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FORTNIGHTLY CASE LAW BULLETIN

(01-01-2023 to 15-01-2023)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
The Commissioner, Inland Revenue, Karachi. v.
M/s Attock Cement Pakistan Limited, Karachi
Civil Appeals No. 1422 of 2019
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1422_2019.pdf

Facts: Through this Appeal, the petitioner has assailed the judgment whereby the order passed by the Appellate Tribunal was maintained, directing refund for the respondents and another sum for the spare parts as goods within the contemplation of tax regime as enforced for the period 1996-97.

Issues: i) Whether the adjustment of 'input tax' from the 'output tax' provided under section 7(1) of the Sales Tax Act can be availed without any limitation of time?
ii) What is relevant provision of the Sales Tax 1990 dealing with refund of tax claimed to have been 'paid or over paid' through 'inadvertence, error or misconstruction'?
iii) Whether there is period of limitation prescribed for seeking the refund under section 66 of the Sale Tax Act 1990?

Analysis: i) The provision does not stipulate any condition or restriction of time for adjustment of the 'input tax' from the 'output tax' payable in respect of taxable supplies made in a tax period. The stipulation of time, that is, a tax period, is with regard to determining the tax liability of the 'output tax' on taxable supplies made by the tax payer during that period, and does not relate to the period of payment of 'input tax' on the taxable supplies received by him.
ii) Section 66 of the Sale Tax Act 1990 provides for refund of tax claimed to have been 'paid or over paid' through 'inadvertence, error or misconstruction' and prescribes a period of one year for preferring such claims.
iii)The period of limitation prescribed for seeking the refund under section 66 of the Sale Tax Act 1990 is one year from the date of over-payment of tax that is, when 'output tax' was paid by the registered person without adjusting the 'input tax'.

Conclusion: i) The adjustment of 'input tax' from the 'output tax' provided under section 7(1) of the Sales Tax Act can be availed without any limitation of time.
ii) Section 66 of the Sale Tax Act 1990 provides for refund of tax claimed to have been 'paid or over paid'.
iii) The period of limitation prescribed for seeking the refund under section 66 of the Sale Tax Act 1990 is one year.

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2. **Supreme Court of Pakistan**
Naeem Tahir and others v. Jahan Shah alias Shah Jehan and others
Civil Petition No. 2633 of 2019
Mr. Justice Qazi Faez Isa, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2633_2019.pdf

Facts: A civil misc. application was filed before the Supreme Court on behalf of some of the respondents through which they filed a document without any explanation of the same.

Issues: Whether mere filing of documents through a concise statement or an application without any explanation accords with the Supreme Court Rules, 1980?

Analysis: If there is a practice of merely filing documents through a concise statement or an application without any explanation, as contended by the learned counsel, it does not accord with the Supreme Court Rules, 1980 ('the Rules') nor with common sense. An application or concise statement must mention the purpose of its filing. Rule 1 of Order XVIII of the Rules stipulates that 'concise statements of the facts of the case and the arguments upon which they propose to rely' are to be mentioned therein. And, Order XVIII is also applicable to supplemental proceedings, which would include applications. Simply filing a document without explaining what it is and /or what is its effect would not put the other side on notice, as to purpose of its filing. Documents which are filed either through an application or a concise statement (save exhibits or pleadings) should be explained in the application/concise statement or in the affidavit in support thereof.

Conclusion: Mere filing of documents through a concise statement or an application without any explanation does not accord with the Supreme Court Rules, 1980.

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3. **Supreme Court of Pakistan**
Shahbaz Akmal v. The State through
Prosecutor General Punjab, Lahore and another
Criminal Petition No. 1496 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1496_2022.pdf

Facts: Through this petition the petitioner has sought post-arrest bail in a murder case.

Issues: i) Whether a bail application on the same ground can be repeated before the same court?
ii) Whether a detained accused can be made to suffer because his advocate elects to strike?
iii) Whether the exercise of authority is a sacred trust?
iv) Whether action detrimental to the liberty of anyone can be taken?
v) Whether a court has to wait for the complainant's advocate?

vi) Whether it is duty of bar councils of Pakistan to ensure the prestige of legal profession?

Analysis: i) In the case of Nazir Ahmed (a judgment by a three -Member Bench of Hon'able Supreme Court) it was held that another bail application on the same ground cannot be repeated before the same court. And, if a bail application is withdrawn during the subsistence of a ground on which bail is sought it cannot be taken again if the bail application was withdrawn. The said decision was endorsed in the case of Muhammad Aslam (a judgment by a five -Member Bench of Hon'able Supreme Court).

ii) A detained accused must not be made to suffer because his advocate elects to strike or does so in solidarity with his colleagues. The Pakistan Bar Council has enacted the 'Canons of Professional Conduct and Etiquette of Advocates' which stipulates that, 'It is duty of the Advocates to appear in Court when a matter is called and 'make satisfactory alternative arrangements' if he is unable to. The advocate representing an accused must discharge his duty towards his client. If an advocate strikes for a lesser or personal reason it would be appropriate to first return the professional fee received from the client. An advocate should not strike at the expense of the client.

iii) The Constitution of the Islamic Republic of Pakistan ('Constitution') commences by stating that the exercise of authority is a sacred trust. If an advocate representing a detained accused does not attend court he fails to perform his professional duty and breaks his client's trust. An accused person like any other has the inalienable right to 'enjoy the protection of law and to be treated in accordance with law' but if advocates strike and trials are postponed this constitutional right of the accused is negated.

iv) The Constitution also mandates that 'no action detrimental to the liberty of anyone be taken except in accordance with law, therefore, if the trial of a detained accused is delayed on account of strike, and subsequently, the accused is acquitted then the additional incarceration suffered by the accused would have been detrimental to his liberty. Amongst the designated Fundamental Rights of an accused there is also the right to a fair trial and due process which rights are premised on proceeding with the trial of a detained accused.

v) It is clarified that a court does not have to wait for the complainant's advocate to attend court, much less adjourn a case due to his absence, because the State counsel, employed at taxpayers' expense, is required to prosecute cases.

vi) All provincial bar councils and the Pakistan Bar Council undoubtedly would remind advocates of their professional duties and would ensure that the prestige of the legal profession is not undermined by advocates who strike for a lesser cause than to protect and defend the Constitution in the public interest.

Conclusion: i) A bail application on the same ground cannot be repeated before the same court.

ii) A detained accused cannot be made to suffer because his advocate elects to strike.
iii) Yes, the exercise of authority is a sacred trust.
iv) Action detrimental to the liberty of anyone cannot be taken.
v) A court has not to wait for the complainant's advocate and State counsel is required to prosecute cases in his absence.
vi)Yes, it is duty of bar councils of Pakistan to ensure the prestige of legal profession.

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4. **Supreme Court of Pakistan**
Amir Faraz v. The State
Criminal Petition No.475 of 2022
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din-Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._475_2022.pdf

Facts: Through this Criminal Petition, petitioner / complainant of case sought cancellation of post arrest bail which was granted to respondent No.2 who is accused in the said FIR.

Issue: i) Whether the opinion of second investigation officer holding the complainant party aggressor can be believed at the stage of bail specially when accused party has neither agitated it nor moved for any cross-version?
ii) Whether bail granting order can be cancelled if the same is perverse?

Analysis: i) No doubt, the opinion of the Investigating Officer has some persuasive value, if the same is based upon a strong and concrete material which is lacking in the present case. Some co-accused earlier filed petition for protective pre-arrest bail before the Lahore High Court and in the said petition, it is nowhere asserted that complainant party was aggressor nor any ground regarding cross-version, was agitated, meaning thereby that at that time, this plea was not taken by the respondent and was subsequently agitated, due to which the subsequent Investigating Officer formed the said opinion and due to this circumstance his opinion has no persuasive value at the stage of bail and it would be the trial Court which after recording the evidence will appreciate this aspect of the case.
ii) It is settled law that bail granting order could be cancelled if the same was perverse. An order which is, inter-alia, entirely against the weight of the evidence on record, by ignoring material evidence on record indicating, prima-facie, involvement of the accused in the commission of crime, is always considered as a perverse order, which is in present case as material evidence on the record brought by prosecution promptly, was not given any weight by the High Court and a perverse order was passed upon a baled opinion of second Investigating Officer. … Of course, bail can be cancelled if bail granting order is erroneous and resulted into miscarriage of justice.

Conclusion: i) The opinion of second investigation officer holding the complainant party aggressor cannot be believed at the stage of bail specially when accused party has neither agitated it nor moved for any cross-version.
ii) Bail can be cancelled if bail granting order is perverse, erroneous and resulted into miscarriage of justice.

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5. **Supreme Court of Pakistan**
Nasir Ahmed v. The State.
Jail Petition No. 865 of 2017
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/j.p._865_2017.pdf

Facts: Through instant jail petition the petitioner has assailed the order of learned Lahore High Court, Lahore, whereby in appeal the conviction and sentence of death along with compensation and the sentence in default whereof awarded to the petitioner by the learned Trial Court was maintained.

Issues: i) Whether trustworthy and confidence inspiring ocular evidence alone is sufficient to sustain conviction of an accused?
ii) Whether minor discrepancies, if any, in medical evidence relating to nature of injuries can negate the direct evidence?
iii) Whether relationship of the prosecution witnesses with the deceased can be a ground to discard the testimony of such witnesses?

Analysis: i) It is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused.
ii) Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse effect on prosecution case. 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.
iii) It is by now a well-established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses especially when the relationship with the assailant is so close.

Conclusion: i) Yes, trustworthy and confidence inspiring ocular evidence alone is sufficient to sustain conviction of an accused.
ii) Minor discrepancies, if any, in medical evidence relating to nature of injuries cannot negate the direct evidence.
iii) Relationship of the prosecution witnesses with the deceased cannot be a

ground to discard the testimony of such witnesses.

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6. **Supreme Court of Pakistan**
M/s Sadiq Poultry (Pvt.) Ltd. v. Government of Khyber Pukhtunkhwa thr. its Chief Secretary & others
Civil Petition No.5646 of 2021
Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5646_2021.pdf

Facts: Through this petition the petitioner assailed the impugned order passed by the Peshawar High Court, whereby, the learned High Court made several directions, inter alia, that a committee should be formed to review prices of livestock and poultry products and that officials of the government ought to make regular visits to the market to ensure that adulterated milk and other items which are not consumable are not sold in the market.

Issues: i) Whether the High Court does have suo motu jurisdiction?
ii) Whether learned High Court is competent to fix the prices of products and can devise formula for pricing under Article 199 of the Constitution?
iii) Whether the subject of restriction or prohibition of imports and exports falls within the domain of the Federal Government?
iv) Whether section 5B of the Pakistan Imports and Exports (Control) Act, 1950 provides that in case of violation of an order restricting or prohibiting imports or exports, the jurisdiction to adjudge the same would exclusively vest with a Commercial Court?

Analysis: i) It is settled law that the High Court does not have suo motu jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan (the "Constitution") as compared to this Court which has been conferred exclusive jurisdiction in the matter by the Constitution in terms of Article 184(3). Article 184 of the Constitution provides that the power to exercise suo motu jurisdiction vests only with the Supreme Court.
ii) It is pertinent to mention here that the learned High Court was not competent to even fix the prices of products. The only course of action available to it, if necessary, was to direct the Government to do what it is required to do under the law in case its officials /functionaries were not doing that. The High Court, under Article 199, cannot devise a formula for pricing. Doing so is not permitted under the law and does not fall in the domain of the Courts and goes against the principle of trichotomy of powers envisaged under the Constitution. The act of issuing directions with respect to an issue or dispute which was not before the High Court constitutes overstepping jurisdictional limits which cannot be countenanced. The learned High Court could only pass appropriate and lawful orders on matters which have a direct nexus with the lis before it and could not overstep or digress therefrom.
iii) Item No.27 of the Federal Legislative List clearly and categorically provides

that import and export is a federal subject. Further, Section 3 of the Pakistan Imports and Exports (Control) Act, 1950 clearly states that the power to prohibit or restrict imports and exports vests with the Federal Government. The aforenoted provision of law clearly states that the subject of restriction or prohibition of imports and exports falls within the domain of the Federal Government.

iv) It is necessary to note that Section 5B of the ibid Act provides that in case of violation of an order restricting or prohibiting imports or exports, the jurisdiction to adjudge the same would exclusively vest with a Commercial Court. The High Court, acting under Article 199, cannot be termed as a Commercial Court. This is because civil/ criminal jurisdictions of the High Court are separate from the constitutional jurisdiction of the High Court. In the former, evidence is recorded by the competent Court and then the High Court sits in appeal/revision over a decision of the lower fora. In the latter, the High Court is the Court of first instance, does not ordinarily record evidence regarding factual matters, and is acting as a constitutional court inter cilia to ensure that there is no infringement of the Constitution or the rights guaranteed to citizens by the Constitution.

Conclusion: i) The High Court does not have suo motu jurisdiction as under Article 184 of the Constitution provides that the power to exercise suo motu jurisdiction vests only with the Supreme Court.

ii) Learned High Court is not competent to fix the prices of products and cannot devise formula for pricing under Article 199 of the Constitution.

iii) The subject of restriction or prohibition of imports and exports falls within the domain of the Federal Government.

iv) Section 5B of the Pakistan Imports and Exports (Control) Act, 1950 provides that in case of violation of an order restricting or prohibiting imports or exports, the jurisdiction to adjudge the same would exclusively vest with a Commercial Court.

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7. **Supreme Court of Pakistan**
Muhammad Abbas, and Muhammad Ramzan v. The State.
Criminal Appeal No. 481/2012
Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._355_2018.pdf

Facts: Petitioners along with two co accused were tried by the learned Additional Sessions Judge, in a private complaint under Sections 302/148/149 PPC for committing murder. The same was instituted being dissatisfied with the investigation conducted by the Police in case FIR under Sections 302/148/149 PPC. The learned Trial Court vide its judgment while acquitting the two co-accused, convicted the petitioners under Section 302(b) PPC and sentenced them to imprisonment for life. They were also directed to pay compensation to the legal heirs of the deceased or in default whereof to further suffer four months SI. Benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioners. In appeal the learned High Court maintained the conviction and sentences awarded to the petitioners by the learned Trial Court.

Issues: i) Whether relationship of prosecution witnesses with deceased is fatal for prosecution case?
ii) Whether accused is entitled for the benefit of minor discrepancies?

Analysis i) It is by now a well-established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses.
ii) On account of lapse of memory owing to the intervening period, some minor discrepancies are inevitable and they may occur naturally. The accused cannot claim benefit of such minor discrepancies.

Conclusion: i) Relationship of witness with deceased is no ground to discard the testimony.
ii) The accused cannot claim benefit of such minor discrepancies.

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8. **Supreme Court of Pakistan**
Muhammad Yousaf and others v.
Muhammad Ishaq Rana (deceased) through LRs and others
Civil Appeal No.801 of 2021
Mr. Justice Ijaz ul Ahsan, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._801_2021.pdf

Facts: The respondents filed suit for partition etc. against appellants and appellants filed suit for declaration to the effect that their predecessor was the real owner whereas predecessor of respondents was mere benamidar. The trial court dismissed the suit of appellants and partially decreed the suit of respondents. On appeal, first appellate court issued decree in favour of appellants. The respondents sought revision of decree from the High Court and the High Court restored the decree of trial court. Hence, this civil appeal by appellants.

Issues: i) How many persons and contracts are involved in benami transaction?
ii) How benami transaction can be proved?
iii) Whether in benami dispute, authenticity and execution of document is in question?
iv) On whom burden to prove lies that the ostensible vendee (owner) was a mere name-lender and how this burden is discharged?

Analysis: i) There are three persons involved in benami transaction — the seller, the real owner, and the ostensible owner or benamidar, and, in the ordinary course of human conduct, it encompasses two different contracts, one is the contract, express or implied, between the ostensible owner and the purchaser (real owner) and it specifically mentions two things. First, the real owner expresses his desire or compulsion (also called motive) and obtains permission from the ostensible owner (Benamidar) to purchase the property in his name after paying the consideration amount to the seller, and second, it talks about the consent of the ostensible owner (Benamidar) that whenever the real owner demands, he will be bound to transfer the property to him. The other is a contract between the ostensible owner (Benamidar) and the seller of the property.

ii) Both contracts involved in benami transaction, though differ from each other in their legal character and incidents, complement each other to establish benami transaction, and thus, in cases of such transaction, the plaintiff must first state them, in detail, in his plaint, and then prove them by legal testimony, and failure to do so is fatal..

iii) The case of benami dispute is not one in which the authenticity of the document is in question, but in such cases the execution of the document is an admitted fact and the seeker only intends rectification of the document and wants that in it the name of the Benamidar be deleted and instead his name be written.

iv) The burden of proof lies heavily on the person who claims against the tenor of the document or deed to show that the ostensible vendee (owner) was a mere name-lender and the property was in fact purchased only for his benefit. Such burden would be discharged by satisfying the well-known criteria, to wit, (i) the source of purchase money relating to the transaction; (ii) possession of the property, (iii) the position of the parties and their relationship to one another, (iv) the circumstances, pecuniary or otherwise, of the alleged transferee, (v) the motive for the transaction, (vi) the custody and production of the title deed, and (vii) the previous and subsequent conduct of the parties. Each of the above-stated circumstances, taken by itself, is of no particular value and affords no conclusive proof of the intention to transfer the ownership from one person to the other. But a combination of some or all of them and a proper weighing and appreciation of their value would go a long way towards indicating whether the ownership has been really transferred or where the real title lies.

Conclusion: i) There are three persons involved in benami transaction and it encompasses two different contracts.

ii) The plaintiff must first state both contracts of benami, in detail, in his plaint, and then prove them by legal testimony.

iii) In benami dispute, authenticity and execution of document is not in question.

iv) The burden of proof lies heavily on the person who claims against the tenor of the document or deed to show that the ostensible vendee (owner) was a mere namelender and such burden is discharged by proving (i) source of purchase money, (ii) possession of property,(iii) position & relationship of parties, (iv) the circumstances, pecuniary or otherwise, of the alleged transferee, (v) the motive for the transaction, (vi) the custody and production of the title deed, and (vii) the previous and subsequent conduct of the parties.

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9. **Supreme Court of Pakistan**
Muhammad Iqbal (deceased) v. Ahmad Din (dec) through his L.Rs., etc.
C.M.A. No.1609-L of 2021 IN C.R.P. No.NIL-L of 2021 IN C.A. No.5-L of 2010 etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-Ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._1609_l_2021.pdf

Facts: Through this application permission is sought by the learned counsel to represent the petitioner in review petition by replacing the earlier counsel.

Issues: i) What are requirements for filing review petition before Supreme Court?
ii) What can be the consequences of filing vexatious or frivolous review application?
iii) Why order XXVI of the Supreme Court Rules 1980 requires the same Advocate, who earlier appeared to argue the case, to draw up the review application and appear in support of it before the Court?

Analysis: i) Order XXVI of the Supreme Court Rules 1980 ("Rules") deals with the practice and procedure of Supreme Court in exercising its review jurisdiction. Under Rule 6 an application for review has to be drawn by the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made. Under Rule 4, the Advocate who draws up the review application has not only to specify the points upon which the prayer for review is based but he has also to add his certificate to the effect that the review would be justifiable in accordance with the law and practice of the Court.
i) Rule 5 of order XXVI of the Supreme Court Rules 1980 provides that in case the Court comes to the conclusion that the review application filed was vexatious or frivolous, the Advocate or the Advocate on Record drawing the application shall render himself liable to disciplinary action, while Rule 7 provides that no application for review shall be entertained unless party seeking review furnishes cash security of Rs. 10,000/- which shall stand forfeited if the review petition is dismissed or shall be paid to the opposite-party, if the review petition is contested.
ii) Order XXVI of the Supreme Court Rules 1980 Rules requires the same Advocate, who earlier appeared to argue the case, to draw up the review application and appear in support of it before the Court for certain reasons. It is because a review petition is not the equivalent of a petition for leave to appeal or an appeal where the case is argued for the first time. It is not the rehearing of the same matter. The Advocate who had earlier argued the main case is perhaps the best person to evaluate whether the said grounds of review are attracted in the case. He being part of the hearing of the main case is fully aware of the proceedings that transpired in the Court leading to the judgment or order sought to be reviewed. He is the one who knows what was argued before the Court and what weighed with the Court in deciding the matter either way.

Conclusion: i) Under Order XXVI an application for review has to be drawn by the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made and to specify the points upon which the prayer for review is based along with certificate to the effect that the review would be justifiable in accordance with the law and practice of the Court.
ii) If the review application filed was vexatious or frivolous the Advocate drawing the application can be himself liable to disciplinary action and security Rs.

10,000/ furnished, under Rule 7 of Supreme Court Rules, shall stand forfeited if the review petition is dismissed or shall be paid to the opposite-party, if the review petition is contested.

iii) The Advocate who had earlier argued the main case being part of the hearing of the main case is fully aware of the proceedings that transpired in the Court leading to the judgment or order sought to be reviewed.

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10. **Supreme Court of Pakistan**
Muhammad Yasin etc. v. The Director General,
Pakistan Post Office, Islamabad & another
Civil Petitions No.688 & 689 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._688_2020.pdf

Facts: The petitioners seek leave to appeal against a consolidated judgment of the Federal Service Tribunal, whereby their appeals filed against the decisions of the departmental authority have been dismissed. The departmental authority had declined the petitioners' request for permission to appear in the departmental competitive exam for appointment to the posts of Assistant Superintendent on the ground that they were above 45 years of age and as such were not eligible for appointment to the said post under the relevant rules.

Issues: Whether an unlawful act or wrongful gains of others can be made a standard for enforcing the right to equality guaranteed by Article 25 the Constitution?

Analysis: Article 25 of the Constitution guarantees the equal protection of law, not the equal protection of lawlessness, by declaring that all citizens are equal before law and are entitled to equal protection of law. An unlawful act, therefore, cannot be made a standard for enforcing the right to equality guaranteed by the Constitution. One illegality cannot be allowed to be compounded by applying the right to equality. Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit. Such other persons cannot be discriminated against to deny the same benefit, in view of their right to equality before law and equal protection of law guaranteed by Article 25 of the Constitution. If unlawful acts are allowed or acknowledged on the basis of the right to equality and nondiscrimination, it would negate the rule of law mandated by Articles 4 and 5 of the Constitution. The one who wants the court to grant him the relief prayed for must base his claim on his own legal right, not on the wrongful gains of others.

Conclusion: No, an unlawful act or wrongful gains of others cannot be made a standard for enforcing the right to equality guaranteed by Article 25 the Constitution.

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11. **Supreme Court of Pakistan**
Waqas Aslam & others v. Lahore Electric Supply Company Limited, etc.
Civil Petition No.4806 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4806_2019.pdf

Facts: The petitioners were not considered for the post of Line Superintendent Grade-I (BPS15) on the ground that they did not meet the eligibility criteria/selection requirement as per the advertisement. The refusal was challenged by the petitioners through a constitutional petition, which was allowed by the learned Single Judge. The respondents preferred Intra Court Appeal, which was allowed by holding that the petitioners did not meet the requirement of the advertisement and secondly that the petitioners being overqualified for the post were not suitable for the said position. Petitioners have assailed the said judgment through this petition.

Issues: i) Whether court can draw an inference that a higher qualification presupposes the acquisition of a lower qualification?
ii) Whether court can examine the qualification and eligibility in a recruitment process?
iii) Whether power of judicial review by the Courts can be extended to determine equivalence or comparison of academic qualifications for a post or assume the role of a human resource department of an employing institution?

Analysis: i) It is also important to note that in the absence of any such stipulation in the advertisement or the recruitment policy of the respondent company, it is not possible for the Court to draw an inference that a higher qualification presupposes the acquisition of a lower qualification or that a candidate having a higher qualification is better suited for the post as opposed to a candidate possessing the requisite qualification that has been expressly prescribed in the advertisement according to the nature of the post and the requirement of the employer.
ii) It is not for the Court to examine the qualification and eligibility in a recruitment process. The Court, at best, can look into the legality of the recruitment process but cannot delve deeper into the design and need of the employing institution or second guess their selection criteria and job requirement.
iii) It is also not open to the Courts to embark upon comparing various degrees held by the applicants with the advertised qualifications and carry out the function of an employer by carrying out the comparison of the said qualifications. The power of judicial review by the Courts cannot be extended to determine equivalence or comparison of academic qualifications for a post or assume the role of a human resource department of an employing institution. It is a specific expert area and can be best resolved by the institution itself according to the suitability and requirements of a certain post as designed and desired by the employer. It is an area for which the Courts are not best suited.

Conclusion: i) The court cannot draw an inference that a higher qualification presupposes the acquisition of a lower qualification.
ii) The court cannot examine the qualification and eligibility in a recruitment process.
iii) The power of judicial review by the Courts cannot be extended to determine equivalence or comparison of academic qualifications for a post or assume the role of a human resource department of an employing institution.

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12. **Supreme Court of Pakistan**
Divisional Superintendent, Pakistan Railways & another v. Umar Daraz
Civil Petition No.4618 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4618_2019.pdf

Facts: The respondent, an employee in grade 5 of the Pakistan Railways became visually impaired and incapacitated to do the job of Pointsman for which he was initially appointed. The department adjusted him in grade 3 having regard to his incapacitation in compliance of Railways manual. The respondent successfully challenged the action and able to get the post equal to grade 5. The petitioner, through this petition has challenged the said order on the ground that post allocated to respondent is a selection post and he had to go through the process of promotion to be entitled to the said post.

Issues: Whether physical incapacitation of an employee during service entitles him to get a job of an equal grade and suitable description?

Analysis: The Court maintained that in case an officer develops physical incapacitation the department has to reach out to said officer to ensure the best possible option available for the officer in his condition to continue to serve the department. The said transfer to another suitable post of the respondent is as a special case and is over and above the regular process of transfer, appointment or promotion. Such a special transfer is to provide "reasonable accommodation" to an employee who has been incapacitated during service and for no fault of his own suffers from a disability. Any such "reasonable accommodation" is a priority action item for the department and must be addressed at the earliest. Suitability of the new post must factor in the earlier job description as well as the grade so that the employee is not worse off in financial terms. This finds support from Article 9 and 38(d) of the Constitution of Islamic Republic of Pakistan ("Constitution") which provide for right to life, which includes right to a meaningful livelihood as an integral part of life and policies must be made by the State to safeguard the interest of persons suffering from infirmity or sickness. The Court further directed Pakistan Railways to revisit the Personnel Manual in the light of the fundamental rights and principles of policy enshrined in the Constitution, as well as, the Convention on the Rights of Persons with Disabilities (CRPD), in particular Article 27 thereof, so

that the Personnel Manual is constitution compliant and meets the international standards when dealing with persons with disabilities.

Conclusion: The physical incapacitation of an employee during service without fault of his own entitles him to get a job of equal grade and suitable description.

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13. **Supreme Court of Pakistan**
SDO/AM, Hasht Nagri Sub Division, PESCO,
Peshawar, etc. v. Khawazan Zad
Civil Petition No.1159 of 20 19.
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1159_2019.pdf

Facts: Respondent instituted a suit for declaration and possession of the suit property against PESCO and its employees, SDO/AM etc., ("petitioners"). The petitioners contested the suit by filing a joint written statement. The respondent did not raise any objection as to the authority of the person filing the said written statement on behalf of all the petitioners, including PESCO, and thus no issue in this regard was framed for trial by the trial court. At the conclusion of the trial, the trial court dismissed the suit of the respondent. The respondent's appeal, however, succeeded. The petitioners then filed a revision petition, which was dismissed by the High Court without touching upon the merits of the case, through the impugned judgment, on the ground that it had not been filed by a person duly authorized by a resolution of the Board of Directors of PESCO. Hence, the present petition has been filed by the petitioners for leave to appeal.

Issues: i) Whether there is a difference between the authority to sign and verify a pleading and the authority to institute or defend a suit by or against a corporation, under CPC?
(ii) Whether the provisions of the CPC relating to signing and verification of the pleadings apply to the memorandums of appeal and revision petitions?
(iii) Whether any defect or omission in signing and verifying, or presenting, pleading or a memorandum of appeal or revision is curable?
iv) Whether any defect in the authority of a person to sign and verify a pleading filed in, or to institute or defend, such a suit or in signing and filing a memorandum of appeal or revision petition can be cured at a later stage of the proceedings?

Analysis: i) The notable point is that neither Rules 14 and 15 of Order VI nor Rule 1 of Order XXIX says anything about presenting the pleadings to the court after signing and verifying the same. Rather, these are Rule 1 of Order IV and Rule 1 of Order VIII which deal with the subject of presenting a plaint or a written statement to the court. Different rules on these two matters make it obvious that there is a difference between the signing and verifying a pleading (plaint or written statement) under Rules 14 and 15 of Order VI, or under Rule 1 of Order XXIX, and the presentation of that pleading to the court under Rule 1 of Order IV (plaint) and Rule 1 of Order VIII (written statement), CPC. The act of presenting

a plaint to the court under Rule 1 of Order IV is called the institution of the suit, and the act of presenting a written statement under Rule 1 of Order VIII constitutes the defence of the suit. These acts manifest the will of a litigant to pursue his claim or to defend the claim made against him, in a court of law. By presenting the plaint, a plaintiff sets the machinery of the court in motion for deciding upon his claim while the presentation of the written statement expresses the will of the defendant to defend that claim. The act of presentation of a plaint or a written statement can, therefore, be done only by the plaintiff and the defendant in person or by their recognized agents or by their duly appointed pleaders, in terms of Rule 1 of Order III. Rules 14 and 15 of Order VI, or Rule 1 of Order XXIX, which relates to signing and verifying the pleadings (plaint and written statement), cannot be referred to for the purpose of establishing the authority of a person to institute, or defend, the suit. (…) As the authority conferred by Rule 1 of Order XXIX, on the specified officers of the corporation to sign and verify any pleading on behalf of the corporation, does not include the authority to institute or defend the suit in their own names, a corporation (like PESCO in the present case) being a juristic person must sue or be sued in its own name. Therefore, the name of the corporation, not the name or designation of any of its officers or employees, is to be mentioned as a plaintiff or a defendant.

ii) A memorandum of appeal can be signed, as per Rule 1 of Order XLI, by the appellant or his pleader; so can a revision petition be signed by the petitioner or his pleader as the revisional jurisdiction is a part of the general appellate jurisdiction of a superior court and the provisions of the CPC in regard to appeals are applicable mutatis mutandis to revision petitions. A memorandum of appeal or a revision petition can, therefore, be signed by a duly appointed pleader as per Rule 1 of Order XLI, and presented to the appellate or revisional court by him on behalf of the appellant or petitioner as per Rule 1 of Order III, CPC. Rules 14 and 15 of Order VI, as well as Rule 1 of Order XXIX, as to signing and verifying the pleadings (plaint and written statement) are, thus, not applicable to the memorandums of appeal and revision petitions.

iii) Any defect or omission in signing and verifying, or presenting, a pleading (plaint or written statement) or a memorandum of appeal or revision petition does not affect the merits of the case or the jurisdiction of the court and is therefore taken to be such an irregularity which can be cured at any stage of the proceedings.

iv) Likewise, any defect in the authority of a person to sign and verify a pleading filed in a suit by or against a corporation, or to institute or defend such a suit by presenting that pleading to the court, or in signing or filing of a memorandum of appeal or revision petition by a corporation, can also be cured at any stage of the proceedings.

Conclusion: i) There is a difference between the signing and verifying a pleading and the presentation of that pleading to the court. Authority conferred by Rule 1 of Order XXIX, on the specified officers of the corporation to sign and verify any pleading

on behalf of the corporation, does not include the authority to institute or defend the suit in their own names.
ii) The provisions of the CPC relating to signing and verification of the pleadings does not apply to the memorandums of appeal and revision petitions
iii) Any defect or omission in signing and verifying, or presenting, a pleading or a memorandum of appeal or revision petition is curable.
iv) Suit filed by an unauthorized person is curable.

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14. **Supreme Court of Pakistan**
Province of the Punjab thr. Deputy Commissioner/District Collector, Rawalpindi & another v. Muhammad Akram & others
Civil Petitions No.3760 of 20 19 & 3759 of 201 9
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3760_2019.pdf

Facts: These Civil Petitions for leave to appeal are directed against the consolidated Order passed by the Lahore High Court, Rawalpindi Bench in W.P.No.3111/2018 and W.P. No.341/2019, whereby both the Writ Petitions filed by the respondents were disposed of with certain directions.

Issues: i) What is the object of Order 1 Rule 10 C.P.C?
ii) Which court can undertake a case of dispute between any two or more Governments?

Analysis: i) The Court, in exercise of powers conferred under Order I, Rule 10, C.P.C may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined be struck out and add the party who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved. The object of the Rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.
ii) According to the exactitudes of Article 184 of the Constitution, this Court , to the exclusion of every other Court, has original jurisdiction in any dispute between any two or more Governments and may pronounce declaratory judgments only. The explanation attached to this Article accentuates that the term "Governments" means the Federal Government and the Provincial Governments.

Conclusion: i) The object of Order 1 Rule 10 C.P.C is to enable the Court effectually and completely to adjudicate upon and settle all the questions involved between the necessary and proper parties.
ii) According to Article 184 of the Constitution, Supreme Court , to the exclusion of every other Court, has original jurisdiction in any dispute between any two or

more Governments and may pronounce declaratory judgments only.

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15. **Supreme Court of Pakistan**
Fahad Hussain and another v. The State through Prosecutor General Sindh.
Criminal Petition No.167-K of 2022
Mr. Justice Jamal khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._167_k_2022.pdf

Facts: By dint of this Criminal Petition, the petitioners have called in question the order passed by the High Court of Sindh, Circuit Court, Larkana in Criminal Bail Application whereby the petitioners' application for pre-arrest bail was dismissed and ad interim bail order was recalled in FIR, lodged under Sections 302 and 34, PPC at Police Station.

Issues: i) Whether benefit of doubt can be extended to the accused even at bail stage?
ii) What is meant by reasonable grounds?

Analysis i) It is a well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time. .
ii) In order to ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in a vacuum.

Conclusion: i) Benefit of doubt can be extended to the accused even at bail stage.
ii) Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted and/or illusory grounds.

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16. **Lahore High Court**
National Engineering Services Pakistan (NESPAK) and 2 Others v. Muhammad Nawaz Cheema and 13 Others.
ICA No. 32860 of 2022
Mr. Justice Abid Aziz Sheikh, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC8637.pdf

Facts: Through the present decision, Honourable Lahore High Court disposed of the titled Intra Court Appeal, filed under section 3 of the Law Reforms Ordinance, 1972, as well as Intra Court Appeals bearing numbers 33125/2022, 33119/2022, 33122/2022, 33115/2022, 33123/2022, 33121/2022, 33124/2022&33120/2022, being outcome of the same judgment, passed by learned Single Judge of this Court.

Issues: Whether a constitutional petition is maintainable where the relationship between the employee and employer is not governed by any statutory rules of service?

Analysis where conditions of service of employees are not regulated by a statutory provision(s), the service / employment of employees is to be governed by the principle of "Master & Servant" and the employees of such entity cannot invoke Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for alleged violation of terms of service / employment.

Conclusion: An employee who is not governed by statutory rules cannot approach High Court in its constitutional jurisdiction.

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17. **Lahore High Court**
Commissioner of Inland Revenue, Legal Division, Regional Tax Office, Lahore v. M/s. Rafaqat Marketing, Lahore & another.
STR No.18 of 2010
Mr. Justice Shams Mehmood Mirza, Mr. Justice Shahid Jamil Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC8615.pdf

Facts: During scrutiny of refund claims of taxpayer, the department observed that input invoices were issued by the suppliers who had either been declared blacklisted by the concerned authorities, or were nonexistent at their given addresses with "registration suspended" status and issued Show Cause Notices, which culminated in passing of Order-in-Original, whereby refund claims of taxpayer were rejected. Feeling aggrieved, taxpayer assailed said order in appeal before Collector (Appeals), which was dismissed. Feeling dissatisfied, taxpayer filed second appeal before the Appellate Tribunal, whereby orders passed by fora below were set-aside and appeal was accepted. Hence, instant Reference Application.

Issues: i) Whether department is authorized to reject the tax credit of all the previously issued invoices on the sole reason that the supplier was blacklisted subsequently?
ii) Who has initial burden to prove that invoices have nexus with blacklisting or

tax was not paid or deposited against the invoices?

Analysis: i) Provision of Section 21(3) of the Act of 1990 clarifies that the department is authorized to reject a refund claim based on invoices issued during the period of suspension and after consequent blacklisting, 'whether prior or after such blacklisting', by passing a speaking order after giving the registered person an opportunity of being heard. However, such power is not available to reject the tax credit of all the previously issued invoices on the sole reason that the supplier was blacklisted subsequently. Provisions of Section 21(3) cannot be read in isolation for refusing to entertain the invoice(s) issued prior to blacklisting of the supplier. The Taxation Officer has to establish, through plausible evidence, that the invoices have some nexus with the cause of blacklisting; that the suppliers were conducting business as per law when the invoices were issued; that blacklisting order was passed due to some subsequent defaults; and that order of blacklisting or suspension was reversed being challenged by the supplier subsequently. The reasons or cause of blacklisting is to be correlated with the invoices intended to be rejected for the adjustment of tax credit or its refund.

ii) To prove the facts that invoices have nexus with blacklisting or tax was not paid or deposited against the invoices, burden is upon the revenue, however, this burden can be shifted upon the registered person claiming adjustment or refund of tax, in cases of tax fraud, in accordance with the provisions of section 2(37) of the Act of 1990. Not by confronting, merely, that the supplier was blacklisted subsequently, initial burden, before shifting, is to be discharged by the revenue.

Conclusion: i) Department is not authorized to reject the tax credit of all the previously issued invoices on the sole reason that the supplier was blacklisted subsequently.

ii) Revenue department has initial burden to prove that invoices have nexus with blacklisting or tax was not paid or deposited against the invoices.

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18. **Lahore High Court**
M/s. Malik Mazhar Hussain Goraya v. Govt. of Punjab, etc.
Writ Petition No. 18004 of 2022.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC8584.pdf

Facts: This judgment examines the extent of statutory authority and constitutional validity of appointment and powers of Administrators of Local Governments to utilize Local Government's Development Fund, in absence of Elected Representatives and that too for carrying out Development Scheme proposed by MNAs and MPAs.

Issues: i) Whether the Chief Minister, without approval of the Cabinet can Appoint Administrators and assign them functions?

ii) Whether executive order, allocating grants to MNAs and MPAs for development work within the domain of a Local Government, is legal?

Analysis: i) Appointment of Administrators and assigning of functions and power by the Chief Minister, without approval of the Cabinet is without lawful authority. However, the functions, not powers to be exercised by elected Local Government, can be ratified and continued by the Administrators appointed in accordance with law.

ii) Any executive order, allocating grants to MNAs and MPAs for development work within the domain of a Local Government, is declared illegal and any regulation or law permitting allocation of such grant shall be unenforceable in view of Section 4 of Punjab Local Government Act 2022.

Conclusion: i) The Chief Minister, without approval of the Cabinet cannot Appoint Administrators and assign them functions.

ii) Any executive order, allocating grants to MNAs and MPAs for development work within the domain of a Local Government, is illegal.

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19. **Lahore High Court**
Mazhar Rasool Hashmi v. Government of Punjab etc.
Writ Petition No. 81608/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC8622.pdf

Facts: The petitioner through this Public Interest Litigation (PIL) has challenged the appointment of the current Advocate General of Punjab on the ground that under Article 140 of the Constitution of 1973, the Governor can appoint only such person as the Advocate General who is qualified to serve as a Judge of the High Court. Article 195 fixes the retirement age of a High Court Judge at 62 years. Since the present Advocate General is 73 years of age hence ineligible for the office.

Issues: i) Whether the retiring age mentioned in Art. 195 also applies to the Advocate General and anyone over that age is disqualified to be appointed as an Advocate General?

ii) What are the essential prerequisites for a Public Interest Litigation (PIL)?

Analysis: i) The positions of the High Court Judge and the Advocate General are distinct. There is a separate mechanism for appointment, remuneration, tenure, and removal from these posts. Their responsibilities differ as well. Article 140 governs the appointment of the Advocate General, which is found in Chapter 3 of Part IV of the Constitution, whereas Part VII governs the Judicature. Article 195 is in Chapter 3 of Part VII. Thus, the constitutional framework for the offices of the Advocate General and the High Court Judge is completely different. Article 140 of the Constitution, which provides for the appointment of an Advocate General for a Province as aforesaid, incorporates Article 193(2) only by reference. If the framers of the Constitution intended to prescribe the upper age limit for the appointment of Advocate General or to set the age of retirement for him, they

would have specifically said so. In *Secretary, Ministry of Law, Parliamentary Affairs, and Human Rights, Government of the Punjab, and others v. Muhammad Ashraf Khan and others* (PLD 2011 SC 7), the Hon'ble Supreme Court ruled that under Article 140 a person appointed as Advocate General should meet the requirements for appointment as a High Court Judge. However, this does not imply that he is subject to the same restrictions in other areas that the Constitution places on a High Court Judge.

ii) The courts consider Public Interest Litigation (PIL) a "part of the process of participative justice" and an extremely important jurisdiction. However, it must be exercised with great care and circumspection. In *Javed Ibrahim Paracha v. Federation of Pakistan and others* (PLD 2004 SC 482), the Hon'ble Supreme Court of Pakistan held that a person could invoke the constitutional jurisdiction of the superior courts as pro bono publico but he must show that he is prosecuting, first, in the public interest and, second, for the public good, or the welfare of the general public. In *Muhammad Shafique Khan Sawati v. Federation of Pakistan* (2015 SCMR 851), the apex Court emphasized that a citizen must first establish his bona fides in a PIL petition. He should demonstrate that he is not undertaking such litigation to advance a private or vested interest but to serve the public interest, good, or welfare. In *Premier Battery Industries Private Limited v. Karachi Water & Sewerage Board and others* (2018 SCMR 365), the Hon'ble Supreme Court stated: "Such litigation does not strictly fall under any part of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. However, it has received judicial recognition enabling the courts to enlarge the scope of the meaning of 'aggrieved person' under Article 199 of the Constitution to include a public-spirited person who brings to the notice of the court a matter of public importance requiring enforcement of fundamental rights. Nonetheless, the constitutional jurisdiction of the superior courts is required to be exercised carefully, cautiously, and with circumspection to safeguard and promote public interest and not to entertain and promote speculative, hypothetical, or malicious attacks that block or suspend the performance of executive functions by the Government". In *Gurpal Singh v. State of Punjab & others*, [(2005) 5 SCC 136], the Indian Supreme Court ruled that before entertaining a PIL petition the court must be satisfied with (a) the applicant's credentials; (b) the prima facie correctness or nature of the information given by him; (c) the information is not vague and indefinite. The facts should reflect the gravity and urgency of the situation. It further held that the court should not allow anyone to make wild and reckless allegations besmirching the character of others and keep a check on public mischief. It should reject mischievous petitions trying to dispute lawful executive actions for oblique motives or to gain cheap popularity.

Conclusion: i) The offices of the High Court Judge and the Advocate General are distinct and governed by different constitutional provisions. The retiring age mentioned in Art. 195 for a High Court Judge does not apply to the Advocate General and anyone over that age is qualified to be appointed as an Advocate General.

ii) Primarily, the applicant must show that he is prosecuting in the public interest and for the public good or welfare. Moreover, the court before entertaining a PIL petition must be satisfied with (a) the applicant's credentials; (b) the prima facie correctness or nature of the information given; (c) the accuracy and the certainty of the information given; and (d) the facts should reflect the gravity and urgency of the situation. Lastly, in no circumstances it should be a Publicity Interest Litigation.

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20. **Lahore High Court**
Mst. Sughran Bibi v. Abdul Sattar, etc.
Civil Revision No. 2194/2011
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC8604.pdf

Facts: Instant and connected Civil Revision are directed against consolidated judgment and decree of first appellate court, whereby appeals preferred by petitioner was dismissed, and consolidated decision of court of first instance, was affirmed, in terms whereof trial court had dismissed suit for declaration instituted by the petitioner, and decreed suit for specific performance brought by respondent No.1, seeking enforcement of alleged agreement to sell.

Issues: Whether in view of sections 214 and 215 of the Contract Act, 1872, where agent purchases the property, subject of agency, for himself or his own benefit, same is obligated to seek principal's consent, after acquainting the principal with all material circumstances?

Analysis: It is established that no special permission was asked – though attorney admitted that respondent No.1 was his nephew [no explanation was provided to show that respondent No.1 was not the descendant from same ancestor, and respondent No.1 was not related by blood. Notwithstanding this inadequacy, there is another fundamental lapse in the performance of obligations by the Attorney. Attorney has to prove that transaction was not for his benefit, which material issue was not proved and instead it is established that suit property was sold in return of the services rendered by the respondent No.1 – which convincingly proved that attorney sold suit property for his own benefit. Evidently the transaction carried out secured him his comfort, residence, food and care extended by the respondent No.1, which influenced the attorney and led to compromising his duties, responsibilities and obligations towards the principal. The advantages / benefits drawn by the attorney, at the expense of the principal, are established. These admitted facts constitute provisioning of tangible benefits and calls for the necessity of prior permission from the principal. No evidence was led to prove that money allegedly received were paid to the principal. Attorney not even alleged this fact. Hence, requirements of sections 214 and 215 of the Contract Act, 1872 were not met.

Conclusion: In view of sections 214 and 215 of the Contract Act, 1872, where agent purchases the property, subject of agency, for himself or his own benefit, same is obligated to seek principal's consent, after acquainting the principal with all material circumstances.

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21. **Lahore High Court**
Mst. Kausar Bibi v. Civil Judge Etc.
Writ Petition No.5777 Of 2022
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC8611.pdf

Facts: Through the writ petition, legality and validity of the order of the learned Civil Judge is assailed, whereby registration of FIR had been ordered against the judgment debtor, who according to report of the bailiff obstructed in the execution of warrants of possession.

Issues: Is the order of the executing Court for registration of FIR against the judgment debtor, who allegedly obstructed in the execution of warrants of possession, maintainable in eyes of law whilst relying upon mere report of bailiff instead of holding any inquiry?

Analysis: Procedure for execution of a decree/order is provided in Order XXI of the C.P.C. However, in case of any resistance in the execution process, the Court is empowered to proceed under Rule 98 to Order XXI of the C.P.C., at the instance of the applicant, to detain the judgment debtor or the person who was resisting or obstructing in the execution process, only after such fact having been proved in a result of inquiry. Necessary steps should be taken in order to determine the correctness or otherwise of the report of bailiff relied upon before passing the order. The Court may record statement of the bailiff, call upon him to submit affidavit to verify the correctness of his report and summon the SHO concerned or call for his report in order to satisfy itself about the correctness or otherwise of the report of bailiff, especially in case where, whilst issuing warrant for possession, the SHO concerned was directed to provide police aid to the bailiff for execution of warrants of possession without any unpleasant incident.

Conclusion: The order of the executing court, relying upon the report of the bailiff without holding an inquiry, for registration of an FIR against the judgment debtor, who allegedly obstructed in the execution of warrants of possession, is not sustainable in the eye of law.

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22. **Lahore High Court**
Mst. Shamim Akhtar etc. v. Muhammad Younis Khan etc.
RSA No.62 of 2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC8645.pdf

Facts: Through this Regular Second Appeal the appellants have challenged the judgment and decree of the learned Appellate Court below who allowed the appeal, set aside the judgment and decree of the learned Trial Court, and dismissed the suit for specific performance of the agreement to sell of the Plaintiffs/Appellants.

Issues: i) Whether simple denial of execution of agreement to sell is sufficient or alleged vendor must challenge that specifically by way of initiating criminal proceedings or through an independent civil suit?
ii) What are the requirements for a subsequent vendee/purchaser to establish his claim to be bona fide purchaser?
iii) In case of judgments at variance of the learned two Courts below, which one is to be preferred and on what grounds?

Analysis i) The Defendants/Respondents. No. 1 to 4, though in their written statement, have alleged that the agreement and the receipt are fake, yet they have not specifically challenged the same either by way of initiating criminal proceedings or through an independent civil suit even after taking preliminary objection in this regard. The Honorable Supreme Court in case titled "Sajjad Ahmad Khan v. Muhammad Saleem Alvi and others" (2021 SCMR 415) held that in such an eventuality simple denial of a document being fake and fictitious is not legally sufficient unless same facts are proved and established on record.
ii) It is settled law that a subsequent vendee/purchaser has to establish by discharging the initial onus that (i) he acquired the property for due consideration and thus is a transferee for value, meaning thereby that his purchase is for the price paid to the vendor and not otherwise; (ii) there was no dishonesty of purpose or tainted intention to enter into the transaction while acting in good faith and (iii) he had no knowledge or notice of the original sale agreement between the plaintiff and the vendor at the time of his transaction with the latter. Reliance is placed on cases reported as "Hafiz Tassaduq Hussain v. Lal Khatoon" (PLD 2011 SC 296) and "Bahar Shah and others v. Manzoor Ahmad" (2022 SCMR 284).
iii) where the judgments of the learned Courts below are at variance and this Court is hearing a second appeal, preference should be given to the judgment of the learned Appellate Court below. However, the said principle of law does not entail its universal application, hence, it is not an impregnable and invariable rule of law as the finding of the lower Appellate Court would be immune from interference in second appeal only if the same is supported and substantiated by logical reasoning and proper appreciation of evidence and is not result of misreading and/or non-reading of evidence. Where the findings of the lower Appellate Court are at variance with that of the Trial Court, the two will definitely come in for comparison of their merits in light of the facts of the case and the reasons of which the two different and contradictory, if not opposing, findings have been respectively proceeded. If the judgment of the learned lower Appellate Court is found to be arbitrary or capricious, it can be rejected as held by the Honorable Supreme Court in case reported as "Madan Gopal & 4 others vs. Maran Bepari & 3 others (PLD 1969 SC 617).

Conclusion: i) Simple denial of execution of agreement to sell is not sufficient rather alleged vendor must challenge that specifically by way of initiating criminal proceedings or through an independent civil suit.

ii) A subsequent vendee/purchaser has to establish his claim to be bona fide purchaser by discharging the initial onus that, he acquired the property for due consideration, acted in good faith and that he had no knowledge or notice of the original sale agreement.

iii) Generally, in case of judgments at variance of the learned two Courts below, preference should be given to the judgment of the learned Appellate Court below, but it is not universal rather both the judgments will definitely come in for comparison of their merits in light of the facts of the case and the reasons of which the two are different and contradictory.

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23. **Lahore High Court**
Muhammad Latif v. The State and another
Writ Petition No.573-Q of 2022
Mr. Justice Raheel kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC8632.pdf

Facts: Through this writ petition, the petitioner seeks quashing of the First Information Report registered against him for the offences under Sections 419, 420, 468, 471 & 109 PPC at Police Station Federal Investigation Agency ("FIA"), on complaint

Issues: i) What is nature and scope of jurisdiction of FIA?
ii) Whether Mala fide must be pleaded with particularity?

Analysis: i) The nature and scope of jurisdiction of the FIA is governed by Section 3(1) and Schedule to the Act read with preamble thereof, which embodies its purpose, object and reads as follows:- "Whereas it is expedient to provide for the constitution of a Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government, and for matters connected therewith, it is hereby enacted as follows:"It is well settled by now that although preamble to a statute is not operative part thereof, however, the same provides a useful guidance for determining the purpose and intention of the legislature behind the enactment. There is no cavil with the proposition that the FIA has been established/constituted for investigation of certain offences committed in connection with matters concerning the Federal Government, and for matters connected therewith.(..) Through the Act, the FIA, in terms of Schedule to the Act, has been granted jurisdiction to take cognizance in respect of several offences under the Pakistan Penal Code, 1860 ("P.P.C.") which are cognizable by the local police also.

ii) As regards allegation of mala fide, suffice it to observe that it is well settled that mala fide must be pleaded with particularity. Wage and general allegations have no value in the eye of law.

Conclusion: i) The nature and scope of jurisdiction of the FIA is governed by Section 3(1) and Schedule to the Act read with preamble thereof, which embodies its purpose,

object .The FIA, in terms of Schedule to the Act, has been granted jurisdiction to take cognizance in respect of several offences under the Pakistan Penal Code, 1860 ("P.P.C.") which are cognizable by the local police also .

ii) Mala fide must be pleaded with particularity and not in general.

LATEST LEGISLATION/AMENDMENTS

1. Section 1 of the "The Foreign Investment (Promotion and Protection) Act, 2022 is amended.
2. Section 325 0f the "The Pakistan Penal Code, 1860" is omitted and amendment of Schedule-II in the Code of Criminal Procedure, 1898 is made.
3. Section 3, 7, 9, 11, 15, 20 and 92 of "The Punjab Trusts Act, 2020" are amended and Section 15-A is inserted.
4. Rule 1 and 4 of "The Punjab Pakistan Waqf Properties (Accounts) Rules, 1982 are amended and Rule 5 is omitted.
5. Amendment in Schedule at Sr. No. 6 of "The Punjab Criminal Prosecution Service (Conditions of Service) Rules, t 2007 is made.
6. Amendment in "The Punjab Government Letter No.2374-88-VI/2808-CS, dated 07.08.1988 under the subject "Misuse of Agricultural Land/States-Assessment of Condonation Fee."
7. Sr. No. 7 of "The Punjab Government Rules of Business, 2011" is amended.
8. Amendment in Local area of metropolitan corporation, Sargodha, Punjab.
9. Amendment in Rule, 22 of "The Punjab Local Governments Land Use Plan (Classification, Reclassification and Redevelopment) Rules, 2020" is made.

SELECTED ARTICLES

1. **MANUPATRA**
   https://articles.manupatra.com/article-details/Antiturst-A-major-issue-in-the-modern-MA-Regime

   Antiturst - A major issue in the modern M&A Regime by Akshit Gupta

   Since mergers and acquisitions is a collusive activity, it is rife with numerous behind- the - scenes factors which induce anti - competitive trade culture and threaten to damage the small - investors and shareholders. Despite the fact that the antitrust and anti - unfair competition phenomena has received a sufficient concern of the Government ,and subsequently reasonable steps a lot had s been taken, done in that regard as well, yet the issue of mergers control under anti - trust laws remains a rather complex entity . The smaller target enterprises remain at a constant state of perplexity due to lower negotiation capacity as compared to foreign giants. In this article, we try to critically analyze, the various what are the various antitrust challenges faced by corporate entities while undergoing the process of mergers/demergers, how have the laws evolved to shield the market from monopolistic and damaging anti - competitive motives of few key players, what is the position of the International conglomerate market on this issue and what can be a viable roadmap ahead to address this issue more prudently.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Interplay-of-Arbitration-and-Intellectual-Property-Rights

Interplay of Arbitration and Intellectual Property Rights by Arjim Jain

The commercial and business-commerce sectors have finally greatly embraced and benefited from alternative conflict resolution techniques. One of the most popular ways is arbitration; today, the majority of parties involved in business transactions choose to use arbitration to resolve any sort of disagreement. The article uses many case laws to argue whether intellectual property disputes are arbitrable in India. Is arbitration a viable option for IP disputes is the question this study seeks to answer. Also being contested is whether IPs fall under Right in rem or Right in personam. This article also briefly discussed the status of international IPR disputes' arbitrability. Additionally, several recommendations have been given.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Diplomatic-means-of-Dispute-Settlement-in-Public-International-Law

Diplomatic means of Dispute Settlement in Public International Law by VedikaKakar

Post-World War II the world leaders were confident they needed a new international organisation (to replace League of Nations) to create a stable world order and to be a peacemaker and a peacekeeper. The UN Charter in Chapter VI discusses "peaceful substitutes for techniques of violence". Several other declarations recognised peaceful settlement of disputes as one of the seven principles of international law. International dispute settlement refers to submitting the dispute to a body that would assess the merits and issues and come to a conclusion on how to best settle it.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/To-Pierce-or-not-to-pierce-A-General-survey-of-Doctrine-of-piercing-the-corporate-veil

To Pierce or not to pierce: A General survey of Doctrine of piercing the corporate veil by Mr. Soham Sakpal

A company is a legal entity formed by a group of like-minded individuals with the capital, to engage in and operate a commercial enterprise and thereby further their business ambitions. In this day and age of globalized economies formation of a company has become a standard medium to pursue any commercial venture. Historically, this "association of individuals" of western origin and its genesis lies in both the ingenuity and financial exigencies of the Dutch which compelled them to launch the first joint stock corporation so as to not miss the proverbial ship of exploration for new trade routes, with one fell swoop the Dutch not only gained access to the limitless public funds but also the financial risk of a perilous business venture was now distributed throughout the ranks of multitudes of shareholders thus minimizing the risk of an individual investor, even today modern corporations are

formed with this same motivation. Thus, the Dutch East India Company has the distinction of being the first multinational corporation established in 1602. Being a student of law & of history, I would argue that it was the impeachment trial of Governor General of India Warren Hastings in 1787 when the prosecution led by Edmund Burke, rather unknowingly and unsuccessfully first attempted to pierce the corporate veil (although the concept of the corporate veil was not yet invented) by seeking to impeach the senior most administrator of the East India Company in India for his acts of mismanagement and corruption allegedly committed under the garb of Company's authority. It was the first time in history that not only the official in charge of the company's affairs was held accountable for illegal acts done in the Company's name but also the overall conduct of the East India Company in carrying out its business was discussed and debated in the House of Lords which until 2009 was the highest court of appeal in the UK..

5. SPRINGER LINK

https://link.springer.com/article/10.1007/s11572-023-09654-y

A Fiduciary Principle of Policing by Stephen Galoob

Consider two cases of policing. The first is Whren v. United States.Footnote1 In the early 1990s, two plainclothes District of Columbia police officers, Soto and Littlejohn, were patrolling a so-called high crime area in an unmarked car when they noticed a truck that they suspected was engaged in the drug trade. However, at this point the officers lacked an independent legal basis for detaining or searching the truck. The officers made a U-turn toward the truck. The truck turned right without signaling and sped off. The officers then pulled over the truck for traffic violations. After stopping the truck, the officers saw large plastic bags containing crack cocaine in the passenger compartment. The two occupants of the truck, Whren and Brown, were arrested and charged with possessing cocaine with the intent to distribute it within 1000 feet of a school.

6. SPRINGER LINK

https://link.springer.com/article/10.1007/s11196-022-09962-x

Langue and Parole of Investment Law by Paolo Vargiu

This article identifies the principal signs forming the language of investment law and arbitration, isolating for each of them its signifier and its signified in light of how such signs are used by arbitrators, practitioners and scholars. In light of this analysis, investment arbitration is assessed from a semiotic standpoint in order to verify whether it is possible, under this perspective, to consider international investment law as a multilateralised branch of international law, with a common language, customs and rules rightly referred to by international arbitral tribunals, or if the term "international investment law" is merely a conventional expression that simply groups together a plurality of micro-systems with no significant link among each other to justify the arbitrators' establishment of a de facto system of precedent and the constant reference to a non-existent body of international law rules on foreign investment.

7. THE NATIONAL LAW REVIEW
https://www.natlawreview.com/article/wedded-to-law-striking-marital-discrimination-failure-explained-uk

Wedded to The Law – striking marital discrimination failure explained (UK) by David Whincup

As the next in our occasional series of posts about The Law, here is a new Employment Appeal Tribunal decision so morally unjust that even the Judge himself didn't want to make it. Mrs Bacon was married to the majority shareholder of their joint employer, Advanced Fire Solutions Limited. She was also employee, director and shareholder of AFS. When she told her husband that she wanted to separate (but from him, not it), he promptly demonstrated beyond reasonable argument that hell having no fury is in no sense limited by gender. Both directly and via AFS's managing director, a Mr Ellis, Bacon subjected his wife to a series of retaliatory detriments including denying her dividend payments, fitting a tracking device to her car, falsely alleging IT abuse, dismissing her and making what the Employment Tribunal found to be a wholly spurious complaint to the police about her.

LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(16-01-2023 to 31-01-2023)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Province of Sindh through Chief Minister & others v.
Sartaj Hyder Civil Petitions No.943 to 954 -K of 2022
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah,
Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._943_k_2022.pdf

Facts: The instant Civil Petition along with connected Petitions impugns interim orders, passed by the High Court of Sindh, Bench at Sukkur and Circuit Court Larkana. The orders have been passed in petitions filed by the Respondents in relation to the relief work carried out by the Petitioners in the flood affected areas of Sindh.

Issues: i) Whether Supreme Court can interfere in interim orders of High Court?
(ii) Whether as per National Disaster Management Authority Act members of the civil community can be made part of Provincial and District Management Authorities?
(iii) What are the Policy Guidelines regarding the participation of women in disaster management plan?
iv) On whom responsibility falls to propose a national adaptation plan?

Analysis: i) The orders impugned are interim orders and this Court normally does not interfere with the interim orders of the High Court except in exceptional circumstances.
ii) As per the scheme of the Act, members of the civil community which include volunteers, NGOs, doctors and others can be made part of the Provincial and District Management Authorities to help relief efforts. The record shows that they have been included in the DDMA vide notification dated 24.06.2014, however, there is no information on whether they actually participated. Section 3(2)(p) of the Act provides that National Commission shall also consist of representatives of civil society or any person appointed by the Prime Minister. As this is the policy making body, the inclusion of members of civil society on this Commission is imperative because for effective and efficient disaster management the inclusion of people likely to be affected is necessary not only for coordination, data collection and creating awareness but also to combine the efforts of the community and the authority in the event of a natural disaster. This gives civil society an opportunity to become part of the implementation, co-ordination and monitoring plan which only makes the work of the authority more effective. The Act also provides under Section 8 that the NDMA shall consist of members as may be prescribed by its chairperson. This Authority is headed by the Prime Minister, who can include any member as he deems appropriate. Similarly, at the provincial as well as the district level, the Act provides in its Sections 13 and 15 that members to the PDMA and DDMA may be nominated by the Chief Minister and by the District Authority to include any member as they deem appropriate.

Under these provisions, members of civil society can be included not only on the Commission but also in the Authorities to ensure that relief work is carried out where required and to help in mitigating the effects of the natural disaster as well as work on rehabilitation of the affectees. Hence, inclusion of civil society is necessary.

iii) In this context, we find that the Policy Guidelines requires the participation of women in disaster management plan at all levels to ensure integration of the gender perspective. As per the Policy Guidelines, women are at a greater risk from natural disasters than men. They are vulnerable and victims in natural disasters but also play a significant role throughout the disaster management cycle, without being adequately recognized and included in the decision making. The Policy Guidelines also emphasizes on ensuring equal access to relief opportunities for victims without any discrimination which requires the needs of vulnerable groups to be targeted to ensure that their needs are attended, safeguarded and protected. As per the Policy Guidelines, women, children, older persons, persons with disabilities are all defined as vulnerable groups in disaster. The NDMA and National Disaster Risk Reduction Policy all emphasize on reducing risks and vulnerabilities of those who are marginalized which include women, children, older person, persons with disabilities and minorities , however, there is no report available on the actual efforts made during the last six months .

(…)Therefore, in line with the policies formulated, it is imperative that the citizens committees include women, older persons and persons with disabilities so that the required response is ensured and provided and that the Policy Guidelines formulated be implemented real time. In this context, we note that the affected areas require maternity and healthcare for women so there is an increased need for female doctors, trainers and caretakers to attend to the health concerns. Women are often subjected to gender-based violence and harassment in times of such calamities, therefore safety and security concerns are also of significance for which appropriate response is also required. In this context, although the framework exists, an effort must go into ensuring that it actually functions and fulfils its mandate. Accordingly, we find that the citizens committee should ensure the representation of the vulnerable groups, particularly of women, in order to strengthen its perspective.

iv) Climate change is undoubtedly the most serious existential threat faced by Pakistan and the major cause of the recent floods. Therefore, any post-floods strategy must first and foremost propose a national strategy to deal with climate change today and tomorrow. The primary responsibility falls on the shoulders of the Ministry of Climate Change, Government of Pakistan, as well as, the National Disaster Management Authority (NDMA) to propose a national adaptation plan to avert the horrific devastation caused by floods this year and also to safeguard and protect the fundamental rights of the people from the wrath of climate change. I, therefore, feel compelled to append this additional note in public and national interest.(…) In view of this unprecedented damage and the likelihood of its recurrence, it is imperative that serious and practical efforts are undertaken for

prevention and adaptation against such disasters induced by climate change. It is also expected that existing policies or mechanisms catering to food insecurity etc. are mobilized as soon as possible and if no such policies or mechanisms exist, then the respective State functionaries should take urgent action to formulate such policies and create such mechanisms to prevent further exacerbation of the losses and damage already suffered due to the floods and for sustainable rehabilitation.

Conclusion: i) Supreme Court normally does not interfere with the interim orders of the High Court except in exceptional circumstances.

ii) As per the scheme of the Act, members of the civil community which include volunteers, NGOs, doctors and others can be made part of the Provincial and District Management Authorities to help relief efforts.

iii) Policy Guidelines require the participation of women in disaster management plan at all levels to ensure integration of the gender perspective.

iv) Primary responsibility falls on the shoulders of the Ministry of Climate Change, Government of Pakistan, as well as, the National Disaster Management Authority (NDMA) to propose a national adaptation plan.

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2. **Supreme Court of Pakistan**
Collector of Customs, Model Customs Collectorate, Peshawar v. Waseef Ullah and another etc.
Civil Petitions No. 389, 696 to 742 of 2022
Mr. Justice Umar Ata Bandial CJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._389_2022.pdf

Facts: The aforesaid forty-eight Civil Petitions for leave to appeal are directed against the common judgment passed by the learned Peshawar High Court in Custom References, whereby the Reference Applications were answered in the negative in favour of the respondents, and against the petitioner.

Issues: i) What is the duty of the Court while interpreting a law?

ii) What is the purpose of issuing S.R.Os?

iii) If the tax-payer is entitled for exemption in plain terms of notification, whether the department can deny the benefit of an exemption which was intended for the benefit of the taxpayer?

iv) Whether in a taxing statute, there is a leeway or probability of any intendment?

Analysis: i) According to well-settled canons and rules of interpretation laid down by the superior Courts time and again, the indispensable and imperative sense of the duty of the Court in interpreting a law is to find out and discover the intention of the legislature, and then endeavor to interpret the statute in order to promote or advance the object and purpose of the enactment. If the words used are capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is

more consistent with the alleged object and policy of the Act. If the words of the section are plain and unambiguous, then there is no question of interpretation or construction. The duty of the Court then is to implement those provisions with no hesitation. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. The Court cannot supply casus omissus and while interpreting a statute, the Court cannot fill in gaps or rectify defects and cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The legal maxim, "absoluta sententia expositore non indigent" also reminds us that, when the language is not only plain, but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation. Whereas another maxim "generalia verba sunt generalita intelligenda" expresses that general words are to be understood generally and what is generally spoken shall be generally understood unless it be qualified by some special subsequent words or unless there is in the statute itself some ground for restricting their meaning by reasonable construction, not by arbitrary addition or retrenchment.

ii) S.R.Os are issued fundamentally in the aid of substantive principles of law set out in the parent legislation, and to give effect to administrative directions and instructions for the implementation of the law.

iii) If the tax-payer is entitled for exemption in plain terms of notification, then the department could not deny the benefit of an exemption which was intended for the benefit of the taxpayer so it should be construed accordingly.

iv) In a taxing statute, there is no leeway or probability of any intendment but the manner of interpretation should be such which undoubtedly or unmistakably comes into sight from the plain language of the notification with the conditions laid down in it, but with the caution that the benefits arising from a particular exemption should not be defeated or negated and, in case of any ambiguity or mischief, the taxing statute should be construed in favour of the assessee.

Conclusion: i) The indispensable and imperative sense of the duty of the Court in interpreting a law is to find out and discover the intention of the legislature, and then endeavor to interpret the statute in order to promote or advance the object and purpose of the enactment.

ii) S.R.Os are issued in the aid of substantive principles of law set out in the parent legislation, and to give effect to administrative directions and instructions for the implementation of the law.

iii) If the tax-payer is entitled for exemption in plain terms of notification, then the department cannot deny the benefit of an exemption which was intended for the benefit of the taxpayer.

iv) In a taxing statute, there is no leeway or probability of any intendment but the manner of interpretation should be such which undoubtedly or unmistakably

comes into sight from the plain language of the notification with the conditions laid down in it, but with the caution that the benefits arising from a particular exemption should not be defeated or negated and, in case of any ambiguity or mischief, the taxing statute should be construed in favour of the assessee.

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3. **Supreme Court of Pakistan**
National Highway Authority through Ghulam Mujtiba, G.M, Lhr (in all cases) v. Mazhar Siddique & others (in all cases) C.P. 819, 820 of 2017 & 939-L of 2015
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._819_2017.pdf

Facts: Through petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, leave has been sought against the judgment/ orders of learned High Court whereby holding that ICA had become infructuous as award had already been announced however matter was referred again with consent of the parties for determining interest to be paid from the date of possession or from the date of corrigendum.

Issue: i) What is the relevant date under Section 34 of the Land Acquisition Act, 1894 for the computation of compound interest?
ii) Whether High Court can use contempt of court jurisdiction as a substitute of execution proceedings?

Analysis: i) The relevant starting date for the payment of compound interest on compensation amount, under Section 34 of the Land Acquisition Act, 1894, is the date of taking possession of the acquired land till the date of payment of entire amount of compensation by the collector where normal statutory period has been observed.
ii) Indeed, contempt jurisdiction vests in superior courts to ensure the maintenance of dignity of court and majesty of law. Such jurisdiction is to be exercised with circumspection and sparingly and not merely at whims and fancy of any person to satisfy personal ego or as an arm-twisting tool. Therefore, the use of contempt of court jurisdiction as a substitute of execution proceedings is undesirable.

Conclusion: i) The relevant starting date for the payment of compound interest on compensation amount is the date of taking possession of the acquired land.
ii) The use of contempt of court jurisdiction as a substitute of execution proceedings is undesirable.

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4. **Supreme Court of Pakistan**
Amanullah v. The State and another
Criminal Appeal No. 75-L of 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._75_l_2021.pdf

Facts: The appellant along with two co-accused was tried by the learned Additional Sessions Judge, for committing murder of brother of the complainant. The learned Trial Court while acquitting the co-accused, convicted the appellant and sentenced him to death. In appeal, the learned High Court while maintaining the conviction of the appellant, altered the sentence of death into imprisonment for life. Being aggrieved by the impugned judgment, the appellant filed instant Jail Petition.

Issues: i) Whether ocular evidence can be given preference over medical evidence?
ii) Whether testimony of a prosecution witness can be discarded mere on the ground of relationship with the deceased?

Analysis: i) It is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence
ii) This Court has time and again held that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses.

Conclusion: i) Trustworthy ocular evidence can be given preference over medical evidence.
ii) Testimony of a prosecution witness cannot be discarded mere on the ground of relationship with the deceased.

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5. **Supreme Court of Pakistan**
Muhammad Umar Waqas Barkat Ali v. The State and another Criminal Petition No. 352-L of 2022
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._352_l_2022.pdf

Facts: Through the instant petition the petitioner has assailed the consolidated order of the learned High Court with a prayer to grant pre-arrest bail in a cross-version recorded under Sections 337-A(i)/337-A(ii)/337- F(v)/354/148/149 PPC in the interest of safe administration of criminal justice.

Issues: i) Whether the opinion of the Investigating Officer can be evaluated without recording evidence regarding the overt act of petitioner?
ii) Whether a person can be put behind the bars for an indefinite period merely on bald and vague allegations?
iii) Whether the case of two versions falls within the ambit of section 497(2) Cr.P.C?

Analysis: i) The opinion of the Investigating Officer regarding the overt act of the petitioner has to be evaluated after recording of evidence as an abundant caution. In this view of the matter, the possibility of false implication just to pressurize the petitioner's side to gain ulterior motives cannot be ruled out.

ii) Trial Court after recording of evidence would decide about the guilt or otherwise of the petitioner and until then he cannot be put behind the bars for an indefinite period. It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.

iii) It is established principle of law that a case of two versions falls within the ambit of Section 497(2) Cr.P.C.

Conclusion: i) The opinion of the Investigating Officer regarding the overt act of the petitioner has to be evaluated after recording of evidence.

ii) It is settled law that liberty of a person is a precious right and the same cannot be taken away merely on bald and vague allegations.

iii) It is established principle of law that a case of two versions falls within the ambit of Section 497(2) Cr.P.C.

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6. **Supreme Court of Pakistan**
Federal Board of Revenue through its Chairman, Islamabad & others v. M/s Hub Power Company Ltd & others
Civil Petition No. 3739 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3739_2019.pdf

Facts: The petitioners have filed the instant petition without exhausting the available remedy of filing an Intra Court Appeal under section 3 of the Law Reforms Ordinance, 1972 before the High Court and the respondent, at the very outset, raised an objection that the instant petition is not maintainable. Hence objection is decided.

Issues: Whether a petition before Hon'ble Supreme Court can be filed without exhausting the available remedy of filing an Intra Court Appeal under section 3 of the Law Reforms Ordinance, 1972 before the High Court?

Analysis: It is settled law that where the right to file an ICA before the High Court under section 3 of the Ordinance exists, then a petition before this Court without exhausting the said remedy, and thereby circumventing the forum below, is ordinarily not maintainable. The requirement of filing an ICA is a rule of practice for regulating the procedure of the Court and does not oust or abridge the constitutional jurisdiction of this Court. Such petitions, however, have been entertained by this Court only when certain exceptional circumstances exist, such as, where the matter involves important questions of law of great public importance having far-reaching consequences, questions of law as to the interpretation of the Constitution and validity of provincial statutes, and

substantial questions of law involving fundamental rights, coupled with the fact that the objection with regards to maintainability is taken at a belated stage before the Court.

Conclusion: A petition before Hon'ble Supreme Court cannot be filed without exhausting the available remedy of filing an Intra Court Appeal under section 3 of the Law Reforms Ordinance, 1972 before the High Court except when certain exceptional circumstances exist.

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7. **Supreme Court of Pakistan**
Qazi Naveed ul Islam v. District Judge, Gujrat, etc.
C.P. 3127 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3127_2020.pdf

Facts: The trial court had dismissed the application of the petitioner filed under Section 476 of the Code of Criminal Procedure 1898 ("CrPC") against respondents No. 3 to 5 and the revisional court had also dismissed his revision petition filed against that order of the trial court and the writ petition filed against the orders of the trial court and revisional court was dismissed by the High Court. The petitioner seeks leave to appeal against the order of the High Court.

Issue: i) Whether the power conferred by Section 476, CrPC on a Court to take cognizance of certain offences committed in, or in relation to, any proceedings before it, is discretionary in nature and what is its scope?

ii) What is the importance of imposition of costs to curb frivolous and vexatious litigation?

Analysis: i) The power conferred by Section 476, CrPC on a Civil, Revenue or Criminal Court to take cognizance of certain offences committed in, or in relation to, any proceedings before it, is discretionary as evident from the expression, "may take cognizance", used in the Section. No doubt, like all other discretionary powers, the court concerned is to exercise this discretion judiciously, not arbitrarily, while taking into consideration the facts and circumstances of the case. Previously, before its substitution by the Act XXI of 1976, Section 476 had stated it expressly that the court is to take action under Section 476 when it is of opinion that "it is expedient in the interests of justice" that an inquiry should be made into such an offence. As the discretionary powers must always be exercised in the interests of justice, we are of the considered view that notwithstanding the omission of that expression in the present Section 476, while exercising its discretion under this Section the court concerned should give prime consideration to the question, whether it is expedient in the interests of justice to take cognizance of the offence. The court is to exercise this discretionary power with due care and caution, and must be watchful of the fact that its process under Section 476 is not abused by an unscrupulous litigant scheming to wreak private vengeance or satisfy a private grudge against a person, as has been done by the petitioner in the present case.

ii) The purpose of awarding costs at one level is to compensate the successful

party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences. In a nutshell costs encourage alternative dispute resolution; settlements between the parties; and reduces unnecessary burden off the courts, so that they can attend to genuine claims. Costs are a weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court.

Conclusion: i) The power conferred by Section 476, CrPC on a Court to take cognizance of certain offences committed in, or in relation to, any proceedings before it, is discretionary. Like all other discretionary powers, the court concerned is to exercise this discretion judiciously, not arbitrarily, while taking into consideration the facts and circumstances of the case.

ii) The purpose of awarding costs at one level is to compensate the successful party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences.

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8. **Supreme Court of Pakistan**
Mst. Jameela Bibi (decd) through LRs vs.
Mst. Fatima Bibi (decd) through LRs
C.P.3125 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3125_2020.pdf

Facts: The civil revision filed by the petitioner before the High Court was dismissed for non-prosecution. He filed an application for restoration of the said revision which was dismissed by the High Court through the impugned order on the ground that it was barred by time.

Issues: What is the limitation period for filling an application for the restoration of a civil revision dismissed for non-prosecution?

Analysis: The application for restoration of the civil revision of the petitioner was dismissed on the basis of Article 168 (mistakenly mentioned in the impugned order as Article 169) of the Third Division of the First Schedule of the Limitation Act, 1908 ("The Act"), which provides for a period of thirty days for maintaining such an application in case of an appeal. Perusal of the First Schedule of the Act reveals that Article 163 deals with application for restoration of the suits dismissed for non- prosecution and provides for a period of thirty days from the date of dismissal for filing such an application, while Article 168 provides for readmission of an appeal dismissed for want of prosecution and provides a period of limitation of thirty days from the date of dismissal for filing an application for restoration. There is, however, no specific article, which deals with the application for restoration of civil revision dismissed in default, therefore, reliance

has to be placed on Article 181 of the First Schedule to the Act, which provides that for an application for which no period of limitation is provided elsewhere in the Schedule the period of limitation is three years from the date when the right to apply accrues. In the present case Article 181 is attracted and a period of three years is available to the petitioner to make an application for restoration of the civil revision.

Conclusion: Art. 181 of Limitation Act 1908 shall apply for such an application which envisages a period of three years from the date when right to apply accrues.

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9. Supreme Court of Pakistan
Mubarik Ali Babar v. Punjab Public Service Commission through its Secretary & others
Criminal Petition No. 2045 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2045_2019.pdf

Facts: The petitioner challenged the allocation and reservation of seats for minorities and persons with disabilities in the Combined Competitive Examination, 2015 conducted by the Punjab Public Service Commission, Lahore. The said petition was dismissed by the Lahore High Court which was challenged through this petition.

Issues: Whether the quota reserved for minorities and persons with disabilities which remained unfilled in a particular year can be made available to the other deserving candidates applying under the general quota on open merit?

Analysis: In order to safeguard the rights of the minorities and persons with disabilities (PWDs) and to provide equality of status and opportunities, the State has to endeavor to bridge the gap and ensure that the differently-abled persons and the Non-Muslim minority in our country get to enjoy their fundamental rights under the Constitution with the same fervour and force as enjoyed by the Muslim majority and majority of persons with fuller abilities. Hence other than the general seats, the additional provision of quota for the PWDs and the minorities reaffirms the constitutional commitment. The argument of the petitioner that in case the said seats are not filled by PWDs and the Non-Muslim minority in a particular year, the said seats should be opened and made available to general quota. This is not permissible as it would offend constitutional values, fundamental rights and the Principles of Policy as discussed above. The seats earmarked for minorities or PWDs must be retained and carried forward. This quota is their constitutional right and cannot be reversed or made available to other citizens.

Conclusion: The quota reserved for minorities and persons with disabilities which remained unfilled in a particular year cannot be made available to the other deserving candidates applying under the general quota on open merit.

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10. **Supreme Court of Pakistan**
Peerzada Waqar Alam v. National Accountability Bureau (NAB) through its Chairman, Islamabad, etc. Civil Petition No. 4729 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4729_2019.pdf

Facts: The petitioner (a wheelchair user) was appointed with subject to the condition that he be declared medically fit by the Civil Surgeon. His medical Certificate stated that the petitioner was found "fit for office job". The Certificate, additionally recorded that the petitioner is "fit against disable quota, if any, otherwise as department likes". Then his selection was withdrawn. The petitioner preferred a departmental appeal which was also turned down. The petitioner challenged the same through constitutional petition before the High Court but was not successful and now has challenged the judgment of the High Court through this petition.

Issues: i) Whether section 10 of the Disabled Persons' (Employment and Rehabilitation) Ordinance 1981apply to all organizations?
ii) Whether Employment of persons with disabilities is a charity?

Analysis: i) Under section 10 of the Disabled Persons' (Employment and Rehabilitation) Ordinance 1981all establishments are to employ persons with disabilities "not less than 3% of the total number" of persons employed at any time by the establishment. There is no limitation or distinction of grade in allocating 3% quota for persons with disabilities in any organization. The 3% quota for persons with disability applies across the board in an organization, covering all tiers of posts in an organization and goes up to the highest post.
ii) Employment of population of persons (PWDs) with disabilities is not a charity but a right. The constitutional values of equality and social justice, the fundamental rights to life, to carrying out a profession and to non-discrimination also extend to PWDs and make no distinction between PWDs and others. Therefore, any law or policy relating to PWDs is rights-based and is not to be viewed as charity or pity or mercy. The universality, indivisibility, interdependence and interrelatedness of constitutional values and fundamental rights fully encompass the persons with disabilities and guarantees them full protection without discrimination.

Conclusion: i) Section 10 of the Disabled Persons' (Employment and Rehabilitation) Ordinance 1981applies to all organizations in allocating 3% quota for persons with disabilities.
ii) Employment of persons with disabilities is not a charity but a right.

11. **Supreme Court of Pakistan**
Attiq ur Rehman v. Sh. Tahir Mehmood and others Civil Petition No.600 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._600_2020.pdf

Facts: The Respondent No.1 challenged the initiation of inquiry against him on the charges of which he already stood exonerated in three previous inquiries.

Issues: Whether the Supreme Court can interfere in the interim orders passed by the High Court?

Analysis: It is the settled policy of Supreme Court not to readily interfere in the interim orders passed by the High Court. It is desirable that the court hearing the case finally decides the same before it is brought before the Supreme Court as piecemeal adjudication is not desirable. The only exception is when the interim relief granted by the High Court is arbitrary or unreasonable or reflects abuse of power or wanton exercise of discretion resulting in miscarriage of justice.

Conclusion: The Supreme Court cannot interfere in the interim orders passed by the High Court except where the interim relief granted by the High Court is arbitrary or unreasonable or reflects abuse of power or wanton exercise of discretion resulting in miscarriage of justice.

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12. **Supreme Court of Pakistan**
Muhammad Nawaz @ Karo v. The State
Criminal Petition No. 1392 of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1392_2022.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the learned Single Judge of the learned High Court of Sindh, Circuit Court Hyderabad, with a prayer to grant post-arrest bail in case registered under Sections 395/342/506-II PPC, in the interest of safe administration of criminal justice.

Issues: Whether the provision of Section 506(ii) PPC would be applicable whenever an overt act is materialized and ended into an overt act?

Analysis: 'Criminal intimidation' is defined in Section 503 PPC. A bare perusal of Section 503 PPC makes it clear that whenever an overt act is materialized and ended into an overt act, the provision of Section 506(ii) PPC would not be applicable and the only provision which will remain in the field is the overt act, which is committed

in consequence of criminal intimidation.

Conclusion: No, the provision of Section 506(ii) PPC would not be applicable whenever an overt act is materialized and ended into an overt act. It is only Criminal intimidation as defined in Section 503 PPC.

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13. **Supreme Court of Pakistan**
M/s DW Pakistan (Private) Limited, Lahore v.
Begum Anisa Fazl-i-Mahmood and others
Civil Petition No. 3989 of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3989_2022.pdf

Facts: In a suit for specific performance of agreement to sell, the petitioner / plaintiff tendered a cheque on the order of the learned Trial Court to deposit the remaining sale consideration and the learned Trial Court handed it over to the officer of the Court to retain it in safe custody rather than encashing the same. Thereafter the respondents filed a Civil Revision in the Lahore High Court which was disposed with the direction to the learned Trial Court to deposit the subject matter cheque in a profit bearing account. Now petitioner assailed that order through this Civil Petition.

Issue: i) Whether readiness & willingness is a condition precedent for relief of specific performance?
ii) What should be the pattern and contents of plaint of a suit for specific performance?
iii) Whether the deposit of sale consideration in court by the vendee demonstrates his capability, readiness, and willingness to perform his part of the contract?
iv) Whether merely depositing the Cheque in Court without its encashment is a valid tender of the balance sale consideration in a suit for specific performance?

Analysis: i) The person seeking specific performance has to put on show that he is geared up and fervent to perform his part of the contract, but the other side is circumventing or evading the execution of his obligations arising out of the contract. While deciding the suit for specific performance of a contract, the Court has to consider and come to a decision regarding whether the plaintiff is ready and willing to perform his part of the contract, which is in fact substantiated by dint of the conduct or demeanor of the plaintiff before and after instituting the lawsuit. … The fundamental insightfulness of the Courts in directing the plaintiff in a suit for specific performance to deposit the sale consideration in Court in fact articulates that the vendee has the capacity to pay the sale consideration or balance sale consideration and is ready and willing to perform his obligations arising from the contract. An incessant readiness and willingness is a condition precedent for claiming relief of specific performance, which in unison also conveys the state of mind of the vendee, his capability to pay, keenness and commitment.

ii) Appendix "A" of the First Schedule of the CPC highlights the specimen and modules of pleadings in which Form-47 relates to the "Suit for Specific Performance" wherein there is a specific condition jotted down in paragraph (3) that is to be incorporated in the plaint that "The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice". It is unequivocally clear that the plaint instituted for specific performance of a contract should confirm the requirements prescribed in Form 47 of the CPC. Under the letter of the law, the plaintiff ought to communicate the essential particulars: that he approached the defendant for the performance of a contract/agreement which he failed, and the plaintiff is still ready and willing to specifically perform his part of the obligation arising from the contract/agreement.

iii) In the case of Messrs. Kuwait National Real Estate Company (Pvt.) Ltd. and others Vs Messrs. Educational Excellence Ltd. and another (2020 SCMR 171), this Court held that a party seeking specific performance of an agreement to sell is essentially required to deposit the sale consideration amount in Court. In fact, by making such deposit the plaintiff demonstrates its capability, readiness, and willingness to perform its part of the contract, which is an essential pre-requisite to seek specific performance of a contract. Failure of a plaintiff to meet the said essential requirement disentitles him to the relief of specific performance, which undoubtedly is a discretionary relief.

iv) In our view, there was no rhyme or reason, nor any commonsense explanation for retaining the Cheque in the shelf or vault for its cosmetic value without its encashment to gauge the readiness and willingness of buyer in the suit for specific performance. According to Section 6 of the Negotiable Instruments Act, 1881, a "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. While Section 84 of the same Act deals with the consequences where a cheque is not presented for payment within a reasonable time of its issue and, under sub-section (2), it is provided that in determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case. While handing over the cheque to the officer of the Court by the learned Trial Court, it was ignored that all cheques remain valid for certain time, thereafter it loses its efficacy/validity. When a cheque runs out its time it becomes stale / unacceptable to the banker unless it is revalidated and confirmed by the drawer.

Conclusion: i) An incessant readiness and willingness is a condition precedent for claiming relief of specific performance, which in unison also conveys the state of mind of the vendee, his capability to pay, keenness and commitment.

ii) the plaint instituted for specific performance of a contract should confirm the requirements prescribed in Form 47 of the CPC.

iii) The deposit of sale consideration in court by the vendee demonstrates his capability, readiness, and willingness to perform his part of the contract.

iv) Merely depositing the Cheque in Court without its encashment is not a valid tender of the balance sale consideration in a suit for specific performance.

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14. **Lahore High Court**
Mst. Liaqat Sultana and others v. Mst. Mumtaz Tahawar and others Civil Revision No.64976 of 2020
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC8782.pdf

Facts: The respondent No.1 to 4 and respondent No.7 to 10 instituted suits for declaration and partition and also sought revocation of succession certificate which were consolidated and decreed. The respondents preferred nine appeals and learned appellate Court modified the judgment and decree passed by the learned trial Court. Feeling aggrieved, the instant revision petition as well as connected civil revisions have been filed by the petitioners.

Issues: i) What are ingredients of a valid gift?
ii) Whether onus to prove original transaction also lies on the beneficiary when sanctity of a gift is challenged especially on the basis of fraud and misrepresentation?
iii) How many witnesses are required to prove execution of a document?
iv) Whether concurrent findings on facts can be disturbed when the same do not suffer from any misreading and non-reading of evidence?

Analysis: i) It is observed that ingredients for a valid gift are: offer, acceptance and delivery of possession.
ii) When sanctity of a gift is challenged or called into question especially on the basis of fraud and misrepresentation, the beneficiary has not only to prove the valid execution of gift deed or mutation but also the original transaction.
iii) Whereas law requires that in order to prove valid execution of a document, at least two truthful witnesses are to be produced, as has been enunciated under Article 79 of the Qanun-e-Shahadat Order, 1984.
iv) The concurrent findings on facts cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908.

Conclusion: i) Ingredients for a valid gift are: offer, acceptance and delivery of possession.
ii) Onus to prove original transaction also lies on the beneficiary when sanctity of a gift is challenged especially on the basis of fraud and misrepresentation.
iii) At least two truthful witnesses are required to prove execution of a document.
iv) The concurrent findings on facts cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence.

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15. **Lahore High Court**
Mst. Saima Noreen v. The State and another.
Crl. Appeal No. 59829/2021& Crl. Misc. No. 02 of 2021
Justice Miss Aalia Neelum, Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC8798.pdf

Facts: Through the instant miscellaneous application under Section: 428 Cr.P.C. read with Section: 561-A Cr.P.C appellant/applicant sought permission for additional evidence in the shape of oral & documentary preferred during pendency of main appeal.

Issues: i) What is the mandate of Pakistan Telecommunication Authority and which law prevents unauthorized acts with respect to information systems in Pakistan?
ii) What is the minimum period for which a service provider can retain its specified traffic data?
iii) Who is authorized to obtain CDRs from service providers?
iv) Whether the procedure for tendering CDR in evidence and proving the same would be like any other primary evidence?
v) Whether without "Voice Recording Transcript", mere "Call Data Record" (CDR) alone of the SIM is inconclusive piece of evidence regarding identity of its user/carrier?
vi) Whether a piece of evidence in the knowledge/notice to party not produced during trial can be allowed to come on record at appellate stage?

Analysis: i) Pakistan Telecommunication Authority (PTA) was established under Section: 3 of Pakistan Telecommunication (Reorganization) Act, 1996 and is mandated to regulate the establishment, maintenance and operation of the telecommunication system and provision of telecommunication services in Pakistan. Prevention of Electronic Crimes Act, 2016 (hereinafter to be referred as PECA 2016) is the law which has been legislated and promulgated to prevent unauthorized acts with respect to information systems and to provide mechanism for related offences as well as procedure for investigation, prosecution, trial and international cooperation with respect thereof and matters connected therewith or ancillary thereto.
ii) Section-32 of PECA 2016 provides that "a service provider shall within its existing or required technical capability, retain its specified traffic data for a minimum period of one year or such period as the "Authority" may notify from time to time. Service providers are bound, amongst others, to maintain call data record (CDR) of its customers/users of mobile phone for a period of one year.
iii) Federal and Provincial Interior Ministries have authorized the police department under their jurisdiction and other law enforcement agencies to obtain the CDRs as and when required from the service providers. The officials, who perform said job and have been duly authorized by designation as well as other

relevant information relating to them, whereby their authority can be identified, have been shared with the service provider.

iv) The procedure for tendering CDR in evidence and proving the same would be like any other primary evidence.

v) Although any accused or witness can claim or admit possession and use of any SIM "Subscriber Identity Module' by him or anybody else at the time of occurrence or any other relevant time yet mere such claim or admission is not sufficient for relying on CDR "Call Data Record" of said SIM because CDR only shows use of SIM in territorial/geographical jurisdiction of "Cell Phone Tower" installed by telecom operator and does not disclose that who is actually/exactly carrying and using said SIM; however, "Voice Record Transcript" or "End to End Audio Recording" can reflect the detail/identification of the user. Therefore, without "Voice Recording Transcript", mere "Call Data Record" (CDR) alone of the SIM is inconclusive piece of evidence regarding identity of its user/carrier.

Even "Voice Record Transcript" or "End to End Audio/Video Recording" of the call cannot be relied upon without forensic report about its genuineness.

vi) It is well settled that if any piece of evidence was in the knowledge/notice to party but neither produced nor asked to be produced during trial then same cannot be allowed to come on record under Section: 428 Cr.P.C. at appellate stage

Conclusion: i) The mandate of Pakistan Telecommunication Authority is to regulate the establishment, maintenance and operation of the telecommunication system and its services in Pakistan and Prevention of Electronic Crimes Act, 2016 prevents unauthorized acts with respect to information systems in Pakistan.

ii) Minimum period is one year for which a service provider can retain its specified traffic data.

iii) The officials authorized by the Federal and Provincial Interior Ministries under their jurisdiction and other law enforcement agencies can obtain the CDRs as and when required from the service providers.

iv) Yes, the procedure for tendering CDR in evidence and proving the same would be like any other primary evidence.

v) Yes, without "Voice Recording Transcript", mere "Call Data Record" (CDR) alone of the SIM is inconclusive piece of evidence regarding identity of its user/carrier.

vi) A piece of evidence in the knowledge/notice to party not produced during trial cannot be allowed to come on record at appellate stage.

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16. **Lahore High Court**
Shuja-ul-Haq Malik v. The State etc.
Crl. Appeal No.51188 of 2022
Justice Miss Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC27.pdf

Facts: The appellant was convicted in case F.I.R under Section 9 (c) of The Control of Narcotic Substances Act, 1997 and acquitted of the charge under Sections 420,

468 & 471 PPC. Through the instant criminal appeal, the appellant has challenged his conviction.

Issues: i) Whether under Section 150 of Qanoon-e-Shahadat Order, 1984 the power of the Court of the examination of the witness is limited to the stage of examination-in-chief only?

ii) Whether the trial court should consider the favorable answers elicited during the course of cross-examination while passing the final judgment?

Analysis: i) Section 150 of Qanoon-e-Shahadat Order, 1984 does not in terms or by necessary implication confine the exercise of the power by the Court to any particular stage of the examination of the witness to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. It is wide in scope, and the discretion is entirely left to the Court to exercise power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice.

ii) If the prosecution witness's design was obvious, we do not see why the trial court cannot, during the course of the prosecution witness's cross-examination, permit the person calling him/them as a witness/witnesses to put questions to him/them which might be put cross-examination by the adverse party. In the course of cross-examination, when favorable answers had been elicited, the same would be considered by the learned trial court while passing the final judgment.

Conclusion: i) Under Section 150 of Qanoon-e-Shahadat Order, 1984 the power of the Court of the examination of the witness is not limited to the stage of examination-in-chief only but it also includes the cross-examination by the adverse party.

ii) Yes, the trial court should consider the favorable answers elicited during the course of cross-examination while passing the final judgment.

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17. **Lahore High Court**
Muhammad Farooq v. The State and another Criminal Appeal No.23151 of 2019
The State v. Muhammad Farooq
Murder Reference No.94 of 2019
Justice Miss Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC65.pdf

Facts: This single judgment will dispose of Crl. Appeal filed by Muhammad Farooq (appellant/convict) and Murder Reference, sent by learned trial court for confirmation of death sentence awarded to Muhammad Farooq (appellant) as both the matters have arisen out of one and the same judgment passed by learned Additional Sessions Judge/Judge.

Issues: i) If an FIR is recorded with delay and no reasonable explanation regarding its delayed recording comes on the record, whether the same is fatal for the case of prosecution?

ii) Whether the chance witnesses have to plausibly/reasonably explain and prove reason of their presence at the "time and place" of occurrence?

iii) Whether the witness who introduces dishonest improvement for strengthening the case, can be relied?

iv) Whether medical evidence is mere supportive type of evidence and it cannot tell about identity of the assailant who caused the injury?

v) When substantive piece of evidence in the form of ocular account has been disbelieved, whether motive is of any help to the case of prosecution?

Analysis: i) By now it is well settled that First Information Report lays foundation of the criminal case and when it has not been promptly recorded rather with delay as stated above and no reasonable explanation regarding its delayed recording has come on the record, then it is fatal for the case of prosecution.

ii) It is by now well settled that chance witnesses have to plausibly/reasonably explain and prove reason of their presence at the "time and place" of occurrence.

iii) By now it is also well settled that witness who introduces dishonest improvement for strengthening the case, cannot be relied.

iv) By now law is well settled that medical evidence is mere supportive type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury.

v) When substantive piece of evidence in the form of ocular account has been disbelieved, then motive is of no help to the case of prosecution as the same loses its significance; furthermore, motive is a double edged weapon and in peculiar facts of the case, can be also considered as a reason for roping the accused in the case.

Conclusion: i) If an FIR is recorded with delay and no reasonable explanation regarding its delayed recording comes on the record, then the same is fatal for the case of prosecution.

ii) The chance witnesses have to plausibly/reasonably explain and prove reason of their presence at the "time and place" of occurrence.

iii) The witness who introduces dishonest improvement for strengthening the case, cannot be relied?

iv) Medical evidence is mere supportive type of evidence and it cannot tell about identity of the assailant who caused the injury.

v) When substantive piece of evidence in the form of ocular account has been disbelieved, then motive is of no help to the case of prosecution.

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18. **Lahore High Court**
The State v. Shazam Ali
Murder Reference No.82 of 2019
Shazam Ali v. The State.
Crl. Appeal No.26723-J of 2019
Justice Miss Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC124.pdf

Facts: The appellant has assailed his conviction and sentence recorded by the learned trial court in a private complaint filed under sections 302, 392 PPC and in case FIR No.241/2017. The learned trial court also referred murder reference for confirmation of the death sentence awarded to the appellant.

Issues: i) What is the rationale for making certain statements on fact admissible under Article 19-A of the Qanoon-e-Shahadat Order, 1984?
ii) Whether even a single stance providing mitigation or extenuating circumstance would be sufficient to award lesser punishment to accused?
iii) What inference can be drawn from non-production/summoning of relevant evidence?

Analysis: i) The rationale for making certain statements on fact admissible under Article 19-A of the Qanoon-e-Shahadat Order, 1984 is on account of spontaneity and immediacy of such statement or fact in relation to the fact in issue. But such a fact or statement must be part of the same transaction. In other words, such a statement must have been made immediately thereafter. But if there was an interval that was sufficient for fabrication, then the statement is not relevant.
ii) The well-recognized principle is that the accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence. The Hon'ble Supreme Court of Pakistan holds it in the case titled "*Dilawar Hussain v. The State" (2013 SCMR 1582)* in which the Hon'ble Supreme Court of Pakistan has observed on page 1590 as under: - "---It has neither been the mandate of law nor the dictates of this court as to what quantum of mitigation is required for awarding imprisonment for life rather even an iota towards the mitigation is sufficient to justify the lesser sentence. According to our estimation, even a single stance providing mitigation or extenuating circumstance would be sufficient to award lesser punishment as an abundant caution. In such circumstances, if the court is satisfied that there are certain reasons due to which the death sentence is not warranted, the court has no other option but to improve second sentence of imprisonment for life while extending benefit of the extenuating circumstances to the convict in a just and fair manner---."
iii) If a party does not produce/summon relevant evidence then an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984, that had the evidence produced or summoned, then such would have been unfavorable to the party.

Conclusion: i) The rationale for making certain statements on fact admissible under Article 19-

A of the Qanoon-e-Shahadat Order, 1984 is on account of spontaneity and immediacy of such statement or fact in relation to the fact in issue.

ii) Yes, even a single stance providing mitigation or extenuating circumstance would be sufficient to award lesser punishment to accused.

iii) An adverse inference within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984 can be drawn from non-production/summoning of relevant evidence.

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19. **Lahore High Court**
Muhammad Ijaz v. The State etc.
Crl. Misc. No.69898-B of 2022
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2022LHC8659.pdf

Facts: The petitioner applied for the post-arrest bail in a case FIR registered under Section 302 PPC.

Issue: Whether making photographs of the accused publically, either by showing the same to the witness or by publicizing the same in any newspaper or TV program, would create doubt in the proceedings of the identification parade?

Analysis: Making photographs of the accused publically, either by showing the same to the witness or by publicizing the same in any newspaper or TV program would create doubt in the proceedings of the identification parade. The investigating officer has to ensure that there is no chance for the witness to see the accused before going to the identification parade. The accused should not be shown to the witness in person or through any other mode, i.e., photograph, video-graph, or the press or electronic media.

Conclusion: Making photographs of the accused publically, either by showing the same to the witness or by publicizing the same in any newspaper or TV program would create doubt in the proceedings of the identification parade.

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20. **Lahore High Court**
Sheraz Ahmad, etc v. The State
etc. Crl. Rev. No.69407 of 2022
Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2022LHC8819.pdf

Facts: This revision petition is directed against the order passed by the learned Addl. Sessions Judge, Lahore, whereby the application filed by the petitioners for not charge sheeting them for the offences of the Pakistan Penal Code was declined.

Issues: i) Whether the offences falling under Section 11 of PECA, 2016 and the offences falling under sections 295-A, 295-B, 295-C & 298-C PPC can be tried together or not?

ii) Whether there is a distinction between the “same transaction” and “a similar

transaction"?

Analysis: i) The short controversy for decision in the present case is whether the offences falling under Section 11 of PECA, 2016 and the offences falling under sections 295-A, 295-B, 295-C & 298-C PPC can be tried together or not. It was specifically mentioned in Section 235(2) and Section 4(c) of the Cr.P.C says that charge contains more than one head and that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for, each of such offences. Moreover, Section 235 of the Code speaks of more offences than one committed in the course of the same transaction. As per the allegations leveled in the crime report, the alleged acts constitute offences falling under Section 11 of PECA, 2016, and the offences falling under sections 295-A, 295-B, 295-C & 298-C PPC. The ingredients of Section 11 of PECA, 2016, and under sections 295-A, 295-B, 295-C & 298-C PPC are interlinked, supplementing each other and they are not inconsistent inter-se. So, the offences under section 11 of PECA, 2016, and sections 295-A, 295- B, 295-C & 298-C of the Pakistan Penal Code, 1860 cannot be tried separately because the offences falling under Section 11 of PECA, 2016, and under sections 295-A, 295-B, 295-C & 298-C PPC are interlinked.

ii) There is a clear distinction between the "same transaction" and "a similar transaction". The continuity of action is not in the sense that one act follows the other without any connection but in the sense of an intimate connection between the different acts. Accused persons committing offences of the same kind but separately may not be regarded as having committed those offences in the course of the same transaction. The series of acts which constitutes a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions.

Conclusion: i) The offences falling under Section 11 of PECA, 2016 and the offences falling under sections 295-A, 295-B, 295-C & 298-C PPC can be tried together.

ii) Yes, there is a clear distinction between the "same transaction" and "a similar transaction".

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21. **Lahore High Court**
Arshad Mehmood v. Judge Family Court and another
Writ Petition No. 11512 of 2019
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC95.pdf

Facts: Through this petition, interim orders passed by respondent no.1 have been assailed. By virtue of the former order, right of the petitioner to cross-examine the witnesses of respondent no.2 has been struck off and through the latter, his right to produce oral as well as documentary evidence has also been closed.

Issues: i) Whether against an interim order passed by a Family Court, a writ petition is maintainable?
ii) Whether wisdom/intention of the Legislature can be looked into by High Court in exercise of its constitutional jurisdiction?

Analysis: i) In order to meet the objectives of the Act a bar has been specifically created in section 14(3) of the Act which would show that any interim order passed by the Family Court cannot be subject to challenge through an appeal or a civil revision. While interpreting such like bar of jurisdiction, it has been held by the Hon'ble Supreme Court of Pakistan that where a particular law does not provide a remedy against an interim order passed by a court exercising jurisdiction under that law, the said order ordinarily cannot be assailed by way of filing a constitutional petition with a caveat that if the order is without jurisdiction. When an interim order passed by a family court is challenged before this Court in exercise of its Constitutional Jurisdiction (which according to the judgments mentioned supra is circumscribed), interference made by this Court would not only amount to challenging the wisdom/intention of the Legislature, who has deliberately not provided any remedy against the interim order passed by the family court but it is also violative of Article 189 of the Constitution of the Islamic Republic of Pakistan. Even otherwise, such interference will also be defeating the purpose of promulgation of the Act qua expeditious disposal of the family cases.
ii) It has also been held by the Hon'ble Apex Court that wisdom/intention of the Legislature cannot be looked into by this Court in exercise of its constitutional jurisdiction.

Conclusion: i) Against an interim order passed by a Family Court, a writ petition is not maintainable.
ii) Wisdom/intention of the Legislature cannot be looked into by High Court in exercise of its constitutional jurisdiction.

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22. **Lahore High Court**
Manzoor Ahmad, etc. v. Khalid Hassan Khan, etc.
Regular First Appeal .No.7238 of 2022
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC36.pdf

Facts: Through this Regular First Appeal, the appellants have called in question order passed by learned Civil Judge whereby suit for specific performance of agreement to sell filed by the appellants under Section 12 of the Specific Relief Act, 1877, has been dismissed for failure to produce evidence.

Issues: Whether the court can pass penal order under Order XVII Rule 3 of the C.P.C when the previous order was suffering from error and not unambiguous?

Analysis: Once it is established that initial error in passing the order was committed by the court then the blame cannot be shifted to the party in view of well embedded principle that an act of court shall prejudice none. Further, right to produce evidence can only be closed under Order XVII Rule 3 of the C.P.C when on the pen ultimate date request for adjournment has been made by the party in clear terms.

Conclusion: The court cannot pass penal order under Order XVII Rule 3 of the C.P.C when the previous order was suffering from error and not unambiguous.

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23. **Lahore High Court**
MCB Bank Limited v. The Federation of Pakistan etc.
W.P.No. 77994 of 2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC13.pdf

Facts: Through the instant writ petition the petitioner has challenged the validity of order passed by the President's Secretariat (Public), Aiwan-e-Sadr whereby representation of respondent No.3 was accepted directing the petitioner-bank to compensate her forthwith as per instructions of the State Bank of Pakistan.

Issues: i) Whether in absence of any counter-affidavit the contents of the sworn affidavit are deemed to be admitted?
ii) Whether relationship of a Bank and its customer is based on trust?

Analysis: i) It is settled law that in absence of any counter-affidavit the contents of the sworn affidavit are deemed to be admitted.
ii) The relationship of a Bank and its customer is based on trust The public opt to put their valuable articles in bank lockers for security purpose and if their articles are misplaced from there and the banks will not redress their grievance in such case of loss, the very foundation of the banking system would collapse.

Conclusion: i) Yes, in absence of any counter-affidavit the contents of the sworn affidavit are deemed to be admitted.
ii) Yes, relationship of a Bank and its customer is based on trust.

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24. **Lahore High Court**
Aashiq Hussain v. Fida Hussain & others
Writ Petition No.6404 of 2020
Mr. Justice Muhammad Sajid Mehmood Sethi,
https://sys.lhc.gov.pk/appjudgments/2023LHC100.pdf

Facts: Through instant petition, petitioner has called into question order & judgment passed by learned Civil Judge and Additional District Judge, respectively, whereby petitioner's application for comparison of thumb impressions / signatures of witnesses was concurrently dismissed.

Issues: i) Where the thumb-impressions /signatures of the executant or witness of a document are denied, then on whom burden to prove lies?
ii) If party fails to apply for comparison of thumb impression or signature then whether there might be a presumption against him?
iii) Whether Courts should be liberal in accepting the applications for comparison of thumb impression or signature?

Analysis: i) Under the law, a beneficiary of the document(s) is required to establish valid execution of the transaction(s) in his favour by producing attesting / marginal witnesses. In a situation, where the thumb-impressions / signatures of the executant or witness of a document are denied, a person pleading positivity of the thumb impressions / signatures will be under a heavy burden to prove the same by seeking comparison with the admitted thumb impressions / signatures.
ii) In case of failure to opt such course by a party / beneficiary, there might be a presumption against him that had the thumb impressions /signatures of aforesaid witnesses been got compared from the expert, the report would have received against him.
iii) It is well-established by now that the Courts must take liberal view regarding acceptance of request for comparison of signatures / thumb impressions, as there is no express provision in law to decline such request. Moreover, report of the expert will tend to supplement the evidence of either party enabling the Court to reach just and correct decision and pronounce a balanced judgment.(…) It is a right of a party to seek and demand every possible assistance from the Courts of law and to hold him/her responsible only when he or she is found to have acted contrary to law. The interest of justice can only be safely dispensed after the signatures and thumb impressions of aforesaid witnesses are got verified from the expert.

Conclusion: i) A person pleading positivity of the thumb impressions / signatures will be under a heavy burden to prove the same by seeking comparison with the admitted thumb impressions / signatures, if the same is denied.
ii) If party fails to apply for comparison of thumb impression or signature then there will presumption against him.
iii) The Courts must take liberal view regarding acceptance of request for comparison of signatures / thumb impressions.

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25. **Lahore High Court**
Shumaila Sharif v. The Secretary Union Council etc.
Writ Petition No. 66288 of 2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC8696.pdf

Facts: The petitioner is a Christian divorcee who applied for NADRA to replace her father's name with his husband's name after her divorce. NADRA authorities

required a divorce certificate for which she contacted the secretary union council concerned who refused to issue the certificate on the ground that it is not issued to the Christian community.

Issues: Whether a Christian divorcee has a right like a Muslim divorcee to secure a divorce certificate from the Secretary Union Council Concerned after getting a Judicial separation?

Analysis: The preamble of our Constitution gives minorities a special status. Moreover, Art. 2A (which makes the Objectives Resolution a substantive part of the Constitution). Art. 4 (Right of an individual to be dealt with in accordance with the law) and Part II (Fundamental Rights and Principles of Policy) safeguard the rights of minorities. Further, it is the function of the Local Government to register births, deaths, marriages, and divorces and issue certificates in respect thereof. Under section 51(2)(x) of the Punjab Local Government Act, 2013, the Municipal Committees were charged with this duty. The Punjab Local Government Act, 2019 (read with the Third and Fourth Schedules), the Metropolitan Corporations, Municipal Corporations, Municipal Committees, and the Town Committees performed this function. And now, under section 33(1)(j) of the recently enacted PLGA 2022, it is the mandate of the Union Council. At this stage, it is pertinent to mention that Section 21 of the National Database and Registration Authority Ordinance, 2000, ordains that the marriage or divorce of a citizen should be reported to NADRA. The non-issuance of a divorce certificate by a Union Council is now a general issue that the Christian community is facing. This Court considers that rules/bye-laws under sections 202/203 of the PLGA 2022 are necessary to meet the situation. Accordingly, the Government of Punjab is directed to frame the requisite rules and issue notifications and letters, etc., within 90 days from the date of announcement of this judgment.

Conclusion: Legally, a Christian divorcee is also entitled to secure a divorce certificate just like a Muslim divorcee. In this regard, the lacking relevant rules and bylaws must be framed within the time period given by the court.

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26. **Lahore High Court**
All Workmen Employed by Dandot Cement Company Pvt. Ltd v. Chairman, PLAT, Lahore etc. Writ Petition No.2162

of 2022 Mr. Justice Jawad Hassan

https://sys.lhc.gov.pk/appjudgments/2022LHC8711.pdf

Facts: The Respondent No.1 filed a petition under Standing Order 11-A of the Industrial and Commercial Employment (Standing Orders) Ordinance, which was accepted by Punjab Labour Court, Rawalpindi and upheld by Punjab Labour Appellate Tribunal, Rawalpindi. The petitioners/ workmen assailed the said judgments by invoking constitutional jurisdiction.

Issues: What remedy is available to workman in case of violation of past order of court based upon compromise between employer and workman culminating into consent decree?

Analysis: It is well settled that a consent decree or order is nothing but a contract between the parties with command of the Court is superadded to it… The Standing Order No.12(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance 1968 prescribes remedy for grievance of a workman. Plain reading of the order ibid shows that the petitioner was available with remedy under Section 33 of The Punjab Industrial Relations Act 2010 (Act XIX of 2010).

Conclusion: In case of violation of past order of Court based upon compromise between employer and workman culminating into consent decree appropriate remedy is available to workman under section 33 of the Punjab Industrial Relations Act 2010.

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27. **Lahore High Court**
Writ Petition No. 607 of 2019
Shahid Aziz v. Chairman Punjab Labour Appellate Tribunal, Multan and 4 Others Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2020LHC4389.pdf

Facts: This constitution petition impugned the order of Chairman, Punjab Labour Appellate Tribunal who has dismissed the appeal against judgment, whereby petition against his termination from service has been dismissed.

Issues: i) Whether lack of basic qualification or failure to meet with the eligibility criteria can be cured by attaining said qualification or higher qualification subsequently?
ii) Whether the appointee is bound by the terms and conditions mentioned in the appointment letter?
iii) Whether principle of *Locus poenitentiae* would help where basic appointment order was issued without lawful authority?

Analysis: i) In case the appointees were qualified for appointments, their appointments could not be terminated due to any lapses, laxities and irregularities committed by Government itself during the appointment process but the said benefit would not be available to appointees who at the time of their initial appointments, lacked basic qualifications, requirements and eligibilities, unless the same is permitted by the statute, rules, regulations, policy decision or the advertisement through which applications for appointment are invited. Any time spent in rendering the said service would not cure the defect in his appointment.
ii) It is settled by now that tentative appointment would always be subject to verification of character and antecedents as per conditions mentioned in the appointment letter. The appointee could not claim immunity against termination by claiming a vested right for appointment if clause of appointment letter/contract

clearly depicts that appointment was tentative and subject to conditions mentioned in the appointment letter.

iii) The principle of *Locus poenitentiae* confines the powers of the authorities for receding its decisions to a time frame till a decisive step is taken, but the said principle of law does not provide that every order once passed becomes irrevocable, rather it is subject to certain exceptions, which includes power to recede an order even after the same has taken effect in cases where the said order is illegal, unlawful, *corum non judice,* without jurisdiction or lawful authority on any other defect that strikes down the root of the matter for the reason that perpetual rights cannot be gained on the basis of an order suffering from any of the said vices.

Conclusion: i) Lack of basic qualification or failure to meet with the eligibility criteria is a defect which cannot be cured by attaining said qualification or higher qualification subsequently.

ii) The appointee is bound by the terms and conditions of his contract mentioned in the appointment letter.

iii) Where basic appointment order was issued without lawful authority, then superstructure built thereupon would fall on the ground automatically and the principle of *Locus poenitentiae* would not help.

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28. **Lahore High Court**
Haji Arshad Mehmood v. Farrukh Imtiaz Khokhar, etc. Crl.Misc.No.2759-CB of 2022
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC20.pdf

Facts: The petitioner challenged the order passed by an Additional Sessions Judge whereby pre-arrest bail was granted to the respondent No.1 in case FIR for offences under Sections302, 109, 148, 149 & 114 PPC.

Issues: (i) Whether a bail granting order can be recalled on the ground of perversity?
(ii) How the culpability of an accused in reference to the charge of abetment and criminal conspiracy is to be assessed?

Analysis: (i) The concession of bail extended in favour of an accused can be recalled on various grounds, foremost out of which is the perversity of impugned order. The term 'perverse' stands for a decision passed contrary to the judicial and statutory directions.

(ii) Offences of abetment and criminal conspiracy hail from the genesis of the crime, wherein collection of direct evidence is nothing less than a hard nut to crack. The abetment is always co-related with the main crime, whereas criminal conspiracy is an independent offence under Section 120-A PPC and in both of them the delinquents make sure to maintain secrecy. In the given circumstances, the culpability of an accused in reference to the charge of abetment and criminal

conspiracy is to be assessed from the attending circumstances through a pragmatic and dynamic approach.

Conclusion: (i) A bail granting order can be recalled on the ground of perversity.
(ii) The culpability of an accused in reference to the charge of abetment and criminal conspiracy is to be assessed from the attending circumstances through a pragmatic and dynamic approach.

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29. **Lahore High Court**
Nadeem Sultan & another v. Hamza Shamim & 2 others Criminal Revision No.91 of 2022
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2022LHC8703.pdf

Facts: The instant petition moved under Sections 435 & 439 of the Code of Criminal Procedure, 1898 (" Cr.P.C") read with Article 203 of the Constitution of Islamic Republic of Pakistan, 1973 is aimed at challenging the correctness, legality and propriety of order whereby the Sessions trial stemming out of FIR was adjourned *sine die.*

Issues: i) What does the term "*sine die*" means and whether in Sessions trials such an order can be passed or not?
ii) Whether the abscondence of the co-accused is a reasonable cause for an order of *sine die* adjournment under Section 344 (1) Cr.P.C.?

Analysis: i) The term "*sine die"* is a Latin word not defined anywhere in the Cr.P.C. In the Black's Law Dictionary 10th Edition, the term *sine die* is defined as "without day - with no day being assigned - to end a deliberative assembly's or court's session without setting a time to reconvene." In Webster's Unabridged Dictionary, 2nd Edition, following meanings are assigned to sine die; "without fixing a day for future action or meeting." The Sessions trials are to be carried out in consonance with the procedure laid down in Chapter XXII-A, where no express provision is provided whereby a Sessions trial can be adjourned for an indefinite period, without an actual date. Section 344 Cr.P.C does not enable the Sessions Court to adjourn the case without any date or for an indefinite period. The use of expression "from time to time" sheds no ambiguity rather manifests that the case can only be adjourned for a specific date and not for an indefinite period.
ii) The postponement or adjournment of a case under Section 344 (1) Cr.P.C can be made due to absence of witnesses or for any other reasonable cause. The recording of prosecution evidence will indeed preserve the statements of prosecution witnesses and if someone out of them is not available due to death or for any other reason upon the arrest of absconding co-accused, his deposition will legally be brought on record in terms of Article 47 of Qanun-e-Shahadat Order, 1984. According to Article 47, the evidence given by a witness in judicial proceeding is relevant in a subsequent judicial proceeding between the same

parties, if such witness is dead or cannot be found or becomes incapable of giving evidence or is kept out of the way by the adverse party.

Conclusion: i) Section 344 Cr.P.C, curtails the powers of Sessions Judge to keep the case pending without passing order of adjournment or to adjourn the case *sine die* for an indefinite period.

ii) The abscondence of the co-accused is not a reasonable cause for an order of *sine die* adjournment under Section 344 (1) Cr.P.C.

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30. **Lahore High Court**
Rana Muhammad Yousaf Khan Advocate v. The State, etc.
Crl. Misc. No.61551-M of 2022 Mr. Justice Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC115.pdf

Facts: By invoking inherent jurisdiction of this Court in terms of Section 561-A Cr.P.C., the petitioner/accused has challenged the vires of order passed by the learned Magistrate Section 30, Gojra, wherein, application filed by the petitioner under Section 249-A of Code of Criminal Procedure, 1898 (Cr.P.C) was turned down and order, whereby, Criminal Revision filed against the order was dismissed by the learned Additional Sessions Judge, Gojra, District T.T.Singh, who upheld the order of learned Judicial Magistrate.

Issues: i) Whether an embargo can be imposed upon the accused to file application u/s 249-A Cr.P.C., seeking his acquittal at any stage of the case?

ii) Whether powers under Sections 249-A and 265- K Cr.P.C available to the learned Trial Court are similar to powers of High Court u/s 561-A of Cr.P.C?

iii) Whether Audio Tape is admissible in evidence before court of law?

Analysis: i) On going through the above provision of law, it is clear that no embargo has been imposed upon the accused to file application u/s 249-A Cr.P.C., seeking his acquittal at any stage of the case and only certain conditions have been described therein, firstly, that the Court has to give the right of hearing to the prosecutor and the accused and if reaches to the conclusion that the charge against the accused is groundless or there is no probability of accused being convicted of any offence, he shall be acquitted of the charge through an order in which such reasons have to be recorded for reaching to the conclusion that charge(s) against the accused is/are baseless.

iii) There is no cavil with the proposition that powers under Sections 249-A and 265- K Cr.P.C available to the learned Trial Court are similar to powers of High Court u/s 561-A of Cr.P.C.

iii) The relevant provision regarding evidence prepared through modern devices is Article 164 of QANUN-E-SHAHADAT ORDER, 1984. However, in the light of Article 164 supra the august Supreme Court of Pakistan in case of "ISHTIAQ AHMED MIRZA and 2 others versus FEDERATION OF PAKISTAN and

others" (PLD 2019 Supreme Court 675), has laid down the following criteria regarding admissibility of an audio tape or video in evidence before a Court of law and the mode and manner of proving same before the Court.

Conclusion: i) No embargo can be imposed upon the accused to file application u/s 249-A Cr.P.C., seeking his acquittal at any stage of the case.
ii) Powers under Sections 249-A and 265- K Cr.P.C available to the learned Trial Court are similar to powers of High Court u/s 561-A of Cr.P.C.
iii) Audio Tape is admissible in evidence before court of law but subject to the criteria provided by the superior courts.

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31. **Lahore High Court, Lahore**
Mafaiza Begum v. Ghazwana Perveen and others C.R. No. 1157 of 2011
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC8668.pdf

Facts: This civil revision calls into question judgments and decrees of the courts below, whereby suit of respondent No.1 seeking declaration to the extent of her entitlement to 1/3rd share in the estate of her grandfather thereby challenging certain inheritance mutations reflecting her share as 1/6th instead of claimed 1/3rd was decreed.

Issues: i) Having not been raised in pleadings, whether a new plea may be raised in Civil Revision before High Court?
ii) What rule comes into application whilst dealing with residue share after distributing share to daughter of pre-deceased son of a propositus?

Analysis: i) If the plea is not raised in pleadings, no issue can be framed nor any evidence may be produced to raise or prove such plea.
ii) According to Shariah the heirs of predeceased children would inherit what their father or mother would have inherited during their lifetime on the opening of succession and, as per section 4 of the Muslim Family Laws Ordinance, 1961, the share from the deceased grandfather would be endowed to children of the predeceased son but this would not mean that the other heirs of the deceased would be excluded from their share of inheritance.

Conclusion: i) A plea that was not initially raised in the pleadings or in the evidence cannot be raised later in a Civil Revision before High Court.
ii) After distributing share to daughter of pre-deceased son of a propositus, residue shall be controlled by application of the rule that the nearer in degree will exclude the more remote.

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32. **Lahore High Court**
Rana Karamat v. Farhan Haider and others W.P. No. 53269 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC8662.pdf

Facts: This Constitutional Petition arises from orders of the courts below in terms whereof petitioner's application for setting aside of ex parte proceeding was dismissed which order was also affirmed in appeal.

Issues: i) Whether in ex parte proceedings the defendant can participate in proceedings of the case?
ii) Whether defendant proceeded ex parte can be allowed to become part of proceedings recorded in his absence?

Analysis: i) It has been consistently ruled that in case the defendant is proceeded against ex parte s/he cannot be deemed to be a dead person for future proceedings and in facts s/he can appear and join the proceedings from the stage at which s/he appeared in the suit. In case s/he does not apply for setting aside of ex parte proceeding order or if the ex parte proceeding order is not set aside, still s/he can join the proceedings from the stage of his appearance and if the case is at evidence stage, s/he could cross-examine the witnesses and produce own evidence in rebuttal.(…) In other words under Rule 7 of Order IX, C.P.C. the absentee defendant cannot be relegated to the position s/he would have occupied had s/he appeared, unless "good cause" is demonstrated for previous non-appearance and if such defendant appears on the adjourned hearing the defendant cannot be stopped from participating in the proceedings simply because of default in appearance from the first or some other hearing..
ii) The petitioner will not be entitled to get the proceedings which were recorded in his absence set aside as he could not show any "sufficient cause"; but he will be entitled to join the proceedings from the stage he had appeared in the suit for setting aside of ex parte proceedings order and shall be entitled to cross-examine the witnesses of the opposite side if their statements had not been recorded by then and will also be entitled to produce his own evidence in defense.

Conclusion: i) In case the defendant is proceeded against ex parte s/he cannot be deemed to be a dead person for future proceedings and in facts s/he can appear and join the proceedings from the stage at which s/he appeared in the suit.
ii) The defendant proceeded ex parte without showing "sufficient cause" cannot be allowed to be part of proceedings recorded in his absence.

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33. **Lahore High Court**
Zaka Ud Din Malik v. Federation of Pakistan, etc.
W.P. No.50314 of 2022
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC8733.pdf

Facts: This and connected constitutional petitions throw challenge to the constitutionality of Section 8(2)(b) of the Finance Act, 2022 ("Act of 2022") on the premise of being nonconforming to the constitutional requirements; substantially on two-counts, firstly, that the law legislated, whereby it had allegedly taxed the foreign assets of the petitioners, is not within the territorial grasp of the Parliament; and secondly, the absence of legislative competence, because matter of taxing immovable property exclusively falls within the legislative domain of the provincial legislature(s).

Issues: i) Under what law, the power to legislate qua the resident person is drawable, when matter is covered under entry 50 of the Federal Legislative List?

ii) Whether the second half of entry 50 of the Fourth schedule of the Federal Legislative List which provided for taxes on the immovable property, is excluded from the legislative domain of the Parliament?

iii) Whether the Parliament can legislate law to tax foreign based assets of the person [domiciled in the foreign territories / jurisdiction(s)] in violation of rule of 'presumption against extraterritoriality'?

Analysis: i) Parliament, under entry 50, is competent to make laws to tax on the capital value of foreign assets – it is not the foreign assets, inter alia comprising of immovable property(ies), [real properties], which are essentially taxed through section 8(2)(b) of Act, 2022 but capital value of assets of a resident individual, as defined in Section 13(f) of the Act, 2022 and power to legislate qua the resident person is cleanly draw able under Article 142(a) of the Constitution of 1973, when matter is covered under entry 50 of the Federal Legislative List.

ii) Expression 'assets' in the context of capital value, manifests enumerated / specific genus, which has wider connotation in the context of the word 'immovable property', and latter otherwise restricts the meaning of the 'assets'. Entry 50, read disjunctively, comprised of two separate parts, each of which part describes / caters for a distinct and separate class / category of taxes; first half of the entry 50 provisioned for the authority to tax on capital value of the assets, and latter half provided for taxes on the immovable property, which category of taxes is excluded from the legislative domain of the Parliament. In view of the above, entry 50 manifests two separate and individual category of taxes and rules of statutory interpretation are not attracted, in the absence of requisite conditions for attracting rule of Noscitur a socii or/and Ejusdem Generis.

iii) Article 141 of the Constitution envisages extent of domain of Federal and Provincial laws and authorizes the Parliament to make laws, including laws having extra territorial operations. Article 143 of the Constitution has no application in absence of any inconsistency at all. No instance of overlapping /

occupied legislative field(s) arises in the context of distinctiveness of the subject matter tax and tax on immovable properties, each possessing different characteristics. Classification of the class / category subjected to tax is neither arbitrary, ex-proprietary nor discriminatory, which identified and differentiated persons based on the classification of those having foreign assets. The exclusion provided through the expression 'not including' qualifies the authority / legislative powers of the Parliament No redundancy or superfluousness could be attributed to second part of entry 50, which protected the legislative authority of the provinces to tax the immovable property, leaving no room for conjectural debate, speculation qua applicability of linguistic canons of construction, which otherwise defined the scope and extent of tax on capital value of assets and tax on immovable property, latter possessing distinguishing characteristics / features and otherwise coming within the legislative domain of the provincial legislature(s). It is reiterated that expression 'not including' is suggestively construable as 'other than' and 'except' to preserve the harmonious totality of entry 50 – which excludes the application of rule of Noscitur a socii or/and Ejusdem Generis. No fault is found in exercise of legislative powers by the Parliament under entry 50 of the Federal Legislative list, which matter is within the competence of Parliament in terms of Article 142(a) of the Constitution of Pakistan.

Conclusion: i) The power to legislate qua the resident person is draw able under Article 142(a) of the Constitution of 1973, when matter is covered under entry 50 of the Federal Legislative List.

ii) Yes, the second half of entry 50 of the Fourth schedule of the Federal Legislative List which provided for taxes on the immovable property is excluded from the legislative domain of the Parliament.

iii) Yes, the Parliament can legislate law to tax foreign based assets of the person [domiciled in the foreign territories / jurisdiction(s)].

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34. Lahore High Court
Shabbir Ahmad v. Additional District Judge, Multan, etc.
Writ Petition No.3227 of 2022.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC104.pdf

Facts: Through this Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner assailed the vires of orders/judgments, whereby the learned Courts below dismissed his application for correction of order and decree concurrently.

Issues: Whether the omission in the decree to expressly contain reliefs could be supplemented in exercise of the authority under section 152, C.P.C.?

Analysis Plain reading of said Section it appears that the Court under section 152, C.P.C. is not only competent to correct clerical or arithmetical mistake in the judgment, decree or order but may correct accidental slip or omission as well. Section 152,

C.P.C. can be conveniently divided into two parts. First half of the section provides authority to correct "clerical or arithmetical mistake in the judgment, decree or order", other half after or provides authority to correct error arising thereon from any accidental slip or omission. Use of word "or" indicates that, such powers to correct are not conjunctive but disjunctive and qualified. To correct clerical or arithmetical mistake, it means when some mistake either in calculation or numerical figures creeps in, which figures could be verified from the record, or where any party, property or fact has been incorrectly described or where some typographical error has crept in. Second half of the Section 152 (ibid) contemplates "error arising thereon from any accidental slip or omission". Catchword in phrase "accidental slip or omission" as used in section 152, C.P.C. is "accidental", it qualifies „slip" and „omissions". Thus it could be said that "accidental slip or omission" as used in section 152 C.P.C. means „to leave out or failure to mention something unintentionally". Thus, it could be safely said that it is only where the slip or omission is accidental or unintentional it could be supplemented or added in exercise of jurisdiction conferred under section 152 C.P.C. Such course is provided to foster cause of justice, to suppress mischief and to avoid multiplicity of proceedings.

Conclusion: The Court under section 152, C.P.C. is not only competent to correct clerical or arithmetical mistake in the judgment, decree or order but may correct accidental slip or omission as well. Omission in the decree to expressly contain reliefs could be supplemented in exercise of the authority under section 152, C.P.C

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35. **Lahore High Court**
Muhammad Hanif v. The State etc.
Criminal Revision No.173 of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC76.pdf

Facts: The order, declining the application filed u/s 466 of Cr.P.C. (the code) for bail of insane bother of applicant, is assailed through this revision petition.

Issues: (i) What process is to be adopted by the court to attend legal disability?
(ii) What is meant by "trial within a trial" and when it is to be preferred?
(iii) What law requires if accused is fit to face the trial but claims unsoundness of mind at the time of commission of offence?
(iv) What is M'Naughton Rule and what outcome its application has?
(v) How the diminished criminal liability due to insanity can be adjudged?

Analysis: (i) Section 465 of the Code of Criminal Procedure requires the court to try first the fact of unsoundness and incapacity of accused to make his defence in order to ensure that accused understand the proceedings of trial against him so as to make the evidence admissible at trial. Such trial includes the examination of witnesses of accused, report of a medical board, examination of doctors/expert, cross examination by the prosecution or the complainant on such witnesses and expert

and recording of any other evidence seems necessary followed by arguments of the parties and an order that accused is of unsound mind and incapable to make his defence or otherwise and such record shall be part of his main trial before the court. As per section 466 CrPC, if court concludes that accused is of unsound mind, further proceedings shall be postponed and order to release the accused on bail or his detention in safe custody must be passed. If it is concluded that accused has not committed the offence, he would be set at liberty or would still be kept or detained in safe custody under section 471 of the Code. If the accused is later declared fit to be released, the procedure laid down u/ss 474 & 475 of the Code shall follow as may be practicable.

(ii) The concept of "trial within a trial" is known as *voir dire*, meaning 'to speak the truth' a recognized term to try a fact within the trial. In a trial, certain primary facts are to be proved as condition precedent to the admissibility of certain evidence. Such questions are also matter of law for the judge to adjudicate upon them first. For example if a party seeks to adduce a video clip or audio recording in the evidence, the question of its being genuine or non-tempered shall be decided first before its admission to evidence.

(iii) If accused is fit to face the trial but claims unsoundness of mind at the time of commission of offence, then section 469 of the Code requires that trial would proceed in a normal course led through prosecution evidence first including evidence of mental health of accused at the time of commission of offence and other circumstantial evidence regarding offence. After that, the accused can lead the evidence to rebut the prosecution evidence as well as adducing anything favouring or supporting his plea.

(iv) M'Naghten's Case (1843 10 C & F 200) have been a standard test for criminal liability in relation to mentally disordered defendants in common law jurisdictions. Under this M'Naghten test, all defendants are presumed to be sane unless they can prove that at the time of committing the criminal act, the defendant's state of mind caused him to (a) not know what he was doing when committed said act, or (b) that he knew what he was doing, but did not know that it was wrong. The M'Naughton Rule is incorporated in section 84 of Pakistan Penal Code, 1860.

(v) The diminished criminal liability due to insanity can be adjudged while relying on legal precedents developed on different set of facts and mania determined by the medical experts; In "R v Arnold (1724) 16 How St. Tr. 765" , the test for insanity was expressed in the following terms: Whether the accused is totally deprived of his understanding and memory and knew what he was doing "no more than a wild beast or a brute, or an infant". The next major advance occurred in "Hadfield's Trial 1800 27 How St. Tr. 1281" in which the court decided that a crime committed under some delusion would be excused only if it would have been excusable had the delusion been true.

Conclusion: (i) The process prescribed in sections no 465, 466,471, 474 and 475 of the Code of Criminal Procedure is to be adopted by the court to attend legal disability.

(ii) The concept of trial within a trial is known as "voir dire" a recognized term to

try a fact within the trial. In a trial there are certain primary facts which are must to be proved as condition precedent to the admissibility of certain items of evidence.
(iii) The process prescribed in section 469 of the Code of Criminal Procedure is to be adopted by the court when accused is fit to face the trial but claims unsoundness of mind at the time of commission of offence.
(iv) M'Naughton Rule is the first legal test for criminal insanity and such disability is claimed under said Rule for diminished responsibility.
(v) The diminished criminal liability due to insanity can be adjudged while relying on legal precedents developed on different set of facts and mania determined by the medical experts.

LATEST LEGISLATION/AMENDMENTS

1. Substitution of sections 3 and 8, addition of sections 10AA and 10AAA and amendments in sections 4, 5, 7 and 9 in The Punjab Holy Quran (Printing and Recording) Act, 2011(XIII of 2011) vide The Punjab Holy Quran (Printing and Recording) (Amendment) Act, 2022
2. Vide Notification No. SO(JUDI-II)8-2/2019 dated 28.12.2022 published in Punjab Gazette (Extraordinary) Darya Khan, District Bhakkar is declared as the place of sitting of Court of Sessions.
3. Vide Notification No. SO(JUDI-II)8-2/2019 published in Punjab Gazette (Extraordinary) Tehsil Chowk Sarwar Shaheed, District Muzaffargarh is declared as the place of sitting of Court of Sessions.
4. Sr. No.18 and 31 of The Punjab Agriculture Department (On Farm Water Management) Recruitment Rules, 2003 are amended.
5. In the second schedule of The Punjab Government Rules of Business, 2011 under the heading "Board of Revenue" under sub-heading (d) "Revenue Department" entries at serial numbers 44 & 72 (at item (Ixxi) are omitted and entries at serial numbers 51 & 57 are inserted.

SELECTED ARTICLES

1. **MANUPATRA** https://articles.manupatra.com/article-details/Article-Analysis-Should-We-Let-Computers-Get-Under-Our-Skin-James-H-Moor

Article Analysis: "Should We Let Computers Get Under Our Skin", James H. Moor by Avnee Byotra & Jayshree Priya

"Should we let computers get under our skins?" an article written by 'James H. Moor' in which he had discussed about that if we (humans) are converting to "Cyborgs" i.e. part humans and part computers. And he also discusses that if it is happening, then what should be the ethical limits that should be imposed on to control this situation. This paper will try to analyze the texts by putting forward the summary of the different arguments and views which were given by Moor in the article written by him. This paper analyses each argument and will side by side give opinion on each argument. This paper will try to feature the current

scenario and the future consequences of the act. Being a policy maker the author will try to figure out that where a line should be drawn between therapy and enhancement, and will also analyze the three important areas that were propounded by Moor which include; "Privacy, Consent, Fairness". To end of this paper a conclusion has been drawn, which says how with rapid advancement of technology, the creation of cyborgs would affect the social life.

2. **MANUPATRA** https://articles.manupatra.com/article-details/Analysis-of-Trust-Doctor-Patient-Relationship

Analysis of Trust: Doctor-Patient Relationship by Akriti Kumari

Recently, a psychiatrist in New Delhi told the patient's sexual orientation to his mother. The patient was a 19-year-old boy who had specifically mentioned that he was fearful of his parent's reaction and the consequences if they were to know about it. It's unclear as to what was the exact reason for her to pass on such a piece of private information, but it is and should be a clear case of medical negligence. The professionals need to handle much more private and intimate information about their patients, and they cannot be expected to go about communicating the same to others. It has a wider implication on the overall health of the country. The idea of confidentiality is as much technical as it is sympathetic and demands the doctors to be understanding. To teach future doctors to keep their values, beliefs, and stereotypes aside while dealing with a patient and their information is non-negotiable and should be sacrosanct.

3. **MANUPATRA** https://articles.manupatra.com/article-details/Vigilance-Commission-Checks-and-Balances

Vigilance Commission Checks and Balances by Rishabh Singh

Today, corruption is a serious problem in every country, but it is particularly pervasive in India. Each year," The Berlin-based non-governmental organization Transparency International publishes a corruption perception index of all the world's countries". Out of 180 countries, India is ranked 85th in 2021.As can be seen from the Green Light strategy, it has a favourable opinion of the state. The green light strategy emphasizes how crucial it is for administrative law to support government operations rather than obstruct them through judicial or political scrutiny. This example shows how the law can be used as a weapon against administrative authority by acting as an enabling tool. Vigilance is a portmanteau of objectivity, efficiency, reliability, and openness. It is crucial to resolve issues quickly while upholding consistency, openness, and fairness. The speedy conclusion of cases determines the efficacy of "vigilance.

4. **MANUPATRA** https://articles.manupatra.com/article-details/Environmentalism

Environmentalism by Abhyuday

Environment has always played an important role in everyone's life as the sole existence of life on earth is dependent on environment. Earth is not only a home to humans but also to other life forms be it smallest to the largest like blue whale.

We all are dependent on the environment for food, water, clothes and shelter so, it is our duty to protect the environment as misuse of the environmental resources have always caused problem. This article highlights the initiation of

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11196-022-09926-1

Regulatory Artifacts: Prescribing, Constituting, Steering by Giuseppe Lorini, Stefano Moroni & Olimpia Giuliana Loddo

Generally, when thinking of artifacts, one imagines "technical artifacts". Technical artifacts are those artifacts that perform a mere causal function. Their purpose is to instrumentally help and support an action, not to change behaviour. However, technical artifacts do not exhaust the set of artifacts. Alongside technical artifacts there are also artifacts that we can call "cognitive artifacts". Cognitive artifacts are all those artifacts that operate upon information in order to improve human cognitive performances. Artifacts of a further, different kind are what we may call "regulatory artifacts"; that is, material artifacts devised and made to regulate behaviour. Consider a roundabout, a traffic light or a speed bump. These artifacts do not make us stronger, faster, or more intelligent. They are placed on the road surface to regulate traffic. This article investigates artifacts of this third kind and, especially, the functions that they perform.

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FORTNIGHTLY CASE LAW BULLETIN

(01-02-2023 to 15-02-2023)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Shah Zaman Khan etc. v. Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others etc.
Civil Appeals No. 329 to 346 of 2022
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._329_2022.pdf

Facts: The private parties contended that they were the owners of lands which had been declared as 'protected forests', therefore, they challenged the Notification. Some filed suits, others directly filed writ petitions in the High Court and those whose plaints were rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 filed civil revisions in the High Court. The plaints were rejected because the suits were held to be barred under section 92 of the Forest Ordinance. In certain other cases the private parties, who had lost their cases on merit, re-agitated the matter by filing fresh suits. The learned Judges of the Division Bench, through the common judgment, decided all the writ petitions and civil revisions, and this judgment is assailed both by the private parties and the Government through these eighteen appeals arise out of petitions in which leave to appeal was granted, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan ('the Constitution').

Issues: i) Whether the private persons can claim any right over the property on private documents or mere assertions; basically owned by the Forest Department and debarred from the jurisdiction of Civil Courts under the provision of Section 92 of the Forest Ordinance, 2002?
ii) Whether a provision of law ousting the jurisdiction of a civil court can be construed strictly, when an alternate remedy is available?
iii) Whether the civil court can assume the jurisdiction when the alleged mala fide or without jurisdiction of Notification over the land owned by the Forest Department is challenged?

Analysis: i) When the private parties neither allege nor show that they (or their stated predecessors-in interest) are the recorded owners of the said lands either under the land revenue or under any other law, nor they relied upon any official record of the Government or of its predecessor-in-interest (the State of Swat) in support of their claims. The private parties had based their claims on private documents or on mere assertions. The record showed that the Forest Department of the Government is the owner of the said lands. Such lands can be claimed by the forest department and assailing the same was not within the jurisdiction of the civil courts as provided under Section 92 of the Forest Ordinance, 2002.
ii) Undoubtedly, a provision ousting the jurisdiction of a civil court is to be construed strictly and established rights cannot be disturbed, nor can an ouster clause deprive anyone of property. An ouster clause can also not be used to create injustice or hardship. But, this does not mean that the ouster clause is of no legal

effect. Another factor to consider in determining the scope of the ouster of jurisdiction is to examine whether those who may be affected are provided with an alternative remedy.

iii) The private parties did not allege that the issuance of the Notification was mala fide or without jurisdiction, or that an order was passed against them which was coram non judice, which may have enabled them to access the courts.

Conclusion: i) No, the private persons cannot claim any right over the property on private documents or mere assertions; basically owned by the Forest Department and debarred from the jurisdiction of Civil Courts under the provision of Section 92 of the Forest Ordinance, 2002.

ii) Yes, a provision of law ousting the jurisdiction of a civil court can be construed strictly, when an alternate remedy is available.

iii) The civil court can assume the jurisdiction when the alleged mala fide or without jurisdiction of Notification over the land owned by the Forest Department is challenged.

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2. **Supreme Court of Pakistan**
Kiramat Khan v. IG, Frontier Corps & others
Civil Petition No. 3287 of 2019
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3287_2019.pdf

Facts: The petitioner seeks leave to appeal against a judgment of the appeal which was dismissed in limine having been found to be barred by time by the Service Tribunal whereas the High Court dismissed the same for the want of jurisdiction.

Issues: i) What are the prerequisites to avail the benefit of sec. 14 of Limitation Act, 1908?

ii) Which is the proper forum for redressal of the grievance of the employees of Frontier Corps?

iii) Whether limitation would run against the void order?

Analysis: i) In order to avail the benefit of Section 14 of the Limitation Act, 1908 it is imperative that a litigant seeking benefit of the said provision must show that he was prosecuting his remedy with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. The material words are, 'due diligence and good faith" in prosecuting a remedy before a wrong forum. The term "due diligence' entails that a person taken such care as a reasonable person would take in deciding on a forum to approach.

ii) This Court had as far back as 2004 clarified the law on the subject and held that employees of Frontier Corps will be deemed to be civil servants for the purpose of approaching the Tribunal for redressal of their grievances. Reference in this regard may be made to 1G. HO Frontier Corps v. Ghulam Hussain (2004 SCMR 1397).

iii) Limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law.

Conclusion: i) Litigant must show that he was prosecuting his remedy with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it.
ii) Service Tribunal is the proper forum for redressal of the grievance of the employees of Frontier Corps.
iii) Limitation would run even against a void order.

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3. **Supreme Court of Pakistan**
The Commissioner Inland Revenue Zone-I etc., v.
M/s Hajvairy Steel Industries (Pvt.) Limited, Quetta etc.
Civil Petitions No. 3134 and 3135 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3134_2022.pdf

Facts: The Commissioner Inland Revenue Zone-I, Regional Tax Office, Quetta has filed these two petitions for leave to appeal against three concurrent decisions, of the Commissioner Inland Revenue (Appeals), of the Appellate Tribunal Inland Revenue, Karachi Bench, and of the learned Division Bench of the High Court ('the Commissioner', 'the Tribunal' and 'the High Court' respectively).

Issues: i) Whether the Sales Tax Special Procedure Rules, 2007 ('the Special Procedure') contains an overriding, non obstante, clause which prevails over the general charging sections of the Sales Tax Act, 1990?
ii) If reliance is placed upon an earlier decision, whether it must first be established that the same provisions of the law were under consideration?

Analysis: i) Section 71 enables special procedure to be made with regard to the scope and payment of tax to be made and the said Special Procedure was made pursuant thereto, which contained an overriding, non obstante, clause, which uses categorical and clear language and must be given effect to, and the respondents were entitled to be treated in accordance therewith. A particular rate and mechanism for the imposition of sales tax on steel re-rollers was prescribed and it was stipulated that it 'will be considered as their final discharge of tax liability', which the respondents had discharged in accordance therewith.
ii) That as regards the case of Zak Re-Rolling Mills this Court had observed that it was not deciding 'points which were not raised in the Reference application before the High Court nor are noted in the impugned judgment.' In that particular case, the tax years under consideration were not mentioned, therefore, it cannot be stated with any certainty what the applicable law was then, and then to consider whether the decision therein is applicable hereto. The petitioner's counsel also did not bring forth the facts of that case. If reliance is placed upon an earlier decision,

it must first be established that the same provisions of the law were under consideration.

Conclusion: i) The Sales Tax Special Procedure Rules, 2007 ('the Special Procedure') contains an overriding, non obstante, clause which prevails over the general charging sections of the Sales Tax Act, 1990.
ii) If reliance is placed upon an earlier decision, it must first be established that the same provisions of the law were under consideration.

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4. **Supreme Court of Pakistan**
Naeem Tahir and others Collector of Customs, MCC (E&C) Customs House, Peshawar and another v. Zain ul Abidin and others
Civil Petition No.4145 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4145_2022.pdf

Facts: The petitioner has assailed the order passed in a Custom Reference by belatedly filing civil petition for leave to appeal with a delay of 11 days.

Issues: Whether delay in assailing decisions can be condoned without valid reason?

Analysis: If decisions are assailed they should be done within the prescribed period, and it should not be assumed that delay would be condoned when there is no valid reason to condone the same.

Conclusion: Delay in assailing decisions cannot be condoned without valid reason.

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5. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Zone-II, Regional Tax Office, (RTO) Lahore v. Mian Liaqat Ali Proprietor
Civil Petitions No.648-L, 649-L and 650-L of 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._648_l_2021_detailed.pdf

Facts: The respondent was issued specific notices under s. 111(1)(d) of the Income Tax Ordinance, 2001 to show cause why, in terms of the said provision, the whole of the concealed sales ought not to be brought to tax. The replies filed by the respondent were found not to be satisfactory and the deemed assessment orders were amended against him in terms of s. 111(1)(d) of the Ordinance. Being aggrieved by the foregoing, the respondent filed appeals before the CIT (Appeals), which were dismissed by a consolidated order. The respondent took the matter further to the Appellate Tribunal, and there met with success. The learned Tribunal gave a consolidated decision after noting that the respondent had placed before the OIR the costs and expenses incurred in respect of the concealed sales. Being aggrieved by the decision of the learned Tribunal the Commissioner

filed tax references before the High Court, which were dismissed by (identical) orders. The learned High Court upheld the reasoning that had found favor with the learned Tribunal. It is against the said orders that the Commissioner sought leave to appeal from this Court.

Issues: i) Whether the greater latitude given to the State in respect of choosing what is to be taxed is an absolute rule, to be applied rigidly and strictly to the exclusion of all else?

ii) Whether treating only two types of income (production and sales) as "gross receipts" liable to tax, out of the vast categories of "income" is a correct approach?

iii) Whether the Income Tax Ordinance, 2001 provides any yardstick, guidance, standard or measure as to the applicability of s. 111(1)(d) or s. 122(5) in respect of the same thing (i.e., suppressed or concealed production or sales)?

Analysis: i) It is true that in respect of the interpretation of fiscal statutes the State is given greater latitude in respect of choosing what is to be taxed (or exempted) and if so, in what manner and to what extent. However, this approach is but a rule of interpretation (and one among several) that aids the Court in coming to the correct conclusion with regard to the provision under consideration. It is not an absolute rule, to be applied rigidly and strictly to the exclusion of all else.

ii) Production and sales are two types of activity that produce income. However, as is well established, income is a very broad and inclusive concept. In the felicitous words of Kanga and Palkhiwala: "The categories of income are never closed" (see Fawad Ahmad Mukhar and others v Commissioner Inland Revenue and another 2022 SCMR 426, para 9 and the authorities there cited). To pick out only two types of income (production and sales) and treat those "gross receipts" as liable to tax, out of the vast sea that otherwise constitutes "income" properly so-called ("any amount chargeable to tax") is not the correct approach. If "any amount" can be brought within the scope of sub-clause (i) of clause (d) only if, and to the extent, that it is "chargeable to tax" (i.e., constitutes "income" properly so called), then production and sales must be given the same treatment. Thus, it is only production or sales chargeable to tax that can be brought within the ambit of clause (d).

iii) The Ordinance provides no yardstick, guidance, standard or measure when or how, in respect of the same thing (i.e., suppressed or concealed production or sales), it is s. 111(1)(d) that is to be applied or s. 122(5). The matter is left at the unfettered discretion of the OIR. He is the sole judge of whether it is the former or the latter provision that is to be applied. It is his unencumbered wish and choice. But, as just seen, the tax liability is worked out quite differently under the two provisions. It follows that in this scenario the amount of tax with which the taxpayer is to be burdened is entirely at the arbitrary will of the tax authority. Both under s. 122(5) and s. 111(1)(d), the taxpayer is exposed to the same tax liability in respect of the income that has escaped assessment, or been suppressed, i.e., he is liable to tax on the "net" amount, or "income" properly so called.

Conclusion: i) No, the greater latitude given to the State in respect of choosing what is to be taxed is not an absolute rule, to be applied rigidly and strictly to the exclusion of all else.

ii) Out of the vast sea of categories of "income", by treating only two types of income (production and sales) as "gross receipts" liable to tax, is not a correct approach.

iii) No, the Income Tax Ordinance, 2001 does not provides any yardstick, guidance, standard or measure as to the applicability of s. 111(1)(d) or s. 122(5) in respect of the same thing (i.e., suppressed or concealed production or sales).

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6. **Supreme Court of Pakistan**
National Highway Authority v. Rai Ahmad Nawaz Khan etc.
Civil Appeals No. 140-L, 141-L& 142-L of 2015
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._140_l_2015.pdf

Facts: For the purposes of constructing the National Highway, the Land Acquisition Collector of the National Highway Authority acquired the land of the respondents by Issuing notifications under Section 4 of the Land Acquisition Act of 1894 (the "LAA 1894"). The Respondents, by way of three independent reference petitions, challenged the quantum of compensation granted to them under the said awards. The three reference petitions were referred to the Referee Court by the Land Acquisition Collector and, subsequently, the Referee Court enhanced the quantum of compensation in each reference petition. All three judgments and decrees of the Referee Court were assailed by the Appellant before the High Court. The High Court, through the impugned judgments, upheld the findings of the Referee Court but modified the judgments and decrees of the Referee Court in the terms of the rate of interest on the solatium from 6% per annum to 8% per annum. The impugned judgments are now being assailed before this Court by way of these Appeals.

Issues: i) How the Court should determine the quantum of compensation to be awarded to those who had been subjected to exercise of the power of eminent domain under the LAA 1894?

ii) Which direction can be passed by the Court whenever it is of the opinion that the quantum of compensation determined by the Land Acquisition Collector under an award is not adequate?

iii) Whether one year's average of the sales taking place before the publication of the notification under section 4 of similar land is an absolute yard stick for assessment of compensation?

iv) Whether a Court can enhance the rate of compensation; in the terms of the rate of interest on the solatium from 6% per annum to 8% per annum?

v) Whether the benefit provided under Section 34 of the LAA 1894 in which the State compensates citizens whose lands have been acquired through compulsory

acquisition constitutes riba and goes against the injunctions of Islam?

Analysis: i) A bare perusal of Section 23 shows that according to the LAA 1894, there are six factors that need to be taken into consideration by a Referee Court in determining compensation for land acquired under the LAA 1894. Instead, the other five considerations, from their very text, imply that whenever a Court is to consider the quantum of compensation, it must duly consider the loss being caused to property owned by the Federal or Provincial Government's exercise of eminent domain under the LAA 1894. In essence, whenever a government, be it Federal or Provincial or any other entity acting on behalf of the state exercises the power of eminent domain under the LAA 1894, property owners are deprived of their constitutionally guaranteed proprietary rights under Article 24 of the Constitution of Pakistan, 1973. It is important to state that the intention of the legislature behind Section 23 was that whenever a Court is determining the quantum of compensation to be awarded to those who had been subjected to exercise of the power of eminent domain under the LAA 1894, it needs to be considerate and sympathetic towards the claims made by those whose property was compulsorily taken by the state against their will for a public purpose. Section 23 allows a Court to compensate such landowners for giving up their properties for the greater good, on the doctrine of individual rights must give way to the greater public interest (salus populi suprema lex esto).

ii) A bare reading of Section 28 shows that whenever a Court is satisfied that the quantum of compensation announced under an award is not adequate after consideration of the factors mentioned in Section 23, the Court may direct the Collector to pay interest on the difference (of the amount awarded by the Land Acquisition Collector and the Referee Court) if it is of the opinion that the quantum of compensation determined by the Land Acquisition Collector is insufficient.

iii) Section 23 makes mention of various matters to be considered in determining the compensation. One of such factors enumerated therein is that the date relevant for determination of market value is the date of the notification under section 4. Not unoften the market value has been described as what a willing purchaser would pay, to the willing seller. It may,' be observed that in assessing the market value of the land, its location, potentiality and the price evidenced by the transaction of similar land at the time of notification are the factors to be kept in view. One year’s average of the sales taking place before the publication of the notification under section 4 of similar land is merely one of the modes for ascertaining the market value and is not an absolute yard stick for assessment.

iv) Prior to the amendment in the LAA, 1894 by virtue of the Land Acquisition (West Pakistan) Amendment Act of 1969, indeed the maximum interest rate that a Court could impose under Section 28 was six percent. However, post-amendment, the said section now provides that once the Court is satisfied that legal and factual grounds exist to enhance the rate of compensation; it is obligated to award interest on the differential at the rate of eight percent.

v) It is important to clarify that unlike riba/interest that arises/accrues in a financial transaction between parties, the word "interest" in Section 34 of the LAA 1894 is not interest stricto sensu. The interest which is imposed on the State or land-acquiring entity is awarded to the affectees of compulsory acquisition by way of compensation and where compensation originally awarded is found to be inadequate and is later enhanced by a competent forum, to cover the property owner by way of compensation for the time lag between when the property was taken and the time that he receives compensation for the same. The power of compulsory acquisition is, after all, unilaterally exercised by the government and no consent from the affected property owners is required under the law. The benefit of Section 34 is statutory in nature and its benefit cannot be withheld from property owners on the ground that the benefit of Section 34 of the LAA 1894 constitutes riba and goes against the injunctions of Islam. The said Section in our opinion is meant to ensure that the State compensates citizens whose lands have been acquired through compulsory acquisition as soon as possible and any delay in compensating affected citizens would entail penal consequences. Whilst riba/usury may be predatory in nature, the interest under Section 34 of the LAA 1894 is beneficial since it ensures that property owners are compensated in a timely manner.

Conclusion: i) While determining the quantum of compensation to be awarded to those who had been subjected to exercise of the power of eminent domain under the LAA 1894, the Court needs to be considerate and sympathetic towards the claims made by those whose property was compulsorily taken by the state against their will for a public purpose.

ii) The Court may direct the Collector to pay interest on the difference (of the amount awarded by the Land Acquisition Collector and the Referee Court) whenever it is of the opinion that the quantum of compensation determined by the Land Acquisition Collector under an award is not adequate.

iii) No, One year's average of the sales taking place before the publication of the notification under section 4 of similar land is not an absolute yard stick for assessment of compensation but is merely one of the modes for ascertaining the market value of the land.

iv) Yes, after post-amendment a Court can enhance the rate of compensation; in the terms of the rate of interest on the solatium from 6% per annum to 8% per annum.

v) The benefit provided under Section 34 of the LAA 1894 in which the State compensates citizens whose lands have been acquired through compulsory acquisition is compensatory in nature and neither constitutes riba nor goes against the injunctions of Islam.

7. **Supreme Court of Pakistan**
Peshawar Electric Supply Company Ltd (PESCO) etc. v.
SS Ploypropylene (Pvt) Ltd, Peshawar & others etc.
Civil Appeals Nos. 513 to 586 of 2014 and
CMA No. 3671 of 2014 in Civil Appeal No. 542 of 2014
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._513_2014.pdf

Facts: The Respondents had challenged the imposition of Fuel Price Adjustment/Consumer-end Charges through writ petitions before the Peshawar High Court, Peshawar whereupon the High Court declared the imposition of Charges as unconstitutional and illegal. The Appellants challenged the said consolidated decision of the High Court through Civil Appeals.

Issues: (i) Whether NEPRA has the authority to impose Tariff on the Consumers?
(ii**)** Whether the courts can interfere with policy matters of the executive?
(iii**)** Whether the power of a province to determine tariff as provided under Article 157 of the Constitution is subject to any condition?
(iv**)** Whether the supply, distribution or generation of electricity can be regulated through provincial legislation?
(v**)** Whether the Council of Common Interests is vested with the exclusive authority to determine tariffs?
(vi**)** Whether imposition of Consumer-end-Tariff can be declared as ultra vires the Constitution on the ground of non-payment of share/profit of hydel power generation to a province?
(vii**)** Whether the constitutional jurisdiction of courts can be directly invoked in matters relating to determination of tariff?
(viii**)** Whether courts can regulate an economic policy?

Analysis: (i) Under Section 7 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, NEPRA has been assigned the exclusive power to regulate the provision of electric power services. One of the steps that NEPRA may take to regulate the electricity sector, is the determination of tariffs which, as per Act 1997, is a revenue requirement. This is provided in Section 7(2)(ac), which states that NEPRA is responsible for infer alia, ensuring efficient tariff structures for sufficient liquidity in the power markets. Section 7 read with the preamble of the Act, 1997, leaves no doubt in our minds that the determination of tariffs falls within the exclusive domain of NEPRA. This is also in line with Item No. 4 of Part II of the Federal Legislative List which lists electricity as a federal subject pursuant to which, the Act, 1997 was promulgated as well…It is a cardinal principle of statutory interpretation that a law must be read holistically. Even if Rule 2(m) of the NEPRA Rules 1998 does not specifically mention the words "fuel adjustment charges", Section 7 (2)(i) gives NEPRA wide powers to issue guidelines and standard operating procedures which comprehensively outline the mechanism through which various tariffs, including

the Charges, ought to be factored in the tariff. This is provided in the NEPRA Determination of Consumer-end-Tariff (Methodology and Process) Guidelines, 2015. As such, when NEPRA has been empowered by the legislature and its authority has not been questioned, then, the formulae based on which consumer-end-tariff is determined could not have been called into question since the said matter pertains to electricity, which is the domain of the Federal Government.

(ii) It is not the role of the Courts to determine policies and especially those, in which the Court lacks technical expertise. It is the mandate of the Constitution and, is also trite that Courts must confine themselves to legal interpretation. The courts must satisfy itself that there is a breach of fundamental rights vested constitutional/legal rights before any direction is issued. Such directions must not be based on an understanding of the law which is contrary to the Constitution. Doing so goes against the principle of trichotomy of powers and is against the mandate of the Constitution. Courts, while acting under the Constitution, must not encroach upon the domain of the executive branch unless there is violation of fundamental rights guaranteed under the Constitutional or the executive branch oversteps its legal and constitutional limits.

(iii) The power of a Province under Article 157(2)(d) is premised upon two conditions. First, the province purchases electricity in bulk from the national grid for distribution and second, the province constructs power houses and grid stations and lays transmission lines for use within the province…It has been held by this Court that Article 157(2)(d) of the Constitution is an enabling provision of the Constitution and, it is therefore not make it mandatory for Provincial government to determine the rate of tariff.

(iv) It is an admitted position that after the unbundling of WAPDA, the National Transmission and Dispatch Company was responsible to dispatch electricity to all provinces from the national basket. It is important to note that the Act, 1997 applies to the whole of Pakistan per Section 1 of the said Act. There is nothing on the record which could show that there is provincial legislation in vogue which regulates the supply, distribution or generation of electricity. The only legislation in this respect is the Act, 1997. The vires of Act, 1997 has not been challenged on the touch stone of being beyond the legislature competence of the federation. Even otherwise, it is important to note that even if any province legislates on the matter of electricity, the same would not only be against Part II of the Federal Legislative List but, in the event of any provision of provincial law dealing with the subject in conflict with being federal law; provisions of the latter would prevail. This interpretation of the law is in line with the Constitution and with the Act, 1997 which admittedly has an overriding effect as provided in Section 45 of the Act, 1997.

(v) It has been held by this Court in the judgment of Gadoon Textile Mills that the Council of Common Interests cannot interfere with the day-to-day affairs of an Authority which include the determination of tariffs… even if the Council of Common Interests devises guidelines for the imposition of tariffs, the same cannot contradict the legislation under which an authority functions. Since the legislature

in its wisdom and under its authority provided by Article 70 of the Constitution, promulgated the Act, 1997 to specifically address matters pertaining to the supply, generation, and distribution of electricity, therefore, any guideline which is issued must be in line with the Act, 1997 and not inconsistent therewith.

(vi) The concept of net profits is covered by Article 161(2) whereas, the concept of tariffs is covered by Article 157 of the Constitution. If the Government of a Province has not been paid net profits, the same ought to be taken up by the provincial government at the appropriate level before the appropriate forum. The High Court could not have declared the Charges as ultra vires the Constitution on the basis that the province has not been paid its dues. The said matter relates to policy and governance and ought to be raised before the appropriate forum…. High Court arrogated to itself matters of executive policy and by connecting two different matters namely non-payment of share, profits of hydel power generation on the one hand and determination of tariff to be recovered from consumers/ including the component of fuel adjustment surcharge delved into a legal and constitutional area which at best relates to the claim of a province against the federation.

(vii) The Respondents had an alternate efficacious remedy available to them under the Act, 1997. Appellate Tribunal of NEPRA consists of specialized members and must be resorted to in the first instance. A right of second appeal has also been given to the High Court concerned. It is well-settled that without availing/exhausting remedies provided by law, a party cannot directly invoke the constitutional jurisdiction of the High Court more so in highly technical matters including those relating to determination of tariff.

(viii) The High Court appears to have arbitrarily interfered in a policy matters which it should have been reluctant to do considering that such matters concern complex factors which have a direct impact on the economy of the country. Where the legislature has expressly provided an authority for determination in such matters, in the shape of NEPRA, then, such authority allowed to perform its functions because it has technical knowhow owing to the fact that it comprises members from various technical fields. It has been held by this Court that in cases involving utilities and economic regulation, there are good reasons for judicial restraint and/or judicial deference to legislative judgment. It is not the responsibility of the Court to regulate economic policy. The responsibility of the Courts is limited to legal interpretation. The Court is expected to enforce fundamental rights reasonably and not in a manner which creates hurdles and unnecessary complications.

Conclusion: (i) The determination of tariffs falls within the exclusive domain of NEPRA.

(ii) The courts cannot interfere with policy matters of the executive unless there is violation of fundamental rights guaranteed under the Constitutional or the executive branch oversteps its legal and constitutional limits.

(iii) The power of a province to determine tariff as provided under Article 157 of the Constitution is subject to two conditions as mentioned above.

(iv) The supply, distribution or generation of electricity cannot be regulated through provincial legislation.
(v) The Council of Common Interests is not vested with the exclusive authority to determine tariffs.
(vi)Imposition of Consumer-end-Tariff cannot be declared as ultra vires the Constitution on the ground of non-payment of share/profit of hydel power generation to a province.
(vii) The constitutional jurisdiction of courts cannot be directly invoked in matters relating to determination of tariff.
(viii) Courts cannot regulate an economic policy.

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8. **Supreme Court of Pakistan**
Sarfraz and Allah Ditta v. The State
Criminal Appeal No. 560 of 2020
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._560_2020.pdf

Facts: The appellants were tried by the learned Additional Sessions Judge under sections 302/34 PPC. The learned Trial Court convicted the appellants under Section 302(b) PPC and sentenced them to death on two counts. In appeal the learned High Court maintained the conviction and sentence of death awarded to the appellants by the learned Trial Court. Being aggrieved by the impugned judgment, the appellants filed Jail Petition before this Court wherein leave was granted by this Court and the present appeal has arisen thereafter.

Issues: i) Whether court is empowered to presume the existence of any fact, in relation to the facts of the particular case?
ii) Whether any benefit goes in favour of the accused when specific motive has been alleged by the prosecution but failed to establish?
iii) What is evidentiary value of positive report of Forensic Science Laboratory when crime empty is sent to Laboratory after the arrest of the accused or together with the crime weapon?
vi) Whether only one doubt can give benefit to the accused?
v) What kind of evidence on which conviction can be based?

Analysis: i) Article 129 of the Qanoon-e-Shahadat Order, 1984, empowers the court to presume the existence of any fact, which it thinks likely to have happened with regard to common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
ii) It is now well established that if a specific motive has been alleged by the prosecution then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence. Otherwise, the same would go in favour of the accused.
iii) This Court in a number of cases has held that if the crime empty is sent to the Forensic Science Laboratory after the arrest of the accused or together with the

crime weapon, the positive report of the said Laboratory loses its evidentiary value. Sending the crime empties together with the weapon of offence is not a safe way to sustain conviction of the accused and it smacks of foul play on the part of the Investigating Officer simply for the reason that till recovery of weapon, he kept the empties with him for no justifiable reason.

iv) It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused.

v) It is settled principle of law that the conviction must be based on unimpeachable, trustworthy and reliable evidence.

Conclusion: i) Article 129 of the Qanoon-e-Shahadat Order, 1984, empowers the court to presume the existence of any fact, which it thinks likely to have happened with regard to common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

ii) Benefit goes in favour of the accused when specific motive has been alleged by the prosecution but failed to establish.

iii) When crime empty is sent to Laboratory after the arrest of the accused or together with the crime weapon, it loses its evidentiary value.

iv) If there is only one doubt, the benefit of the same must go to the accused.

v) Conviction must be based on unimpeachable, trustworthy and reliable evidence.

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9. **Supreme Court of Pakistan**
Pakistan Television Corporation v. Noor Sanat Shah
Civil Appeal No. 284 of 2017
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._284_2017.pdf

Facts: The respondent being employee of the appellant instituted a suit for recovery of damages against the Appellant, on the basis of unnecessary litigation in service matters to secure his right, which was decreed by the learned Civil Court (the "Trial Court") and was upheld by the Additional District Judge (the "Appellate Court"). Both of these judgments were upheld by the High Court in the impugned judgment which has now been assailed by the Appellant by way of the instant Appeal.

Issue: **i)** Under what law are suits for recovery of damages regulated in Pakistan?

ii) What are the types of Torts and what is the tort of interest in property?

iii) Whether a corporation can be held vicariously liable for the acts of its officials?

iv) What are the considerations to hold a corporation vicariously liable for the acts of its officials?

v) Whether the state-owned television broadcaster which falls within the

administrative competence of the Information and Broadcasting Division of the Government of Pakistan but being a non-statutory body having its own Service Rules as well as Memorandum & Articles of Association can sue or be sued in its own name?

Analysis: i) It is settled law; based on a Latin maxim recognized by our jurisprudence, that *ubi jus ibi remedium* (where there is a right, there is a remedy). It postulates that where law has established a right, there should be a corresponding remedy for its breach. The right to a remedy is one such fundamental right that has historically been recognized by our legal system However, the recovery of the said resources (in this case, monetary expenses) is not covered or regulated by any law in Pakistan for the time-being other than awarding costs. Since the said suit is not regulated by any specific law for the time being in Pakistan, section 9 of the Civil Procedure Code, 1908 (the "CPC") would operate and vest jurisdiction in the Civil Court to adjudicate the suits for recovery of damages of the nature filed by the Respondent.

ii) Torts, broadly speaking, tend to fall within four categories. They are: 1) torts of physical integrity; 2) torts of interests in property; 3) torts of use and enjoyment of land; and 4) torts of reputation. The torts of importance for the purposes of this instant Appeal are tort of interest in property. In its essence, the Respondent in his suit claimed that by virtue of litigation that had ensued between the parties, the Appellant had committed a tort of interest in property. In this case, his financial resources as well as physical integrity insofar as he was subjected to face anxiety, mental stress of having to approach various legal fora, arrange legal representation and expend his limited financial resources for enforcement of his legitimate rights. However, the main physical, perceivable and ostensible damages that the Respondent had arguably suffered were monetary/ economic in nature.

iii) It is imperative to note that vicarious liability can only arise if the employee of the organization has committed a tort during the course of his employment. The United Kingdom's House of Lords in the case of Lister vs. Hesleu Hall Ltd. ([2002] 1 AC 215) has found that actions that were so "closely connected" to what a person was employed to do opened up the employing organization to vicarious liability and held that it would be fair and just to hold such organizations vicariously liable if the said act that ended up becoming a tort was "closely connected" to the duties normally performed by an employee during the course of his employment. … It would therefore appear that the concept of vicarious liability for tort is not something that arises out of a law or a legal principle but is instead guided by policy reasons that are expanded and determined by courts of law in the absence of any legislation which regulates the specific tort in question.

iv) The first consideration is that the courts have to look at when deciding whether an entity / organization is vicariously liable for breaches in tort committed by its employees is whether or not a tortious breach has actually been committed in the first place. The next consideration would be whether or not the tortious acts had been committed by an employee of an organization during the course of his

employment and the final consideration would be whether it would be fair, just and reasonable to hold an organization / entity vicariously liable for the actions of its employees during the course of their employment which resulted in tortious acts.

v) The Appellant in the instant case is a state-owned television broadcaster and falls within the administrative competence of the Information and Broadcasting Division of the Government of Pakistan (Schedule II Heading 16 (13) (i) (a) read with Rule 3 (3) of the Rules of Business, 1973). However, admittedly, the Appellant is a non-statutory body having its own Service Rules as well as Memorandum & Articles of Association. Whilst it may be controlled and directed by the Government of Pakistan through the Information and Broadcasting Division, it is, for all intents and purposes, a separate corporate entity. Therefore, the Respondent was not bound to follow the requirement laid down in Section 79 of the CPC read with Article 174 of the Constitution of Pakistan since the Appellant cannot be considered a part of the Government of Pakistan for the sole reason that the Government of Pakistan administers the Appellant. The Appellant has its own corporate personality and cannot be considered a part of the Government of Pakistan. It can therefore sue or be sued in its own name and there is no requirement for potential claimants/ plaintiffs to implead the Government of Pakistan when they wish to sue the Appellant.

Conclusion: i) Since the suits for recovery of damages are not regulated by any specific law for the time being in Pakistan, section 9 of the Civil Procedure Code, 1908 (the "CPC") would operate and vest jurisdiction in the Civil Court to adjudicate such suits like the one in hand.

ii) Torts, broadly speaking, fall within four categories which are: 1) torts of physical integrity; 2) torts of interests in property; 3) torts of use and enjoyment of land; and 4) torts of reputation.

iii) A corporation can be held vicariously liable for the acts of its officials.

iv) The considerations to hold a corporation vicariously liable are whether or not a tortious breach has actually been committed in the first place, whether or not the tortious acts had been committed by an employee of an organization during the course of his employment and the final consideration would be whether it would be fair, just and reasonable to hold an organization / entity vicariously liable for the actions of its employees during the course of their employment which resulted in tortious acts.

v) The state-owned television broadcaster which falls within the administrative competence of the Information and Broadcasting Division of the Government of Pakistan but being a non-statutory body having its own Service Rules as well as Memorandum & Articles of Association can sue or be sued in its own name.

10. **Supreme Court of Pakistan**
Province of Punjab through Secretary Agriculture Department, Lahore v. Saleem Ijaz, etc.
C.P.1336-L of 2021 to C.P.1340-L of 2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1336_l_2021.pdf

Facts: Through these civil petitions the petitioner assailed the order of the High Court, whereby, it held that the pesticide laboratories had to be certified by the ISO and in the absence thereof their Reports cannot be relied upon or form basis of any criminal proceedings against the respondents.

Issues: i) Whether the pesticide laboratory established under section 13 of the Agricultural Pesticides Ordinance, 1971 is required to be certified by the ISO as prescribed in Rule 22 of the Punjab Agricultural Pesticides Rules, 2018?
ii) Whether a rule can be framed so as to be in conflict with or in derogation from the statute under which it is framed or in conflict with any other statute, which is not inconsistent with the parent statute under which the rule is framed?

Analysis: i) Section 13 of the Ordinance provides for the establishment of pesticide laboratories. The above shows that the pesticide laboratory is to be set up by the Provincial Government, which is to carry out its functions entrusted to it by or under the Ordinance. Section 13 (2) provides that the functions of the pesticide laboratory and the mode of submissions of samples for analysis or test to the Laboratory shall be such as may be "prescribed". The word "prescribed" under Section 3 (o) means as prescribed under the Rules. Under Section 13 (2) of the Ordinance Rules can only provide the procedure for the functions of the pesticide laboratory and the mode of submissions of samples for analysis or tests, while the laboratory is set up as a pesticide laboratory under section 13 by the Provincial Government. Rules enjoy no power to set up or establish the pesticide laboratory, which is the sole prerogative of the Provincial Governments under Section 13 (1) of the Ordinance. The power to make Rules under Section 29 of the Ordinance also does not authorise the Provincial Government to make Rules regarding the setting up of the pesticide laboratory. The above Rule shows that the pesticide laboratory has to be duly certified by the International Organization for Standardization (ISO). Certification of the pesticide laboratory is a matter relating to its setting up and cannot be regulated by the Rules as the prerogative of setting up the pesticide laboratory is that of the Provincial Government under Section 13. Further, under the Act, 2017 the Pakistan National Accreditation Council ("PNAC") has been established for providing accreditation/certification of Conformity Assessment Body (Laboratories) across the country in order to enable the laboratories to assure the quality of products, services and management system in accordance with national and international standards for sustainable socio economic development. Two main functions of the PNCA under Section 4 (a) and (d) of Act, 2017 are to establish an internationally recognized

accreditation system and accredit the conformity assessment bodies. Therefore, under the Act, 2017 the conformity assessment bodies or laboratories in the country have to be accredited and certified by the PNAC. Rule 22 requiring the certification to be done by ISO is offensive to the provisions of Act, 2017. In Pakistan laboratories can only be accredited or certified by PNAC. Reliance on Muhammed Asghar is also misplaced as the said opinion revolves around the mandatory and directory nature of Rule 22 and does not discuss the vires of the Rule when compared with the provisions of the Ordinance and the Act, 2017. The said opinion is also silent regarding the fact that ISO is not a certifying or a conformity assessment organization but an organization that only develops standards as discussed hereunder.

ii) No rule can be framed so as to be in conflict with or in derogation from the statute under which it is framed or in conflict with any other statute, which is not inconsistent with the parent statute under which the rule is framed. However, before declaring so, the court should endeavor to reconcile the rule, that is to say, the rule may be so read, if the phraseology permits it, as to make it consistent with the provisions of the statute.

Conclusion: i) The pesticide laboratory established under section 13 of the Agricultural Pesticides Ordinance, 1971 is not required to be certified by the ISO as prescribed in Rule 22 of the Punjab Agricultural Pesticides Rules, 2018.

ii) A rule cannot be framed so as to be in conflict with or in derogation from the statute under which it is framed or in conflict with any other statute, which is not inconsistent with the parent statute under which the rule is framed.

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11. **Supreme Court of Pakistan**
Ijaz Akbar v. The Director General (Ext.) L&DD, Punjab, Lahore and others
C.P. 4835 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4835_2019.pdf

Facts: The petitioner seeks leave to appeal against a judgment of the Punjab Service Tribunal, whereby the Tribunal while maintaining the findings of the departmental authorities as to his guilt on the charge of willful absence from duty, has partly allowed his appeal by reducing his penalty from forfeiture of two-year service to forfeiture of one year service.

Issues: i) What does act of unauthorized absence of a civil servant from his duty constitutes?

ii) When and what incidental order a disciplinary authority has to pass as a legal consequences of absence of delinquent civil servant from duty?

iii) Whether there is any limit on penalty of forfeiture of period of past services?

iv) What courses are available to departmental authority in case of unauthorized absence of a civil servant from his duty?

Analysis: i) The unauthorized absence of a civil servant from his duty is an act which is prejudicial to 'good order' and 'service discipline', and thus constitutes misconduct for taking disciplinary action against him.

ii) In view of legal consequence of the absence from duty, a disciplinary authority, or an appellate authority, tribunal or court, when imposes a penalty lesser than dismissal or removal from service on a delinquent civil servant for his misconduct of being absent from duty, it has to make an incidental order as to what treatment should be given to the period of his absence for the purpose of giving continuity to his service; otherwise, the whole past service of the civil servant will stand forfeited, which would be the imposition of an additional penalty neither prescribed by the law nor imposed by the authority. The best possible incidental order, which may be made in such a situation, is therefore to make a fictional arrangement to account for such period of absence from duty in the service record of the civil servant by treating (deeming) the same as an extraordinary leave without pay, rather than any other kind of leave; as in case of treating the said period as a leave of some other kind of leave (even if found due), the delinquent civil servant may claim pay of that period also, which would amount to awarding him a benefit rather than awarding a penalty for his fault. Where the penalty imposed on the delinquent civil servant is dismissal or removal from service, it may not be necessary to pass any incidental order relating to the period of absence, unless it is deemed necessary to recover any amount of pay, or other service benefits, received by the civil servant during the period of his absence from duty.

iii) Although Section 4(b)(iii) of the PEEDA Act provides for the penalty of forfeiture of past service for a specific period, it has also limited the same to a maximum of five year period and thus does not permit the forfeiture of the whole past service exceeding a period of five years.

iv) In case of an unauthorized absence of a civil servant from his duty, two courses are open to the departmental authority: (i) to condone the unauthorized absence by accepting his explanation (if found justified) and sanction the ex-post facto leave under the relevant leave rules, or (ii) to initiate the disciplinary proceedings against him and impose a penalty for the misconduct.

Conclusion: i) The unauthorized absence of a civil servant from his duty constitutes misconduct.

ii) When penalty of dismissal from service is imposed for unauthorized absence of civil servant it may not be necessary to pass any incidental order relating to the period of absence, unless it is deemed necessary to recover any amount of pay, or other service benefits, received by the civil servant during the period of his absence from duty. Whereas when penalty lesser than dismissal or removal from service on a delinquent civil servant is imposed for his misconduct of being absent from duty, it has to make an incidental order as to what treatment should be given to the period of his absence for the purpose of giving continuity to his

service.

iii) Section 4(b)(iii) of the PEEDA Act provides for the penalty of forfeiture of past service for a specific period, it has also limited the same to a maximum of five year period.

iv) In case of an unauthorized absence of a civil servant from his duty, two courses are open to the departmental authority: (i) to condone the unauthorized absence by accepting his explanation (if found justified) and sanction the ex-post facto leave under the relevant leave rules, or (ii) to initiate the disciplinary proceedings against him and impose a penalty for the misconduct.

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12. **Supreme Court of Pakistan**
Syed Hammad Nabi and others v. Inspector General of Police Punjab, Lahore and others.
Civil Appeals No.1172 to 1178 of 2020 etc.
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1172_2020.pdf

Facts: The Appellants claimed seniority as per police rules and prayed to set aside the impugned judgment passed by the Punjab Service Tribunal through instant civil appeals.

Issues: i) Whether final seniority list of Inspectors may be reckoned from the date of confirmation of the officers or from the date of appointment?

ii) Whether leave-refusing orders which has neither decided any question of law nor enunciated any principle of law constitute binding precedents?

iii) Whether all issues of posting, transfer and seniority must be settled by the Courts?

Analysis: i) Once police officer has successfully undergone the said courses he stands confirmed at the end of the probationary period. The seniority is once again settled, this being the final seniority from the date of confirmation. The above rule is, therefore, very clear that final seniority list of Inspectors will be reckoned from the date of confirmation of the officers and not from the date of appointment.

ii) We have gone through Qayyum Nawaz and find that it is a leave-refusing order (described as a judgment), which has neither decided any question of law nor enunciated any principle of law in terms of Article 189 of the Constitution. Such leave-refusing orders do not constitute binding precedents. The impression that a leave-refusing order endorses the statements of law made in the impugned orders and thus enhances the status of those statements as that of the apex court is fallacious. This impression is based on inference drawn from the leave-refusing orders, while 'a case is only an authority for what it actually decides' and cannot be cited as a precedent for a proposition that may be inferred from it.

iii) The issues of posting, transfer and seniority must be settled within the department strictly in accordance with the Rules and only matters requiring legal interpretation may come up before the Courts. Several junior officers approaching the courts for redressal of their grievance reflects poorly on the internal

governance of the Police department when the elaborate Police Rules and the Police Order provide for such eventualities in detail.

Conclusion: i) As per rule 12.2(3), final seniority list of Inspectors will be reckoned from the date of confirmation of the officers and not from the date of appointment.
ii) Leave-refusing order which has neither decided any question of law nor enunciated any principle of law do not constitute binding precedent.
iii) The issues of posting, transfer and seniority must be settled within the department and only matters requiring legal interpretation may come up before the Courts.

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13. **Supreme Court of Pakistan**
Saif Power Limited v. Federation of Pakistan through Secretary, Ministry of Law, Civil Secretariat Islamabad and others
Civil Petition No.3263 of 2022
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3263_2022.pdf

Facts: This Civil Petition under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, has arisen out of judgment, passed by the Islamabad High Court, Islamabad (High Court) whereby writ petition filed by the Petitioner, was dismissed.

Issues: i) Whether under section 231 of the Companies Ordinance, 1984, the inspection is limited to books of account and related papers and books?
ii) Whether an investigation under sections 263 and 265 of the Companies Ordinance, 1984 can be ordered on statutory grounds which include allegations of fraud, illegalities into the affairs of the company, or misuse and misappropriation of funds of the company?

Analysis: i) Section 231 of the Ordinance empowers the SECP, as a regulator, to inspect the books of account and related books and papers of a company. So, inspection is limited to books of account and related papers and books, and it does not include other record of the company which is unrelated to the accounts of the company. The exercise of this power is administrative in nature, essentially to ensure compliance with the regulatory requirements pertaining to the books of account. Books of account are the journals and ledgers which contain financial information related to the business and include books such as purchase books, cash books, sales books, debit ledger and credit ledger amongst others. There is also a corresponding obligation on the directors, officers and employees of the company to provide all books of account and papers and to give all assistance in connection with the inspection. An inspection under Section 231 of the Ordinance is, therefore, restricted in its scope and requires every director, officer or employee of the company to produce the books of account and is not an open ended inspection.
ii) Sections 263 and 265 of the Ordinance deals with the exercise of power of

investigation by the SECP. The powers under Sections 263 and 265 are wider and also come with more procedural requirements. The SECP is empowered to initiate an investigation on an application by the members or on the basis of a report of the Registrar or it can initiate an investigation if there are circumstances suggesting that the business of the company is being conducted with intent to defraud the creditors, members or any other person, or if the business is being conducted for a fraudulent or unlawful purpose, or if the members concerned with the formation of the company are guilty of fraud, misfeasance, breach of trust or other misconduct. The spirit of Sections 263 and 265 of the Ordinance is to ensure that the business is managed in accordance with sound business principles or prudential commercial practice and that the financial position of the company is not threatened. The scope of the investigation is based on the allegations pertaining to the affairs of the company and requires a probe into the allegations to ascertain their veracity. An investigation against a company is a serious matter, as it is capable of entailing consequences both financial and penal which will impact the goodwill of the company. Consequently, an investigation cannot be ordered except on statutory grounds which include allegations of fraud, illegalities into the affairs of the company, or misuse and misappropriation of funds of the company.

Conclusion: i) Under section 231 of the Companies Ordinance, 1984, the inspection is limited to books of account and related papers and books and it does not include other record of the company which is unrelated to the accounts of the company.
ii) An investigation under sections 263 and 265 of the Companies Ordinance, 1984 cannot be ordered except on statutory grounds which include allegations of fraud, illegalities into the affairs of the company, or misuse and misappropriation of funds of the company.

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14. **Supreme Court of Pakistan**
Divisional Superintendent, Postal Services, D.G. Khan v.
Nadeem Raza & another
Civil Petition No.3855 of 2022
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3855_2022.pdf

Facts: The department imposed a major penalty of "Removal from Service" on respondent No.1 for misappropriation of government money, against which he preferred a departmental appeal, which was rejected. Thereafter, on an appeal filed by respondent No.1 before the Tribunal, the penalty was reduced from "Removal from Service" to "reduction to three stages lower in pay scale for two years". The instant petition has been filed seeking leave to appeal against the said judgment.

Issues: i) Whether a Tribunal or the Court can interfere or reduce the penalty imposed by the department on a civil servant?
ii) Under what circumstances, the imposition of the penalty becomes

unsustainable under the law and the Tribunal or Court is justified for interference?
iii) When the Tribunal or the Court interferes in the quantum or nature of the penalty imposed by the competent authority by terming the same as unreasonable, perverse or harsh, or by exercising leniency?
iv) Whether the test of proportionality is more stringent in cases of misconduct involving moral turpitude?

Analysis: i) Under Section 5 of the Service Tribunals Act, 1973 ("Act") the Tribunal is empowered to confirm, set aside, vary or modify the order appealed before it; however, such powers are to be exercised carefully, judiciously and after recording reasons for the same. This Court has repeatedly held that the Tribunal has no jurisdiction to grant arbitrary relief to any person as the powers of the Tribunal under Section 5 of the Act are neither unqualified and nor unlimited. It is also settled law that the imposition of punishment under the law is primarily the function and prerogative of the competent authority and the role of the Tribunal or the Court is secondary unless it is found to be against the law or is unreasonable. This is because the department/competent authority, being the fact finding authority, is best suited to decide the particular penalty to be imposed keeping in view a host of factors such as the nature and gravity of the misconduct, past conduct, the nature and the responsibility of the duty assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the department, as well as any extenuating circumstances. The question of interference with relation to the quantum or the nature of the penalty imposed by the department only arises when the Tribunal or the Court, in consonance with the decision of the competent authority, has also found the delinquent guilty of the same or some form misconduct or inefficiency. It is, therefore, only in the above exceptional circumstances, i.e. where it is against the law or is unreasonable, that the Tribunal or the Court can interfere in the penalty imposed by the department.
ii) The imposition of the penalty being against the law would entail that it cannot be held as legally sustainable, such as, when misconduct or inefficiency for which the penalty has been imposed has not been proved and a lesser form of misconduct or inefficiency, in the opinion of the Tribunal or the Court, is proved, or the procedure provided under the law for imposing the penalty has not been followed or the penalty imposed has not been provided for in the law or rules applicable, and therefore, the imposition of the penalty itself is not sustainable under the law, thereby, justifying interference.
iii) Reasonableness for the purposes of assessing the quantum or nature of a penalty imposed by the department is to be gauged by applying the test of proportionality. In ***Sabir case*** (PLD 2019 SC 189) it was held that proportionality is a standard that examines the relationship between the objective the executive branch wishes to achieve, which has the potential of infringing upon a human right, and the means it has chosen in order to achieve that infringing objective. In essence, an administrative decision must not be more drastic than necessary and therefore, it follows that the penalty imposed must be commensurate with the

misconduct or inefficiency that has been proved. Where the Tribunal or the Court interferes in the quantum or nature of the penalty imposed by the competent authority by terming the same as unreasonable, perverse or harsh, or by exercising leniency, such interference is, in effect, only made when the Tribunal or the Court concludes that the penalty is disproportionate to the misconduct proved by employing the test of proportionality.

iv) Another question that arises is with regards to the applicability of the test of proportionality to interfere with a penalty imposed for misconduct which involves moral turpitude. "Moral turpitude" was defined in Imtiaz Ahmed case (2008 PLC (CS) 934) as "the act of baseness, vileness or the depravity in private and social duties which man owes to his fellow man, or to society in general contrary to accepted and customary rule of right and duty between man and man." In Ghulam Hussain case (2002 SCMR 1691), it was held that moral turpitude includes anything which is done contrary to the good principles of morality, any act which runs contrary to justice, honesty, good moral values or established judicial norms of a society. The modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed. The test of proportionality is, therefore, more stringent in cases of misconduct involving moral turpitude in view of the depravity or moral culpability involved.

Conclusion: i) Only in exceptional circumstances where the order is against the law or unreasonable or fails the test of proportionality, a Tribunal or the Court can interfere or reduce the penalty imposed by the department on a civil servant.

ii) The imposition of the penalty becomes unsustainable under the law and the Tribunal or Court are justified for interference when a lesser form of misconduct or inefficiency is proved; or procedure provided under the law is not followed; or the penalty imposed has not been provided for in the law or rules applicable.

iii) The Tribunal or the Court interferes in the quantum or nature of the penalty imposed by the competent authority by terming the same as unreasonable, perverse or harsh, or by exercising leniency, such interference is, in effect, only made when the Tribunal or the Court concludes that the penalty is disproportionate to the misconduct proved by employing the test of proportionality.

iv) Yes, the test of proportionality is more stringent in cases of misconduct involving moral turpitude.

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15. **Supreme Court of Pakistan**
FIA through Director General, FIA and others v.
Syed Hamid Ali Shah and others
C.P. 1257 of 2020
Mr. Justice Syed Mansoor Ali Shah Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1257_2020.pdf

Facts: The petitioners seek leave to appeal against a judgment of the Islamabad High Court, whereby the writ petition of the respondents, has quashed FIR registered against them at Police Station FIA, Islamabad, for offences punishable under Sections 409/109 of the Pakistan Penal Code 1860 ("PPC") and Section 5(2) of the Prevention of Corruption Act 1947 ("PCA").

Issues: i) Whether a High Court has power under Section 561-A Cr.P.C to quash an FIR or an investigation proceeding?
ii) Whether the misuse of the authority entrusted to a public servant would constitute the offence of criminal breach of trust punishable under section 409 of PPC and section 5(2) of PCA 1947?

Analysis: i) The jurisdiction of a High Court to make an appropriate order under Section 561-A Cr.P.C necessary to secure the ends of justice, can only be exercised with regard to the judicial or court proceedings and not relating to proceedings of any other authority or department, such as FIR registration or investigation proceedings of the police department. This has been authoritatively held by a five-member bench of this Court in Shahnaz Begum's case. A High Court, therefore, can quash a judicial proceeding pending before any subordinate court under Section 561-A Cr.P.C, if it finds it necessary to make such order to prevent the abuse of the process of that court or otherwise to secure the ends of justice; however, it should not ordinarily exercise its power under Section 561-A Cr.P.C to make such an order unless the accused person has first availed his remedy before the trial court under Section 249-A or 265-K, Cr.P.C. If an accused thinks that the FIR has been registered, and the investigation is being conducted, without lawful authority, he may have recourse to the constitutional jurisdiction of the High Court under Article 199 of the Constitution for judicial review of the said acts of the police officers.
ii) The argument of the learned counsel for the petitioner is totally misconceived, that the authority conferred upon the accused public officers, who granted the illegal upgradations, was a trust and by misusing that authority, they have committed the offence of criminal breach of trust punishable under section 409 PPC and the offence of criminal misconduct punishable under Section 5(2) PCA. No doubt, the powers of the public servants are like a trust conferred upon them and they should exercise them fairly, honestly and in good faith as a trustee; but the entrustment of the power to upgrade his subordinate officials is not equivalent to the entrustment of property as mentioned in Section 405 PPC and its misuse, or use in violation of the relevant rules and regulations, does not constitute the cognizable offences punishable under Section 409 PPC and Section 5(2) PCA. The misuse of such a power may constitute misconduct under the service laws but does not attract criminal misconduct punishable under the criminal laws.

Conclusion: i) A High Court has no power to quash an FIR or investigation proceedings under section 561-A of Cr.P.C 1898, however, this power can be exercised under Article 199 of the Constitution of 1973.

ii) The misuse of the authority entrusted to a public servant shall not constitute the offence of criminal breach of trust punishable under section 409 PPC and section 5(2) of PCA. However, the misuse of such a power may constitute misconduct under the services laws.

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16. **Supreme Court of Pakistan**
Aman Ullah etc. v. The State etc.
Jail Petition No. 883 of 2017 and Criminal Petition No. 1793-l of 2017
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/j.p._883_2017.pdf

Facts: The petitioner assailed the judgment of the learned High Court, whereby, the learned High Court while maintaining the conviction of the petitioner under Section 302(b) PPC, altered the sentence of death into imprisonment for life. The other conviction and sentences were maintained. The amount of compensation and the sentence in default whereof was also maintained. Benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioner.

Issues: i) Where ocular evidence is found trustworthy and confidence inspiring, whether the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused?
ii) Whether minor discrepancies, if any, in medical evidence relating to nature of injuries do negate the direct evidence?
iii) Whether mere relationship of the prosecution witnesses with the deceased can be a ground to discard the testimony of such witnesses?

Analysis: i) It is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused.
ii) Casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where accused caused injuries. It becomes highly improbable to correctly mention the number and location of the injuries with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse effect on prosecution case.
iii) As far as the question that the prosecution witnesses are interested and related, therefore, their evidence has lost its sanctity is concerned, it is now settled that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses.

Conclusion: i) Where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused.
ii) Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account.
iii) Mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses.

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17. **Supreme Court of Pakistan**
Mst. Hajira Bibi @ Seema and Mst. Shaina Hameed v.
Abdul Qaseem and another
Criminal Appeal No. 39-K of 2022 & Criminal M.A. No. 113-K of 2022
Abdul Qaseem v. The State
Criminal Petition No. 613 of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._39_k_2022.pdf

Facts: Appellants were tried by the learned Additional Sessions Judge under charge of abatement of murder of brother of the complainant, with co-accused. The main co-accused did not join trial and was declared a proclaimed offender. Another co-accused, who allegedly facilitated the main absconding accused by driving motorcycle, being juvenile, was tried separately by the learned Additional Sessions Judge. The learned Trial Court vide two separate judgments convicted the appellants and co-accused. In appeal, the learned High Court while maintaining the conviction of the appellants under Section 302(b) PPC, altered the sentence of death into imprisonment for life. However, the learned High Court acquitted juvenile co-accused. Hence instant criminal appeals have been filed against the judgments of the learned High Court.

Issues: i) What are the stages in the commission of a crime?
ii) What are ingredients which constitute an offence of abetment?
iii) What evidence is required to prove the charge of offence of abetment?
iv) What kind of evidence on which conviction can be based?
v) Whether any doubt arising in prosecution case is to be resolved in favour of the accused?

Analysis: i) There are three stages in the commission of a crime, i.e. (i) the mental stage in which the crime is considered and determined upon, (ii) the preparatory stage, and (iii) the stage of execution.
ii) A bare perusal of Section 109 PPC shows that the same comes into operation if there is abetment of an offence. Section 107 deals with abetment of a thing. Abetment under the said provision involves active complicity on the part of the abettor at a point of time prior to actual commission of offence. It is essence of

crime of abetment that the abettor should substantially assist the principal culprit towards commission of offence. Concurrence in the criminal acts of another without such participation therein does not per se become culpable. Mere negligence in an act also does not bring in a person within the purview of the offence of abetment. Perusal of Section 107 PPC reveals that three ingredients are essential to dub any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of abetment. Expression "abettor" has been defined in Section 108 PPC to mean a person who abets either commission of an offence or commission of an act which would be an offence if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor. Intention to aid commission of the crime is the gist of offence of abetment and in the absence of necessary intention, such offence is not made out. Liability of an abettor of a crime is generally co-extensive with the principal offender.

iii) To establish the charge under section 109 PPC, it is the duty of the prosecution to produce evidence of conclusive nature in order to prove the ingredients as mentioned in the definition of abetment, referred above.

iv) It is settled principle of law that the conviction must be based on unimpeachable, trustworthy and reliable evidence.

v) Any doubt arising in prosecution case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable doubt. It is also an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer… For the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused.

Conclusion: i) There are three stages in the commission of a crime, i.e. (i) the mental stage in which the crime is considered and determined upon, (ii) the preparatory stage, and (iii) the stage of execution.

ii) Three ingredients are essential (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of abetment.

iii) It is the duty of the prosecution to produce evidence of conclusive nature in order to prove offence of abetment.

iv) Conviction must be based on unimpeachable, trustworthy and reliable evidence.

v) Any doubt arising in prosecution case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable doubt.

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18. **Supreme Court of Pakistan**
Gul Muhammad v. The State
Criminal Petition No. 1557 of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1557_2022.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the High Court of Sindh with a prayer to grant post-arrest bail in case registered under Sections 302 / 324 / 337-A(i) / 337-F(i) / 337-H(ii) / 504 / 506 / 114 / 147/ 148 / 149 PPC.

Issues: What are the relevant considerations for a case of further inquiry in a post arrest bail?

Analysis: The allegation against the petitioner is that he while armed with pistol .30 bore launched an attack on the complainant party and made straight fire from his pistol on the complainant which hit on his ear and shoulder. However, it is stance of the petitioner that in fact the complainant party while armed with firearms came at his village, attacked on him and caused injury on his left arm, due to his left arm has been which amputated. The medical evidence available on record prima facie supports the stance of the petitioner. The petitioner has also got registered a counter FIR against the complainant party. The crime report was lodged after an inordinate delay of two days for which not even a single word has been put forward by the complainant. The delayed registration of FIR prima facie shows deliberations and consultation on the part of the complainant. The injuries of the injured witness have been declared as ghayr jaifah mutalahimah and shaijah-i-khafifah falling within the ambit of Sections 337 F(iii) and 337-A(i) PPC for which the maximum punishment provided under the statute is three and two years respectively. The petitioner is behind the bars for the last more than five months. Liberty of a person is a precious right, which cannot be taken away unless there are exceptional grounds to do so.

Conclusion: Unexplained delay in lodging of the FIR, case of counter versions, role and overt act ascribe to the petitioner, nature of injury (if any) caused by petitioner, maximum sentence of the alleged offence, and petitioner's period behind the bars are the few relevant considerations for a case of further inquiry in a post arrest bail.

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19. **Supreme Court of Pakistan**
Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others v. Zahid Malik
Civil Appeal No.33-K of 2018
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._33_k_2018.pdf

Facts: This appeal is filed against the judgement passed by the Federal Service Tribunal whereby the appeal filed by the respondent was allowed and the major penalty of dismissal from service was converted into the minor penalty of stoppage of one increment for a period of one year and the respondent was also reinstated in service.

Issues: Whether the principles of natural justice are mandatory to be observed in the administrative proceedings?

Analysis: The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned. The doctrine of natural justice is destined to safeguard individuals and whenever the civil rights, human rights, Constitutional rights, and other guaranteed rights under any law are found to be at stake, it is the religious duty of the Court to act promptly to shield and protect such fundamental rights of every citizen of this country. The principle of natural justice and fairmindedness is grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-defined, just, right and understandable, therefore it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and even handed approach to ensure justice according to tenor of law and without any violation of the principle of natural justice.

Conclusion: The observance of the principles of natural justice is mandatory for all judicial, quasi-judicial and administrative proceedings.

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20. **Lahore High Court**
Muhammad Azhar Siddique v. Federation of Pakistan etc.
W.P. No. 50725 of 2022
Mr. Justice Ali Baqar Najafi
https://sys.lhc.gov.pk/appjudgments/2023LHC203.pdf

Facts: The petitioners domestic, industrial and commercial consumers herein have challenged the imposition of FUEL PRICE ADJUSTMENT (FPA) and

QUARTER TARIFF ADJUSTMENT (QTA) etc. change of tariff from Industrial to Commercial and seek a direction to the National Electric Power Regulatory Authority (NEPRA) and Distributing Companies (DISCOs) not to charge them illegally in violation of Article 4, 9 & 38 of the Constitution of Islamic Republic of Pakistan, 1973.

Issues:

i) What is the composition of the authority defined under Section 3 after the modification in the NEPRA Act, 1997 and as per the judgments of the Supreme Court?
ii) What does Tariff mean and what is the obligation of consumer?
iii) What is the responsibility of NEPRA and Federal Government while determining the tariff?
iv) When the tariff should be determined on regular basis?
v) What is the procedure of fuel adjustment in approved tariff?
vi) What is fuel cost adjustment?
vii) What are the parameters/ guidelines if alternate remedy is allowed to be resorted?
viii) What would be the process in case of the application of wrong tariff?
ix) Whether the special tribunals constituted to settle different matters have the power of Judicial Review?
x) Whether the consumer can be asked for the change of method of charging agreed at the time of obtaining the supply?

Analysis:

i) By means of the amendment in 2021, sub clause (2) of Section 3 has now made it obligatory upon the Federal Government to appoint a Chairman and 4 specialized Members experts in the field of tariff and finance, chartered accountant, etc. Each of these Members is to be rotated so that the 4 Provinces of the Federation, namely Punjab, Baluchistan, Sindh, KPK are continuously represented as a part of the authority which would make it fully functional. This policy of rotational representation enumerated in sub section (2) is to ensure the equal and equitable representation of the Provinces. However, under section 31(2) (4a) the authority as a whole was to comply with the requisite range of skills.
ii) Under Section 31(2) Tariff means a final cost of energy offered to consumer determined on the basis of reference fuel price and any subsequent difference in the fuel price, added by NEPRA, therefore, it should be in the knowledge of the consumer that they were required to pay the price of energy on the basis of tentative fuel price and that the actual price would be payable on the receipt of the actual invoice of the fuel. Thus, it was a pre-agreed but reasonably contemplated liability of the consumer payable as and when finally determined, therefore, no question of vested right and legitimate expectancy arises if it not unjust.
iii) It is the heavy responsibility of the NEPRA to adjudge against the power generation companies if they wrongly claimed fuel adjustment costs and other expenses in order to transfer its burden to the consumers. Federal Government and NEPRA will also be responsible to determine the transmission losses after

holding detailed probe and to fix the responsibility and then to take appropriate action against the culprits as held in Muhammad Yasin's case. More so as under section 31(2) the NEPRA is bound to protect consumers against monopolistic and oligopolistic prices as the electricity was a monopoly product of WAPDA thus it is required to examine each and every component used for generation and transmission of energy while determining the tariff as held in Noorani Steel Mills's case.

iv) Under Section 3 the tariff is to be determined regularly and mandatorily on yearly, quarterly and monthly basis so as to demand the exact amounts from the domestic, industrial and commercial consumers. The broad reasoning is that the timely demand with legitimate expectancy is essential for the budgetary and to prepare a profit-loss balance sheet ever essential for payments, therefore, the timeframe so given in the said provision cannot be extended as it is mandatory and not directory.

v) Section 31(7)(IV) of the NEPRA Act, 1997 , deals with the monthly fuel adjustments while working out fuel adjustments, no other factor other than fuel changes can be considered and the decision has to take place not later than a period of 7 days, from the date the application is made to the Federal Government as per the dictum laid down in the Mustafa Impex's case 32 which means the Prime Minister and the Cabinet, otherwise it will undermine the power of the Federal Government which is against the spirit of the law.

vi) According to NEPRA, fuel cost adjustment is mechanism for recovery of left-over fuel cost component. It is determined and notified under section 31(7)(iv) read with section 7(1) & 7(3)(a) of NEPRA, the fuel price adjustment was determined on monthly basis to settle the variation due to cost of fuel (major component of tariff) and as such one month bill represent the fuel price adjustment of that month only. The fuel price adjustment variations due to generation mix and prices. The variation is subject to the final adjustment and settlement of the obligation of the consumers to pay the fuel charges. The increase of fuel price adjustment is obviously on account of increase of fuel price in the international market.

vii) For adequate and alternate remedy the test and guidelines for this court under Article 199 of the Constitution lies in efficacious, convenient, beneficial, effective and speedy, inexpensive and expeditious. The alternate remedy if allowed to be resorted to must be able to accomplish the same purpose, which depends upon the circumstances of each case.

viii) Application of a correct tariff is the responsibility of DISO at the time of sanction of connection. In case of application of wrong tariff, which is lower than the applicable tariff, no differential bill will be debited against the consumer account. However, in case where high tariff has been charged to the consumer than adjustment/credit for six (6) months be allowed retrospectively, from the date of pointing out of such discrepancy.

ix) The power of Judicial Review is conferred only upon the High Courts and Supreme Court of Pakistan by virtue of the Constitution of Islamic Republic of

Pakistan, 1973 and therefore, the Special Tribunals constituted to settle different matters between Governmental Departments do not have the authority to exercise this power.

x) The relationship of the consumer with the WAPDA is created on the basis of Abridged Conditions of Supply and according to clause 19 the methods of charging for the supply shall be those prescribed in the authority's schedule of electricity tariff enforced from time to time and no consumer shall be entitled to asked for any change if the method of charging agreed to at the time of obtaining the supply. However, clause 27 the authority has a right to refuse the condition of supply, the schedule of the electricity tariff rates and schedule of service/general charges without giving any previous notice to the consumer to that effect. Meaning thereby that the schedule can be changed unilaterally depending on post of conditions which obviously are justiciable and supported by good reasons.

Conclusion: i) By means of the amendment in 2021, sub clause (2) of Section 3, Federal Government appoint a Chairman and 4 specialized Members experts in the relevant field from each province representing their respective province.

ii) Tariff means a final cost of energy offered to consumer as it was a pre-agreed but reasonably contemplated liability of the consumer payable as and when finally determined.

iii) Federal Government and NEPRA will be responsible to determine the transmission losses after holding detailed probe and to fix the responsibility and then to take appropriate action against the culprits as held in Muhammad Yasin's case as well as NEPRA is bound to protect consumers against monopolistic and oligopolistic prices.

iv) Tariff is to be determined regularly and mandatorily on yearly, quarterly and monthly basis so as to demand the exact amounts from the domestic, industrial and commercial consumers.

v) Fuel adjustments in the approved tariff on account of any variations in the fuel charges and policy guidelines as the Federal Government may issue and notify the tariff so adjusted in the official Gazette are made not later than a period of 7 days.

vi) According to NEPRA, fuel cost adjustment is mechanism for recovery of left over fuel cost component.

vii) The alternate remedy if allowed to be resorted to must be able to accomplish the same purpose, which depends upon the circumstances of each case.

viii) In case of application of wrong tariff, which is lower than the applicable tariff, no differential bill will be debited against the consumer account.

ix) The special tribunals constituted to settle different matters do not have the power of Judicial Review.

x) The consumer cannot be asked for the change of method of charging.

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21. **Lahore High Court**
Mst. Robina Shehnaz, etc v. Mukhtar Begum, etc.
Civil Revision No. 2701 of 2016
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC168.pdf

Facts: The petitioners moved an application before the learned Executing Court for cancellation of mutations which were sanctioned by the judgment debtor after decree and recovery of decretal amount of maintenance allowance. The application was allowed. The respondents being aggrieved preferred an appeal and the same was accepted and application was dismissed. Hence, the instant revision petition has been filed by the petitioners.

Issues: Whether Executing Court is vested with jurisdiction to cancel the mutation sanctioned by the judgment debtor after passing decree against him?

Analysis: Therefore, the learned Executing Court was vested with jurisdiction to undo the said illegal act committed by the deceased (judgment debtor) and rightly cancelled the said mutations by allowing application, filed by the petitioners in this regard.

Conclusion: Executing Court is vested with jurisdiction to cancel the mutation sanctioned by the judgment debtor after passing decree against him.

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22. **Lahore High Court**
Mubashar Ahmad Ayaz v. Late (Moulana) Manzoor Ahmad Chinioti Thorugh L.Rs. etc.
R.S.A.No.46 of 2009
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC171.pdf

Facts: The respondent No. 1 instituted a suit for recovery of damages against the present appellant and respondent No.2, which was duly contested and on application of appellant, two additional issues were framed. The learned trial court decreed the suit but did not give findings on additional issues. Appeal was preferred but it was dismissed, hence, the instant regular second appeal has been filed.

Issues: Whether it is mandatory for trial court to give reasons for decision on each separate issue?

Analysis: According to Rule 5 of Order XX, Code of Civil Procedure, 1908, "In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit." In the instant case, the learned trial Court framed additional issues 1-A and 1-B on the application of the appellant but while reducing the judgment into writing the learned trial Court totally ignored the said issues, which otherwise go to the root of the case and

without deciding the same, the fate of the case cannot be decided finally, because by using word "Shall" the said provision has been made mandatory unless the issues are interlinked and interconnected.

Conclusion: It is mandatory for trial court to give reasons for decision on each separate issue unless the issues are interlinked and interconnected.

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23. **Lahore High Court**
Muhammad Yousaf (deceased) through L.Rs. v. Naila Shaheen and others
R.S.A. No.129 of 2010
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC295.pdf

Facts: The appellants through this regular second appeal have assailed judgment and decree of the appellate court whereby appeal against preliminary decree passed in judgment and decree in suit for partition was dismissed.

Issues: Whether the court is under obligation to amend or frame additional issues after submission of amended plaint and written statement?

Analysis: The Court is under obligation to amend or frame additional issues after submission of amended plaint and written statement. The parties have to lead evidence keeping in mind the burden of proof placed upon their shoulders while formulating issues. If the issues framed by the Court are not proper with regard to rival claims of the parties then the provisions of Order XIV, Rule 1 of the Code of Civil Procedure, 1908 have been defiled. The stage of framing of issues is very important in trial of civil suit because at this stage the real controversy between the parties is summarized in the shape of issues and narrowing down the area of conflict and determination where the parties differ and then parties are required to lead evidence on the said issues. The importance of framing correct issues can be seen from the fact that parties are required to prove issues and not pleadings as provided by Order XVIII, Rule 2, C.P.C. The Court is bound to give decision on each issue framed as required by Order XX, Rule 5, C.P.C. Therefore, the Courts while framing issues should pay special attention to Order XIV of CPC and give in deep consideration to the pleadings etc. for the simple reason that if proper issues are not framed, then entire further process will be meaningless, which will be wastage of time and energy and would further delay the final decision of the suit.

Conclusion: The court is under obligation to amend or frame additional issues after submission of amended plaint and written statement.

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24. **Lahore High Court**
Zaheer Ahmed v. Judge, Special Court, etc.
Criminal Revision No.23556 of 2022
Miss. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC192.pdf

Facts: Through instant revision petition, petitioner has challenged the vires of order passed by learned Judge Special Court (OIB-II), Lahore, whereby application filed by the petitioner for having comparison of signatures of his deceased father, was dismissed.

Issues: i) Whether any piece of evidence which is essential for just decision of the case, has to be brought on record irrespective of the fact that either it favours one party or goes against other?
ii) Whether filling lacuna in the case is immaterial if any piece of evidence is otherwise necessary for securing ends of justice?

Analysis: i) Any piece of evidence which is essential for just decision of the case, has to be brought on record irrespective of the fact that either it favours one party or goes against other. It goes without saying that Ch.1-E of the Volume III of Lahore High Court Rules and Orders deals with recording of evidence in criminal cases and relevant portion of its Rule 2 clearly reflects as under: -
"2. Duty of Court to elucidate facts.---.....
…….....
.....a Judge in a Criminal trial is not merely a disinterested auditor of the contest between the prosecution and the defence, but it is his duty to elucidate points left in obscurity by either side, intentionally or unintentionally, to come to a clear understanding of the actual events that occurred and to remove obscurities as far as possible. The wide powers given to the court by [Article 161 of the Qanun-e-Shahadat, 1984] ***[…] should be judiciously utilized for this purpose when necessary". Similarly, Article 161 of the Qanun-e-Shahadat Order, 1984 and Section 94 Cr.P.C., are also relevant.
ii) As far as filling lacuna left by any party is concerned, if such evidence/material is necessary for just decision of the case, then it becomes mandatory for the Court to summon and examine such evidence/material.

Conclusion: i) Any piece of evidence which is essential for just decision of the case, has to be brought on record irrespective of the fact that either it favours one party or goes against other.
ii) Filling lacuna in the case is immaterial if any piece of evidence is otherwise necessary for securing ends of justice.

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25. **Lahore High Court**
The State v. Bilal Hassan.
Murder Reference No. 81 of 2019
Bilal Hassan v. The State.
Crl. Appeal No. 19109 of 2019
Justice Miss Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC411.pdf

Facts: The appellant was tried by the learned Additional Sessions Judge under Sections 302,324 P.P.C, sentenced to death with a direction to pay compensation, and also sentenced to undergo ten years R.I. under section 324 PPC. The appellant filed criminal appeal against his conviction and sentences and the learned trial court transmitted murder reference for confirmation of death sentence of the appellant. Murder reference and criminal appeal have been decided through single judgment.

Issues: i) Whether flaw in fixation of exact time when the incident was reported to the police is sufficient to cast doubt about the authenticity of the F.I.R?
ii) Whether unexplained delay of postmortem of the dead body is sufficient to cast doubt about the authenticity of the F.I.R?
iii) Whether delay in lodging FIR often resulted in exaggeration and treated as afterthought?

Analysis: i) When in the prosecution evidence, there is a severe flaw, to precisely fix the time when the incident was reported to the police. This aspect of the matter is sufficient to cast doubt about the authenticity of the F.I.R. This creates serious doubt about the genuineness of the prosecution story, including the presence of the complainant at the scene of occurrence.
ii) There is no plausible explanation as to why the postmortem of the dead body was delayed for 11 hours and 45 minutes. This aspect of the matter is sufficient to cast doubt about the authenticity of the F.I.R. This creates serious doubt about the genuineness of the prosecution story.
iii) Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought.

Conclusion: i) Flaw in fixation of exact time when the incident was reported to the police is sufficient to cast doubt about the authenticity of the F.I.R.
ii) Unexplained delay of postmortem of the dead body is sufficient to cast doubt about the authenticity of the F.I.R.
iii) Unexplained delay in lodging FIR often resulted in exaggeration and treated as afterthought.

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26. **Lahore High Court**
Hafiz Riaz Ahmad etc. v. Province of Punjab etc.
Writ Petition No.6917 of 2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC311.pdf

Facts: The petitioners through this Constitutional Petition have challenged the order passed by respondent No.2, whereby petitioners' posting against the post of Executive Engineer on their Own Pay and Scale was set-aside.

Issues: i) Whether Service Tribunal has exclusive jurisdiction on transfer and posting matters and jurisdiction of High Court is barred?
ii) Whether Service Tribunal has jurisdiction on the question of fitness and the question of eligibility?

Analysis: i) The Hon'ble Supreme Court in various judgments repeatedly held that in respect of transfer and posting matters, the exclusive jurisdiction is of the PST and jurisdiction of this Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution).
ii) There is no cavil that PST has no jurisdiction on the question of "fitness", however, the question of eligibility is different from the question of fitness. The eligibility primarily relates to the terms and conditions of service and their applicability to the Civil Servants concerned, and therefore, the PST has jurisdiction on the question of eligibility, whereas the question of fitness is a subjective evaluation on the basis of objective criteria, where substitution for an opinion of the competent authority is not possible by that of a Tribunal, therefore, the Tribunal has no jurisdiction on the question of fitness.

Conclusion: i) Service Tribunal has exclusive jurisdiction on transfer and posting matters and jurisdiction of High Court is barred.
ii) Service Tribunal has no jurisdiction on the question of fitness however, Service Tribunal has jurisdiction on the question of eligibility.

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27. **Lahore High Court**
Commissioner Inland Revenue v. M/s Prime Commercial Bank Ltd.
P.T.R No. 173 of 2013
Mr. Justice Shahid Karim, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC148.pdf

Facts: This P.T.R along with a number of reference applications under Section 133 of the Income Tax Ordinance, 2001 in which the same questions of laws are involved are to be decided together through the instant judgment as they arise out of a common judgment rendered by the Appellate Tribunal Inland Revenue.

Issues: i) Whether the power conferred upon the Commissioner envisaged by sub-section (5A) of Income Tax Ordinance, 2001 to amend or further amend an assessment order negate sub-section (5) of the Ordinance in its material particulars that an

amendment can only be made on the basis of definite information acquired?
ii) Under what circumstances, a Taxation Officer is equipped with the power to amend or further amend the assessment order in respect of a tax year?
iii) For the purpose of section 171 of the Ordinance, when the refund becomes due u/s 120 (1) of the Income Tax Ordinance, 2001?
iv) Which agreement could only be characterized as a loan agreement?
v) Whether SBP is a banking company or a development financial institution according to the term 'banking company' as given in the Banking Companies Ordinance, 1962?

Analysis: i) Section 122 grants power to the Commissioner to amend an assessment order treated as issued under Section 120 by making such alteration or addition as the Commissioner considers necessary. By virtue of sub-section (5) such an amendment can only be made on the basis of definite information acquired from an audit or otherwise. (Subsection (5) was amended by the Finance Act, 2020 but we are concerned with the contents of sub-section (5) at the relevant time of the passing of the assessment order). As stated above, sub-section (5A) does not negate sub-section (5) in material particulars and the only distinction is that the power to amend or further amend conferred upon the Commissioner may be exercised under distinct circumstances. The power is conditional upon definite information acquired from an audit or otherwise as far as sub-section (5) is concerned whereas the power to amend or further amend is not dependent upon such a pre-condition as envisaged by sub-section (5A).
ii) If an audit is conducted and discrepancies are noted by the Taxation Officer, this would clearly constitute definite information to clothe Taxation Officer with the power to amend or further amend the assessment order in respect of a tax year. The intention of the legislature has been expressed in the words "definite information acquired from an audit or otherwise" and no ambiguity can be read into these words to hold that there was no definite information with the department for completion of assessment. The only condition to be satisfied priorly is that invocation of the powers is subject to sub-section (9) which merely provides that an amendment or further amendment can only be made if a taxpayer has been provided with an opportunity of being heard.
iii) For the purpose of section 171 of the Ordinance, the refund becomes due on the date it was treated to have made under Section 120(1). Hence, the purpose of sub-section (1) of section 171 of the Ordinance the refund becomes due on the date of the assessment order made under Section 120 (1).
iv) The repurchase agreement could only be characterized as a loan agreement. While relying upon the book published by SBP in collaboration with Institute of Banks Pakistan and other institutions, came to the conclusion that the agreement was indeed a loan agreement to be caught by the exception given in section 151 (1)(d).
v) By the definition, a banking company is the one as defined in the Banking Companies Ordinance, 1962 and includes anybody corporate which transacts the

business of banking in Pakistan. When the loan agreement is with State Bank of Pakistan, it is not covered by the exclusion of clause (d) of sub-section (1) of section 151 as SBP is not a banking company or a development financial institution by any stretch of imagination nor by the definition of the term 'banking company' as given in the Banking Companies Ordinance, 1962.

Conclusion: i) The power conferred upon the Commissioner envisaged by sub-section (5A) of Income Tax Ordinance, 2001 to amend or further amend an assessment order does not negate sub-section (5) of the Ordinance in its material particulars and the only distinction is that the power under sub-section (5A) may be exercised under distinct circumstances.
ii) If an audit is conducted and discrepancies are noted by the Taxation Officer, a Taxation Officer has the power to amend or further amend the assessment order in respect of a tax year subject to providing him an opportunity of being heard.
iii) For the purpose of section 171 of the Ordinance, the refund becomes due on the date of the assessment order made under Section 120 (1) of the Income Tax Ordinance, 2001.
iv) The repurchase agreement could only be characterized as a loan agreement.
v) SBP is neither a banking company nor a development financial institution according to the term 'banking company' as given in the Banking Companies Ordinance, 1962.

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28. **Lahore High Court**
Jan Muhammad Tayab v. Federation of Pakistan & others
W.P.No.36748 of 2022
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC429.pdf

Facts: The petitioner challenged the order passed by the Presiding Officer of the Foreign Exchange Regulation Appellate Board in which he was required to deposit a surety equivalent to the amount of penalty imposed upon him and this was held to be a sine qua non for the appeal to be entertained and decided. The petitioner prayed for holding the provisions of Section 23C (4) of the Foreign Exchange Regulation Act, 1947 to be unconstitutional on the ground that it offends the rights of the petitioner.

Issues: i) Whether unimpeded right of an aggrieved person to file at least one appeal against the order which affects his rights is a fundamental right?
ii) Whether provision of Section 23C (4) of the Foreign Exchange Regulation Act, 1947 is unconstitutional?

Analysis: i) One of the most important planks of the right of access to justice is the right to file at least one appeal against the order which affects the rights of a person. The right to file an appeal must be unimpeded and should not be circumscribed by a condition which surely takes away that right… Sub-section (4) of Section 23C is a clog on the right of the petitioner to be dealt with in accordance with law. The

petitioner has the right of filing at least one appeal and for that appeal to be heard without any pre-conditions attached to it. This is a fundamental right under the Constitution and springs from Article 10A (Right to fair trial) which provides, inter alia, that for the determination of civil rights and obligations, a person shall be entitled to due process. It also emanates from Article 4. This right has been established in a plethora of superior court judgments.

ii) Consequently, it is held that sub-section (4) of Section 23C of the Act, 1947 as well as rule 8 of the Rules (to the extent that rule makes the receipt of an appeal subject to the compliance with sub-section (4) of Section 23C of the Act) as unconstitutional and violative of the fundamental rights of the petitioner and they are hereby struck down.

Conclusion: i) Unimpeded right of an aggrieved person to file at least one appeal against the order which affects his rights is a fundamental right.

ii) Provision of Section 23C (4) of the Foreign Exchange Regulation Act, 1947 is unconstitutional and violative of the fundamental rights.

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29. **Lahore High Court**
Province of the Punjab through Chief Secretary etc. v.
Syed Danish Hussain Shah.
I.C.A. No.31531 of 2022
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC184.pdf

Facts: Through this Intra Court Appeal, the appellants have challenged the order of learned Single Judge whereby writ petition filed by respondent was allowed.

Issues: i) Whether admitted facts need to be proved?

ii) Whether it is mandate of law that anything to be done in a particular manner as prescribed by it?

iii) Whether the right of profession is treated as a fundamental right subject to such qualification as settled by the law?

iv) Whether power to strike down or declare a legislative enactment as void is to be exercised with great care and caution?

v) Whether prerogative of setting the eligibility criteria of a certain post exclusively falls within the domain of the concerned authority?

vi) Whether the Courts can examine the qualification and eligibility in a recruitment process of the employing institution?

Analysis: i) It is settled law that admitted facts need not to be proved.

ii) When law prescribes anything to be done in a particular manner, it is to be done as mandated by law.

iii) There is no cavil or cudgel that the right of profession is treated as a fundamental right but it is subject to such qualification as settled by the law and every citizen has to follow the commandments of the law in this regard.

iv) The power to strike down or declare a legislative enactment as void is to be exercised with great care and caution and Hon'ble Apex Court of the country has laid down certain conditions for exercising such power.

v) The prerogative of setting the eligibility criteria of a certain post exclusive falls within the domain of the concerned authority/executive and interfering in that domain would amount to committing judicial overreach which is unwarranted by law.

vi) It is settled law that it is not for the Court to examine the qualification and eligibility in a recruitment process and it cannot delve deeper into the design and need of the employing institution or second guess their selection criteria and job recruitment and these matters can be best resolved by the institution itself according to the suitability and requirements of a certain post. The autonomy and free choice of the employing institution/ appellants must be respected and be allowed to recruit according to the criteria advertised.

Conclusion: i) Admitted facts need not to be proved.

ii) Yes, it is mandate of law that anything to be done in a particular manner as prescribed by it.

iii) Yes, the right of profession is treated as a fundamental right but subject to such qualification as settled by the law.

iv) Yes, power to strike down or declare a legislative enactment as void is to be exercised with great care and caution.

v) Yes, prerogative of setting the eligibility criteria of a certain post exclusively falls within the domain of the concerned authority.

vi) The Courts should not examine the qualification and eligibility in a recruitment process of the employing institution.

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30. **Lahore High Court**
Mst. Hajra Bibi (deceased) through her legal heirs v.
Bashir Ahmad (deceased) through his legal heirs etc.
W.P.No.57166 of 2019
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC322.pdf

Facts: Respondents filed an application under Sections 30 & 33 of The Arbitration Act, 1940 for cancellation of agreements for appointment of arbitrators & arbitration decisions which was accepted by learned Civil Judge. Against the said decision, the petitioners filed an appeal under Section 39 of the Act ibid which was dismissed by the learned Additional District Judge, The petitioners have assailed the aforesaid orders through this writ petition.

Issues: Whether the remedy against first appellate court deciding objections to the award under Section 30/33 of the Arbitration Act, 1940 would be revision petition under Section 115 C.P.C or constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973?

Analysis: The Arbitration Act, 1940 is a special statute having limited application relating to matters governed by the said Act. The revisional jurisdiction of the High Court under the C.P.C or under any other statute therefore shall not stand superseded under the Act ibid and if the Act does not contain any express bar against exercise of revisional power by the high Court provided exercise of such revisional power does not militate against giving effect to the provision of the Act ibid. There is no express provision in the Arbitration Act putting an embargo against filing a revisional application against appellate order under Section 39 of the Act. The Arbitration Act has put an embargo on filing any second appeal from appellate order under Section 39 of the Act. It may be stated that even if a special statute expressly attaches finality to an appellate order passed under that statute, such provision of finality will not take away revisional powers of the High Court under Section 115 of C.P.C.

Conclusion: The remedy against first appellate court deciding objections to the award under Section 30/33 of the Arbitration Act, 1940 would be revision petition under Section 115 C.P.C.

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31. **Lahore High Court**
University of Health Sciences, Lahore v. Government of Pakistan through the Secretary, Ministry of Inter Provincial Coordination, Islamabad etc.
W.P.No.29214 of 2011 & 19848 of 2011
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2022LHC8888.pdf

Facts: Through first writ petition, the petitioner/UHS has challenged the validity of notification issued by the Deputy Director General (Health), Ministry of Inter Provincial Coordination (Health Wing), Government of Pakistan in violation of Section 37 of the University of Health Sciences Ordinance 2002. As common questions of law and facts are involved so in another writ petition, the Superior College, Lahore has challenged the validity of Notice whereby the UHS directed the petitioner to get Medical College affiliated with UHS and press releases issued by the UHS whereby the recognition of said College was declared as false and illegal.

Issues: i) Whether the affiliation of medical teaching institutions located within the territorial boundaries of the Province of Punjab with UHS is mandatory?
ii) Whether any Federal Department/Authority has jurisdiction to intrude into the domain of the provincial authorities or frustrate the objective and spirit of the law?

Analysis: i) Under Section 34(1) (iv) of the Ordinance 2002, the Syndicate of the UHS has been authorized to make Statutes to prescribe and regulate the matters regarding affiliation and disaffiliation of medical institutions. Pursuant to Section 34(iv) of the Ordinance 2002 statutes for Affiliation of Medical Institutions of 2011 was promulgated (which was repealed upon promulgation of Statutes for Affiliation of

Medical Institutions 2022) wherein a procedure is provided for application to be filed by all medical institutions seeking affiliation with UHS. Section 37 of the Ordinance ibid requires mandatory affiliation of all the medical colleges/ institutions, whether in public or private sector, located within the geographical boundaries of the province of the Punjab with the UHS. Under section 37 of the Ordinance 2002, it is mandatory that all medical colleges or institutions, whether in public or private sector, located within the territorial boundaries of the Province of Punjab, whether affiliated with any other University, Examination Board or a Medical Faculty, notwithstanding anything contained in any other law for the time being in force, shall affiliate with UHS. It is not out of place to mention here that the question of mandatory affiliation of medical colleges with UHS was earlier arisen in the year 2003, when concurrent list was still in vogue, a few of the medical colleges/ universities/students challenged the vires of Ordinance 2002. Through Section 37 of the Ordinance 2002, the exclusive jurisdiction was/is given to UHS for the affiliation of the medical teaching institutions either in public or private sector, located within the territorial jurisdiction of the Province of Punjab.

ii) After promulgation of the above said 18th Constitutional amendment, the subject of education comes within the exclusive legislative domain of the provinces, thus, any Federal Department/Authority lacks jurisdiction to intrude into the domain of the provincial authorities or impede or frustrate the objective and spirit of the law. Therefore, the government functionaries [as in this case the Ministry of Inter Provincial Coordination (Health Wing), Government of Pakistan] are debarred from performing any act in deviation to the mandatory statutory provision of Section 37 of Ordinance 2002, allowing a medical College to escape from the mandatory affiliation.

Conclusion: i) Yes, the affiliation of medical teaching institutions located within the territorial boundaries of the Province of Punjab with UHS is mandatory.

ii) Any Federal Department/Authority has no jurisdiction to intrude into the domain of the provincial authorities or frustrate the objective and spirit of the law.

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32. **Lahore High Court**
M/s Basfa Textile (Pvt.) Limited, Lahore v.
Deputy Director (Customs), Lahore & others
Customs Reference No.52 of 2016
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC349.pdf

Facts: The applicant imported a consignment of Indian Raw Cotton and claimed benefit of SRO 1125(I)/2011 dated 31.12.2011 to pay sales tax @ 2%, which was allowed. However, during course of audit, it was observed that applicant was liable to pay sales tax @ 16%, which culminated in passing order creating demand of said defaulted amount and penalty of Rs.15,000/-. Feeling aggrieved, applicant filed appeal against said order before Appellate Tribunal, which was rejected. Hence, the instant Reference Application.

Issue: When there are two possible interpretations of fiscal statute / notification; one favoring the taxpayer and other not; which one has to be adopted?

Analysis: It is now settled that while interpreting a taxing statute / notification, equitable consideration, the Court must look squarely at the words of the statute / notification and interpret them. The court cannot imply anything that is not expressed; it cannot import provisions in the statute / notification so as to supply an assumed deficiency. Moreover, interpretation of fiscal statute / notification had to be made strictly and any doubts arising therefrom must be resolved in favour of taxpayer and even if two reasonable interpretations were possible, one favouring taxpayer had to be adopted.

Conclusion: When there are two possible interpretations of fiscal statute / notification; one favoring the taxpayer and other not; the one favoring the taxpayer has to be adopted.

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33. **Lahore High Court**
Madiha Ammad v. The State etc.
Writ Petition No. 21725 of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC8859.pdf

Facts: This petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeks annulment of the order passed by the Judicial Magistrate, whereby he concurred with the police report and cancelled FIR, for an offence under section 382 PPC.

Issues: i) Whether Cr.P.C. contain any specific provision regarding cancellation of case?
ii) Whether it is mandatory that cancellation report be submitted by S.P. to the magistrate?
iii) If cancellation report is not forwarded or countersigned by S.P, whether said defect is curable?
iv) Whether the Magistrate acts as a court when he cancels a criminal case?
v) Whether SHO is required to notify the complainant, if he decides not to investigate the case u/s Section 157(2) Cr.P.C?
vi) Whether complainant has the right to be heard by the Magistrate, when cancellation report is submitted?
vii) Whether accused has right to be heard when cancellation report is decided by Magistrate?
viii) What are the factors to be considered by the magistrate while deciding the cancellation report?

Analysis i) It is important to note that the expression "cancellation report" does not occur in either the Code or Police Rules. Section 173 Cr.P.C. refers to "a report," whereas Rules 24.7 and 25.57 of the Police Rules use the phrase "final report." The High Court Rules & Orders, supra, use the same terminology. However, sections 9, 12

& 13 of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, employ the wording "a report for cancellation of the first information report." The Rule 10 of the Punjab Anti-Corruption Establishment Rules, 2014, includes the phrase "cancellation report."

ii) Rule 24.7 outlines the grounds and procedure for cancelling a criminal case. Except where the investigation is transferred to another police station or district (in which case Rule 25.7 applies), only the Magistrate of the Ist Class can cancel the FIR by an order. Rule 24.7 requires the S.P. to submit the cancellation report to the Magistrate. (…)The purpose of Rule 24.7 for requiring the S.P. to submit the cancellation report to the Magistrate is to provide a mechanism for checking genuine lapses and misconduct on the part of the investigating officer. Since the case closes when the Magistrate concurs with the cancellation report, that oversight is critical. Rule 24.8 obligates the S.P. to keep a register of cognizable offences in the prescribed form and discharge various tasks in connection therewith. All these factors when considered in conjunction with the language of Rule 24.7 clearly show that it is mandatory.

iii) In the present case, it is observed, the SHO submitted the cancellation report dated 25.2.2021 before the Judicial Magistrate. The S.P. neither signed nor countersigned nor forwarded it. In view of what I have discussed above, the said submission was illegal and without lawful authority. The argument that it was valid according to the departmental practice is not tenable. The Assistant District Public Prosecutor's recommendation also does not cure the defect.

iv) In Bahadur, the Hon'ble Supreme Court was called upon to determine whether the Magistrate acts as a court when he cancels a criminal case. It held that he works in an administrative capacity.

v) The complainant/informant in a criminal case does not fade away after the FIR is registered. He is deeply concerned about the response of the officer in-charge of the police station to the FIR. Section 157(2) requires the officer in-charge of a police station to notify the complainant if, despite the FIR, he decides not to investigate the case on the ground there is insufficient evidence to warrant an investigation.

vi) the complainant of FIR has a right to know the progress of the case unless the authorities have a legitimate reason to keep the information confidential. If they go for its cancellation, he has the right to be informed and heard by the Magistrate. The complainant derives these rights under Article 4 and Article 10A of the Constitution, which includes the concept of procedural fairness. Whether a cancellation report constitutes an adverse order or not is irrelevant.

vii) This opinion has primarily focused on the rights of a complainant of FIR in relation to its cancellation because one such person has filed this petition. Procedural fairness implies equity for all. Hence, I must emphasize that the accused also has a right to be heard before the Magistrate when he decides on the cancellation report.

viii) To that end, he must inter alia consider the following factors: (a) the nature of the allegations against the accused, (b) the evidence collected, and (c) the

accused's defence plea and any evidence presented in support thereof. Besides, the Magistrate should thoroughly examine the police diaries and document his reasoning.

Conclusion: i) The Code does not contain any specific provision for cancelling criminal cases.
ii) Rule 24.7 of police rules 1934requires the S.P. to submit the cancellation report to the Magistrate. Said Rule clearly shows that it is mandatory.
iii) If cancellation report is neither signed nor countersigned nor forwarded by S.P., the said defect is not curable; even the Assistant District Public Prosecutor's recommendation also does not cure the defect.
iv) When magistrate cancels the FIR he works in an administrative capacity.
v) Section 157(2) requires the officer in-charge of a police station to notify the complainant if, despite the FIR, he decides not to investigate the case on the ground there is insufficient evidence to warrant an investigation.
vi) If Police submit cancellation report, complainant has the right to be informed and heard by the Magistrate.
vii) Accused has a right to be heard before the Magistrate when he decides on the cancellation report.
viii) Following factors must be considered by magistrate while deciding cancellation report: (a) the nature of the allegations against the accused, (b) the evidence collected, and (c) the accused's defence plea and any evidence presented in support thereof. Besides, the Magistrate should thoroughly examine the police diaries and document his reasoning.

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34. **Lahore High Court**
Bashir Ali Shahzad v. The Bank of Punjab etc.
Writ Petition No. 10403 of 2019
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC367.pdf

Facts: By this petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner seeks the quashing of orders (the "Impugned Orders") and his reinstatement in service with back benefits.

Issues: i) Whether an aggrieved party can invoke the High Court's jurisdiction under Article 199(1)(a) of the Constitution against a person performing, within its territorial jurisdiction, functions in connection with the affairs of the federation or a province or local authority?
ii) Whether the rules become statutory merely because a corporation has adopted any rules framed by the Government or has made them applicable by reference?
iii) Whether the service rules/bye-laws do have the legal standing of statutory rules?
iv) Whether the principle of master and servant would apply if some enactment or statutory rule intervenes and limits the parties' freedom to negotiate the terms of the contract?

Analysis: i) An aggrieved party can invoke the High Court's jurisdiction under Article 199(1)(a) of the Constitution against a person performing, within its territorial jurisdiction, functions in connection with the affairs of the federation or a province or local authority. Article 199(5) elucidates that "person" includes any body politic or body corporate, any authority under the control of the Federal Government or a Provincial Government, and any court or tribunal, other than the Supreme Court, a High Court, or a court or tribunal established under a law relating to the armed forces of Pakistan. To determine whether an organization is a "person" within the meaning of Article 199, the courts generally apply the "function test."

ii) The rules do not become statutory merely because a corporation has adopted any rules framed by the Government or has made them applicable by reference.

iii) In Arshad Ahmad Khan v. Chairman, The Bank of Punjab, and others [2000 PLC (C.S.) 1355 : 2001 PLC (C.S.) 207], a Division Bench of this Court considered the question as to whether the aforementioned service rules/bye-laws could be said to be statutory. It held that those service bye-laws were distinct from the bye-laws made under section 25 of the BoP Act – which may be described as the "general bye-laws" – and one cannot equate them. It determined that the service rules/bye-laws do not have the legal standing of statutory rules.

iv) In Anwar Hussain v. Agricultural Development Bank of Pakistan and others (PLD 1984 SC 194), a junior officer in the ADBP submitted his resignation which he wanted to withdraw afterward. Meanwhile, the ADBP accepted his resignation and notified him about it. The officer instituted a suit challenging the acceptance of his resignation. ADBP contended that the suit was not maintainable. The Hon'ble Supreme Court upheld the objection, holding that section 30 of the Agricultural Development Bank of Pakistan Ordinance, 1961, empowered the ADBP to appoint officers upon terms and conditions as may be prescribed by the Regulations framed under section 39 of the said Ordinance. Thus, it left the subject of hiring and the terms of employment of staff to the ADBP. In the circumstances, the general law of master and servant applied. The apex Court further stated that this principle would not apply if some enactment or statutory rule intervenes and limits the parties' freedom to negotiate the terms of the contract.

Conclusion: i) An aggrieved party can invoke the High Court's jurisdiction under Article 199(1)(a) of the Constitution against a person performing, within its territorial jurisdiction, functions in connection with the affairs of the federation or a province or local authority.

ii) The rules do not become statutory merely because a corporation has adopted any rules framed by the Government or has made them applicable by reference.

iii) The service rules/bye-laws do not have the legal standing of statutory rules.

iv) The principle of master and servant would not apply if some enactment or statutory rule intervenes and limits the parties' freedom to negotiate the terms of the contract.

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35. **Lahore High Court**
Pakistan Tehreek-e-Insaaf through its General Secretary Asad Umar v. Governor of Punjab and another
Writ Petition No. 5851 of 2023
Munir Ahmad v. The Governor of Punjab and others
Writ Petition No. 6118 of 2023
Zaman Khan Vardag v. Province of Punjab and another
Writ Petition No. 6093 of 2023
Sabir Raza Gill v. Governor of Punjab
Writ Petition No. 6119 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC395.pdf

Facts: The Petitioners sought issuance of writ of mandamus in terms of Article 199 of the Constitution directing the Respondents to announce date of holding elections of Provincial Assembly, Punjab within ninety (90) days as mandated by the Constitution of Pakistan, 1973.

Issues: (i) Whether clause (3) of the Article 105 of the Constitution applies to a situation when a Provincial Assembly is dissolved by efflux of time stipulated in the said Article?
(ii) When a provincial assembly stands dissolved by operation of law as envisaged under Article 112(1) of the Constitution, which authority is to declare the date of election to comply with the time frame mentioned in Article 224(2) of the Constitution?
(iii) What is the Doctrine of Penumbra?

Analysis: (i) Perusal of Article 105 of the Constitution makes it quite clear that it covers two eventualities; the first eventuality deals with the situation where on the advice of the Chief Minister, the Governor exercises his constitutional power to dissolve the assembly while second eventuality deals with a situation where on such advice by the Chief Minister, he abstains from exercising his constitutional powers and the assembly stands dissolved by operation of law. In the first eventuality, where the Governor uses his constitutional powers to dissolve the assembly, he is clearly bound under Article 105(3)(a) to appoint a date not later than ninety days from the date of dissolution, for the holding of general elections to the Assembly but Article 105 is silent and does not clearly specify as to who is the authority to declare the date of election in the above-mentioned second eventuality…On the other hand, careful perusal of Article 112 of the Constitution also shows that the said two eventualities are duly separated by insertion of semi-colon, separating the eventuality when the Governor so exercises his constitutional powers to dissolve the assembly, from the eventuality when it stands dissolved by the operation of law.
(ii) Article 224(2) also does not specifically mentions the authority who is constitutionally bound to declare the date of election of the Provincial Assembly in such eventuality. To resolve this controversy, it is necessary to look into the

nature, scope, constitutional mandate and constitutional responsibility of the ECP…perusal of Part-VIII of the Constitution shows that the Constitution in Articles 213 to 226 contained in Chapters 1 and 2 of the said Part, defines and elaborates the nature, scope, powers and purposes of the ECP. Article 218(3) of the Constitution provides that "It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against." Article 219(d) of the Constitution further provides that the ECP is charged with the duty of "the holding of general elections to the National Assembly, Provincial Assemblies and the local governments". Similarly, Article 220 provides that "it shall be the duty of all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions"…The interpretation of Article 218(3) by the Hon'ble Supreme Court clearly indicates that the Election Commission of Pakistan is the ultimate authority to ensure the conduct of elections in accordance with law i.e. the provisions of the Constitution as well as the Elections Act, and such authority is not limited to the election day or subsequent to it but also to all stages prior to it, while the election process starts with issuance of election program which in turn starts with the declaration of date of election…Although, Article 224(2) read with Article 105 and 112 of the Constitution does not specifically mentions the authority to declare a date of election in a provincial assembly in case it stands dissolved by operation of law but in the light of jurisprudence developed in the judgments of the Hon'ble Supreme Court, it can safely be concluded that the ECP being apex, independent and neutral constitutional authority mandated under the Constitution to hold, organize and conduct elections in Pakistanin accordance with law is the ultimate constitutional authority to ensure compliance of Article 224(2) of the Constitution under the doctrine of Penumbra…Keeping the aforesaid doctrine in view, when Articles 218(3) read with Article 219(d), Article 224(2) and 220 of the Constitution are being considered together being connecting and relevant provisions, the obligation and duty of the ECP to declare the date of general election for the Province comes within the penumbra of these constitutional provisions and elections laws.

(iii) The doctrine of Penumbra refers to a legal principle that recognizes certain unenumerated rights and obligations as implicit in the guarantees of the Constitution which can also be termed as constitutional penumbras. Under this doctrine, a specific provision of a Constitution or a Statute should not be read in isolation and it must be considered in the context of other relevant and connecting provisions of a Constitution or a statute and the underlying values and principles of the Constitution as a whole. The doctrine of penumbra enable the Courts in interpreting various provisions of the Constitution in order to enforce those rights and obligations which are explicitly mentioned in the text of a particular provision of the Constitution or a law.

Conclusion: (i) Clause (3) of the Article 105 of the Constitution does not apply to a situation when a Provincial Assembly is dissolved by efflux of time stipulated in the said Article.
(ii) When a provincial assembly stands dissolved by operation of law as envisaged under Article 112(1) of the Constitution, Election Commission of Pakistan is to declare the date of election to comply with the time frame mentioned in Article 224(2) of the Constitution.
(iii) The doctrine of Penumbra refers to a legal principle that recognizes certain unenumerated rights and obligations as implicit in the guarantees of the Constitution which can also be termed as constitutional penumbras.

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36. **Lahore High Court**
Mst. Alia Sehr v. Mushtaq Ahmed and others
W.P. No.61653 of 2020
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC8835.pdf

Facts: The instant Constitutional petition has been filed to call into question judgment/order of the learned Addl. District Judge, whereby the appeal was accepted and the case was remanded to the learned Guardian Judge/Family Court for de novo decision.

Issues: i) Whether a party making an offer for decision on Special Oath by the opposite side which is accepted and statement is duly recorded, could challenge the decision on the basis thereof or could retract from his statement and if not then what will be effect of the order passed on such statement?
ii) What is paramount consideration of the welfare of minor and whether the company of mother is essential for minor daughter for proper upbringing?

Analysis: i) it was observed to the effect that having made an offer for decision on Special Oath and after its acceptance by the opposite side, the party making the offer cannot be allowed to raise objection as to the jurisdiction of the Family Court or to take up the plea that the Special Oath could not be given in matrimonial proceedings.(…) The respondent was bound by the order of dismissal of the earlier application which was passed in result of an agreement to abide by the statement on Special Oath and could not possibly re-agitate the same grounds or facts which would stand concluded by the earlier decision.
ii) It is settled rule that the minor daughters needs the company of their real mother for their proper upbringing and guidance and for other matters which they could not discuss with anyone except their actual mother who is the best protector of her daughters as against the stepmother. The paramount consideration in the matter being the welfare of the minors when examining the question of custody, the real mother of the child is the pristine source of unconditional love and affection which nature has put into her heart for her children and for which there could be no other substitute. Daughters require company and association of their

real mother for preparing their personalities to shoulder the responsibilities in the future. Welfare of the minors would of course play a pivotal role in determining the controversy in hand i.e. question of custody.

Conclusion: i) If the decision is made on oath, then the party making the offer cannot be allowed to raise objection as to the jurisdiction of the Family Court or to take up the plea that the Special Oath could not be given in matrimonial proceedings .
ii) The paramount consideration in the matter being the welfare of the minors when examining the question of custody, is the real mother of the child, and especially minor daughters needs the company of their real mother for their proper upbringing and guidance.

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37. **Lahore High Court**
Mahboob Ahmad and others v. Ayub Ahmad and others
Civil Revision No. 2494 of 2022
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC8851.pdf

Facts: Through this civil revision, the petitioners question the validity of the judgments and decree of the courts below whereby the suit for declaration, partition and other reliefs was dismissed under Order VII, Rule 11, C.P.C. and appeal there against also met the same fate.

Issue: Whether the Award declaring partition of property or making a declaration of separate entitlement of the property through arbitration can confer title without being registered?

Analysis: It is settled rule that where the Award declared partition of property or makes a declaration of separate entitlement of the property through arbitration, it could not confer title unless the same is registered and no title in the property could be confirmed in the absence of such registration of the Award in respect of the immovable property. Reference may be made to the case of "Haji Nawab Din v. Sh. Ghulam Haider and another" (1988 SCMR 1623). … The same view was reaffirmed in the case of "Mst. Farida Malik and others v. Dr. Khalida Malik and others" (1998 SCMR 816).

Conclusion: The Award declaring partition of property or making a declaration of separate entitlement of the property through arbitration cannot confer title without being registered and no title in the property could be confirmed in the absence of such registration of the Award in respect of the immovable property.

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38. **Lahore High Court**
Muhammad Arif v. Province of Punjab and others
C.R. No.23580 of 2022
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC8827.pdf

Facts: Through this Civil Revision, the petitioner has called into question the validity of order of learned Addl. District Judge whereby order of the learned Civil Judge was set aside by accepting the objection and production of defendant as a witness of plaintiff was declined.

Issues: i) Whether there is any bar regarding the production of adversary by a party as its own witness?
ii) Under what circumstances permission to produce adversary as a witness can be accorded under Order XVI, Rule 21, C.P.C.?

Analysis: i) It is correct that C.P.C. does not contain any specific provision that bars the production of adversary by a party as their own witness but at the same time it is also true that there is no provision therein that permits such an exercise. The practice of summoning or producing an adversary as witness by the opposite party, in the ordinary course, has not been approved as it leads to unnecessary embarrassment for the opponent to face the cross-examination of his own counsel or the counsel of his co-defendants having common interest and, thereafter, reappear as a witness in support of their own case.
ii) The permission to produce adversary as a witness can be accorded when the plaintiff has already alleged in his plaint that his adversary has executed a document or has direct knowledge of a certain fact. Nevertheless the court, if at any stage, feels that examination of any of the parties who had not entered appearance in the witness-box is necessary it can exercise of its jurisdiction under Order XVI, Rule 20, C.P.C. to direct any of the parties in the suit to appear in the court and give evidence or produce documents in their possession and power and the rules regulating the witnesses shall apply in such eventuality.

Conclusion: i) There is no bar regarding the production of adversary by a party as its own witness but it leads to unnecessary embarrassment for the opponent to face the cross-examination of his own counsel.
ii) The permission to produce adversary as a witness can be accorded when the plaintiff has already alleged in his plaint that his adversary has executed a document or has direct knowledge of a certain fact.

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39. **Lahore High Court, Lahore**
Raheela Begum and others v. Nargis Bano and others
C.R. No. 55453 of 2022
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC8873.pdf

Facts: This civil revision impugns judgments and decrees of the courts below, whereby declaratory suit of the respondents, challenging sanctity of an oral tamleeq mutation involving transfer of subject property from one of respondents in favour of her deceased husband as well as a subsequent inheritance mutation allocating

share to his allegedly divorced wife, was partly decreed and appeal there against was dismissed.

Issues: Who is required in law to prove the oral transaction of tamleeq and the alleged mutation thereof if they are disputed by the owner/transferor?

Analysis: As per rule where a transaction by way of oral gift/tamleeq is claimed and its existence is disputed by the owner/transferor who states that no such oral gift/tamleeq was made nor was properly transferred by way of such mode, the onus of proof shifts on to the beneficiary and he is under heavy onus to prove the stance.

Conclusion: Beneficiary is required in law to prove the oral transaction of tamleek and also the alleged mutation thereof if they are disputed by the owner/transferor.

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40. **Lahore High Court**
Sh. Sajjad Umer v.Muhammad Din and others
F.A.O. No.101195 of 2017
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC8878.pdf

Facts: Appellant in this appeal seeks annulment of judgment/order of the learned Addl. District Judge whereby the case was remanded for trial on merits.

Issues: i) Whether suit is competent which was earlier withdrawn with permission to file a fresh subject to payment of costs without deposit of such costs?
ii) Whether Court has power to condone the omissions in payment of such cost?

Analysis i) Deeper review of the cases cited supra manifests that the consistent view expressed by the honourable Supreme Court of Pakistan in respect of the provisions of Order XXIII, Rules 1 to 3, C.P.C. has been that in case a suit is allowed to be withdrawn with liberty to file a fresh one subject to payment of costs, the filing of the suit without compliance of condition of deposit of costs will not be a proper presentation or institution of the suit; nevertheless the Court is not denuded of its jurisdiction to condone the default or omission of plaintiff.
ii) The criteria for the exercise of discretion laid in the case of Haji Abdul Rashid Sowdagar is that the order for dismissal of suit could only be passed after it is found that the plaintiff, on an objection taken, is unwilling to comply with the terms on which he was permitted to withdraw the suit with liberty to institute a fresh one and that in case on an objection as to the competency of the suit, the plaintiff is willing to comply with the terms on which he was permitted to withdraw the suit, the Court will have inherent power to condone the bona fide delay or omissions, etc.

Conclusion: i) In case a suit is allowed to be withdrawn with liberty to file a fresh one subject to payment of costs, the filing of the suit without compliance of condition of

deposit of costs will not be a proper presentation or institution of the suit; nevertheless the Court is not denuded of its jurisdiction to condone the default or omission of plaintiff.

ii) In case on an objection as to the competency of the suit, the plaintiff is willing to comply with the terms on which he was permitted to withdraw the suit, the Court will have inherent power to condone the bona fide delay or omissions, etc.

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41. **Lahore High Court**
Muhammad Alam v. Darbari Khan
C.R. No.40284 of 2020
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC341.pdf

Facts: Petitioner in this civil revision has challenged judgments and decree of the courts below in terms whereof the suit for specific performance of the petitioner was dismissed and return of earnest money was allowed which judgment was affirmed in appeal.

Issues: i) What are the requirements of a buyer of the agreement to sell to prove that he was ready and willing to perform his part of agreement?

ii) What is the limitation to file a suit for specific performance of sale agreement in which a date is fixed for the performance of the agreement?

Analysis: i) As far as the relief of specific performance is concerned which is discretionary in its nature, the buyer was expected to prove that he was ready and willing to perform his part of agreement from the date of its execution till the date fixed for payment of balance sale consideration; and also to prove that he did take steps necessary for the performance of his part. Reference can be made to the case of "Nazar Hussain and another v. Syed Iqbal Ahmad Qadri (Deceased) through his L.Rs. and another" (2022 SCMR 1216) where it was observed to the effect that a buyer's primary obligation in a contract of sale is to make payment of the balance sale consideration as stipulated in the contract and that if the seller refuses to receive payment the buyer must establish that he had the required money which was kept aside for the seller, for instance, by making a pay order or cashier cheque in his name as this would show that the buyer no longer had access to the sale consideration and that alternatively the buyer could have deposited it in court.

ii) Limitation to file a suit for specific performance of sale agreement is regulated by Article 113 of Limitation Act, 1908 which provides that if a date is fixed for the performance, the suit could be instituted within three years from the date so fixed and if no such date is fixed the suit could be filed when the vendee has noticed that the performance has been refused.

Conclusion: i) In order to prove willingness of the buyer to perform his part of agreement; a buyer of the agreement to sell has to prove his willingness for payment of balance sale consideration and also to prove that he did take steps necessary for the performance of his part.

ii) Under Article 113 of Limitation Act, 1908, the limitation to file a suit for specific performance of sale agreement in which a date is fixed for the performance of the agreement is three years from the date so fixed.

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42. **Lahore High Court**
Waqar Ali v. Addl. District Judge and others
Writ Petition No. 17643 of 2020
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC330.pdf

Facts: This Constitutional petition calls into question orders of the forums below in terms whereof petitioner's application for setting aside of ex parte proceedings order was dismissed, an ex parte ejectment order was passed, and the order was affirmed in appeal.

Issue: i) Whether the ex-parte proceedings can be initiated on the report of process server which lacks the details about how he identified the respondent and upon simple postal receipt without acknowledgement due?

ii) Whether the tenant can be non-suited if the requirements of section 21 of the Punjab Rented Premises Act, 2009 are not properly followed for his service?

Analysis: i) The report of process server shows that it does not indicate as to who identified the petitioner and in whose presence the notice was delivered. So much so, no CNIC of the addressee is mentioned nor any copy of the same was secured. Obviously, the Process Server did not claim that he knew the petitioner. It was necessary for him to have mentioned the name of person who had identified the addressee and, in whose presence, he had allegedly delivered the notice. … A copy of the postal receipt in respect of registration of the notice was placed on record but no "acknowledgement due" showing any service of the notice was placed on record. The Rent Tribunal did not deem it necessary to examine the Process Server with a view to satisfy the manner in which he allegedly delivered the notice and to whom it was delivered and casually proceeded to pass an order for ex-party proceedings which could not be approved.

ii) The requirements of the provisions of section 21 of Act have been considered in number of cases by this Court wherein it was observed that if the notice has not been served actually upon the tenant in the manner as prescribed by schedule annexed to the Act and along with the documents like pleadings, affidavits and other appended documents, the opposite side could not be non-suited on the plea that application was not accompanied by the application for Leave to Contest or filed later. Reference can be made to the cases of "Mureed Hussain v. Additional District Judge and others" (2018 MLD 162), "Bakht Munir v. Qadir Khan and another" (PLD 2014 Lah. 87), "Babar Ali v. Additional District Judge, Sargodha and 2 others" (2012 YLR 2933) and "Younas Siddique v. Mst. Tahira Jabeen" (PLD 2009 Lah. 469).

Conclusion: i) Ex-party proceedings cannot be initiated on the simple report of process server

which lacks the details about how he identified the respondent and upon simple postal receipt without acknowledgement due.

ii) The tenant cannot be non-suited if the requirements of section 21 of the Punjab Rented Premises Act, 2009 are not properly followed for his service.

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43. **Lahore High Court**
Mian Manzoor Ahmad through L. Rs. V.
Mian Muhammad Akbar and 5 others
C. R. No. 174-D of 2009
Mr. Justice Abid Hussain Chattha,
https://sys.lhc.gov.pk/appjudgments/2023LHC175.pdf

Facts: The Petitioners filed civil revision against the impugned judgments and decrees passed by Learned Senior Civil Judge and Learned Additional District Judge, respectively, whereby, the suit for declaration filed by Respondents No. 1 and 2 was concurrently decreed against predecessor-in-interest of the Petitioners.

Issues: i) Whether a valid and complete gift can be retractable without the consent of both parties or by a decree?
ii) Whether any condition attached to a valid completed gift can be considered as void?
iii) How kind of gift "Areeat" can be defined?
iv) Whether protection to property is a fundamental right and no person can be compulsorily deprived of his property?
v) Whether principle of reversion is recognized by law?

Analysis: i) Generally, a valid and complete gift is not retractable without the consent of both parties or by a decree since retraction of gift as a deed of conveyance is the very opposite of conveyance. Section 167 of Muhammadan Law by D. F. Mulla enunciates this principle. Gift is essentially without consideration. It is of two kinds, Hiba pertaining to corpus of property or Hiba pertaining to Areeat, which is a transfer of some limited interest for a limited time with the objective to allow the enjoyment or benefit of usufruct of gifted property.
ii) Any condition attached to a valid completed gift falling within the ambit of first kind is considered void, whereas, lawful conditions are recognized with respect to second kind of gift…It was held that where a condition is attached to a gift of 'corpus' of the property, the gift is valid and the condition attached thereto is illegal. However, when gift is regarding 'usufruct' of the property, any condition attached thereto is valid and is liable to be given effect.
iii) Section 170 thereof defines Areeat as grant of a license, resumable at the grantor's option, to take and enjoy the 'usufruct' of a thing. It follows that an Areeat is not a complete and absolute transfer of ownership but a temporary license in the nature of revocable and conditional transfer of ownership allowing the benefit of 'usufruct' without any consideration. The grantor's option can be validly capped or made conditional. As such, in common parlance, it may be

termed as a conditional gift which operates and is revocable subject to conditions attached thereto. The determination as to whether a gift relates to 'corpus' or 'usufruct' of the property depends upon the facts and circumstances of each case to be inferred from relevant evidence after discovering the real intention of the donor and no hard and fast rule can be laid down for this purpose.

iv) Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution") grants protection to property rights as a fundamental right of the citizens. The principles enshrined therein stipulate that every citizen shall have the right to acquire, hold and dispose of property subject to the Constitution and any reasonable restrictions imposed by law in the public interest. Further, no person shall be compulsorily deprived of his property save in accordance with law. It is further articulated that no property shall be compulsorily acquired save for a public purpose and after payment of due and adequate compensation. It, therefore, follows that the public welfare schemes initiated by the State for the benefit of its citizens are required to be executed after acquisition of land subject to determination and payment of due and adequate compensation in accordance with law. However, due to financial constraints, it is customary for the Government to execute various welfare schemes, such as, farm to market roads, schools, health and provision of other civic facilities on land volunteered by the residents. Such schemes generally require that free of cost land must be transferred in the name of concerned Government Department before a scheme is executed.

v) The land is generally mutated in the villages in the name of the concerned Government Department through gift mutation as a convenient mode of transfer of land to satisfy the mandatory condition of the concerned Government Department. The intention of the party while executing such a transfer is unequivocally restricted to benefit from the project and the gift of land is intrinsically linked to the purpose of donation. Such gift of land is liable to be construed as a limited or conditional gift which is valid till the life of the project. Such land, in all fairness and equitable considerations, must revert to the owners once the purpose of donation extinguishes and the project is abandoned. The principle of reversion is also recognized in terms of Article 493 of Chapter XIV (Acquisition of Land for Public Purposes) of Punjab Land Administration & Management Manual administered by the Board of Revenue, Punjab even with respect to unutilized lands that may have been acquired. Therefore, gifts regarding 'usufruct' of the property in the name of the State should be encouraged as this would give incentive and security to the donors to freely donate land to the Departments of the Government as the donors would know that the donated land would revert back to them including their legal heirs after the life of the project. Needless to reiterate that State is mandated by Article 3 of the Constitution to eliminate all forms of exploitation.

Conclusion: i) Generally, a valid and complete gift is not retractable without the consent of both parties or by a decree since retraction of gift as a deed of conveyance is the

very opposite of conveyance.
ii) A condition attached to a gift of 'corpus' of the property, the gift is valid and the condition attached thereto is illegal. However, when gift is regarding 'usufruct' of the property, any condition attached thereto is valid.
iii) Areeat as grant of a license, resumable at the grantor's option, to take and enjoy the 'usufruct' of a thing.
iv) Protection to property is a fundamental right and no person can be compulsorily deprived of his property save in accordance with law.
v) The principle of reversion is recognized in terms of Article 493 of Chapter XIV (Acquisition of Land for Public Purposes) of Punjab Land Administration & Management Manual administered by the Board of Revenue, Punjab.

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44. **Lahore High Court**
Ayesha Tahir v. Additional District & Sessions Judge, etc.
Writ Petition No.36910 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC434.pdf

Facts: The petitioner has assailed order of the learned Appellate Court, whereby, the order passed by the learned Trial Court in application under Section 12 of the Guardians and Wards Act, 1890 filed by the petitioner was set aside and the findings of the learned Guardian Court, Lahore were reversed and interim custody the Minor who is approximately three and half years of age, was allowed to be retained by the respondent.

Issues: i) Whether the order passed on application under Section 12 of the Guardians and Wards Act, 1890 is appealable or not?
ii) Whether the welfare of a minor in granting his permanent custody under Section 25 of the Act is equally applicable to the grant of interim custody under Section 12 of the Act?
iii) Whether in a clash between the rights of parents and the welfare of a minor, the latter must prevail?
iv) Whether any clause or the agreement having effect of surrendering or relinquishing right of custody of the mother is void and unlawful?

Analysis: i) Section 47 of the Act deals with the appealable orders and admittedly, order passed under Section 12 of the Act is not mentioned thereunder. However, after insertion of the word „Guardianship" in the First Schedule of The West Pakistan Family Courts Act, 1964 ("the Act 1964"), the remedy by way of the appeal is available against an order under Section 12 of the Act before the learned Appellate Court. As per Section 47 of the Act, an order under Section 12 thereof is apparently not appealable, however, provisions of the Act must be read in conjunction with the provisions of the Act 1964 as the legislature in its wisdom has brought the matters pertaining to „Guardianship" under the jurisdiction of the Family Courts by contemplating that all the matters pertaining to „Guardianship" shall be exclusively triable by the Family Courts created under the Act 1964

which is a latter enactment. It is settled principle of interpretation that the latter enactment shall prevail over the earlier legislation. One cannot lose sight of the fact that subsection (1) of Section 14 of the Act 1964 begins with the words „notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable", thus the latter provision has an overriding effect. Meaning thereby that in spite of the fact that order under Section 12 of the Act is not mentioned under Section 47 thereof, an appeal can be preferred against an order passed under Section 12 as the same is a „decision" given by a Family Court as mentioned in Section 14(1) of the Act 1964, and also not hit by Section 14(3) thereof as such decision disposes of the application under Section 12 of the Act.

ii) The overarching and controlling position held by the welfare of a minor in granting his permanent custody under Section 25 of the Act is equally applicable to the grant of interim custody under Section 12 of the Act. The order under Section 12 of the Act is tentative in nature and passed at a stage when the evidence is not yet recorded. Hence, the order under Section 12 of the Act is subservient to the order passed under Section 25 thereof. However, welfare of a minor remains central even at the time of deciding application under Section 12 of the Act. It is imperative to note that it defeats the legislative intent and object of the law if the paramount interest of welfare of a minor is considered supreme and dominant feature only at the time of deciding application under Section 25 of the Act and not so at the time of deciding an application under Section 12 thereof. However, the decision under Section 12 of the Act should not put on semblance or attire of an order under Section 25 thereof as the former is tentative in nature. Thus, the welfare of a minor is always to be controlling force at every stage and decision made under Section 12 is no exception.

iii) Similarly, it is well settled principle of law that the combat between the parents as to custody of a minor should never be allowed to morph into a battle which makes the welfare of a minor a collateral damage rather the welfare of a minor should get precedence over the egoistic battle between the competing parents. In a clash between the rights of parents and the welfare of a minor, the latter must prevail. Similarly, to be in proper custody is a right of a child and not of either of the parents meaning thereby that it is the welfare of minor that ought to be considered and not that of the person seeking custody.

iv) Any clause or the agreement having effect of surrendering or relinquishing right of custody of the mother is void and unlawful being against the public policy and without consideration.

Conclusion: i) The order passed on application under Section 12 of the Guardians and Wards Act, 1890 is appealable as the same is a „decision" given by a Family Court as mentioned in Section 14(1) of The West Pakistan Family Courts Act, 1964.

ii) The welfare of a minor in granting his permanent custody under Section 25 of the Act is equally applicable to the grant of interim custody under Section 12 of the Act.

iii) In a clash between the rights of parents and the welfare of a minor, the latter

must prevail.
iv) Any clause or the agreement having effect of surrendering or relinquishing right of custody of the mother is void and unlawful being against the public policy and without consideration.

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45. **Lahore High Court**
Ariba Naeem and another v. Additional District Judge, etc.
Writ Petition No. 1222 of 2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC444.pdf

Facts: Through this petition the petitioners have challenged the judgment through next friend, who was admittedly their real maternal aunt, whereby the revision petition filed by respondent no. 3 against the order of trial court, in which the learned Trial Court accepted the application filed by one respondent/mother on her own behalf and on behalf of the petitioners/minors, for setting aside ex-parte judgment and decree, was accepted. The respondent/mother has independently filed connected constitutional petition against the said impugned judgment. In the same way along with these petitions another party also assailed the dismissal order in connection with its application filed under Order I, Rule 10 of the Code of Civil Procedure, 1908 by the learned Revisional Court.

Issues: i) Whether minor can sue by himself or can he be sued without being represented by someone else?
ii) Whether the non-representation of minor in suit and/or non-compliance of the statutory provisions regarding appointment of Guardian ad Litem thereof is just a procedural irregularity without causing any prejudice to the minors?
iii) Whether non-compliance with the provisions of Order XXXII, Rule 3 of the CPC and concomitant non- representation of the minors render the ex- parte judgment voidable at the option of minors or is void and nullity in the eye of law?
iv) Whether the Courts are always under an obligation to remain vigilant and watchful to protect the interest of minor?
v) Whether any guardian ad litem other than appointed by the court will be debarred to represent the minor?

Analysis: i) Order XXXII of the CPC indicates that a minor neither can sue by himself nor can he be sued without being represented by someone else. The "someone else" is considered as "a next friend" when a minor brings an action as a plaintiff/petitioner, whereas, it is referred as "a Guardian ad Litem" when the minor is a defendant/respondent. In fact, this nomenclature does not matter much and the intent of the legislature is well evident in as much as both the next friend or the Guardian ad Litem represent the interest of the minor and/or are under an obligation to remain watchful and in case the Guardian ad Litem is not performing his duties, the Court is under a bounden duty to remove the Guardian ad Litem and appoint a new guardian instead.

ii) The appointment of Guardian ad Litem in terms of Order XXXII, Rule 3 of the CPC is to protect the interest of minor. However, any irregularity in the appointment of the Guardian ad Litem may be overlooked as a procedural irregularity but this is subject to an overriding condition that such irregularity ought not to have prejudiced the minor and that his right to due representation in the proceedings must not have suffered any injury. Thus, it is obligatory upon the Court to overlook the procedural irregularity in the appointment of Guardian ad Litem where the minor has been duly represented by irregularly appointed Guardian ad Litem. However, where the minor is deprived of due representation, such irregularity transforms into and takes up the proportion of substantial deprivation of due process to the minor and cannot be allowed to sustain the subsequent decree or order which is void and nullity in the eye of law.

iii) If a minor is not effectively represented in a suit or in any proceedings, such a defect is not one of mere form, but of substance, and it goes to the root of the jurisdiction of the Court, hence, such a minor in the eye of law is not a party to such a suit or proceedings. As a natural corollary, no order or decree can be validly passed against a minor in such a suit, and any ex-parte proceedings conducted against him will not bind him or his estate at all. Order XXXII, Rule 3 read with Rule 11 of the CPC is mandatory and imperative, and must be strictly complied with in cases where defendant is a minor. Failure on part of the learned Court to follow these mandatory provisions leads to the consequence that there is no proper party to the suit, in the eye of law, though his name appears on the record, therefore, such minor must be deemed in law to be wholly unrepresented, and consequently the jurisdiction of the Court to proceed against such a minor will be ousted and the Court will have no jurisdiction to render any judgment, or pass any order against a minor.

iv) Even if the plaintiff of a suit is not coming forth with a fair approach by seeking an appointment of Guardian ad Litem for the minors/defendants against whom he has instituted a suit, or if a guardian is appointed and neglects to perform his/her duty towards the interest of the minors, the Courts are always under an obligation to remain vigilant and watchful to protect the interest of such minor and in the first place ensure that a person from the near relatives (preferably father and mother) are appointed as the Guardian ad Litem to defend the interest of the minor and in the absence of the same or the neglect of such Guardian ad Litem once appointed to pursue the matter vigilantly, should appoint its own staff to act in the said capacity and, in no eventuality, the minor can be proceeded ex-parte.

v) The term Guardian ad Litem implies guardian for the litigation (suit) appointed in accordance with law by the Court in which a suit is instituted against the minors and may be removed by the same Court in terms of Rule 11 of Order XXXII of the CPC and is confined to the same as compared to guardian appointed by the Guardian Court under the Act, 1890. An appeal or further proceedings by some Guardian ad Litem other than the one appointed by the learned Trial Court seem

not to be envisaged unless such Guardian ad Litem is removed in terms of Rule 11 of Order XXXII of the CPC.

Conclusion: i) A minor neither can sue by himself nor can he be sued without being represented by someone else.
ii) Yes, the non-representation of minor in suit and/or non-compliance of the statutory provisions regarding appointment of Guardian ad Litem thereof is just a procedural irregularity but this is subject to an overriding condition that such irregularity ought not to have prejudiced the minor.
iii) Yes, non-compliance with the provisions of Order XXXII, Rule 3 of the CPC and concomitant non- representation of the minors render the ex- parte judgment voidable at the option of minors or is void and nullity in the eye of law.
iv) Yes, the Courts are always under an obligation to remain vigilant and watchful to protect the interest of minor.
v) Yes, any guardian ad litem other than appointed by the court will be debarred to represent the minor.

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46. **Lahore High Court**
Muhammad Zuhaib Ishaq v. SCJ, etc.
W.P. No.81179 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC284.pdf

Facts: In the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ('Constitution"), the petitioner has assailed the order passed by the learned Senior Civil Judge (Family Division), dismissing application of the petitioner for cross-examination of the PWs once again on the ground that it slipped from mind of his counsel during earlier cross-examination that suit for dissolution of marriage, maintenance and recovery of dowry articles filed by respondents was consolidated with the custody petition filed by the petitioner and his counsel did not cross-examine the said witnesses to the extent of custody petition.

Issues: i) Whether Section 11(3) of the Family Courts Act, 1964 provide unlimited right to the party to further examine, cross examine or re-examine the witnesses?
ii) What is the scope of right to fair trial and whether section 13 (3) of Family Court Act provides also right to fair trial?

Analysis: i) No doubt Section 11(3) of the Act provides that the parties or their counsels may further examine, cross examine or re-examine the witnesses, however, it has been held by the Hon'ble Supreme Court of Pakistan that such provisions are not meant and designed for enabling a party to fill up the omissions in the evidence of witness who has already been examined, due to negligence and lapse of a party, rather the purpose, the nature and the scope of the power available to the Court in that regard is to enable it to seek clarification on any issue or to have a doubt

cleared in the statement of a witness which if left outstanding and without which it would be difficult for the Court to take a right decision.
ii) Even otherwise, Section 13(3) of the Act must necessarily be construed keeping in view the principle of an equality of arms that lies at the heart of fair trial right guaranteed under Article 10A of the Constitution (…)The text of the above fundamental right has been partly adopted from Article 6 of the European Convention on Human Rights. The principle of equality of arms, which is a judicial construct adopted by the European Court of Human Rights, means giving each party a reasonable possibility to present its cause in such conditions as would not put one party in disadvantage to its opponent. In other words, there must be a fair balance between the opportunities afforded to the parties involved in litigation. (…) It has been held by the Hon'ble Supreme Court of Pakistan that the principles of fair trial, as guaranteed by Article 10A of the Constitution, are to be read as an integral part of every sub-constitutional legislative instrument that deals with determination of civil rights and obligations of any person

Conclusion: i) The right to cross examine or re-examine is not unlimited and the same are not meant and designed for enabling a party to fill up the omissions in the evidence of witness who has already been examined.
ii) Section 13(3) of the Act must necessarily be construed keeping in view the principle of an equality of arms that lies at the heart of fair trial right guaranteed under Article 10A of the Constitution. This be read as an integral part of every sub-constitutional legislative instrument that deals with determination of civil rights and obligations of any person.

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47. **Lahore High Court, Lahore**
Younas Rasheed v. Muhammad Kashif Iqbal & Another
W.P. No.75857 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC288.pdf

Facts: Through this writ petition, the validity of order of Rent Tribunal is challenged, whereby the application for setting aside *ex-parte* proceedings and leave to contest the eviction petition was dismissed.

Issues: i) Whether failure to invoke all modes of service simultaneously would render a service duly affected through any of the specified modes as invalid?
ii) Whether copies of the application and the documents are compulsory to be annexed with notice?

Analysis: i) Section 21 of the Punjab Rented Premises Act, 2009 regulate the procedure qua appearance of parties and consequences of non-appearance before the Rent Tribunal. In Section 21(1) of the Act, service of the notice is required to be affected not only through the process server but also through acknowledgement due and courier service and all such modes of service are to be invoked simultaneously. Section 21(3)(a) of the Act stipulates alternative or substituted

modes of service of notice through affixation or publication in the press or through electronic media to be invoked in cases of failure of the respondent to appear where the Rent Tribunal is satisfied that either the notice could not be served on the respondent or he was 64illfully avoiding service thereof. The requirement to serve notice by invoking three modes of service simultaneously under Section 21(1) of the Act has been prescribed to avoid unnecessary delays and service of the notice can be affected in a timely manner.

ii) The requirements to issue notice in the form prescribed in the Schedule to the Act and deliver copy of the application along with annexures attached therewith have been prescribed in section 21(2) of the Punjab Rented Premises Act, 2009 to duly provide all necessary information and documents to the respondent in a case so that he may be able to prepare and file his leave to contest within the period of limitation prescribed. That makes the requirement of service of notice in the form prescribed along with copy of the application and annexures thereto to be mandatory as without satisfying that right of defence of the respondent in a case shall be in jeopardy.

Conclusion: i) No service duly effected through any of the specified modes shall be rendered invalid on account of failure to invoke all modes of service simultaneously.

ii) Copies of the application and the documents are compulsory to be annexed with notice in the prescribed form, as mandated under Section 21 (2) of the Punjab Rented Premises Act, 2009.

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48. **Lahore High Court**
Saima Nazir v. Guardian Judge (IV), Lahore and another
W.P. No.41017 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC354.pdf

Facts: The petitioner has assailed the order passed by the learned Guardian Judge, whereby application of the petitioner under section 12 of the Guardians and Wards Act, 1890 ('Act') to the extent of her one minor daughter suffering from mental disability has been returned for being not proceedable in view of the provisions of the Mental Health Ordinance, 2001 (MHO 2001). Additionally, her request for interim custody of other two minors, who are in the custody of their father-respondent No.2, has been declined while allowing her visitation rights to meet the minors in terms of meeting schedule specified therein.

Issues: i) Whether a writ petition is maintainable against the order of an application for the grant of interim custody?

ii) Who is considered to be a natural guardian of a minor even in situations when the guardian does not have domain over the corpus of the child?

iii) If there is dispute inter-se parents of a mentally disabled minor for his/her custody and/or guardianship, which court will have jurisdiction either Family Court or the court constituted under Mental Health Ordinance, 2001?

iv) Whether the courts should adopt the procedure of constructions of repeal by

implication of one enactment by the other?

v) Whether the provisions of MHO 2001 contradict and repeal the provisions of section 5 read with items No. 5 & 6 of the Schedule to the FCA 1964 to take away jurisdiction of the Family Court in disputes amongst parents regarding guardianship and/or custody of minors who are suffering from any mental disability?

Analysis:

i) The titled writ petition has been preferred against order passed on an application of the petitioner for the grant of interim custody of minors against which the remedy of appeal is not available in view of the provision of section 14(3) of the Family Courts Act, 1964, therefore, the same is maintainable.

ii) Law maintains a distinction between custody and guardianship and respective rights and obligations in that regard under the Act. The definition of ‘guardian’ in section 4(2) seems to include the concept of custody, unless the same has been exclusively awarded by the court to a party who is not the guardian of a minor. Custody under the Act involves a right to upbringing of a minor. On the other hand, guardianship entails the concept of taking care of the minor even in situations when the guardian does not have domain over the corpus of the child. A father is considered to be a natural guardian of a minor, since even after separation with the mother, and even when the mother has been granted custody of a minor, he is obligated to provide financial assistance to the minor. The liability to maintain the minor is not only religious and moral but also is legal. The right of custody of father is subordinate to the fundamental principle i.e. welfare of the minor.

iii) Unless there is something repugnant in the subject or context, section 4 of the Act defines the 'Minor' to mean a person who, under the provisions of the Majority Act, 1875, is to be deemed not to have attained his Majority; the 'Guardian‟ to mean a person having the care of the person of a minor or his property, or of both his person and property and the ‘Ward’ to mean a minor for whose person or property or both there is guardian. As evident from its preamble, the FCA 1964 has been enacted for the establishment of Family Courts for expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith. Subject to the Muslim Family Laws Ordinance and the Conciliation Courts Ordinance, 1961, exclusive jurisdiction has been conferred upon the Family Courts to entertain, hear and adjudicate upon matters specified in Part I of the Schedule to the FCA 1964. These subject matters include custody of children and the visitation rights of the parents to meet them as specified in Entry No.5 of Part I of the said Schedule whereas the matters of Guardianship are also stipulated in Entry No.6 thereof. Section 25 of the FCA 1964 deems the Family Court to be a District Court for the purposes of Guardians and Wards Act, 1890. Barring a few exceptions specified in sub- sections (4) and (5) of section 1 of the FCA 1964, jurisdiction of the Family Court over matters of custody is exclusive and no other Court including the Guardian Judge has any jurisdiction to deal with such matters.

iv) It is noteworthy that the legislature is normally not presumed to have intended to keep two contradictory enactments on the statute book with the intention of repealing the one with the other, without expressing an intention to do so. Such an intention cannot be imputed to the legislature without strong reasons and unless that is inevitable. Before adopting the last-mentioned course, it is necessary for the courts to exhaust all possible and reasonable constructions which offer an escape from repeal by implication.

v) The preamble of the MHO 2001 reveals that the said Ordinance was promulgated to consolidate and amend the law for persons with mental disorder with respect to their care, treatment, the management of their property and other related matters. Chapter No.3 of the said Ordinance relates to assessment and treatment and Chapter No.4 relate to leave and discharge, both of which relate to psychiatry, whereas Chapter No.5 thereof relates to judicial proceedings. The main crux of the MHO 2001 essentially relates to psychiatric facility and management of property of the mentally disabled persons and appointment of guardian under the MHO 2001 is in that context. The dispute inter se parents of a minor for his or her custody and/or guardianship is manifestly not a subject matter of the MHO 2001, which falls within the exclusive domain of Family Court even when the minor suffers from any disability. Therefore, the provisions of MHO 2001 do not contradict and repeal the provisions of section 5 read with items No. 5 & 6 of the Schedule to the FCA 1964 to take away jurisdiction of the Family Court in disputes amongst parents regarding guardianship and/or custody of minors who are suffering from any mental disability.

Conclusion: i) Yes, a writ petition is maintainable against the order of an application for the grant of interim custody.

ii) A father is considered to be a natural guardian of a minor even in situations when the guardian does not have domain over the corpus of the child.

iii) The dispute inter-se parents of a minor for his or her custody and/or guardianship is manifestly not a subject matter of the Mental Health Ordinance, 2001, which falls within the exclusive domain of Family Court even when the minor suffers from any disability.

iv) The courts should escape from adopting the procedure of constructions of repeal by implication of one enactment by the other.

v) No, the provisions of MHO 2001 do not contradict and repeal the provisions of section 5 read with items No. 5 & 6 of the Schedule to the FCA 1964 to take away jurisdiction of the Family Court in disputes amongst parents regarding guardianship and/or custody of minors who are suffering from any mental disability.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No. F. 23(31)/2022-Legis. Dated 30.12.2022, section 17 of the Registration Act, 1908 has been amended.

2. Vide Notification No. SOG/EPD/2-1/2017 (P-I), dated 20.12.2022, substitution in rule 4 and 5 of the Punjab Environmental Tribunal Rules, 2012 have been made.
3. Vide Notification No. F. 23(120)/2021-Legis. Dated 30.12.2022, section 195 of the Code of Criminal Procedure, 1898 has been amended vide Code of Criminal Procedure (Amendment) Act, 2022.
4. Amendments in Columns 1 to 10, Schedule-II of the Punjab Specialized Healthcare and Medical Education Department (Medical and Dental Teaching Posts) Service Rules, 1979 has been made through Notification No. SOR-III(S&GAD)1-4/2005(P) dated 20.12.2022.
5. Vide Notification No. SO(MP) 11-5/2019(P-IV) dated 20.01.2023, new clauses (hh), (hhh), (hhhh) have been inserted in the Pakistan Prisons Rules, 1978 in sub-rule (ii) of rule 215.
6. Vide Notification No. SO(MP) 17-1/2021(P-IV) dated 20.01.2023, in sub-rule (i) in the Table-IV of rule 215, serial no. (viii) and in sub-rule (ii) of rule 215, clause (hhhhh) have been inserted in the Pakistan Prisons Rules, 1978.

SELECTED ARTICLES

1. **MANUPATRA**

https://articles.manupatra.com/article-details/AN-ANALYSIS-OF-LEGALITY-OF-REMIX-CULTURE-COMPLIANCE-OR-VIOLATION-OF-COPYRIGHT-LAWS

An Analysis of Legality of Remix Culture: Compliance or Violation of Copyright Laws? By Swati Pragyan Sahoo

"Remixes are described as works of media that have been transformed from their original form through the adding, removing, and changing pieces of the item. Section 14 of the Indian Copyright Act grants all rights, including further development, translation, reproduction, publication, communication to the public, etc., exclusively to the original author of the work. Section 14(e) of the Copyright Act grants certain protections to the owner of a sound recording. At one stance, the remix culture seems like a violation while on the other side, it can be observed that they comply with the copyright laws and are considered a work of further development. While remixes are a separate genre of music which have started demanding protection amongst other works, they do also bring in ambiguity pertaining to the copyright laws. The paper aims to analyse the copyright laws pertaining to the remix culture taking account of the provisions of the Copyright Act and other domestic and foreign legislations. Taking account of Section 2 (a) (iv) of the Copyright Act which defines 'adaption in relation to musical work' as "any arrangement or transcription of the work". This implies that remixes are any re-arrangement or altercation of the musical pieces of any original work. Remixes are a modified version of any previously published or realised sound/audio recording. S.14 (e) of the Copyright Act provides the owners with the right of protecting their work via the right to sell or hire, any copy of the sound recording

or right to communicate with public. The parties who want to remix the music require to get permission from the original author to make changes to the work. The original author has the full control over the work and he has a right to decide how the work can be reproduced. The owner of the copyright may also transfer the rights to the work's copyright to any third party. According to section 30 of the Act, the owner of the copyright may, through a legal licence agreement, transfer any interest in the rights over his work to another. It can be an expected scenario that the original creator is dissatisfied with the new remix work done on his original work but there is little that can be done to protect the original work. Such actions are unfair, and it creates a loophole. Furthermore, the protections afforded to the Copyright owner by law for the past 60 years have been weakened by Section 52 (1) (j).

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Right-to-Privacy-with-special-reference-to-Right-to-be-Forgotten

Right to Privacy with special reference to Right to be Forgotten by Abhyuday

According to the concept of right to privacy, privacy means that there are certain documents of human which is personal to a particular person and cannot be shared with anybody else. Illicit opening of such documents would mean infringing the privacy of the person and should be protected at any cost. In India the concept of privacy emerged in the forefront with the judgment of Puttaswamy vs. Union of India. In this case the Supreme Court held that right to privacy is essential fundamental right. The governmental committees in reports stated for an establishment of a legislation on the aspect of privacy and data protection. Data protection bill was drafted in the year 2018. The objective of this bill had a totally new concept i.e. right to be forgotten. As per the current status this bill has yet not been passed by the Parliament. The bill has been withdrawn due to numerous amendments proposed in this bill.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Rights-Of-The-Under-Trial-Prisoner-An-Analysis-To-Contemporary-Issue-and-It-Way-Ahead

Rights of The Under-Trial Prisoner: An Analysis to Contemporary Issue and It Way Ahead by Kamlesh Singh

The penitentiary system in India is characterised by overcrowded cells flooded with untried inmates, the majority of whom come from disadvantaged and underprivileged communities. Thousands of them remain imprisoned despite significant rulings by the Supreme Court and other high courts of state at various Instances. Many of the prisoner are there in prison Just for petty and minor offences and are unable to avail of bail due to a lack of suitable sureties or an inability to pay cash bail. The 2015 judgment of the Supreme Court by the two-judge bench of Justices Madan Lokur and U U Lalit to immediately release undertrial prisoners who have completed half the period of the maximum possible sentence on a Personal Recognizance (PR) Bond, is a reiteration of the earlier

judgment of the apex court in September 2014 which passed the same directions. The National Legal Services Authorities (NALSA) have been instructed by the Court to work with state authorities and the home ministry to ensure that state undertrial review panels be set up in every district within a month. These must take into account the release of inmates who are awaiting trial and qualify for benefits under Section 436A of the Criminal Procedure Code (CrPC).

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Comparative-Analysis-of-Mediation-Laws-in-India-and-other-countries

Comparative Analysis of Mediation Laws in India and other countries by Abhyuday

Disputes are a part of everyone's life. Disputes are inevitable and are sure to arise in any personal or commercial association. Every dispute has three aspects, namely: people, process, and problem. There is nothing wrong with having a dispute but what is important, is how the parties handle that dispute. There could be two modes of addressing a dispute: adversarial like litigation and arbitration and non-adversarial like mediation and conciliation.1 Mediation as an alternative to self-help or formal adversarial procedures is not entirely new. In an effort to capture the essence of mediation and highlight distinctions between it and other forms, various research defines mediation in a restricted way. However, other researchers provide a very accurate definition in which they state that they prefer to approach mediation behaviourally. One such definition is, "it is a process of conflict management where disputants seek the assistance of or accept an offer of help from, an individual, group, state or organization to settle their conflict or resolve their differences without resorting to physical force or invoking the authority of the law."

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11572-023-09661-z

Moral Entanglement in Group Decision-Making: Explaining an Odd Rule in Corporate Criminal Liability by Sylvia Rich

Acting as part of a corporation may allow an individual more easily to rationalize participating in a harmful act, but there are countervailing forces in corporate action that increase moral oversight and accountability. Making use of group agency to explain membership as a special feature of some corporate agents, I argue that when someone becomes a member of an organized group like a company, their own moral responsibility becomes entangled with the decisions of other members of the company, whether or not they intend this effect. This moral entanglement in corporate decision-making explains why individuals have a moral obligation to act in their role as a corporate officer when they would not have an obligation to act in a personal capacity even if they had identical knowledge. The entanglement affects the individual's own moral status and the moral status of the company itself. Moral entanglement of corporate decision-makers provides a principled explanation for a rule that is present in corporate criminal law that corporate officers with knowledge that another employee is

about to commit a crime must actively intervene, and cannot rely on their status as bystanders.

LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(16-02-2023 to 28-02-2023)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Federal Government of Pakistan through Ministry of Defence Rawalpindi and another v. Mst. Zakia Begum and others
Civil Appeals No.2150 to 2263 of 2019 and
Civil Misc. Applications No.5284 to 5300 of 2020
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2150_2019.pdf

Facts: Through these Civil Appeals petitioners have assailed the judgment, passed by the Lahore High Court, whereby the Regular First Appeals, filed by the landowners were allowed and compensation was enhanced to the rate of Rs.30,000/-per Kanal for the purposes of acquisition of land, along with 15% necessary acquisition charges as well as compound interest, whereas the Regular First Appeals, filed by the Government, were dismissed.

Issues: i) Whether in case of land acquisition for usage other than its nature, it is fundamental process to consider potential value along with market value for the award of compensation?
ii) What is meant by potential value of a land?
iii) How to determine the potential value of the land and what is the objective behind its consideration?
iv) Whether revenue record and land classifications can form the basis of compensation for land acquisition?
v) Whether the law of acquisition is confiscatory in nature and the constitution of Pakistan mandates provision of due process and compensation when any acquisition made by the State while depriving a person from his right to own property?
vi) What were the objectives of the Land Acquisition Act,1894?
vii) Whether the landowners must be given the benefit of the potential value of the entire area being acquired and not just small pieces of land?

Analysis: i) Section 23 of the Land Acquisition Act,1894 requires that while determining compensation for land acquired, market value of the land must be considered and that market value means the value of similar land located in the vicinity and put to the same use. Hence, the key factors for determining market value are land similarly situated and in similar use. Potential value also has to be factored in where the land is put to different usage, so when agricultural land is acquired for commercial, industrial or residential purposes, the Act requires that along with the market value, potential value be considered. This is important because market value per se does not factor in the value that can be attributed based on the capacity or potential it y of the land, meaning the value based on the use it is reasonably capable of being put to in the future. It means assessing that if the land

were fully developed or used at its fullest potential, what would its value be. Hence, compensation is about the value of the land, being its market value plus its potential value, so as to ensure that the landowner is duly compensated. This is fundamental to the process of award of compensation.

ii) 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.

iii) So far as the determination of potential value, there is no mathematical formula, which is applied uniformly in every case. Each case is seen in the context of its own facts but potential value has to be factored along with the market value. The objective is to ensure that the landowner not only gets the actual value of the land at the time it is acquired but also gets the value based on any future prospects attached with the use of land.

vi) Factors such as entries in the revenue record and land classifications cannot form the basis of the compensation as it does not bring out the potential value of the land and it does not factor in future prospects of the land. The revenue classifications of land are based on agricultural requirements essentially denoting the manner in which the land is irrigated adding to its fertility, quality of the soil and its potential for cultivation. Based on this, the average yield per kanal can be calculated on the basis of which land revenue is assessed. The objective of these classifications is to assess the annual value of the landowner's share of the produce cultivated on the land. In this context, valuing land based on agriculture classification does not bring out the market value of the land or even its potential value. The land may be classified as Banjar Qadeem or Chahi Aabi Selab but its market value may be much more based on its location and proximity to roads and other amenities. Hence, reliance on the aforesaid classifications is not relevant for calculating compensation.

v) The law of acquisition is confiscatory in nature and easily deprives an individual of their property and all rights attached to it. The Constitution of the Islamic Republic of Pakistan, 1973 gives every citizen the right to acquire, hold and dispose of property in every part of Pakistan under Article 23. Article 24 of the Constitution protects the right to own property such that no person can be deprived of his property save in accordance with law under Article 24. The exception to this fundamental right as per Article 24 is compulsory acquisition for public purpose, which means that the State can acquire private property for public purpose under the authority of law, which provides for compensation and either fixes the compensation or provides for a mechanism to fix compensation. The Constitution, therefore, mandates that if there is any acquisition by the State, it will be under a Statute, which provides for due process and compensation. In the context of acquisition, it means that a person who owns property has to be compensated on account of being deprived of their property. When a person is deprived of their right to own property, even if in accordance with law, they are

deprived of their right to control, possess and earn from that property. And this deprivation is what must be compensated.

vi) The Land Acquisition Act.1894 is a colonial law, designed to facilitate acquisition of private land for public purpose. The Act was enacted with the objective of building infrastructure like railway lines, roads, bridges and communication networks essential for the benefit of the rulers of the time. the law was designed to prevent a heavy burden on the public exchequer. Hence, its very objective was to acquire land at the least price possible. Hence, the colonial objective and understanding of the law continues as acquisition even today, for public purpose, is at the cost of an individual's right to own property. In this context, there appears to be no effort on the part of the acquiring department to be fair in their application to determine compensation.

vii) Measuring the land in small parcels, based on ownership and revenue classifications is to the disadvantage of the landowners, because it undermines the potential value particularly when the acquisition is of a large area of land for a single project. In such a situation, the landowners must be given the benefit of the potential value of the entire area being acquired and not just small pieces of land, so as to ensure that the landowners are compensated as per the expected reasonable capacity of land use.

Conclusion: i) Yes, in case of land acquisition for usage other than its nature, it is fundamental process to consider potential value along with market value for the award of compensation.

ii) Potential value means the value of the land based on the probability that if developed than it will increase its value.

iii) There is no mathematical formula to determine the potential value of the land and objective behind its consideration is to ensure that the landowner not only gets the actual value of the land at the time it is acquired but also gets the value based on any future prospects attached with the use of land.

iv) Revenue record and land classifications cannot form the basis of compensation for land acquisition.

v)Yes, the law of acquisition is confiscatory in nature and the constitution of Pakistan mandates provision of due process and compensation when any acquisition made by the State while depriving a person from his right to own property.

vi) The objectives of the Land Acquisition Act.1894 were to acquire land at the least price possible.

vii)Yes, the landowners must be given the benefit of the potential value of the entire area being acquired and not just small pieces of land

2. **Supreme Court of Pakistan**
M/s Middle East Construction Company, Karachi v. The Collector of Customs, Karachi
Civil Appeals No. 2016 and 2017 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2016_2022.pdf

Facts: The petitioner company imported some vehicles but the Customs authorities did not clear the goods alleging that they were different from those described in the Goods Declarations and also older than five years and as such could not be imported under the Import Policy Order, 2016. In appeal the Customs Appellate Tribunal ("the Tribunal") set-aside the order of the adjudicating officer whereas the High Court reversed the order of the Tribunal which the petitioner has assailed through these civil appeals.

Issue: Whether under section 196 of the Customs Act, 1969, the High Court can determine the facts or the jurisdiction is limited only to a question of law**?**

Analysis: The Tribunal is the last forum for the determination of facts. The High Court's jurisdiction under section 196 of the Act is limited to a question of law. It did not lay within the jurisdictional domain of the High Court to itself determine the nature the imported vehicles. If the learned Judges of the High Court preferred any particular reports which were before them, and if they were setting aside the judgments of the Tribunal then they should have given valid reasons for their preference. However, the High Court should not have embarked upon determining the nature of the vehicles itself, and to do so by relying upon material which had not been produced either before the adjudicating officer or the Tribunal. The manner in which the learned Judges of the High Court took it upon themselves to ascertain the nature of the imported vehicles cannot be endorsed.

Conclusion: Under section 196 of the Customs Act, 1969, the High Court cannot determine the facts and the jurisdiction of High Court is limited only to a question of law**.**

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3. **Supreme Court of Pakistan**
Zafar Iqbal v. Additional District and Sessions Judge, Ferozewala & others
Civil Petition No.715 of 2020
Mr. Justice Qazi Faez Isa, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._715_2020.pdf

Facts: Respondents no. 2 to 4 filed suit for specific performance of oral agreement. During pendency of suit, the defendant died and legal heirs of defendant were brought on record. The petitioner filed an application u/O. 1 R. of CPC for his impleadment as legal heir of defendant which was accepted. The respondent no 2 to 4 filed application for amendment in plaint, to the effect that petitioner is not legal heir of defendant, which was dismissed by trial court, however, same was allowed by revisional court, whose order was sustained by High Court, hence this

civil petition.

Issues: Whether party A can seek amendment in plaint to challenge the paternity of party B who was added as legal heir on application u/O.1 R.10 of CPC if the party A has quit its remedy against decision on application filed under u/O. 1 R. 10 of CPC?

Analysis: The matter stands concluded when party A withdrew its petition against decision on application filed u/O.1 R. 10 of CPC. If party A had any grievance with regard to party B being arrayed as a legal heir, party A should have agitated it then, and should not have withdrawn its petition…

Conclusion: Party A cannot seek amendment in plaint to challenge the paternity of party B who was added as legal heir on application u/O.1 R.10 of CPC if the party A has quit its remedy against decision on application filed under u/O. 1 R. 10 of CPC.

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4. **Supreme Court of Pakistan**
Zulfiqar Ahmed Bhutta. v. The Federation of Pakistan
through Secretary Law and Justice Division, Islamabad
Civil Misc. Appeals No. 44 to 46 of 2022 In Constitution Petitions NIL/2022
Mr. Justice Qazi Faez Isa
https://www.supremecourt.gov.pk/downloads_judgements/c.m.appeal._44_2022.pdf

Facts: Three Constitution Petitions were filed by the petitioners and sought that an inquiry be conducted by this Court in respect of a cypher sent by an Ambassador of Pakistan to the Federal Government. However, the office did not number these petitions because, as per office objections, they did not fulfill the stipulated criteria of Article 184(3) of the Constitution and did not meet other related provisions of the Supreme Court Rules, 1980. It is against the said office objections that these three civil miscellaneous appeals have been filed.

Issues: i) Who is authorized to order an inquiry in respect of cypher under the Pakistan Commissions of Inquiry Act, 2017?
ii) Whether Court can assume the executive powers vesting in the Federal Government?

Analysis: i) He was asked who has been authorized to exercise powers under the Act and the learned counsel states that it is the Federal Government. Since the Act itself prescribes who can order an inquiry then it is for that authority to do so, and this Court will not assume such jurisdiction…However, if this Court were to resort to the Act in initiating an inquiry, it would not only contravene the Act but will also be assuming the executive power of the Federal Government.
ii) The executive authority of the Federal Government is attended to by Chapter III of Part III of the Constitution which in its Article 97 stipulates that, the executive authority of the Federation shall extend to the matters with respect to

which the Parliament has powers to make laws … . The said laws are those mentioned in the Federal Legislative List (Fourth Schedule to the Constitution) which also mentions external affairs at number 3 of the said List. Therefore, the matter exclusively vested in the Federal Government. However, the then Prime Minister in his discretion elected not to exercise powers under the Act to order an inquiry. The Court cannot assume the executive powers vesting in the Federal Government.

Conclusion: i) The Federal Government is authorized to order an inquiry in respect of cypher under the Pakistan Commissions of Inquiry Act, 2017.
ii) The Court cannot assume the executive powers vesting in the Federal Government.

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5. **Supreme Court of Pakistan**
Ahmed Ali and another v. The State
Criminal Appeal No.48 of 2021
Mr. Justice Sardar Tariq Masood,Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._48_2021.pdf

Facts: The appellants were booked in case/FIR, registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 ("CNSA") and were convicted under Section 9(c) of CNSA and sentenced to imprisonment for life with a fine, or in default thereof to further undergo simple imprisonment for one year each, with benefit of Section 382-B of the Code of Criminal Procedure, 1898 ("the Code"). The appeal filed by the appellants before the learned High Court was dismissed; hence, the instant appeal by leave of this Court granted.

Issues: i) What are the relevant provisions of law and rules as to the case property and exhibition of the same in a court of law?
ii) If the recovered narcotics are not produced before court, whether the accused can be convicted for the said narcotics?
iii) When the material (narcotics) is neither produced nor exhibited, whether the presumption can be drawn that it is not in existence at all?
iv) Whether a single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit?

Analysis: i) Rule 22.16 of the Police Rules, 1934 ("the Police Rules") deals with the "case property". Rule 22.18 of the Police Rules deals with "custody of property". Rule 22.70 of the Police Rules provides that Register No. XIX shall be maintained, wherein, with the exception of articles already included in Register No. XVI, every article placed in the store-room shall be entered and the removal of any such article shall also be noted in the appropriate column. Rule 27.11 of the Police Rules provides that the head of the legal branch shall, with the help of his assistants, maintain the Registers, including Register of case property and

unclaimed property in Form 27.11(1), which may be destroyed three years after being completed. Rule 27.12 of the Police Rules provides that at headquarters, the Deputy Superintendent of Police (Legal), with the assistance of his staff, shall take charge of weapons, articles and property connected with their safe custody until the case is decided. When final orders are passed in the case, such weapons, articles and property shall, if not made over to the owner, be made over to the District Nazar. The Deputy Superintendent of Police (Legal) shall similarly take charge of, and be responsible for, the safe custody of suspicious property until the issue of the proclamation under Section 523 of the Code of Criminal Procedure, when such property be made over to the District Nazar. Rule 14-E of Part B of Chapter 24 of Volume III of Lahore High Court Rules and Orders provides, inter alia, that care is often required in tracing the custody of a prisoner's substances, personal food, bloodstained clothes, etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the various stages of the inquiry, if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the chemical examiner. The person who packs, seals and dispatches such articles should invariably be examined. Rule 14-F of the High Court Rules provides that clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses. Rule 14-H thereof provides, inter alia, that all exhibits should be marked with a letter or number. The second proviso of section 516-A of Cr.P.C., provides that if the property is a dangerous drug, intoxicant, intoxicating liquor or any other narcotic substance, seized or taken into custody under various laws, the court may, either on an application or of its own motion, and under its supervision and control, obtain and prepare such number of samples of the property as it may deem fit for safe custody and production before it or any other court, and cause destruction of the remaining portion of the property under a certificate issued by it in that behalf. The third proviso thereto provides that such samples shall be deemed to be whole of the property in an inquiry or proceeding in relation to such offence before any authority or court. The Control of Narcotic Substances (Government Analysts) Rules, 2001, which provides the procedure to be followed by the police while dispatching the narcotic for the test or analysis and also the procedure to be adopted by the analyst.

ii) In narcotics cases, the conviction and sentence are based on the possession of the narcotics or on aiding, abetting or associating with the narcotics offences. In that eventuality, it is incumbent upon the prosecution to produce the case property before the court to show that this is the narcotics/case property that was recovered from accused’s possession. The defense counsel may then request the court to de-seal and weigh the case property. Even otherwise, if the prosecution claims that huge quantities of narcotics, i.e., many mounds, were recovered but the same were never produced, then how can the accused be convicted for the said narcotics, which were never before the court or may not even be in existence? However, if the narcotics were destroyed under Section 516-A of the Code, then,

of course, the said practice should be done after issuing notice to the accused, and the destruction should be done in the presence of the accused or his representative. The Magistrate is required to prepare samples of the narcotics substance that was ultimately destroyed so that a representative of the destruction process could be produced in the Court; besides, the certificate so issued by the Magistrate would also be relevant and the same should be exhibited in the Court. When the contraband, on the basis of which a person is convicted, is not produced or exhibited, how can a conviction be sustained on the basis of the same?

iii) When the material (narcotics) is neither produced nor exhibited, the presumption can be drawn that it is not in existence at all. When the best evidence, i.e., the case property/ narcotics, vehicle, etc., is withheld by the prosecution and there is no plausible explanation for the non-production of the same in court, an adverse inference or assumption against the prosecution could be drawn under Article 129-(g1) of the Qanoon-e-Shahadat Order, 1984, and it can easily be presumed that no such material/narcotics is in existence. Needless to observe that if the case property is not produced in Court, the concerned authority/prosecution is required to furnish plausible explanation based upon concrete material and not mere lame excuses.

iv) It is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right.

Conclusion: i) Rule 22.16, Rule 22.18, Rule 22.70, Rule 27.11 and Rule 27.12 of the Police Rules 1934, Rule 14-E, Rule 14-F and Rule 14-H of Part B of Chapter 24 of Volume III of the Lahore High Court Rules and Orders, Section 516-A of the Code of Criminal Procedure, 1898 and the Control of Narcotic Substances (Government Analysts) Rules, 2001 are the relevant provisions of law and rules as to the case property and exhibition of the same in a court of law.

ii) If the recovered narcotics are not produced before court, the accused cannot be convicted for the said narcotics.

iii) When the material (narcotics) is neither produced nor exhibited, the presumption can be drawn that it is not in existence at all.

iv) A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit?

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6. **Supreme Court of Pakistan**
Imran Ahmad Khan Niazi v. Main Muhammad Shahbaz Sharif
C.P. 3436-L of 2022 and C.P. 3437-L of 2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3436_l_2022.pdf

Facts: Through the present petitions, the petitioner seeks leave to appeal against a consolidated order of the Lahore High Court, whereby his two revision petitions filed against the orders of the trial court have been dismissed. The trial court had dismissed the objections (application) of the petitioner for rejection of the interrogatories of the respondent and directed him to submit the answers to those interrogatories and struck out the right of defence of the petitioner due to non-submission of the answers to the said interrogatories.

Issues: i) What has the substantial bearing while using the discretionary power of Supreme Court to grant or decline the leave to appeal?
ii) When the court takes the penal action of dismissing the suit of the plaintiff or striking out the defence of the defendant?
iii) What does the "peremptory order" means?
iv) What is the object of rules relating to time limits for certain acts during judicial proceedings?
v) What is the object of pleadings as well as interrogatories?
vi) Whether the provisions of procedural law are mandatory or directory in nature?
vii) Whether non-examining of the interrogatories would vitiate the order of the trial court?
viii) What is the procedure of examination of interrogatories as per the provisions of CPC?
ix) Whether the trial court has the power to take penal action at its own motion for enforcement of its order?
x) Whether the trial court has discretionary power to grant an adjournment and the appellate court can interfere in the order of the trial court of discretionary nature?

Analysis: i) The jurisdiction of this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 to grant the leave to appeal is discretionary; the conduct of a petitioner has a substantial bearing on the question of granting or declining such leave to him.
ii) The conduct of a party is material for the purpose of exercising the court's discretion under Rule 21 of Order XI, CPC: the court takes the penal action of dismissing the suit of the plaintiff or striking out the defence of the defendant when the party concerned is guilty of contumacious conduct by disregarding the specific order of the court, for compliance of which the court has granted a reasonable time and a sufficient opportunity. However, it is not only a deliberate failure to comply with a specific order of the court by a party that is regarded as his contumacious conduct but a series of separate inordinate delays caused by him at different stages of the proceedings of the case is also a convincing proof of such conduct.
iii) A "peremptory order" of the court, specifies a time to do a certain act in the proceedings of the case with a warning of last opportunity, must be followed by the legal consequences prescribed by the relevant law for its non-compliance.

iv) The rules containing time limits for doing the specified acts necessary for the progress of a case are intended to accomplish the constitutional goal of fair trial and expeditious dispensation of justice by concluding the litigation process within a reasonable timeframe. These rules should, therefore, be observed. The main purpose of providing a timeframe in procedural rules is to expedite the hearing and conclusion of the case and to avoid unnecessary adjournments. Such rules are, therefore, to be adhered to for giving effect to the purpose of their making, else the non-compliance therewith would frustrate the objective of expeditious decision of the cases sought to be achieved by the legislature or the rule-making authority, as the case may be. The procedural rule prescribing the timeframe for doing a certain act in the course of the proceedings of a case should, therefore, be followed as a rule and the departure therefrom can be made only as an exception in exceptional circumstances beyond the control of the party concerned. The court may also ask for the filing of an affidavit or the necessary documents, depending on the facts and circumstances of the case, in support of those exceptional circumstances.

v) The interrogatories differ from the pleadings: the object of the pleadings is to ascertain what the issues are, while the main object of the interrogatories is to save time and expense by enabling a party to obtain an admission of certain facts from his opponent, which narrows down the issues for trial and thus reduces the burden of proof. The fair use of the process of interrogatories ultimately results in an overall shortening of the trial and thus helps achieve the constitutional goal of the inexpensive and expeditious dispensation of justice. Interrogatories therefore play a vital role in making the civil trial court system more effective and efficient.

vi) The provisions of a procedural law are ordinarily directory in nature and are construed liberally to advance the cause of justice, as their main purpose is to facilitate the administration of justice. The same purposive approach is to be adopted while construing and applying a procedural provision which provides a timeframe for doing a certain act necessary to the further progress of the case.

vii) The power of the trial court under Rule 1 to examine the interrogatories before delivering the same to the party concerned under Rule 2 and to reject any irrelevant interrogatory at that stage, is permissive, not obligatory. The non-exercise of which does not vitiate the order of the court delivering the interrogatories to the party concerned under Rule 2 for submitting the answers.

viii) The civil justice, is primarily adversarial, the party concerned invite the attention of the trial court for such examination, either (i) by making an application under Rule 7 of Order XI if all or most of the interrogatories delivered appear to be irrelevant by specifying the particular objection taken to each of such interrogatories separately, or (ii) by answering those interrogatories which he/she thinks are relevant and taking objection to those which he thinks are irrelevant as per Rule 6 of Order XI, CPC.

ix) These amendments would be rendered useless if the trial court enjoys no power to enforce its order by first issuing the warning of the proposed penal action and then to take the said action if its order is not complied with despite that

warning, without an application of the party. The trial court, in our opinion, does have the power to take the penal action on its own if its order is not complied with despite giving the warning of last opportunity for compliance.

x) The power of the trial court under Rule 1 of Order XVII of the CPC to grant an adjournment on being shown the sufficient cause is discretionary; therefore, an appellate court cannot interfere with the order of the trial court, either granting or refusing adjournment, unless it is found that the discretionary power has been exercised perversely or arbitrarily.

Conclusion: i) The conduct of a petitioner has a substantial bearing on the question of granting or declining such leave to him.

ii) The court takes the penal action of dismissing the suit of the plaintiff or striking out the defence of the defendant when the party concerned is guilty of contumacious conduct by disregarding the specific order of the court.

iii) A "peremptory order" of the court, specifies a time to do a certain act in the proceedings of the case with a warning of last opportunity, must be followed by the legal consequences prescribed by the relevant law for its non-compliance.

iv) The rules containing time limits are intended to accomplish the constitutional goal of fair trial within a reasonable timeframe.

v) The object of the pleadings is to ascertain what the issues are, while the interrogatories save time and expense.

vi) The provisions of a procedural law are ordinarily directory in nature.

vii) The non-examining of the interrogatories would not vitiate the order of the court.

viii) The procedure is by making an application if all or most of the interrogatories delivered appear to be irrelevant by specifying the particular objection taken to each of such interrogatories separately, or by answering those interrogatories which he/she thinks are relevant and taking objection to those which he thinks are irrelevant.

ix) The trial court has the power to take penal action at its own motion for enforcement of its order.

x) Trial Court has discretionary power to grant adjournment and appellate court cannot interfere with the order of the trial court unless it is found that the discretionary power has been exercised perversely or arbitrarily.

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7. **Supreme Court of Pakistan**
Mst. Ghazala v. The State & another
Criminal Petition No.54 of 2023.
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._54_2023.pdf

Facts: The petitioner seeks leave to appeal against an order of the Peshawar High Court, whereby the High Court while dismissing the bail application of the petitioner has denied to her the post arrest bail in case, for the offences under Sections 302, 325, 200, 201, 182, 109 and 34 of the Pakistan Penal Code 1860 and the offence under

Section 15 of the Khyber Pakhtunkhwa Arms Act 2013.

Issues: i) Whether women accused is entitled to bail as a rule and refusal is only an exception?
ii) What are the exceptions that justify the refusal of bail?
iii) What is distinction between granting bail under Section 497(1) and under Section 497(2) CrPC?

Analysis: i) No doubt, the offence of Qatl-i-amd (intentional murder) punishable under Section 302 PPC alleged against the petitioner falls within the prohibitory clause of Section 497(1) of the Code of Criminal Procedure 1898 ("CrPC") but being a women, the petitioner's case is covered by the first proviso to Section 497(1), CrPC. The said proviso, as held in Tahira Batool case, makes the power of the court to grant bail in the offences of prohibitory clause of Section 497(1) alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused, equal to its power under the first part of Section 497(1), CrPC. It means that in cases of women accused etc. as mentioned in the first proviso to Section 497(1), irrespective of the category of the offence, the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of Section 497(1), CrPC.
ii) The exceptions that justify the refusal of bail are also well settled by several judgments of this Court. They are the likelihood of the accused, if released on bail: (i) to abscond to escape trial; (ii) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) to repeat the offence.
iii) The Court is not considering the grant of bail to the petitioner under Section 497(2), CrPC, under which the bail is granted to an accused as of right if it appears to the court that there are no reasonable grounds for believing that the accused has committed the offence alleged against him rather there are sufficient grounds for further inquiry into his guilt. For the purpose of deciding the prayer for grant of bail in exercise of the discretionary power of the court under Section 497(1), CrPC, the availability of a sufficient incriminating material to connect the accused with the commission of the offence alleged against him is not a relevant consideration.

Conclusion: i) In cases of women accused etc. as mentioned in the first proviso to Section 497(1), irrespective of the category of the offence, the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of Section 497(1), CrPC.
ii) The exceptions that justify the refusal of bail are: (i) to abscond to escape trial; (ii) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) to repeat the offence.
iii) Under Section 497(2), CrPC, the bail is granted to an accused as of right if

there are sufficient grounds for further inquiry into his guilt. Under Section 497(1), CrPC, the availability of a sufficient incriminating material to connect the accused with the commission of the offence alleged against him is not a relevant consideration.

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8. **Supreme Court of Pakistan**
Imran Mehmood v. The State and another
Criminal Appeal No. 82 of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._82_2022.pdf

Facts: Appellant-accused was booked in case FIR for offences under sections 302/324/34 PPC read with Section 13 of the Arms Ordinance wherein he was convicted by trial court for offence under section 302(b) PPC and sentenced to death. In appeal the High Court maintained the said conviction and sentence. Being aggrieved the appellant filed instant criminal appeal.

Issues: (i) Whether mere relationship of the prosecution witnesses with the deceased can be a ground to discard the testimony of such witnesses out-rightly?
(ii) Whether ocular evidence can be given preference over medical evidence?
(iii) Whether conflict of ocular account with medical evidence would have an adverse affect on prosecution case?
(iv) Whether minor discrepancies on trivial matters can result in rejection of evidence in its entirety?
(v) When the burden to prove any particular fact shifts to an accused in a criminal trial?

Analysis: (i) It is by now a well-established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses out-rightly. If the presence of the related witnesses at the time of occurrence is natural and their evidence is straight forward and confidence inspiring then the same can be safely relied upon to award capital punishment.
(ii) It is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused.
(iii) It is settled principle of law that the value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain conviction. Minor discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where accused caused injuries. It becomes highly improbable to correctly mention the number and location of the injuries with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as

witnesses are not supposed to give pen picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case. Requirement of corroborative evidence is not of much significance and same is not a rule of law but is that of prudence.

(iv) 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. 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.

(v) According to Article 119 of the Qanun-e-Shahadat Order, 1984, the burden of proof to 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.

Conclusion: (i) Mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses out-rightly.

(ii) Where ocular evidence is found trustworthy and confidence inspiring, the same is to be given preference over medical evidence.

(iii) Conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case.

(iv) 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.

(v) Once the prosecution becomes successful in discharging the burden to proof any particular fact, it is incumbent on the accused who had taken a specific defence plea to prove the same with certainty.

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9. **Lahore High Court**
M/s. Ashfaq Brothers & another v. Anti-Dumping Appellate Tribunal of Pakistan & others
F.A.O. No. 74 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC484.pdf

Facts: The appellants through the instant first appeal against order have challenged the orders of different dates passed by the Anti-Dumping Appellate Tribunal, Islamabad ("Appellate Tribunal") while exercising jurisdiction under Section 70 of the Anti-Dumping Duties Act, 2015 ("Act").

Issue: i) The word "High Court" used in sub-section (13) of Section 70 of the Anti-Dumping Duties Act, 2015 corresponds to which High Court?
ii) Whether the Lahore High Court has got territorial jurisdiction to ponder upon the decision of the "Appellate Tribunal" based in Islamabad?

Analysis: i) An appeal against the decision of the "Appellate Tribunal" lies before the High Court. The term "High Court" is nowhere defined in the "Act". Part VII of the Constitution of the Islamic Republic of Pakistan, 1973 deals with the judicature and Chapter 1 defines the Courts. In terms of Article 175(1), there shall be a Supreme Court of Pakistan, a High Court for each Province and a High Court for Islamabad Capital Territory and such other courts as may be established by law. It would not be out of context to mention here that initially, Islamabad High Court was not in existence and it was ultimately established through Act No.XVII of 2010, dated 2 nd August, 2010. By virtue of Section 4 of the said Act, jurisdiction of Islamabad High Court was extended in respect of the Islamabad Capital Territory, original, appellate, revisional and other jurisdiction, as under the constitution or the laws in force immediately before the commencement of the Act ibid, which was previously exercisable in respect of the said territory by the Lahore High Court. … The crux of above discussion is that word "High Court" used in sub-section (13) of Section 70 of the "Act" corresponds to Islamabad High Court.

ii) There is no cavil to the proposition that the "Appellate Tribunal" is performing functions in connection with the affairs of the Federation and it is amenable to writ jurisdiction, but we have to examine as to whether in the circumstances, this Court can exercise the jurisdiction constitutional or appellate against the decision of the "Appellate Tribunal". It is an admitted fact that initially investigation was started by the "Commission" at Islamabad, which resulted into passing of order in original. The said order was assailed through an appeal before the "Appellate Tribunal" under Section 70(1)(2) of the "Act", who decided the same through impugned order. We have noticed that the cause of action also arose either at Islamabad or Karachi and even the appellants before us while preferring their appeals before the "Appellate Tribunal" mentioned their addresses of places other than Rawalpindi. Apparently, the appellants have now changed addresses for their convenience or for any other reason best known to them. It is trite law that the Court cannot assume jurisdiction on the whims of the parties or to facilitate any of them. We cannot ignore the doctrine of *forum non conveniens*. It is founded on the principle that if some other forum is more appropriate and the interest of justice would be served better, the Court may decline to exercise jurisdiction on the ground that a case could be suitably tried by another Court, and, as such, this Court lacks territorial jurisdiction to ponder upon the decision of the "Appellate

Tribunal".

Conclusion: i) The word "High Court" used in sub-section (13) of Section 70 of the Anti-Dumping Duties Act, 2015 corresponds to Islamabad High Court.
ii) The Lahore High Court has got no territorial jurisdiction to ponder upon the decision of the "Appellate Tribunal" based in Islamabad.

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10. **Lahore High Court**
Mian Tariq Mehmood v. Election Commission of Pakistan & others
W.P.No.30623 of 2019
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC542.pdf

Facts: This constitutional petition brings a challenge to the judgment passed by the Election Commission of Pakistan.

Issues: i) What is the effect of repeal?
ii) Whether under clause (3) of Article 218 Election Commission can make a declaration qua disqualification of a member of Assembly?
iii) Whether Articles 62 and 63 confer power on ECP to make such a declaration?
iv) What is procedure when any question arises that a member of the Parliament has become disqualified from being a member?
v) When ECP can proceed to adjudicate upon controversy of disqualification of a member?
vi) Whether ECP is vested with power to entertain any reference of disqualification filed by a private person?
vii) What is the procedure to challenge the election?

Analysis i) The effect of repeal is that it will only save pending proceedings and any proceedings commenced after the enactment of Act, 2017 will be governed by the new law and the provisions of old law cannot be invoked.
ii) The ECP in the impugned order has invoked to its aid clause (3) of Article 218 to make a declaration that the petitioner was disqualified from being a member of the Provincial Assembly. This power cannot be culled out from clause (3) of Article 218 and such an action by ECP must be discountenanced. Clause (3) of Article 218 merely casts a duty on ECP to organize and conduct elections and to make arrangements to ensure that the elections are conducted justly and fairly and in accordance with law. During the course of conduct of the elections it must also guard against corrupt practices. By no stretch of imagination it has empowered ECP to entertain a reference such as one in the present case and to embark upon an inquiry to disqualify a member of the Assembly or the Senate. Such a course is impermissible to ECP and would nullify the intent that permeates the relevant provisions not only of the Constitution but also of the Act, 2017.
iii) Further it is a fallacy on the part of ECP to have relied upon Articles 62 and 63 as conferring power on ECP to make a declaration of the kind which has been done through the impugned order. Articles 62 and 63 merely prescribe the

qualifications and disqualifications of a person from being elected or chosen as and from being a member of the Parliament and a Provincial Assembly and no more. The procedural requirements for doing so and the power which comes to vest in a Court or other Tribunal to set in motion the proceedings for doing so must be prescribed in law.

iv) Clause (2) of Article 63 clearly provides that if any question arises whether a member of the Parliament (or a Provincial Assembly) has become disqualified from being a member of that Assembly, the Speaker or the Chairman shall refer the question to ECP which shall be decided within ninety days from the receipt of the reference from the Speaker or Chairman of the Senate.

v) The only time that ECP can proceed to adjudicate upon such a controversy is when a reference is received from either the Speaker or the Chairman of the Senate.

vi) Apart from this ECP is not vested with any power to broach the subject of disqualification on any reference filed by a private person which exercise will be ultra vires the Constitution as well as the Act, 2017.

vii) It indubitably follows that under the law no election shall be called in question except by an election petition filed by a candidate for that election.

Conclusion: i) The effect of repeal is that it will only save pending proceedings and any proceedings commenced after the enactment of Act, will be governed by the new law and the provisions of old law cannot be invoked.

ii) Clause (3) of Article 218 has not empowered ECP to entertain a reference filed by a private person and to embark upon an inquiry to disqualify a member of the Assembly or the Senate.

iii) Articles 62 and 63 do not confer power on ECP to make a declaration of disqualification of member of assembly.

iv) Clause (2) of Article 63 clearly provides that if any question arises whether a member of the Parliament (or a Provincial Assembly) has become disqualified from being a member of that Assembly, the Speaker or the Chairman shall refer the question to ECP.

v) The only time that ECP can proceed to adjudicate upon such a controversy is when a reference is received from either the Speaker or the Chairman of the Senate.

vi) ECP is not vested with any power to broach the subject of disqualification on any reference filed by a private person which exercise will be ultra vires the Constitution as well as the Act, 2017.

vii) Under the law no election could be called in question except by an election petition filed by a candidate for that election.

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11. **Lahore High Court, Lahore**
Mst. Saima Naeem v. M/S Habib Bank Ltd. and another
EFA No. 18 of 2021
Mr. Justice Mirza Viqas Rauf and Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC459.pdf

Facts: This appeal under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 is directed against the order passed in execution proceedings of decree, whereby appellant's objection petition was dismissed.

Issues: Whether a buyer from a mortgagor or a third party can claim any better title or right in the property or any interest free from the charge of mortgage?

Analysis: As per section 58 of the Transfer of Property Act, 1882 mortgage is transfer of an interest in specific immovable property for the purposes of securing the payment of money advanced or to be advanced by way of loan or financing, an existing or future debt or the performance of an engagement giving rise to a pecuniary liability. Once a valid mortgage is created against a specific immoveable property, then mortgagor's interest in the property to that specific extent stands transferred to the mortgagee. Upon creation of mortgage, the charge travels with the property and not with the person. If a mortgagor manages to part with the property or confers interest to third party, then the buyer or the third party will step into the shoes of mortgagor.

Conclusion: Having stepped into the shoes of mortgagor, buyer or the third party cannot claim any better title or rights in the property or any interest free from the charge of mortgage.

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12. **Lahore High Court, Lahore**
Col. (R) Muhammad Shabir Awan v. Raja Saghir Ahmed and 4 others
Election Petition No.1 of 2022
Mr. Justice MirzaViqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC503.pdf

Facts: Through main petition under section 139 of the Elections Act, 2017 the petitioner called in question the candidature of returned candidate and, in response thereto, returned candidate submitted his reply including objection on maintainability of main petition.

Issues: i) What law requires in connection with verification of the pleadings of an election petition?
ii)Whether "Oath Commissioner" and "Notary Public" are same terms/offices for the purposes of Section 144 of the Election Act, 2017?
iii) Whilst presenting the election petition, what is impact of non-compliance of the mandate of sections 142, 143 and 144 of the Election Act, 2017?

Analysis: i) Section 144 (4) of the Election Act, 2017 prescribes that the election petition and its annexures shall be signed by the petitioner and it shall be verified in the manner laid down in in Order VI Rule 15 ofthe Code of Civil Procedure, 1908. Said both provisions of law shall be read with section 139 of the Code of Civil

Procedure, 1908.

ii) Power to appoint Notary under the Notaries Ordinance (XIX of 1961) vests in the Provincial Government and functions of the Notary are laid down in section 8 of said Ordinance. On the other hand, Oath Commissioner is to be appointed by the High Court under section 139(b) of the Code of Civil Procedure (V of 1908) & section 539 of the Code of Criminal Procedure, 1898 and the prime object of appointing Oath Commissioner is to attest affidavits to be produced before a court to prove any particular fact or facts. Rules and Orders of the Lahore High Court, Lahore Volume IV Chapter 12 Part B deals with the affidavits wherein the manner of appointment and charging of fee by the Oath Commissioner is provided alongwith mode of administering of oath as well as attesting, signing and verification of affidavits, whereas Volume V Chapter 1 Part E of the Rules and Orders of the Lahore High Court, Lahore lays down the procedure for making and filing of affidavits in the High Court. In terms of section 139(b) of the Code of Civil Procedure (V of 1908) Oath Commissioner can only be whom the High Court may appoint in this behalf, which in no way can be Notary.

iii) Chapter IX of the Election Act, 2017 lays down a procedure for the settlement of election disputes. Election petition is to be presented in a manner provided under section 142 of the Act ibid and Section 144 thereof lays down necessary preconditions for the election petition. Section 144 (4) of the Act ibid ordains that an election petition and its annexures shall be signed by the petitioner and the petition shall be verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. Section 145 of the Act ibid prescribes a procedure before the Election Tribunal. Section 145 (1) of the Act ibid contemplates that if any provision of preceding sections 142, 143 or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition.

Conclusion: i) The joint reading of section 144 (4) of the Election Act, 2017 and Order VI rule 15 of the Code of Civil Procedure (V of 1908) clearly shows that the pleadings shall be verified on oath and said oath which is required to be administered by a person who is duly authorized in this behalf.

ii)An “Oath Commissioner” and “Notary” are both different and distinct terms/offices. The intermingling of both would result into serious legal complications.

iii) A petitioner of an election petition is obliged to adhere the mandate of provisions of sections 142, 143 and 144 of the Election Act, 2017 and noncompliance thereof renders automatic rejection of the election petition.

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13. **The Lahore High Court**
Muhammad Nazeer v. Ch. Ghulam Hussain, Etc.
W.P.No.3843 of 2021
Mr. Justice MirzaViqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC495.pdf

Facts: This writ petition is filed against an order passed by the Additional Rent Controller–in a pending ejectment petition filed under section 17(8) of the Cantonments Rent Restriction Act, 1963 seeking eviction of the petitioner, whereby the petitioner was directed to deposit the tentatively assessed rent as well as regular future rent.

Issues: i) When a respondent in the ejectment petition denies the existence of relationship of landlord and tenant, whether it becomes obligatory for Rent Controller to frame a preliminary issue to that effect so as to determine the relationship *inter se* parties in the first instance?
ii) In what circumstances an interlocutory order is amenable to constitutional jurisdiction of High Court?

Analysis: i) A landlord can seek eviction of tenant by moving a petition under section 17 of the Cantonments Rent Restriction Act, 1963. Section 17(8) of the Act ibid empowers the Rent Controller to direct the tenant to deposit all the rent due from him before a specified date and also to deposit the monthly rent which subsequently becomes due till the final decision of the case. Such an order may be passed either on the first hearing of proceeding or as soon thereafter as may be, but before issues are framed. Said section 17(8) manifests that a direction to deposit the tentative rent can only be given to the tenant. The Rent Controller cannot proceed mechanically with the proceedings and pass an order under section 17 (8) of the Act ibid without being satisfied that there exists relationship of landlord and tenant between the parties before it. Where the relationship of landlord and tenant is denied, the Rent Tribunal would lack jurisdiction, on account of the doctrine of jurisdictional fact, to pass an order for payment of rent due under section 24 of the Act until and unless the Tribunal positively ascertains the relationship of tenancy and establishes that the respondent to the eviction application is in fact a 'tenant' in terms of section 2(l) of the Act. When a respondent in the ejectment petition denies the existence of relationship of landlord and tenant, it becomes obligatory for Rent Controller to frame a preliminary issue to that effect so as to determine the relationship *inter se* parties in the first instance.
ii) It is observed that in ordinary course, the constitutional jurisdiction should not be exercised against an interlocutory or interim order as a run-of-the-mill case, but when such order, at the face of it, is patently perverse and appears to be suffering with illegalities, the jurisdiction of High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot be abdicated or abridged.

Conclusion: i) When a respondent in the ejectment petition denies the existence of relationship of landlord and tenant, it becomes obligatory for Rent Controller to frame a preliminary issue to that effect so as to determine the relationship *inter se* parties in the first instance.

ii)Though scope of constitutional jurisdiction against an interim order is limited, but when once Court reaches at the conclusion that the order/action under challenge is fraught with illegalities as to alter the justice, it cannot sit as a silent spectator to perpetuate a void order.

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14. **Lahore High Court, Lahore**
Newage Cables (Pvt.) Ltd.v. Lahore Electric Supply Company, etc.
ICA No.10644 of 2023
Mr. Justice Ch. Muhammad Iqbal and Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC566.pdf

Facts: Through this Intra Court Appeal filed under Section 3 (2) of the Law Reforms Ordinance, 1972, the appellant has called in question order passed by learned Single Judge of this Court, whereby his constitutional petition was dismissed.

Issues: How expiry of six months would be calculated in case letter of intent/agreement provides that repeated order may be placed during the currency of the Contract or within 6 months from the date of issue of initial purchase order, whichever is later?

Analysis: The expression 'whichever is later' is a rider on the exercise of right to place a purchase order with increase or decrease of quantity by 15%, which could have be done even through the initial purchase order and the same could have been made during the currency of the contract or through a subsequent purchase order made within 6 months after initial purchase order had been placed, both of which situations could arise in the matter. The expression 'whichever is later', if provided in the contract/agreement, could not have been treated as redundant or unilaterally rescinded.

Conclusion: Instead of the date of acceptance of Letter of Intent, the six months are to be calculated on the basis of date of issuance of initial purchase order as the same was later in time.

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15. **Lahore High Court**
University of Punjab etc. v. Abdul Majeed etc.
Civil Revision No.78898 of 2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC510.pdf

Facts: Through this civil revision, the petitioner has challenged the validity of judgment & decree passed by the learned Civil Judge whereby suit for declaration with mandatory injunction filed by respondent No.1 was decreed and judgment & decree passed by the learned Additional District Judge who dismissed the appeal of the petitioner.

Issues: Whether the University is debarred to quash the result after the lapse of period of three years once the result gazette was issued?

Analysis: Under Chapter-VI of the Calendar of the University of the Punjab, 1998 the Syndicate has the jurisdiction to quash the result or withdraw the degree within three years from the date of declaration of result. Once the result gazette was issued the University was/is debarred to quash the result after the lapse of period of three years.

Conclusion: Yes, the University is debarred to quash the result after the lapse of period of three years once the result gazette was issued.

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16. **Lahore High Court**
Mst. Rajan Bibi etc. v. Muhammad Saddique etc.
R.S.A. No.67 of 2013
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC517.pdf

Facts: Through this Regular Second Appeal under Section 100 CPC the appellants have assailed the judgment & decree passed by the learned Civil Judge who decreed the suits for possession through specific performance filed by respondents No.1 to 3 and also assailed consolidated judgment & decree passed by the learned Additional District Judge who dismissed their appeal.

Issues: i) Whether the documents relied upon by a party in pleadings should be produced in the evidence by such party and not by their counsel, while giving an opportunity to the other party to cross-examine the same?
ii) Whether evidence given by a witness in a judicial proceeding is relevant for the purpose of proving in a subsequent judicial proceeding?
iii) Whether it is duty of the beneficiaries to prove the alleged agreement to sell by producing both the marginal witnesses?

Analysis: i) It is settled law that the documents relied upon or on the basis of which the pleading (plaint or written statement) has been filed should be produced in the evidence by party itself and an opportunity should be given to the other party to cross-examine the same, as such the documents produced by the counsel cannot be relied upon as valid tender of evidence and such documents are liable to be excluded from consideration.
ii) Under Article 47 of the Qanun-e-Shahadat Order, 1984, the evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which states that the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

iii) Under Article 17 read with Article 79 of the Qanun-e-Shahadat Order 1984, it is the duty of the beneficiaries to prove the alleged agreement to sell by producing both the marginal witnesses.

Conclusion: i) Yes, the documents relied upon by a party in pleadings should be produced in the evidence by such party and not by their counsel, while giving an opportunity to the other party to cross-examine the same.
ii) Yes, evidence given by a witness in a judicial proceeding is relevant for the purpose of proving in a subsequent judicial proceeding subject to fulfill of parameters provided under Article 47 of the Qanun-e-Shahadat Order, 1984.
iii) Yes, it is duty of the beneficiaries to prove the alleged agreement to sell by producing both the marginal witnesses as mandatory requirement.

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17. **Lahore High Court**
Anam Bibi v. Secretary, Punjab Public Service Commission, Lahore & others
Writ Petition No.2412 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC537.pdf

Facts: This writ petition is directed against the rejection letter, whereby petitioner's candidature for the post of Lecturer Philosophy (Female) (BS-17) in the Punjab Higher Education Department announced by PPSC, was rejected on account of non-submission of her previous domicile certificate along with domicile certificate of her husband at the time of filing of her application for the said post and petitioner's representations in this regard were rejected.

Issues: i) Whether the non-existence or non-submission of previous domicile of a married female candidate along with her husband's domicile will result in her ineligibility for appointment to a particular post announced by PPSC?
ii) Whether a subordinate legislation can be made in conflict with the primary legislation?

Analysis: i) PPSC Regulations, 2016 were formulated by taking power from sub-section (2) of Section 10 of the Punjab Public Service Commission Ordinance, 1978 and these are subordinate and delegated legislation, deriving authority and legal cover from the provisions of the main statute. Policy Decisions are meant to deal with details and can neither be a substitute for the fundamentals of the Regulations nor can add to them. The Policy Decision in question has imposed a further condition of having domicile of the candidate before her marriage for getting benefit of domicile of her husband. While Regulation 23(e) does not require the submission of earlier domicile of any married female candidate or rejection of her candidature in case she does not possess any earlier domicile. The beneficial Regulation 23(e) has been qualified with a restriction leading to ineligibility of a candidate to be considered for appointment if she has no domicile before marriage.
ii) The principles of delegated legislation entitle the delegate to carry out the

mandate of the legislature, either by framing rules, or regulations, which translate and apply the substantive principles of law set out in the parent legislation. They can fill in details but not vary the underlying statutory principles. Even otherwise, if a subordinate legislation is in conflict with the primary legislation, then it is void and ultra vires. Similarly, through a policy, a valid subordinate legislation can neither be made redundant nor superseded and no policy can be made in conflict therewith.

Conclusion: i) The non-existence or non-submission of previous domicile of a married female candidate along with her husband's domicile will not result in her ineligibility for appointment to a particular post announced by PPSC.
ii) No, a subordinate legislation cannot be made in conflict with the primary legislation.

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18. **Lahore High Court**
Azeem-ud-Din v. Feroze Khan etc.
Crl. Misc. No.60014/CB of 2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC466.pdf

Facts: The complainant lodged an FIR against the respondent in an offence punishable u/s 489-F PPC wherein the pre-arrest bail of the respondent was allowed by the High Court based on a compromise (Mark-A) executed between them. Later complainant died and the petitioner as his son applied for the cancellation of bail on the ground of non-compliance with the terms of compromise by the respondent.

Issues: Who can file an application for the cancellation of the bail under section 497(5) Cr.P.C of 1898?

Analysis: Section 497(5) Cr.P.C. does not explicitly state that only an interested person can move the court for cancellation of bail. In Nazir Ahmad v. Latif Hussain and others (PLD 1974 Lahore 476), the High Court entertained the application because the applicant, in addition to being a witness of the alleged motive, was the husband of the woman who was assaulted and dishonoured. The High Court held that he was "a person vitally interested in the case." In Khalid Mahmood v. Abdul Qadir Shah and others (1994 PCr.LJ 1784), this Court ruled that a private person who has a legitimate interest in the prosecution, such as the complainant or a close relative of the deceased or an injured person, may apply for cancellation of bail granted to an accused person. The learned Judge observed that being the "real aggrieved persons" they cannot be barred from seeking redress in a court of law. This is also necessary because the State frequently exhibits passivity in bail cancellation.
It is the State's primary duty to ensure justice is done to the parties even during the bail process. No accused should be released on bail unless legally entitled to

it. The Prosecution Department should immediately seek a correction under section 497(5) Cr.P.C. where the court has wrongly granted bail to an offender. Additionally, any individual who is vitally interested in the case and concerned with its outcome has a right to contest such an order. The court may also intervene on its own initiative if any lapse, capriciousness, arbitrariness, or perversity comes to notice. Section 497(5) Cr.P.C. confers powers similar to revisional powers under sections 435 and 436 Cr.P.C. on the High Court and the Court of Sessions.

Conclusion: Any individual who is vitally interested in the case may apply for the cancellation of bail u/s 497(5) PPC.

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19. **Lahore High Court**
Muhammad Akram v. The State etc.
Crl. Misc. No.51580/M of 2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC570.pdf

Facts: The petitioner and respondent no.4 filed two separate applications before the Judicial Magistrate, for custody (superdari) of the Car. The Judicial Magistrate dismissed the Petitioner's application and allowed that of Respondent No.4. The Petitioner filed a revision petition in the Sessions Court, which was dismissed by the Additional Sessions Judge. The Petitioner has now assailed these orders through this petition under section 561-A Cr.P.C. before this Court.

Issues: i) What procedure is required to be adopted, when a person applies for superdari of the vehicle and one of the interested parties asks the Motor Registering Authority to investigate the title of its rival and cancel his registration?
ii) What is meant by 'motor vehicle' under motor vehicle ordinance XIX of 1965?
iii) Whether anyone one can drive any vehicle, or motor vehicle owner can cause or permit his vehicle to be driven in any place unless it is registered under Chapter III of the Ordinance and has a registration mark displayed in the prescribed manner?
iv) What are the consequences regarding ownership of a vehicle, if the transferee does not submit an application to the Motor Registering Authority for a change of ownership of a vehicle within 30 days following the transaction?
v) Whether there is any provision in the Ordinance, which authorizes the Motor Registering Authority to hear an application questioning the ownership of a motor vehicle or requesting it to conduct an inquiry and suspend or cancel the registration owing to any dispute?
vi) Whether the signature or handwriting on the document is required to be proved when a question with regard to signature or writing of a document by a particular person arises?
vii) Whether the conviction based on modern devices and techniques may be lawful?
viii) Whether the handwriting expert's opinion is relevant piece of evidence or

conclusive proof of evidence to prove a fact?

ix) Whether any expert opinion may be used in any trial without calling the Government Chemical Examiner, Serologist, or the other expert as a witness in the court?

Analysis: i) Section 550 Cr.P.C. empowers a police officer to seize any property that may be alleged or suspected to have been stolen or may be found under circumstances that raise suspicion that an offence has been committed. Sections 523 to 525 Cr.P.C. outline the procedure for disposal of the seized property. Section 523 directs the police to report the matter to a Magistrate immediately after the seizure. However, it is well settled that the proceedings before the Magistrate are summary. He cannot conduct a detailed inquiry because it is the realm of the civil court. When the police seize a vehicle, and a person applies for its superdari, the Magistrate sometimes calls a report from the Motor Registering Authority. At times one of the interested parties asks the Motor Registering Authority to investigate the title of its rival and cancel his registration, then it is necessary first to define the precise nature, scope, and extent of the Motor Registering Authority's jurisdiction.

ii) The Motor Vehicles Ordinance XIX of 1965 (the "Ordinance") regulates motor vehicles in the province. According to section 2(23) thereof, "motor vehicle means any mechanically propelled vehicle adapted for use upon roads, whether the power of propulsion is transmitted thereto from an external or internal source, and includes a chassis to which a body has not been attached or a tractor and a trailer; a combined harvester, a rig, a fork lifter, a road roller, construction, and earth moving machinery, such as a wheel loader, a crane, an excavator, a grader, a dozer and a pipe layer, a road making and a road/sewerage cleaning plant but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner."

iii) Section 23(1) of the Ordinance states that no one shall drive any vehicle, and no motor vehicle owner shall cause or permit his vehicle to be driven in any place unless it is registered under Chapter III and has a registration mark displayed in the prescribed manner. Sections 24 to 28 set out the procedure for registering a motor vehicle.

iv) Section 32 speaks of the subsequent transfer of ownership. It stipulates that the transferee shall, within 30 days of the transfer of ownership of a motor vehicle registered under the Ordinance, report the transfer to the Motor Registering Authority within whose jurisdiction he ordinarily resides along with the prescribed documents as proof of the change of ownership and payment of the prescribed fee. The Motor Registering Authority shall update the records and issue a new registration certificate. Section 34 enumerates the instances under which the MRA may suspend a motor vehicle registration certificate, and section 35 lists the circumstances under which the Motor Registering Authority may cancel it.

v) There is no provision in the Ordinance, including sections 34 or 35, which

authorizes the Motor Registering Authority to hear an application questioning the ownership of a motor vehicle or requesting it to conduct an inquiry and suspend or cancel the registration owing to any dispute. That is the exclusive jurisdiction of the civil court.

vi) According to the Article 59, when the court has to form an opinion on the point of foreign law, science, or art, or the identity of handwriting or finger impression, or the authenticity of an electronic document, the opinions of the experts in those fields are relevant facts. Article 61 deals with the situation when the court has to form an opinion about the person who wrote or signed a document. It states that the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact. Article 78 deals with the proof of a person's signature and handwriting. It stipulates that if a question arises whether a document was signed or written by a particular person, his signature or handwriting, as the case may be, on that document must be proved. Article 100 attaches some presumptions to thirty years old documents.

vii) Article 164 of Qanun-e-Shahadat provides that courts may allow any evidence that may have become available because of modern devices and techniques. Proviso to Article 164, added in the year 2017, provides that conviction based on modern devices and techniques may be lawful. Article 164, read with Article 59, inter alia, allows modern forensic science to enter courts through the experts' credible and valued scientific opinions as evidence to arrive at the truth.

viii) Parliament has recently amended section 510 Cr.P.C. through the Code of Criminal Procedure (Amendment) Act, 2022 and made the report of the forensic scientist and the handwriting expert admissible per se. While interpreting section 510 Cr.P.C**.** (and the abovementioned amendment), we must, on the one hand, distinguish between the admissibility and the procedure for adducing the handwriting expert's report in evidence and, on the other hand, its probative value. The law only makes the report admissible without the expert's examination, but it is not conclusive evidence. The jurisprudence developed over the years is that the handwriting expert's opinion is relevant, but it is a weak type of evidence. It should not be treated as conclusive evidence to prove a fact.

ix) Qanun-e-Shahadat makes the expert opinion admissible, but section 510 Cr.P.C. states special rules of evidence and simplifies the evidentiary procedure by providing that the reports of the chemical examiner, serologist, fingerprint expert, or firearm expert may be used in any trial without calling the Government Chemical Examiner, Serologist, or the other expert as a witness.

Conclusion: i) It is necessary first to define the precise nature, scope, and extent of the Motor Registering Authority's jurisdiction; when a person applies for superdari of the vehicle and one of the interested parties asks the Motor Registering Authority to investigate the title of its rival and cancel his registration.

ii) According to Section 2(23) of motor vehicle ordinance XIX of 1965, motor

vehicle means any mechanically propelled vehicle adapted for use upon roads, whether the power of propulsion is transmitted thereto from an external or internal source but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner.

iii) No one shall drive any vehicle, and no motor vehicle owner shall cause or permit his vehicle to be driven in any place unless it is registered under Chapter III of the Ordinance and has a registration mark displayed in the prescribed manner.

iv) If the transferee does not submit an application to the Motor Registering Authority for a change of ownership of a vehicle within 30 days following the transaction, the transaction is null and void under section 32 of the Ordinance.

v) There is no provision in the Ordinance, which authorizes the Motor Registering Authority to hear an application questioning the ownership of a motor vehicle or requesting it to conduct an inquiry and suspend or cancel the registration owing to any dispute.

vi) The signature or handwriting on the document must be proved; when a question with regard to signature or writing of a document by a particular person arises.

vii) Proviso to Article 164, added in the year 2017, provides that the conviction based on modern devices and techniques may be lawful.

viii) The handwriting expert's opinion is only a relevant piece of evidence and not a conclusive proof of evidence to prove a fact.

xi) Under Section 510 Cr.P.C, any expert opinion may be used in any trial without calling the Government Chemical Examiner, Serologist, or the other expert as a witness in the court.

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20. **Lahore High Court**
Muhammad Manzoor @ Dani v. The State & another
Crl.Misc.No. 261-B of 2023
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC472.pdf

Facts: The petitioner on being unsuccessful in getting relief of post-arrest bail from the court of learned Additional Sessions Judge, through instant application entreats the same concession from this Court in case FIR, in respect of an offence under Section 9(1) 3(c) of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether juvenile accused of a major or minor offence is entitled to bail as matter of right?

ii) Whether bail of juvenile accused above 16 years involved in heinous offence can be denied?

iii) Whether a juvenile below the age of 16 years involved in heinous offence is entitled to bail as a matter of right?

Analysis: i) The reading of the sections of the Act of 2018 reflects that a juvenile i.e. (a person less than 18 years of age) accused of a major or minor offence, should be granted bail as of right and not by way of grace or concession unless it appears that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger.
ii) If the offence for which a juvenile is charged is a heinous offence, the juvenile may be declined bail provided he is more than 16 years of age.
iii) The sections 6(3) and 6(4) of the mentioned Act have different meanings and purposes. Section 6 (4) of the Act do not have an overlapping effect upon section 6(3) of the Act. In the present case, according to the Birth Registration Certificate, the petitioner prima facie, appears to be 13 years, 11-months and 15-days of age and thus, entitle to the concession given in the Act of 2018 to persons falling within the ambit of Section 6(3) of the Act Ibid.

Conclusion: i) A juvenile accused of a major or minor offence, should be granted bail as of right and not by way of grace or concession.
ii) The bail of juvenile accused above 16 years may be declined in heinous offences
iii) If a person is less than sixteen years of age then by virtue of section 6(3) of the Juvenile Justice System Act, 2018 he should be granted bail as of right and not by way of grace of concession.

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21. **Lahore High Court**
Maqbool Ahmed v. The State, etc.
Criminal Appeal No.32 of 2019
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC580.pdf

Facts: The respondent No.2 was acquitted of the charge under section 489-F PPC by the learned trial court. The appellant/complainant has assailed the judgment passed by the learned Magistrate 1st Class through this criminal appeal under Section 417 Cr.P.C.

Issues: i) Whether every transaction where a cheque is dishonoured may constitute an offence?
ii) Whether dishonesty on the part of the payer is a condition precedent in issuance of a cheque to constitute an offence under section 489-F PPC?
iii) How the term "obligation" can be defined?
iv) Whether dishonesty is a "state of mind" or it is a "course of action" in view of section 489-F PPC?
v) Whether words 'dishonestly' and 'fraudulently' are different in view of section 489-F PPC?

Analysis: i) Every transaction where a cheque is dishonoured may not constitute an offence, rather three elements are required for the applicability of section 489-F PPC (i)

cheque must be issued with dishonest intention or dishonestly, (ii) it should be for repayment of a loan or (iii) to fulfill an obligation.

ii) It is trite that to constitute an offence under this section dishonesty on the part of the payer is a condition precedent in issuance of a cheque towards repayment of loan or to fulfill an obligation.

iii) The popular meaning of the term "obligation" is a duty to do or not to do something. In its legal sense, obligation is a civil law concept. An obligation can be created voluntarily, such as one arising from a contract, quasi-contract, or unilateral promise. An obligation can also be created involuntarily, such as an obligation arising from torts or a statute. An obligation binds together two or more determinate persons. Therefore, the legal meaning of an obligation does not only denote a duty, but also denotes a correlative right; one party has an obligation means another party has a correlative right. The person or entity who was liable for the obligation is called obligor; the person or entity who holds the correlative right to an obligation is called obligee… The legal sense of obligation from early Roman law claims that obligations are the bond of vinculum juris, or legal necessity, between at least two individuals or parties. In the original sense, the idea of obligation referred only to the responsibility to pay any money outlined in the terms of specific written documents. Obligation is the moral or legal duty that requires an individual to perform, as well as the potential penalties for the failure to perform. An obligation is also a duty to do what is imposed by a contract, promise, or law.

iv) Dishonesty means a state of mind where an act is committed by a person with the intention of causing wrongful gain for himself, herself or another, or of causing wrongful loss to any other person. Dishonesty is an acquisitive offence but a crucial question is palpitated as to whether dishonesty is a "state of mind" or it is a "course of action" No law in Pakistan defines this difference so far as told to the court; therefore, seeking guidance from UK law which says that there were two views of what constituted dishonesty in English law. The first contention was that the definition of dishonesty (such as those within the Theft Act 1968) described a course of action, whereas the second contention was that the definition described a state of mind. A clear test within the criminal law emerged from R v Ghosh [1982] QB 1053. The Court of Appeal held that dishonesty is an element of mens rea, clearly referring to a state of mind, and that overall, the test that must be applied is hybrid, but with a subjective bias which "looks into the mind" of the person concerned and establishes what he was thinking… But this decision was criticized, and over-ruled, by the UK Supreme Court in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. The position as a result is that the court must form a view of what the defendant's belief was of the relevant facts. Hence the test for dishonesty was subjective and objective… From the above expression it is clear that two terms stand a part therefore, it is essential to prove dishonesty in issuing of cheque for the applicability of section 489-F PPC.

v) Section 489-F PPC finds mentioned the word 'dishonestly' and not the

'fraudulently' which is somewhat different concept yet both sometime are intermingled… Section 23 of PPC further defines that "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled. Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled. A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property… The above discussion is concluded in the terms that dishonesty is an acquisitive offence and in our law is a 'state of mind' (mens rea) and the fact that doer of an act knew of his act being dishonest (subjective test) is to be determined by the court from 'course of action' adopted for such act (objective test), depending upon the circumstances and evidence of the parties; therefore, it rests upon the Court to consider under which circumstances, the cheque was issued and what was the intention of the person issuing it.

Conclusion: i) Every transaction where a cheque is dishonoured may not constitute an offence, rather three elements are required for the applicability of section 489-F PPC (i) cheque must be issued with dishonest intention or dishonestly, (ii) it should be for repayment of a loan or (iii) to fulfill an obligation.
ii) Dishonesty on the part of the payer is a condition precedent in issuance of a cheque to constitute an offence under section 489-F PPC.
iii) The meaning of the term "obligation" is a duty to do or not to do something what is imposed by a contract, promise, or law.
iv) Dishonesty is a "state of mind" or it is a "course of action" in view of section 489-F PPC, for determination, the court must form a view of what the defendant's belief was of the relevant facts. Hence the test for dishonesty was subjective and objective.
v) Section 489-F PPC finds mentioned the word 'dishonestly' and not the 'fraudulently' which is somewhat different concept yet both sometime are intermingled.

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22. **Lahore High Court, Lahore**
M/S Fun Infotainment (Pvt.) Limited/Neo TV v. Pakistan Electronic Media Regulatory Authority And 2 Others
F.A.O No. 32274 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC9905.pdf

Facts: This appeal is filed under Section 30-A of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 against order passed by Pakistan Electronic Media Regulatory Authority, whereby fine is imposed upon petitioner.

Issues: i) When an order has been passed by the competent authority in exercise of its delegated powers, whether it would be considered as in violation of Section 8 (5) of the Ordinance, 2002?

ii) Which is the appropriate forum to decide that the contents as aired by Neo TV contained 'obscenity', 'indecency' or 'vulgarity'?

iii) Can the Courts take a lenient view regarding the person who admits his guilt and tenders apology, invoking the said apology as the mitigation circumstances?

Analysis: i) Section 8 (5) of the PEMRA Ordinance, 2002 requires that all the orders, determinations and the decisions of the Authority must identify the determination of Chairman and each member, separately. The Honourable Supreme Court of Pakistan in the case titled "Muhammad Ashraf Tiwana and Others v. Pakistan and Others"(2013 SCMR 1159) has clearly held that all the statutory authorities must discharge its functions and responsibilities conferred by the statute and the powers must be exercised personally, unless, the Authority is expressly allowed by law/statute to delegate his powers.Under section 13 of the PEMRA Ordinance, 2002, the Authority may, by general or special order, delegate to the Chairman or a Member or any member of its staff or an expert, etc. any of its powers, responsibilities or functions under this Ordinance subject to such conditions as it may prescribe by rules The Authority had delegated the powers to the Chairman of PEMRA in terms of Section 26 of the Ordinance, 2002.

ii) Courts are best suited for the job of upholding the rule of law and to provide a forum to resolve disputes and to test and enforce laws in a fair and rational manner.The Council of Complaints is the appropriate forum to address the issue that whether the contents as aired by the Appellant contained 'obscenity', 'indecency' or 'vulgarity'.

iii) Invariable in cases where a person admits guilt or misconduct, express remorse, tenders apology and assures not to repeat wrong or misconduct complained of, then the authority concerned and courts of law as well do take a lenient view of the matter but in case, charge or allegation is contested and is ultimately established, then such delinquent may lose sympathetic consideration or any leniency on the part of the authority or the Court.

Conclusion: i) An order passed by the competent authority in exercise of its delegated powers, would be considered in consonance with Section 8 (5) of the PEMRA Ordinance, 2002.

ii)The forum for determination the question as to the contents, which are aired by the Channel, is the 'Council of Complaint'.

iii) In case where the charges or allegations are also contested at the same time, then the delinquent losses sympathetic consideration and thus the apology will not operate as the mitigation circumstance.

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23. **Lahore High Court**
Muhammad Shareef deceased through LRs, etc. v. Muhammad Ramzan deceased through LRs, etc.
Civil Revision. No.192 of 2014
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC479.pdf

Facts: Through this petition under Section 115 of the Code of Civil procedure, 1908 the petitioners have assailed the judgment and decree passed by the learned District Judge, allowing appeal of the respondents against dismissal of their suit for declaration vide judgment and decree, passed by the learned Civil Judge, for being not maintainable.

Issues: i) Whether suit can be treated as an application under Section 12(2) of the CPC.?
ii) Whether it is necessary to frame issues and record evidence in every application under section 12(2) CPC?
iii) What is the period of limitation to file an application under Section 12(2) of the CPC?
iv) What is the procedure to be adopted by the Court while disposing of an application under Section 12(2) of the CPC?

Analysis i) A cursory reading of the plaint in the instant case, instituted by the plaintiffs-respondents specially alleged in their plaint shows that the decree impugned therein was obtained by fraud and the same could not deprive of the Court to its jurisdiction to decide it as an application under Section 12(2) of the CPC if otherwise such jurisdiction was available to the court under the law, therefore, the learned appellate court was justified in converting into/treating the suit to be an application under Section 12(2) of the CPC and no prejudice was caused to the petitioners- defendants.
ii) As regards direction of the appellate court to the Civil Court to frame issues, record evidence and thereafter decide the case afresh on merits, suffice it to say that it is not mandatory in every case to frame issue and record evidence for disposal of an application under Section 12(2) of the CPC.
iii) the period of limitation to file an application under Section 12(2) of the CPC is governed by Article 181 of the Limitation Act, 1908.(…) "A careful reading of the above provision clearly reveals that the period of limitation to file an application under Section 12(2) of the CPC would be three years, and the crucial starting point for the period of limitation would be when the right to apply accrues to the aggrieved applicant, which in case of an application under Section 12(2) of the CPC would be the date when the impugned decision based on fraud and concealment was passed. In case the aggrieved person has, by means of fraud, been kept from the knowledge of decision of the Court, he may then seek the extension of the commencing point of the period of limitation of three years from the date of the decision under Article 181 of the Act, to the date of knowledge of the said decision under Section 18 (supra)."
iv) Sub-section (3) of Section 12 of the CPC governs the procedure to be adopted

by the Court while disposing of an application under Section 12(2) of the CPC. (…) Prior to insertion of sub-section (3) in Section 12 of the Code through Punjab Act No. XIV of 2018 dated 20.03.2018, no procedure was prescribed for the disposal of an application under Section 12(2) of the Code, however, in cases where the determination of allegations of fraud and misrepresentation involved investigation into the question of fact, inquiry was ordinarily held to adjudicate upon the matter by framing an issue and recording evidence while invoking the provision of Section 141 of the Code. It was, however, held in various judgments of the apex Court to be not mandatory to frame issues and record evidence for the disposal of an application under Section 12(2) of the Code as the court had to regulate its proceedings keeping in view nature of the allegations made in the application and adopt such mode as was in consonance with justice in the facts and circumstances of the case.

Conclusion: i) The suit can be converted into/treated to be an application under Section 12(2) of the CPC.
ii) It is not mandatory in every case to frame issue and record evidence for disposal of an application under Section 12(2) of the CPC.
iii) The period of limitation to file an application under Section 12(2) of the CPC would be three years, which is governed by Article 181 of the Limitation Act, 1908.
iv) Sub-section (3) of Section 12 of the CPC governs the procedure to be adopted by the Court while disposing of an application under Section 12(2) of the CPC.

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24. **Lahore High Court**
Muhammad Arif v. Fouzia Nasreen, etc.
W.P. No.30491 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC556.pdf

Facts: Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") the petitioners have assailed the judgment and decree passed by the learned Judge Family Court, whereby suit for dissolution of marriage, recovery of maintenance and dowry articles instituted was partially decreed.

Issues: i) How the jurisdiction of family courts is determined with reference to the maintenance claim?
ii) If the cause of action arose in abroad, whether the family court in Pakistan has the jurisdiction over the matter of maintenance?

Analysis: i) In terms of Article 175(2) of the Constitution, no court has any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. Jurisdiction of the Family Court to entertain, hear and adjudicate upon matters specified in Part I of the Schedule to the Family Courts Act, 1964 ('Act') is

governed by Section 5 of the Act. The matters specified in the Schedule to the Act include maintenance as Item No.3. On matters specified under the Act, Rule 6 of the Family Court Rules, 1965 governs territorial jurisdiction of a Family Court. In terms of Rule 6 ibid, the Family Court which has jurisdiction to try a suit for maintenance is the one within the local limits of which the cause of action wholly or in part has arisen, or where the parties reside or last resided together.

ii) If the parties resided in abroad and the cause of action arose there, then the courts over there could exercise jurisdiction over the matter of maintenance and the suit is not maintainable in Pakistan.

Conclusion: i) In terms of Rule 6 of the Family Court Rules, 1965, the Family Court has jurisdiction to try a suit for maintenance within the local limits of which the cause of action wholly or in part has arisen, or where the parties reside or last resided together.

ii) The family court in Pakistan has not the jurisdiction over the matter of maintenance if the cause of action arose in abroad.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No. PAP/Legis-2(125)/2021/99, dated 17.02.2023 amendments in clauses of sections 2, 5, 6, 7, 8, 10, 11, 12, 13, 17, 22, 23, 24, 27, 28, 31, 32 and in Schedule and insertion of sections 20-A, 20-B, 21-A, 21-B, 21-C, 21-D, 28-A of the Punjab Shops and Establishments Ordinance, 1969 have been made.
2. Vide Notification No. PAP/Legis-2(146)/2022/108, dated 17.02.2023 amendments in sections 2, 25, 30, 32, 34 and in First Schedule of the Provincial Motor Vehicles Ordinance, 1965 have been made.
3. Vide Notification No. PAP/Legis-2(140)/2021/105, dated 17.02.2023 amendment in section 15 of the Punjab Pension Fund Act, 2007 has been made.
4. Vide Notification No. PAP/Legis-2(139)/2021/104, dated 17.02.2023 amendment in section 9 of the Punjab General Provident Investment Fund Act, 2009 has been made.
5. Vide Notification No. PAP/Legis-2(106)/2021/101, dated 17.02.2023 amendment in section 16 of the Punjab Urban Immovable Property Tax, 2003 has been made.
6. Vide Notification No. PAP/Legis-2(136)/2021/102, dated 17.02.2023 amendment in section 8 of the Punjab Finance Act, 2014 has been made.
7. Vide Notification No. PAP/Legis-2(132)/2021/103, dated 17.02.2023 amendment in section 9 of the Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974 has been made.
8. Amendments of sections 2, 3, 4, 6, 7, 11, 12, 15, 17, 22, 24, 25 and Schedule-I, substitution of section 8 and 21 and insertion of 21-A and 24-A in the Punjab Alternate Dispute Resolution Act, 2019 have been made.

9. Vide Order No. SO (IS-II)1-1/2004 of the Home Department, Government of the Punjab dated 20.02.2023 prohibition/ban has been imposed on "usage of rough papers including newspapers having holy words/verses imprinted on them for wrapping/packaging and preserving the commodities in any form".
10. Vide Notification No. F. 22(38)/2023-Legis., dated 11.01.2023 amendments in long title, preamble, clauses a, b, c, d, of section 2 and insertion of section 20-A in the Public Procurement Regulatory Authority Ordinance, 2002 have been made.
11. Vide Notification No. F. 9(3)/90-Admin/FSC dated 10.02.2023, substitution of word in Rule 3 (1) (b), Chapter-1 of the Federal Shariat Court (Procedure) Rules, 1981 has been made.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Sociology-and-Law-Interface-An-Analysis

Sociology and Law Interface: An Analysis by Himanshu Ratre

Sociology, when we think about sociology one word always strikes in our mind i.e. society, and we know that studies about society is known as sociology. Law, when we talk about the law it is related to a set of rules and regulations for society. In this article, we will discuss about the interconnection and link between society and law. To know the link between this two, first of all, we have to know the definitions of these both terms.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Critical-Analysis-of-Statutory-Framework-of-Indemnity-Contracts

Critical Analysis of Statutory Framework of Indemnity Contracts by Prerita Bhardwaj

Indemnity refers to a situation in which a person suffers a loss and that loss is reimbursed or paid by another. Loss has always been a component of our life. It is natural that loss occurs and that rules for redressing it have existed for a long period of time. A person may suffer a loss in a variety of ways; it may be to his person or to his possessions. Indemnity is a legal principle, expressed in the form of a contract or referenced as a provision in business contracts, in which a party undertakes to compensate the indemnified party for damages incurred as a consequence of the promisor's or any third party's actions. By 1872, English law on contractual indemnities was quite developed. The common law courts had established the fundamental character of the claim for indemnification. Courts of equity also have the authority to enforce indemnification contracts. Insofar as it followed then-prevailing English law on indemnities, the Act was weak in certain areas and ahead of its time in others. For example, the Act makes no reference to the promisor's rights. It is startling to note that the 'contract of indemnification,' a

critical and often used instrument in the commercial world, is covered by just two provisions of the Indian Contract Act 1872, namely sections 124 and 125. This concept's statutory framework seems to have a number of flaws and inadequacies. This article attempts to address these shortcomings as well as propose corrective solutions to help rectify these deficits.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Right-to-Apply-for-Winding-Up-Devas-Multimedia-vs-Antrix-Corporation

Right to Apply for Winding Up: Devas Multimedia vs Antrix Corporation by Simant Tyagi

A company is said to be in the stage of winding up when its assets are acquired and sold in order to settle its debts. Debts, expenses, and charges are initially paid off and distributed among the shareholders when a company is wound up. A firm is formally dissolved and ceases to exist when it is liquidated. It is a legal procedure to shut down a business and stop all activities. When a company is wound up, its existence comes to an end, and its assets are managed to protect the interests of its stakeholders. According to Pennington, "Winding up or liquidation is the process by which the management of a company's affairs is taken out of its director's hand, its assets are realized by a liquidator, and its debts and liabilities are discharged out of the proceeds of realization and any surplus of assets remaining is returned to its members or shareholders. At the end of winding up the company will have no assets or liabilities, and will therefore be simply a formal step for it to be dissolved, that is its legal personality as a corporation to be brought to an end."

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Fraud-as-a-Ground-for-Arbitrability-Demystifying-the-Evolved-Jurisprudence

Fraud as a Ground for Arbitrability: Demystifying the Evolved Jurisprudence by Dhairya Kumar

With the changing legal scenario, there has been a rise in the use of arbitration to settle disputes due to a surge in business transactions and the parties' desire to promptly settle disputes in a private setting. Determination of subject matter of arbitrability is a crucial aspect. It means 'capability of a dispute or classes of disputes that can be settled by an arbitrator'. The question of the arbitrability of fraud is a contentious one. The Arbitration and Conciliation Act 1996 does not expressly bar the arbitrability of fraud. The amendments made in 2015 and 2019 have provided little light on this issue. In such a scenario, interpreting the jurisprudence based on several case laws becomes very crucial. In legal terminology, arbitrability is determined based on the nature of the rights involved.

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11572-023-09657-9

Against the Evidence-Relative View of Liability to Defensive Harm by Eduardo Rivera-López & Luciano Venezia

According to the evidence-relative view of liability to defensive harm, a person is so liable if and only if she acts in a way that provides sufficient evidence to justify a (putative) victim's belief that the person poses a threat of unjust harm, which may or may not be the case. Bas van der Vossen defends this position by analyzing, in relation to a version of Frank Jackson's famous drug example, a case in which a putative murderer is killed by a putative victim. Van der Vossen submits that the putative murderer is liable to be killed, which is a verdict that can be accommodated only by the evidence-relative view. We argue that Van der Vossen's attempt to ground the evidence-relative view of liability to defensive harm fails. We also argue that this notion should be construed in fact-relative terms. This, however, does not mean that the notion of permissibility should necessarily also be understood in such a way in all possible cases. So, we explore whether the evidence-relative view of permissibility may be used in some contexts.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-03-2023 to 15-03-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Federal Public Service Commission, Islamabad & another v.
Dr. Shahid Hanif.
Civil Appeal No. 64 of 2022
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._64_2022.pdf

Facts: The respondent applied for the post, appeared and qualified the test conducted by Federal Public Service Commission (FPSC). On scrutiny of documents, he was found deficient in the post qualification experience. The respondent's claim to count his experience prior to degree in Public Health was not accepted and his representation was dismissed by FPSC. He filed review application which was also rejected. The first appeal filed by the respondent was allowed. Hence, the appellants filed this civil appeal, with leave of the Court, against the judgment passed by Islamabad High Court.

Issues: i) What does the phrase "Post Qualification Experience" mean?
ii) Whether while applying the schedule appended to Rules in SRO No.1138(I)/2014, the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 can be ignored?

Analysis: i) The genus of Post qualification experience deduces the experience and proficiency which is gained after achieving the specific degree/education in order to meet the qualifying standards for the selected vacancy or job with the characteristics and attributes of ability, suitability and fitness of a person to perform a particular job or task with excellence. In fact it depends on the fine sense of judgment of requisitioning authority to structure the yardstick of required qualification for the post and no relaxation can be claimed in the criteria fixed for the post qualification experience.
ii) The learned High Court discarded the condition of post experience qualification as mentioned in Rule 12 of the APT Rules, 1973 as well as the advertisement published for inviting applications mainly on the ground that in SRO No.1138(I)/2014, no such condition was mentioned in the schedule for post qualification experience which was not correct advertence and appreciation to the applicable rules, on the contrary, it is clearly manifesting while appreciating the relevant rules in entirety or in conjunction… It was further held by the learned High Court that the proviso to Rule 12 will only come in field where the method of appointment does not provide the qualification and other conditions and since in the year 2014 the Rules were promulgated but through the aforesaid SRO with specific qualification and experience, hence the proviso attached to the schedule of the APT Rules, 1973 will not be applicable. In fact, the learned High Court mainly focused on the schedule appended to Rules in the aforesaid SRO of 2014 but failed to consider that this schedule is corresponding to the requirement of qualification, experience and age limit for initial appointment as prescribed in Rule 4 ibidem in which experience means the "experience gained in a regular full-

time paid job after obtaining the required qualification".

Conclusion: i) Post qualification experience means the experience and proficiency which is gained after achieving the specific degree/education in order to meet the qualifying standards.
ii) While applying the schedule appended to Rules in SRO No.1138(I)/2014, the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 cannot be ignored because schedule is corresponding to Rules, 1973.

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2. **Supreme Court of Pakistan**
The Collector of Sales Tax and Central Excise, Lahore v.
M/s Qadbros Engineering (Pvt) Ltd., Lahore
Civil Petition No.409-L of 2021
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._409_l_2021.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by the learned Lahore High Court, Lahore whereby the sales tax appeal filed by the petitioner was dismissed.

Issues: i) What does term sister concern means?
ii) When a company is deemed to be a subsidiary of another company?
iii) When the corporate veil of a company can be lifted?
iv) What is presumptive tax regime?
v) What is scope of jurisdiction of High court u/s 47 of Sales Tax Act, 1990?

Analysis: i) There is no definition of "sister concern" either in the repealed Companies Ordinance, 1984 or the present Companies Act, 2017, but this turn of phrase basically delineates two or more distinct businesses or ventures owned by one and the same conglomerate but such undertakings/concerns do not have any link or nexus with the operations of each other's business with the exception of conjoint ownership but legally or financially are not related to each other despite its affiliation with another company with a separate identity and workforces.
ii) A company is deemed to be a subsidiary of another, the holding company, if the latter holds a majority of its voting rights; is a member of it and has the right to appoint or remove a majority of board of directors; or is a member of it and controls alone (under an agreement with other members) a majority of its voting rights. A company is also deemed to be a subsidiary of another if it qualifies as a subsidiary of a subsidiary of the holding company. A "wholly-owned subsidiary" is one whose shares are exclusively owned by a holding company, its wholly owned subsidiaries and the nominees of either.
iii) It is true that occasionally the corporate veil of a company is pierced through in order to find out the substance but that is only where it is permitted by a statute or in exceptional cases of fraud. It is well-settled that, in a suitable case, the court can lift the corporate veil where the companies share the relationship of a holding

company and a subsidiary company and also to pay regard to the economic realities behind the legal facade. The modern tendency is where there is identity and community of interest between companies in the group, especially where they are related as holding company and wholly owned subsidiary or subsidiaries, to ignore their separate legal entity and look instead at the economic entity of the whole group tearing of the corporate veil.

iv) The presumptive tax regime in fact denotes that the tax so deducted or paid is treated as a final discharge of tax liability whereas the production capacity is reckoned by the Department according to the notified and applicable sales tax rates visà-vis the production as per comparative past and present physical production data including the machine ratings. Presumptive tax regime predominantly encompasses the usage of indirect means to determine tax liability, which diverges from the normal rules founded on the taxpayer's accounts to indicate a legal presumption that the tax liability is not less than the amount occasioning from the application of the indirect method.

v) Prior to the amendment made through Finance Act 2005, (assented on 29.6.2005), a right of appeal was provided which was later amended to a remedy of filing Reference. In both the scenario, the jurisdiction of High Court was and is strictly confined to answering questions of law which is evident from plain reading of original and amended Section 47 of the Sales Tax Act 1990 and obviously, the source of question must be the order of the Tribunal. The elementary characteristic of this jurisdiction is that it has been conferred to deal only with questions of law and not questions of fact. When we talk of a question of law, it connotes a tangible and substantial question of law on the rights and obligations of the parties founded on the decision of the Tribunal.

Conclusion: i) Term sister concern delineates two or more distinct businesses or ventures owned by one and the same conglomerate but such undertakings/concerns do not have any link or nexus with the operations of each other’s business with the exception of conjoint ownership but legally or financially are not related to each other despite its affiliation with another company with a separate identity and workforces.

ii) A company is deemed to be a subsidiary of another, the holding company, if the latter holds a majority of its voting rights; is a member of it and has the right to appoint or remove a majority of board of directors; or is a member of it and controls alone (under an agreement with other members) a majority of its voting rights.

iii) In a suitable case, the court can lift the corporate veil where the companies share the relationship of a holding company and a subsidiary company and also to pay regard to the economic realities behind the legal facade.

iv) The presumptive tax regime in fact denotes that the tax so deducted or paid is treated as a final discharge of tax liability whereas the production capacity is reckoned by the Department according to the notified and applicable sales tax rates visà-vis the production as per comparative past and present physical

production data including the machine ratings.
v) The elementary characteristic of High court u/s 47 of Sales Tax Act, 1990 is that it has been conferred to deal only with questions of law and not questions of fact.

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3. **Supreme Court of Pakistan**
Shaukat Ali v. State Life Insurance Corporation of Pakistan through its Chairman and another
Civil Petition No.1743 of 2020
Mr. Justice Qazi Faez Isa, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1743_2020_03032023.pdf

Facts: Through this petition, the petitioner assailed the order of Federal Service Tribunal, whereby, his miscellaneous application was dismissed on the point of its belated filing despite the fact that the petitioner had a good case.

Issues: i) Whether honourable (or honorable) is to be used as an honorific or prefix with inanimate objects and institutions, including all courts?
ii) Whether Judges may be referred to as honourable (or the abbreviated hon'ble) or learned?

Analysis: i) The Constitution of the Islamic Republic of Pakistan ('the Constitution') refers to this Court as the Supreme Court and to the High Courts as High Courts. The Constitution also does not use any prefix or honorific before these courts nor uses the terms August or Apex for the Supreme Court. It serves us best when we use the language of the Constitution with regard to institutions mentioned therein. Those whose vocation requires proper use of language should strive for accuracy, and for advocates and judges the preference should be to use the language of the Constitution. In the birthplace of the English language, the Supreme Court and High Courts are neither referred to as honourable or learned. The British Parliament, which is referred to as the mother of parliaments, is also not referred to as honourable. However, members of the British Parliament are referred to as Right Honourable. Usage of the honorific 'honourable' with inanimate institutions, like courts, is linguistically inappropriate. Therefore, our understanding that honourable (or honorable) is not to be used as an honorific or prefix with inanimate objects and institutions, including all courts, stands confirmed.
ii) Judges may be referred to as honourable (or the abbreviated hon'ble) or learned. Any use of language that is respectful and concise is sufficient. However, it is irksome when these honorifics and Sir are used profusely; which we have invariably found to serve as a substitute for meaningful arguments.

Conclusion: i) Honourable (or honorable) is not to be used as an honorific or prefix with inanimate objects and institutions, including all courts.
ii) Judges may be referred to as honourable (or the abbreviated hon'ble) or

learned.

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4. **Supreme Court of Pakistan**
Director Military Lands & Cantonment Quetta Cantt Quetta and another v. Aziz Ahmed and others.
C.P.L.A. No. 211 -Q of 2017 and C.P.L.A. No. 5070 of 2017
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._211_q_2017.pdf

Facts: Through these petitions the petitioners have sought leave under Article 185(3) Constitution of the Islamic Republic of Pakistan, 1973 against the judgment passed by the High Court of Balochistan Quetta.

Issues: i) Whether constitutional jurisdiction can be exercised to resolve factual controversy?
ii) Whether Cantonment Board can transfer the property vested in it?
iii) Whether Government may resume the land granted to Cantonment Board?
iv) Whether Cantonment Board has authority to change the classification of land?
v) Whether new rights can be created through declaration issued by the court?
vi) Whether resolution passed by the Cantonment Board confers any right in favour of some one?

Analysis: i) It is a settled proposition of law that constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot be exercised to resolve the factual controversies.
ii) Under Rule 8 the Cantonment Board cannot transfer the property vested in it except with the previous sanction of the Government and in such manner on such terms and conditions as the Government may approve.
iii) Rule 9 governs the provisions of leasing of Cantonment Property which also provides that no Class "C" land should be leased out or otherwise alienated by the Board save in accordance with such orders as the Government may issue in this behalf. If in the opinion of the Government, Board is not using for the object for which the land was granted to the Board or in the opinion of the Government any breach of the conditions on which it was transferred or the land is required for a public purpose, the Government may resume the land under Rule 7.
vi) The Cantonment Board has no independent and exclusive authority to change the classification of the land, its lease or transfer, except with the previous approval of the Federal Government.
v) Through a declaration in civil matters claimed under section 42 of the Specific Relief Act a pre-existing right can be declared and a new right cannot be created by grant of a decree by the civil court. Same is the position here, the learned High Court under the Constitutional Jurisdiction vested in it under Article 199 can declare a pre-existing right and no new right can be created through a declaration issued under Article 199.
vi) Resolution passed by the Cantonment Board does not create or confer any

right in favour of any person unless the same were approved by the Government as the same were relating to the transfer of rights in the property vested in the Government under the administrative control of the Cantonment Board.

Conclusion: i) Constitutional jurisdiction cannot be exercised to resolve factual controversy.
ii) Cantonment Board cannot transfer the property vested in it except with the previous sanction of the Government.
iii) Yes, Government may resume the land granted to Cantonment Board.
iv) Cantonment Board has no authority to change the classification of land.
v) New rights cannot be created through declaration issued by the court.
vi) Resolution passed by the Cantonment Board does not confer any right in favour of someone unless approved by the Government.

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5. **Supreme Court of Pakistan**
Irfan Azam and others v. Mst. Rabia Rafique and others
C.M.A.No. 649-L of 2021 in Civil Review Petition No. Nil of 2021 in CPL.A. No. 1719-L of 2020.
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._649_l_2021.pdf

Facts: The civil petition of the petitioners after hearing their full arguments was dismissed by the Supreme Court. The petitioners filed this application through another counsel under Rule 6 of Order XXVI read with Order XXXIII Rule 6 of the Supreme Court Rules, 1980 for entertaining the review petition and for permission to file and argue the case on the ground that previous counsel has lost the confidence of the petitioners.

Issues: Whether loss of confidence of the party in the counsel can be a ground under rule 6 of order XXVI of the Supreme Court Rules, 1980 for changing the counsel to file and argue the review petition?

Analysis: In the light of the law already enunciated by this Court, neither are therein the instant case any compelling circumstances to change the counsel nor the circumstances are unavoidable as the previous counsel is also available and in the first certificate given by the said counsel the ground taken by the said counsel that the party has lost confidence in the said counsel and they want to change the said counsel is hardly a ground to allow the substitution of a counsel at the review stage. If permission is liberally granted, it would not only be against the said rules but would make the rule redundant and would further lead to endless litigation.

Conclusion: Loss of confidence of the party in the counsel is not a ground under rule 6 of order XXVI of the Supreme Court Rules, 1980 for changing the counsel to file and argue the review petition.

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6. **Supreme Court of Pakistan**
State Life Insurance Corporation & another v. Mst. Razia Ameer & another
Civil Appeal No.929 of 2017 & C.M.A.No.1708 of 2019
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._929_2017.pdf

Facts: This direct appeal is of the insurer and challenges the cogency of the judgment of the first Appellate Court, which is at variance with the judgment of the Insurance Tribunal.

Issues: Whether the legal heirs of the assured person are entitled to claim liquidated damages under Section 118 of the Insurance Ordinance, 2000?

Analysis: The Insurance Tribunal, Punjab, declined to grant liquidated damages mainly on two grounds. The first was that the revised contract entered into between the insurer and the Provincial Welfare Board, Punjab did not contain a clause for liquidated damages. It appears that the Insurance Tribunal, Punjab, while returning this finding did not consider Section 118 of the Insurance Ordinance, 2000, which provides that payment of liquidated damages on late settlement of claims shall be an implied term of every contract of insurance. This omission was noted by the first Appellate Court and thus, held that on completion of all formalities, if the claim is not satisfied/cleared within ninety days without any fault of the claimant when it becomes due, then, under the implied term of every contract of insurance the liquidated damages must be granted. We are of the view that the findings of the first Appellate Court does not suffer from any legal infirmity and are accordingly sustained. The other reason which dissuaded the Insurance Tribunal to grant the application filed by respondent No.1 under Section 122 of the Insurance Ordinance, 2000 was that since the assured person was not a party to the group insurance contract, his legal heirs had no standing to claim liquidated damages. This understanding was inconsistent with the scheme of group insurance and the provision of law applicable thereto, and thus, the first Appellate Court rightly repelled it with the observation that group insurance is designed to provide monetary benefits to the family of the assured person; particularly, if the assured person has not defaulted in payment of premium amount.

Conclusion: The legal heirs of the assured person are entitled to claim liquidated damages under Section 118 of the Insurance Ordinance, 2000.

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7. **Supreme Court of Pakistan**
Director General, Intelligence Bureau v. Riaz-ul-Wahab another & Surkharu Khan & another
CP 3449 & 3450 of 2022 & CP 3447 & 3448 of 2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3447_2022.pdf

Facts: The petitioner seeks leave to appeal against four judgments of the Federal Service Tribunal, whereby the Tribunal, while allowing the appeals of the respondents, has expunged the adverse remarks recorded by the Countersigning Officer in their Performance Evaluation Reports ("PERs") of certain periods and restored the assessment of their performance made by the Reporting Officers.

Issues: What are the requirements for a Countersigning officer, if he/she intends to record adverse remarks in the "PER" of an officer by disagreeing with the assessment of his Reporting officer?

Analysis: The evaluation of the performance of a subordinate officer by his Reporting or Countersigning Officer, primarily being a matter of personal assessment based on the direct observation of the work of the officer concerned, is not to be usually interfered with by the Tribunal or this Court unless malafide with full particulars, or the gross violation of the instructions, on the part of the Reporting or Countersigning Officer, as the case may be, is shown. In the present case, the Tribunal has interfered with and expunged the remarks recorded by the Countersigning Officer mainly on the ground of gross violation of the instructions on the subject of recording adverse remarks in PERs. According to relevant instructions, as a general rule, an officer is to be apprised, if his Reporting or Countersigning Officer is dissatisfied with his work, and the communication of such dissatisfaction with advice or warning should be prompt so that the officer may eradicate the fault and improve his performance. That is why it is emphasised that the Reporting or Countersigning Officers should not ordinarily record adverse remarks as to the performance of an officer without prior counselling. They are thus expected to apprise the officer concerned about his weak points and advise him how to improve, and to record the adverse remarks in the PER when the officer fails to improve despite counselling. The supervisory officers under whose supervision other officers work must realise that the supervision does not mean cracking the whip on finding a fault in their performance, rather the primary purpose of the supervision is to guide the subordinate officers in improving their performance and efficiency, and that their role is more like a mentor rather than a punishing authority. As the purpose of counselling is to improve the performance of the officer and not to insult or intimidate him, the supervisory officers are also to see, having regard to the temperament of the officer concerned, whether the advice or warning given orally or in written form, or given publicly in a general meeting of the officers or privately in a separate meeting with the concerned

officer only, would be beneficial for the officer in improving his performance. The directions contained in the instructions, in this regard, on paying great attention to the manner and method of communicating advice or warning should be adhered to. It must also be pointed out that such guidance, through counselling, for improving the performance and efficiency of a subordinate officer, can ultimately benefit the organization as it enables identifying and addressing performance issues before they become major problems, thereby, leading to increased productivity and better performance so that the organization's goals and objectives are effectively achieved.

Conclusion: First, the Countersigning officer must give reasons for his disagreement with the evaluation of the Reporting officer and secondly, he must do counselling of the officer by pointing out his shortcomings and advising him how to improve them. If the officer fails to improve despite counselling, then he may record adverse remarks in his PER.

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8. **Supreme Court of Pakistan**
Aqil v. The State
Jail Petition No. 553 of 2017
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/j.p._553_2017.pdf

Facts: Through this jail petition, the petitioner assailed the judgment of learned High Court, whereby, the learned High Court while maintaining the conviction of the petitioner under Section 302(b) PPC, altered the sentence of death into imprisonment for life on two counts, the amount of compensation and the sentence in default whereof was also maintained and benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioner.

Issues: i) Whether promptness of FIR shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation?
ii) Whether the evidence of a witness can be discarded merely because he happens to be a related witness?
iii) Where ocular evidence is found trustworthy and confidence inspiring, whether the same is given preference over medical evidence?
iv) Whether minor discrepancies, if any, in medical evidence relating to nature of injuries negate the direct evidence?
v) Whether the term 'discrepancy' has to be distinguished from 'contradiction'?

Analysis: i) Promptness of FIR shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation.
ii) The term "related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"." In the present case,

the eye witnesses, one of whom was an injured eye-witness have spoken consistently and cogently in describing the manner of commission of the crime in detail. The testimony of an injured eyewitness carries more evidentiary value. The Court is not persuaded that their evidence is to be discarded merely because they happen to be related witnesses.

iii) The medical evidence available on the record further corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the person of the deceased and injured is concerned. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused.

iv) It is settled principle of law that the value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain the conviction. Minor discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where accused caused injuries. It becomes highly improbable to correctly mention the number and location of the injuries with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence.

v) We may point out that 'discrepancy' has to be distinguished from 'contradiction'. Contradiction in the statement of the witness is fatal for the prosecution case whereas minor discrepancy or variance in evidence will not make the prosecution case doubtful. It is normal course of the human conduct that while narrating a particular incident there may occur minor discrepancies. Parrot-like statements are always discredited by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounts to contradiction, regard is required to be made to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witnesses were making the statement. There are always normal discrepancies, howsoever, honest and truthful a witness may be. Such discrepancies are due to normal errors of observation, memory due to lapse of time and mental disposition such as shock and horror at the time of occurrence. Material discrepancies are those which are not normal and not expected of a normal person.

Conclusion: i) Promptness of FIR shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation.

ii) The evidence of a witness cannot be discarded merely because he happens to be a related witness.

iii) Where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence.

iv) Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence.

v) The term 'discrepancy' has to be distinguished from 'contradiction'.

9. **Supreme Court of Pakistan**
National Highway Authority through its Chairman, Islamabad v.
M/s Sambu Construction Co. Ltd. Islamabad, etc.
Civil Petition No.3767 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3767_2023.pdf

Facts: The parties referred the matter to the arbitrators; one nominated by each party. The arbitrators awarded amount along with interest. The civil court decreed the said amount without interest and executed the decree. Petitioner filed an FAO against the order of the civil court, which was dismissed by the Islamabad High Court against which the instant petition has been filed by the petitioner.

Issues: i) What are the grounds for challenging the arbitration award?
ii) What is scope of judicial review of award announced by arbitrators?
iii) What does misconduct of arbitrators means?

Analysis: i) The grounds for challenging an Award are very limited. There are three broad areas on which an arbitration Award is likely to be challenged i.e. firstly, jurisdictional grounds (non-existence of a valid and binding arbitration agreement); secondly, procedural grounds (failure to observe principles of natural justice) and thirdly, substantive grounds (arbitrator made a mistake of law).
ii) There is a limited scope of judicial review of the 'Award' announced by an Arbitrator. An arbitration Award is a final determination of the dispute between the parties. The review of an arbitration Award cannot constitute a re-assessment or reappraisal of the evidence by the court. An over-intrusive approach by courts in examination of the arbitral Awards must be avoided. The court is not supposed to sit as a court of appeal and must confine itself to the patent illegalities in the Award, if any. The jurisdiction of the Court under the Act is supervisory in nature. Interference is only possible if there exists any breach of duty or any irregularity of action which is not consistent with general principles of equity and good conscience. The arbitrator alone is the judge of the quality as well as the quantity of the evidence. He is the final arbiter of dispute between the parties. He acts in a quasi-judicial manner and his decision is entitled to utmost respect and weight. By applying the afore-noted principles of law on the subject and considering the petitioner's objections within the limited scope of court's jurisdiction in testing the validity of Award this court is not supposed to sit as a court of appeal and make a roving inquiry and look for latent errors of law and facts in the Award. The arbitration is a forum of the parties' own choice its decision should not be lightly interfered by the court, until a clear and definite case within the purview of the section 30 of the Act is made out.
iii) A misconduct of an Arbitrator in the judicial sense means failure to perform his essential duty or any conduct inconsistent with his duties, resulting in substantial miscarriage of justice between the parties.

Conclusion: i) There are three broad areas on which an arbitration Award is likely to be challenged. i.e. firstly, jurisdictional grounds; secondly, procedural grounds and thirdly, substantive grounds.
ii) The grounds for challenging an Award are very limited. The arbitration is a forum of the parties' own choice its decision should not be lightly interfered by the court, until a clear and definite case within the purview of the section 30 of the Act is made out.
iii) A misconduct of an Arbitrator in the judicial sense means failure to perform his essential duty or any conduct inconsistent with his duties, resulting in substantial miscarriage of justice between the parties.

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10. **Supreme Court of Pakistan**
Ali Taj Afzaar @ Afzaal v. The State
Jail Petition Nos. 255 & 272 of 2018
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/j.p._255_2018.pdf

Facts: Petitioners were tried by the learned Anti-Terrorism Court, pursuant to a case registered under Sections 302/324/353/186/341/394/224/225/427/34 PPC read with Section 7 of the Anti-Terrorism Act, 1997 for committing murder and for causing injuries. The learned Trial Court vide its judgment convicted the petitioners. In appeal the learned High Court maintained the convictions and sentences awarded to the petitioners by the learned Trial Court.

Issue: i) Whether the testimony of police officials is reliable?
ii) How the process of Identification Parade shall be carried out in each case?
iii) Whether ocular evidence should be given preference over medical evidence?
iv) Whether minor discrepancies in medical evidence relating to nature of injuries negate the direct evidence?
v) Whether the requirement of corroborative evidence is rule of law?
vi) What is the requirement to be considered by the court while appreciating the evidence of a witness?

Analysis: i) This Court in a number of judgments has held that testimony of police officials 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 statement of official witnesses, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimonies remain un-shattered during cross-examination.
ii) Process of identification parade has to be essentially carried out having regard to the exigencies of each case in a fair and non-collusive manner and such exercise is not an immutable ritual, inconsequential non-performance whereof,

may cause failure of prosecution case, which otherwise is structured upon clean and probable evidence. Reliance is placed on Tasar Mehmood Vs. The State (2020 SCMR 1013).

iii) It is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused. Reliance is placed on Muhammad Iqbal Vs. The State (1996 SCMR 908), Naeem Akhtar Vs. The State (PLD 2003 SC 396), Faisal Mehmood Vs. The State (2010 SCMR 1025) and Muhammad Ilyas Vs. The State (2011 SCMR 460).

iv) It is settled principle of law that the value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain the conviction. Casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse effect on prosecution case.

v) Requirement of corroborative evidence is not of much significance and same is not a rule of law but is that of prudence.

vi) It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored.

Conclusion: i) Police officials are as good witnesses as private witnesess and could be relied upon, if their testimonies remain un-shattered during cross-examination.

ii) Process of identification parade has to be essentially carried out having regard to the exigencies of each case in a fair and non-collusive manner.

iii) If ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence.

iv) Minor discrepancies in medical evidence relating to nature of injuries do not negate the direct evidence.

v) Requirement of corroborative evidence is not rule of law.

vi) 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.

11. **Supreme Court of Pakistan**
Rao Abdul Rehman (deceased) through legal heirs v.
Muhammad Afzal (deceased) through legal heirs and others
Civil Petition No.1133-L of 2016
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1133_l_2016.pdf

Facts: The petitioner instituted a civil suit for declaration with an alternate prayer for decree of specific performance of an agreement to sell and trial Court decreed the suit to the extent of declaration, but declined the relief of specific performance of the alleged agreement. The respondents filed an Appeal which was accepted by the Appellate Court and as a consequence thereof, the judgment of the Civil Court was set aside. Being aggrieved, the petitioner filed a Civil Revision in the High Court which was dismissed. Petitioners have assailed the said judgment through this petition.

Issues: i) Whether a contract for sale of immovable property itself, create any interest in or charge on such property?
ii) Whether Court can make any declaration where the party, being able to seek further relief than mere declaration of title, omits to do so?
iii) Whether on the basis of a sale agreement, any legal character or right can be established?
iv) What are criteria for exercising the discretion while decreeing the suit for specific performance of contract?
v) Whether time is of the essence of the contract when no specific date is fixed for performance of agreement?
vi) Whether an agreement to sell pertaining to immovable property which is not signed by one of the parties is enforceable in law?
vii) Whether judgments of Supreme Court operate prospectively?
viii) Whether "consensus ad idem" is one of the conditions to constitute a valid contract?
ix) Whether Court can make out a contract for the parties when an effective and enforceable contract is not structured?
x) In case of inconsistency between the Trial Court and the Appellate Court, the findings of which court can be given preference in the absence of any cogent reason to the contrary?

Analysis: i) According to Section 54 of the Transfer of Property Act 1882, "sale" means the transfer of ownership in exchange for a price paid or promised or part paid and part promised which is made in the case of tangible immovable property of the value of one hundred rupees and upwards or in the case of a reversion or other intangible thing, can be made only by a registered instrument with further rider that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties but it does not, of

itself, create any interest in or charge on such property.

ii) Whereas under Section 42 of the Specific Relief Act 1877, a person entitled to any legal character or to right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief, but according to the attached proviso, no Court shall make any such declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. The expression "legal character" has been understood to be synonymous with the expression status. A suit for mere declaration is not permissible except in the circumstances mentioned in Section 42 of the Specific Relief Act. The claim of mere declaration as to alleged title does not suffice.

iii) On the basis of a sale agreement, no legal character or right can be established to prove the title of the property unless the title is transferred pursuant to such agreement to sell, but in case of denial or refusal by the vendor to specifically perform the agreement despite the readiness and willingness of the vendee, a suit for specific performance may be instituted in the court, but suit for declaration on the basis of a mere sale agreement is not the solution for appropriate relief.

iv) Under Section 22 of the Specific Relief Act, the exercise of jurisdiction by the Court for decreeing the suit for specific performance of contract is discretionary in nature in which the Court is not bound to grant such relief, but in tandem the discretion is not to be exercised arbitrarily but should be based on sound legal principles after analyzing and gauging the circumstances, inter alia, whether the contract is such which gives an unfair advantage to the plaintiff over the defendant or the performance of the contract encompasses some hardship on the defendant which he could not foresee or whether its non-performance would embroil some hardship to the plaintiff and whether the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance. The person seeking specific performance has to establish that he is enthusiastic and vehement to act upon his obligations as per the contract but the opponent is refusing or delaying its execution.

v) Obviously, the first part of Article 113 of the Limitation Act refers to the exactitudes of its application when time is of the essence of the contract, which means an exact timeline was fixed for the performance of obligations arising out of the contract/agreement hence, in this particular situation, the limitation period or starting point of limitation will be reckoned from that date and not from date of refusal, however, if no specific date was fixed for performance of agreement and time was not of the essence, then the right to sue will accrue from the date of knowledge about refusal by the executant.

vi) It was further held that the proposition that where an agreement to sell pertaining to immovable property is not signed by one of the parties thereto is, in each and every eventuality, invalid and not specifically enforceable is fallacious and contrary to the law. The existence and validity of the agreement and it being specifically enforceable or otherwise would depend upon the proof of its

existence, validity and enforceability in accordance with the Qanun-e-Shahadat Order, 1984, the relevant provisions of the Contract Act, 1872, the Specific Relief Act, 1877, and any other law applicable thereto.

vii) In the aforesaid perspective, the doctrine of prospective overruling is also quite relevant which originated in the American Judicial System. The literal meaning of the term 'overruling' is to overturn or set aside a precedent by expressly deciding that it should no longer be a controlling law. Similarly 'prospective' means operative or effective in the future. According to the dictum laid down in the case of Pakistan Medical and Dental Council & others vs. Muhammad Fahad Malik & others (2018 SCMR 1956) the judgments of this Court (Supreme Court) unless declared otherwise operate prospectively. More or less, similar findings that the law laid down by this Court is prospective which cannot be doubted have been recorded in the case of Sakhi Muhammad and another vs. Capital Development Authority, Islamabad (PLD 1991 S.C 777) and Pir Bakhsh and others vs. The Chairman, Allotment Committee and others, (PLD 1987 S.C. 145).

viii) No doubt to constitute a valid contract one of the conditions is “consensus ad idem” which must exist with regard to the terms and conditions of the contract and, in case of any ambiguity, it may adversely reflect on its very existence. In fact it is a Latin term in the law of contract that means the existence of meeting of minds of all parties involved which is the elementary constituent for the enforcement and execution of a contract and in case of no consensus ad idem there shall be no binding contract and in case of any palpable inexactitude or obliviousness in the settled terms and conditions then there shall be no probability to get a hold of any outcome of such defective agreement.

ix) Where an effective and enforceable contract is not structured by the parties, it is not the domain or province of the Court to make out a contract for them but the lis would be decided on the basis of terms and conditions agreed and settled down in the contract. The decree for specific performance may not be passed if the substratum of the contract suffers from shortcoming or legal infirmities which render the contract unacceptable and unenforceable.

x) In the case of Amjad Ikram vs. Mst. Asiya Kausar (2015 SCMR 1), the court held that in case of inconsistency between the Trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary as has been held by this court in the judgments reported, as Madan Gopal and 4 others v. Maran Bepari and 3 others (PLD 1969 SC 617) & Muhammad Nawaz through LRs. v. Haji Muhammad Baran Khan through LRs. and others (2013 SCMR 1300).

Conclusion: i) A contract for sale of immovable property can take place on terms settled between the parties but it does not itself, create any interest in or charge on such property.

ii) Court cannot make any declaration where the party, being able to seek further relief than mere declaration of title, omits to do so

iii) On the basis of a sale agreement, no legal character or right can be established.
iv) The Court for decreeing the suit for specific performance of contract is not bound to grant such relief, but in tandem the discretion is not to be exercised arbitrarily but should be based on sound legal principles after analyzing and gauging the circumstances.
v) Time is not essence of the contract when no specific date is fixed for performance of agreement.
vi) An agreement to sell pertaining to immovable property which is not signed by one of the parties is enforceable in law unless proved otherwise.
vii) Judgments of Supreme Court unless declared otherwise operate prospectively.
viii) Consensus ad idem is one of the conditions to constitute a valid contract.
ix) Court cannot make out a contract for the parties when an effective and enforceable contract is not structured.
x) In case of inconsistency between the Trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

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12. **Lahore High Court**
Ashfaq Ahmad Kharal etc. v. Province of Punjab through its Secretary, Law & Parliamentary Affairs etc.
W.P. No. 5324 of 2023 etc.
Mr. Justice Ali Baqar Najafi, Mr. Justice Abid Aziz Sheikh, Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez, Mr. Justice Anwaar Hussain,
https://sys.lhc.gov.pk/appjudgments/2023LHC603.pdf

Facts: Through these writ petitions, the notifications have been challenged whereby Advocate General Punjab, 32 Additional Advocate-Generals and 65 Assistant Advocate-Generals (total 97) have been removed and 46 new law officers have been appointed and look after charge was given to an Additional Advocate-General by the caretaker Chief Minister, Punjab.

Issues: i) What is caretaker government and when it is to be formed?
ii) What is purpose of caretaker chief minister under the Constitution of Pakistan, 1973?
iii) What are the limitations of care taker government?
iv) What are the matters which section 230 of Election Act, 2017 deals with?
v) What are the legal provisions for the appointment of Advocate General?
vi) Whether caretaker government can make appointments of law officers?
vii) What will be the effect if there is inconsistency in provisions of two independent statutes of same field?
viii) What does expression "public interest" used in Elections Act, 2017 means?

Analysis: i) The word caretaker Government is a government temporarily in power until the election is held. It is a temporary Government commissioned by the Governor-General or State Governor, usually for a short period until the stable Government can be formed. Caretaker governments are established during the time of

uncertainty when it is not clear whether any party or coalition of parties is capable of forming a stable government.

ii) Caretaker chief minister is the Chief Executive of the Province and discharges his duties under the Constitution and the Election Act, 2017. He is supposed to be a strong Chief Executive of the Province as he is assigned an onerous duty to thoroughly implement the policy of Election Commission in the Provinces to hold fair, free and transparent elections having approval by the public-at-large.

iii) Caretaker governments carry on the routine business of government, but they are expected to refrain from making important policy decisions. The caretaker Government is not entitled to make promotions or major appointments of public officials but may make acting or short-term appointments in public interest and that the caretaker Government has to restrict itself to the activities that are of routine, noncontroversial and urgent in nature that too in the public interest, revisable by the future Government elected Government.

iv) In order to interpret Section 230 of Election Act, 2017, preamble of Election Act, 2017 reference can be made to preamble of the Act, according to which it was expedient to amend, consolidate and unify laws relating to the conduct of elections and matter connected therewith or ancillary thereto. It deals with de-limitation of Constituencies, Elected rolls, Conduct of Elections in the Assemblies, Senate, Falling of Election Expenses, Resolution of Election Disputes, Formation of Political Parties, Allocation of Symbols, Conduct of Elections of the Local Government and Chapter XIV deals with the related other matters.

v) The Advocate-General has been defined in Clause 1.5 of the Law Department Manual. Article 140 of Constitution of 1973 has empowered the Governor regarding the appointment of Advocate-General. An Advocate-General is appointed by the Governor on the advice of the Chief Minister under the powers given in Clause 4 of Part-A of Third Schedule under Rule 13 of the Punjab Government Rules of Business, 2011 read with Clause 16 of the Seventh Schedule Part-A made under Rule 14(1) of the Punjab Government Rules of Business, 2011.

vi) It is the exclusive domain of Caretaker Chief Minister to make appointments of law officers as per qualification and disqualification prescribed under the law.

vii) It is settled law that where two statutes operate in the same field independently, though they may contain different provisions in this behalf, if by giving effect to the provisions, one of the provision of the other enactment are rendered or are likely to be rendered nugatory, the two statutes clashes and are inconsistent, then the provisions of later statute to the extent of grounds covered or intended to be covered will supersede and displace the other statute. This principle is based on maxim leges posteriores priores contrarias abrogant. It means that the latest expression of the will of the legislature must prevail.

viii) Expression “public interest” is not capable of precise definition and has no strict meaning but it takes colour from the statute in which it occurs. When the above rule of interpretation is applied to the words “public interest” used in

Elections Act, this indeed means that public interest in this case is to ensure honest, just, free and fair elections in accordance with law, which is also the mandate of Articles 218 to 224 & 224-A of the Constitution.

Conclusion: i) Caretaker Government is a temporary Government commissioned by the Governor-General or State Governor, usually for a short period until the stable Government can be formed. Caretaker governments are established during the time of uncertainty when it is not clear whether any party or coalition of parties is capable of forming a stable government.

ii) Caretaker chief minister is the Chief Executive of the Province and discharges his duties under the Constitution and the Election Act, 2017 who is assigned an onerous duty to thoroughly implement the policy of Election Commission in the Provinces to hold fair, free and transparent elections having approval by the public-at-large..

iii) Caretaker Government has to restrict itself to the activities that are of routine, noncontroversial and urgent in nature that too in the public interest, revisable by the future Government elected Government.

iv) Section 230 of Election Act, 2017 deals with de-limitation of Constituencies, Elected rolls, Conduct of Elections in the Assemblies, Senate, Falling of Election Expenses, Resolution of Election Disputes, Formation of Political Parties, Allocation of Symbols, Conduct of Elections of the Local Government and Chapter XIV deals with the related other matters.

v) Article 140 of Constitution of 1973 has empowered the Governor regarding the appointment of Advocate-General. An Advocate-General is appointed under the powers given in Clause 4 of Part-A of Third Schedule under Rule 13 of the Punjab Government Rules of Business, 2011 read with Clause 16 of the Seventh Schedule Part-A made under Rule 14(1) of the Punjab Government Rules of Business, 2011.

vi) It is the exclusive domain of Caretaker Chief Minister to make appointments of law officers as per qualification and disqualification prescribed under the law.

vii) If there is inconsistency in provisions of two independent statutes of same field then the provisions of later statute to the extent of grounds covered or intended to be covered will supersede and displace the other statute.

viii) Expression "public interest" used in Elections Act, 2017 means to ensure honest, just, free and fair elections in accordance with law, which is also the mandate of Articles 218 to 224 & 224-A of the Constitution.

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13. **Lahore High Court**
M/s Gulistan Group of Companies v. Mr. Waseem Javed Khand
Civil Revision No.25850 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC940.pdf

Facts: The respondent/plaintiff instituted a suit for recovery along with interest and costs of damages against the petitioner/defendant, which was duly contested by the

petitioner. The trial Court partially decreed the suit. The petitioner being aggrieved preferred an appeal, which was partially accepted and some amount was excluded. The petitioner being aggrieved has filed the instant revision petition whereas the respondent feeling dissatisfied filed the connected revision petition.

Issues: i) Whether accumulative claim in money suit can be relied and considered while decreeing the suit?
ii) Whether disputed documents submitted through counsel can be relied and considered?
iii) Whether the documents furnished in evidence beyond the mandate of Order VII, Rule 14 and Order XIII, Rule 1, Code of Civil Procedure, 1908 can be relied and considered?

Analysis: i) The same must have been bifurcated and categorized as to what amount under which head is being claimed by the respondent; meaning thereby the pleadings of the respondent are ambiguous…Therefore, the same must not have been considered and relied upon by the learned Courts below.
ii) Moreover, the respondent submitted disputed documents through his counsel, which otherwise must have been brought on record through their author or in statements of witnesses having nexus with such documents… Therefore, the same must not have been considered and relied upon by the learned Courts below.
iii) In addition to the above, the documents furnished in evidence through statement of learned counsel for the respondent are also beyond the documents, presented and relied upon while submitting forms as per mandate of Order VII, Rule 14 and Order XIII, Rule 1, Code of Civil Procedure, 1908. Therefore, the same must not have been considered and relied upon by the learned Courts below.

Conclusion: i) The accumulative claim in money suit cannot be relied and considered while decreeing the suit and the same must be bifurcated and categorized.
ii) Disputed document submitted through counsel cannot be relied and considered and it must be brought on record through their author or in statement of a witness having nexus with such document.
iii) The documents furnished in evidence beyond the mandate of Order VII, Rule 14 and Order XIII, Rule 1, Code of Civil Procedure, 1908 cannot be relied and considered while decreeing the suit.

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14. **Lahore High Court**
Mubarak Ali v. Zafar Mahmood and others
R.S.A. No.101 of 2011
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC947.pdf

Facts: The present appellant instituted a suit for specific performance of agreement to sell against the respondents. The learned trial Court vide impugned judgment and decree dismissed suit of the appellant, who feeling aggrieved of the same

preferred an appeal but it was dismissed by the first learned appellate Court; hence, the instant regular second appeal.

Issues: i) What are the grounds for filing second appeal before the High Court and what is its scope?
ii) Whether the discretionary decree in a suit for specific performance can be denied even if it is proved by the plaintiff?

Analysis: i) Under Section 100 of the Code of Civil Procedure 1908, a second appeal to the High Court lies only on any of the following grounds: (a) the decision being contrary to law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits. The scope of second appeal is thus restricted and limited to these grounds, as Section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in Section 100.
ii) It has time and again been held by this Court as well as August Court of the country that even if the plaintiff succeeds in proving his case, the discretionary decree in a suit for specific performance can be denied.

Conclusion: i) The scope of second appeal is restricted and limited to the grounds which are the decision being contrary to law or usage having the force of law, the decision having failed to determine some material issue of law or usage having the force of law; and a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits.
ii) The discretionary decree in a suit for specific performance can be denied even if it is proved by the plaintiff.

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15. **Lahore High Court**
The State v. Arshad Ali
Arshad Ali v. The State
Murder Reference No.159 of 2019
Crl. Appeal No.47011-J of 2019
Miss Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC755.pdf

Facts: The appellant was convicted under Section 302(b) PPC as Tazir and sentenced to Death for committing Qatl-e-Amd with the direction to pay compensation of Rs.2,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to further undergo 06-months S.I. Feeling aggrieved by the judgment of the learned trial court, the appellant, has assailed his conviction by filing instant jail appeal. The learned trial court also referred murder reference for confirmation of the death sentence awarded to the appellant.

Issues: i) Whether inordinate delay in informing the police about the incident make the prosecution version doubtful?
ii) What is the effect of not mentioning the name of the who has written the complaint for registration of F.I.R?
iii) Whether the prosecution is duty bound to prove that parcels of crime empties remained in safe custody?
iv) What is the evidentiary value of recovery of weapon from the accused from his house when he had sufficient time to destroy the same after the occurrence?

Analysis: i) The inordinate delay of about two hours and thirty minutes from the time of the commission of the offence remained unexplained and can render the whole of the prosecution version doubtful.
ii) Non-mentioning of name who has written the application/complaint indicates that the complainant has not stated the complete truth and that the F.I.R. came into existence after due deliberations and consultations. It creates a dent in the prosecution case.
iii) The prosecution has to establish by cogent evidence that the alleged parcels of crime empties seized from the place of occurrence were kept in safe custody at police station.
iv) It does not appeal to the prudent mind that to facilitate the investigating agency, the accused will bring back the weapon, and he will conceal the same in his house, which the investigating officer could not recover at the time of his arrest although the accused had ample opportunity to destroy the weapon during the period of occurrence and his arrest.

Conclusion: i) Inordinate delay in informing the police about the incident makes the prosecution version doubtful.
ii) Non-mentioning of name who has written the application/complaint indicates that the complainant has not stated the complete truth.
iii) Yes, the prosecution is duty bound to prove that parcels of crime empties remained in safe custody.
iv) Recovery of weapon from the accused from his house, when he had sufficient time to destroy the same after the occurrence has no evidentiary value.

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16. **Lahore High Court, Lahore**
Mst. Amman Gul v. Learned Judge Family Court. Rawalpindi and 2 others
Transfer Application No. 31of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Mirza Viqas Rauf and Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC590.pdf

Facts: This single judgment decides identical applications seeking transfer of execution petitions pending before different learned Family Courts in pursuance of decrees passed in the suits instituted under the Family Courts Act, 1964.

Issues: i) Does there exist any impediment in the way of Family Court in adopting the procedure provided in the Code of Civil Procedure, 1908 for purpose of execution of a decree?

ii) Whether Family Court is entirely a different entity or it has some nexus with Civil Court?

iii) How the proceedings/petitions for execution of decree pending before Judge Family Court can be transferred to some other place for satisfaction thereof?

Analysis: i) Section 6 of Family Courts Act, 1964 confers power of supervision of a Family Court to District Judge same as that of Civil Court in the respect of district and Section 13 (4) of Act ibid clearly manifests that a Civil Court is at par with the Family Court at least for the purpose of execution of the decree.

ii) The West Pakistan Family Courts Rules, 1965 were framed to carry out the purpose of the Family Courts Act, 1964, Rule 3 whereof ordains that courts of the District Judge, the Additional District Judge, the Civil Judge, the President of the *Majlis-e-Shoora* Kalat and the *Qazi* appointed under the *Dastur-ul-Amal diwani* Riasat Kalat, shall be the Family Courts for the purposes of the Act ibid. Rule 7 of the West Pakistan Family Courts Rules, 1965 prescribes that suits triable under the Act ibid shall be instituted in and tried by the Court of the Civil Judge having jurisdiction under rule 6 and if there is no such court in any District, then such suits shall be instituted in and tried by the Court of the District Judge or the Additional District Judge. Furthermore, Rules 15 to 21 of the West Pakistan Family Courts Rules, 1965 eliminate any element of distinction between a Family Court and Civil Court for the purpose of registering of cases, decrees & orders etc. The provisions of the Code of Civil Procedure, 1908, except its Sections 10 & 11, have been ousted to the proceedings before the Family Court vide Section 17 of Act ibid. The prime purpose of such ouster clause is to avoid procedural formalities likely to operate as hurdle in the speedy and swift decision of disputes brought before the Family Court. Hence, there is no notable difference between Family Court and Civil Court. Therefore, general procedure for both the courts would remain almost the same until something is specifically barred or amounts to cause a serious prejudice to any of the party.

iii) Both provisions of Section 24 of the Code of Civil Procedure, 1908 and Section 25-A of the Family Court Act, 1964 deal with transfer, entrustment or withdrawal of the proceedings from one court to another. Said powers in the case of former provision vest with High Court or the District Court, whereas in the latter it falls within the domain of the High Court and the Hon'ble Supreme Court. Section 38 of the Code ibid lays down that a decree may be executed either by the court which passed it, or by the court to which it is sent for execution. Once a decree is passed by the Family Court, it becomes executable in terms of Section 13 of Act ibid. Section 13 (4) of Act ibid places the Family Court and the Civil Court at the same pedestal for the purpose of execution of decree, so in that capacity a court "Family" or "Civil" enjoys all powers of the executing court vested in Part II as well as Order XXI of the Code ibid.

Conclusion: i) There exists no impediment in the way of Family Court to adopt the procedure provided in the Code of Civil Procedure, 1908 to foster the justice in proceedings for execution of a decree.
ii) There is no marked distinction between a Family Court and the Civil Court.
iii) Decree pending before Judge Family Court can be transferred to some other place for its satisfaction under Section 39 of Part II of the Code of Civil Procedure, 1908.

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17. **Lahore High Court**
Khalid Mehmood v. The State.
Criminal Appeal No.253 of 2019
The State v. Khalid Mehmood
Murder Reference No.16 of 2019
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2022LHC8998.pdf

Facts: The appellant faced trial in case FIR registered for offences under Sections 302,324 & 311 PPC. The trial court convicted the appellant and sentenced him under section 302(a) PPC to suffer death sentence as *Qisas.* Being aggrieved, the appellant filed the instant appeal whereas trial court sent reference under Section 374 the Cr.PC for the confirmation or otherwise of death sentence.

Issues: (i) What is the importance of Medical Evidence in a murder trial?
(ii) What is meant by corroboration of evidence?
(iii) What are the various kinds of punishments provided under the Islamic Jurisprudence?
(iv) Whether a statement made by an accused at the time of his indictment in a sessions case without being defended by a legal practitioner can be used to his detriment or disadvantage?
(v) Whether a conviction can be awarded on the basis of incriminating circumstances not confronted with under section 342 Cr.PC?
(vi) Where a trial court does not award punishment to an accused on his pleading guilty under section 265-E and proceeded with trial then whether such confession can be used to the detriment of the accused?
(vii) Whether a conviction under section 302(a) without conducting Tazkiyah-Al-Shuhood of the eye witnesses during trial is sustainable in the eyes of law?
(viii) What is meant by Tazkiya-Al-Shuhood?
(ix) What is the mode and manner of carrying out the essential requirement of Tazkiyah-Al-Shuhood?

Analysis: (i) The medical evidence in a charge of murder has its own importance and is collected with the sole purpose of enabling the Court for reaching the truth. The doctor who examines the injured or the deceased, in fact makes contribution in the administration of criminal justice. From the medical data placed on record, the court gets an overview about the truth of eyewitnesses in reference to the

locales of injuries, the kind of weapons used for the crime, the duration within which the traumas were inflicted and above all the actual cause of death.

(ii) In legal parlance the word "corroborate" means to strengthen, confirm or to make more certain and this is how the term is defined in Black's Law Dictionary, Tenth Edition. The corroboration can be sought from some other independent circumstances or evidence which though does not directly prove the ultimate guilt of a delinquent but inclines to connect him with the commission of crime.

(iii) Islamic Jurisprudence provides various kinds of punishments which can be summarized as Hadd, Qisas and Ta'zir. The word "Hadd" in its literal sense means the punishments of crimes as ordained in Holy Quran. The offences which come within the purview of "Hadd" include intoxication through consumption of liquor by mouth, Theft/Haraabah, Zina, Qazf and Apostasy. If the quantum and quality of evidence for proving these offences is available in accordance with the Injunctions of Islam, then the delinquents are tobe punished with the quantum of sentence as ordained by Almighty Allah and no deviation can be made therefrom by the Qazi/Court. So far as the Qisas is concerned, it means equal retaliation through retributive justice… The basic difference between Hadd and Qisas is to the effect that the former fundamentally is the right of Allah Almighty and no compromise, settlement, pardon or waiver is permissible, whereas the latter is the right of victim (if injured) or the legal heirs/wali (in the case of murder) and can be compounded or waived. In so far as Ta'zir is concerned, it is a kind of punishment which can be awarded through the laws of an Islamic State for other offences and in respect of delinquencies in which requisite proof for inflicting Hadd is lacking.

(iv) We need to shed light on the point that through the necessary implication of Article 10(1) of the Constitution of Islamic Republic of Pakistan, 1973, a person burdened with the allegation of having committed crime has an unfettered right to consult and be defended by a legal practitioner of his choice. Similar right is bequeathed to an accused under Section 340(1) of Cr.P.C…For ensuring the afore-mentioned right of an accused facing criminal charge, the needful is done through Rule 1 of the High Court Rules and Orders Volume-III, Chapter 24…The High Court Rules and Orders Volume-V, Chapter-4 Part-D further speaks that in cases of conviction having capital sentence, if the convict cannot engage a counsel for his defence, the Deputy Registrar shall take appropriate steps for providing such services at Government expense in appeals. Another provision of High Court Rules and Orders Volume-V Chapter-4 Part-E is a step forward in this regard and it is provided therein that if an accused is being tried by High Court in its original jurisdiction for an offence entailing capital punishment and he is incapacitated to afford the services of a legal practitioner, he can get such assistance at State expense…It can safely be captured that where in subsequent trial a convict was being defended by a legal practitioner but at the time of his indictment it was not so then the statement made by such convict cannot be used to his detriment or disadvantage and more importantly as a necessary proof of *qatl-i-amd* liable to Qisas in accordance with Section 304(1) Cr.P.C.

(v) It would be in fitness of things to observe here that the examination of an accused under section 342 Cr.P.C. after the closure of prosecution evidence is not a mere formality but a legal requirement, which in no manner can be dispensed with. The primary purpose of such an examination is to apprise an accused with all the circumstances which are incriminating in nature, so as to enable him or her to address them properly. The law is settled that if the accused, facing trial is not confronted with such incriminating circumstances, no conviction can be awarded on the basis thereof.

(vi) We have no doubt in our minds that if the accused pleads guilty under Section 265-E Cr.P.C. but the Court does not award him punishment and instead proceeds with the trial then such confession cannot be used to the detriment of the accused subsequently.

(vii) It can be derived from Section 304(1)(b) P.P.C that punishment of Qisas can be awarded if the proof in the form of Article 17 of QSO, 1984 is available… The combined effect of reading Article 17(1)of QSO, 1984 in conjunction of Sections 304(1)(b) & 338-F P.P.C is to the effect that punishment of death as Qisas can be awarded if the witness fulfills the requirement of "Tazkiyah-Al-Shuhood" which is a concept emanating from the Islamic law.

(viii) The term "Tazkiyah-Al- Shuhood" comprises upon two words, one out of which is Tazkiyah which means purifying, screening or separating the good from the bad, whereas Shuhood stands for the witnesses to be produced during trial of a case. According to Quranic commandments, a Muslim is to speak nothing but truth even if it goes against him.

(ix) Chapter XVI of P.P.C, even after having been reshaped in accordance with cases reported as *Gul Hassan Khan v. Government of Pakistan and another* (PLD 1980 Peshawar 1), *Muhammad Riaz, etc. v. Federal Government, etc.* (PLD 1980 FSC 1) and *Federation of Pakistan through Secretary, Ministry of Law and another v. Gul Hassan Khan* (PLD 1989 Supreme Court 633) is in eternal silence about the mode and manner of carrying out the essential requirement of Tazkiyah-Al-Shuhood…Due to the legislative defect so mentioned above, Tazkiyah-Al-Shuhood always remained a problematic question for the Courts and no judicial consensus could be developed about the procedural requirement to give it a practical effect. As per Islamic law Tazkiyah-Al-Shuhood can be carried out through open as well as by secret proceedings as is mentioned in Islam Ka Qanun-e-Shahadat (Volume 1) by S.M.Mateen Hashmi (pages 146, 149 & 308). We are mindful of the fact that a prosecution witness will always be reluctant to lift veil from his own misdeeds of having been involved in major sins, thus requirement of Tazkiyah-Al-Shuhood are to be fulfilled through a separate inquiry. Such practice, if given effect, will give rise to the proceedings involving the recording of the statements of various persons regarding the character of a witness before the commencement of actual trial for the offence.

Conclusion: (i) The medical evidence in a charge of murder enables the Court to reach the truth.

(ii) Corroboration of evidence means to strengthen, confirm or to make it more certain.
(iii) Islamic Jurisprudence provides various kinds of punishments which can be summarized as Hadd, Qisas and Ta'zir.
(iv) A statement made by an accused at the time of his indictment in a sessions case without being defended by a legal practitioner cannot be used to his detriment or disadvantage.
(v) A conviction cannot be awarded on the basis of incriminating circumstances not confronted with under section 342 Cr.PC
(vi) Where a trial court does not award punishment to an accused on his pleading guilty under section 265-E and proceeded with trial then such confession cannot be used to the detriment of the accused
(vii) A conviction under section 302(a) without conducting Tazkiyah-Al-Shuhood of the eye witnesses during trial is not sustainable in the eyes of law.
(viii) The term "Tazkiyah-Al- Shuhood" comprises upon two words, one out of which is Tazkiyah which means purifying, screening or separating the good from the bad, whereas Shuhood stands for the witnesses to be produced during trial of a case.
(ix) As per Islamic law Tazkiyah-Al-Shuhoodcan be carried out through open as well as by secret proceedings and through a separate inquiry.

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18. **Lahore High Court**
Jameela Bibi, etc. v. Muhammad Aslam Mehmood, etc.
C.R.No.22619 of 2019
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2019LHC5072.pdf

Facts: This petition in terms of Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred as "CPC") assails the vires of order, whereby the learned Additional District Judge, proceeded to dismiss an application under Order XLI Rule 25 "CPC" moved by the petitioners.

Issues: i) Whether an appellate Court is vested with the power to frame issues while hearing the appeal and can refer the matter for trial to the Court from whose decree the appeal is preferred?
ii) Whether mere non-framing of an issue by the learned trial court will affect the vires of the judgment?
iii) Whether a party in the garb of recording of additional evidence can be allowed fill up the lacunas in the evidence?

Analysis: i) There is no cavil that an appellate Court is vested with the power to frame issues while hearing the appeal and can refer the matter for trial to the Court from whose decree the appeal is preferred. An Appellate Court can only direct the framing of issues if the Court from whose decree the appeal is preferred omit (i) to frame issue (ii) try any issue (iii) to determine any question of fact, which in

the opinion of the learned Appellate Court is essential for arriving at right decision of the suit. The appellate Court is vested with the power that after framing of issues refer the same for trial to the Court from whose decree the appeal is preferred and, in such case, shall direct such Court to take the additional evidence required and such Court shall proceed to try such issues and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor. It is, thus, discretionary with the Appellate Court to accord the permission for framing of issues, if the Court is of the opinion that such issues are essential to the right decision of the suit.

ii) Even otherwise mere non-framing of an issue by the learned trial court will not affect the vires of the judgment if it is established that the parties, while leading their evidence, were well conscious and aware of the matter in issue and they have led the relevant evidence to that effect.

iii) It appears that the petitioners are now endeavoring to get framed the proposed issues so as to obtain a direction from the learned Appellate Court for recording of additional evidence in the garb of which they can fill up the lacunas in the evidence. Such a mode is not permissible under the law.

Conclusion: i) An appellate Court is vested with the power to frame issues while hearing the appeal and can refer the matter for trial to the Court from whose decree the appeal is preferred.

ii) Mere non-framing of an issue by the learned trial court will not affect the vires of the judgment if it is established that the parties, while leading their evidence, were well conscious and aware of the matter in issue and they have led the relevant evidence to that effect.

iii) A party in the garb of recording of additional evidence cannot be allowed fill up the lacunas in the evidence.

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19. **Lahore High Court**
Ch. Rahmat Ali Memorial Trust v.
Lahore Development Authority and another
I.C.A. No. 9534 of 2021
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC952.pdf

Facts: Through this Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972, appellant has called in question order passed by learned Single Judge of this Court whereby W.P. filed by the appellant against order passed by Director Estate Management, L.D.A. was disposed of with direction to avail remedy of Arbitration in terms of lease agreement between the parties and in the meanwhile respondent L.D.A. was restrained from taking any coercive measures against appellant.

Issues: i) What powers can be exercised by an Arbitrator appointed under the Arbitration Act, 1940 while determining the dispute referred to him?

ii) Whether the factual controversy having agreed by the parties to be decided

through arbitrator can be determined through the Constitutional jurisdiction of High Court?

Analysis: i) The Arbitrator appointed under the Arbitration Act, 1940 while determining the dispute referred to him has the authority to determine all the legal questions arising out of the lease agreement including question of validity of the said agreement, maintainability of Arbitration proceedings, proper and necessary parties to the said proceedings, legality of termination order, etc. which is well within its jurisdiction.
ii) Where parties can approach the Arbitrator for resolution of their dispute, which even otherwise requires determination of disputed facts are beyond the powers to be exercised in constitutional jurisdiction of High Court as it is settled by now that disputed questions of fact cannot be looked into in Constitutional Petition as the same require recording of evidence.

Conclusion: i) The Arbitrator appointed under the Arbitration Act, 1940 while determining the dispute referred to him has the power to determine all the legal questions arising out of the lease agreement.
ii) No, the factual controversy having agreed by the parties to be decided through arbitrator cannot be determined through the Constitutional jurisdiction of High Court.

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20. **Lahore High Court**
Ishrat Bano etc. v. Fateh Muhammad.
Objection Diary. No.16605 of 2023
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC736.pdf

Facts: The instant matter along with other application are fixed as objection cases in consequence of question arisen that in the light of two views taken by the Hon'ble High Court regarding transfer of an execution petition from one District to other District.

Issues: i) Whether Family Court has power to pass any order to meet the ends of justice?
ii) Whether executing Court/Family Court is competent to transfer the execution petition within District or outside the District?
iii) Whether only High Court is empowered to transfer suit, proceedings from one Family Court to another Family Court within District or outside the District?

Analysis: i) Family Courts Act, 1964 is a special law enacted to provide facilities to litigants in Family matter. The Family Court has power to pass any order to meet the ends of justice and also has power to take steps for substantial justice.
ii) The Family Court Act is a special law and the Family Judge is competent to do the needful for substantial justice, however, the CPC in stricto senso is not applicable to the proceeding before Family Court. Thus, the learned executing Court/Family Court is not competent to transfer the execution petition within

District or outside the District and if it does so, it would be violation of Section 25-A of the Family Courts Act, meaning thereby the Family Court is not competent to issue any precept under Section 46 CPC for the attachment of any property rather it shall adopt the procedure mentioned under Section 80 of the Land Revenue Act, 1967.

iii) Under Section 17 read with 25-A of the West Pakistan Family Courts Act, 1964, the provisions of the Code of Civil Procedure, 1908 are not stricto senso applicable, therefore, a Family Court cannot transfer a suit, decree, execution petition or issue a precept to another Family Court within the same district or any other district on its own and the only mode to transfer a suit, appeal, decree or execution petition under the Act ibid is to approach Hon'ble High Court. Under Section 25 of the Family Courts Act, 1964 this Court is empowered to transfer any suit, proceeding under the Act ibid from one Family Court to another Family Court in the same District or from one Family Court in one District to another Family Court in other District. This Court has also power to transfer an appeal or proceeding under the Act ibid from one District to other whereas the District Judge is competent to transfer any such suit/proceedings from one Court to another within such district.

Conclusion: i) Yes, Family Court has power to pass any order to meet the ends of justice.

ii) Executing Court/Family Court is not competent to transfer the execution petition within District or outside the District.

iii) Yes. only High Court is empowered to transfer suit, proceedings from one Family Court to another Family Court within District or outside the District.

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21. **Lahore High Court**
Akhiz. v. Chief Secretary Punjab, etc.
I.C.A No. 10837 of 2023
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC784.pdf

Facts: Through this Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972, the appellant has called in question order passed by learned Single Judge of this Court, whereby constitutional petition filed by the appellant, for issuance of directions to respondents No. 2 for entertaining the application of the petitioner on behalf of his real daughter in the light of minority quota and notification No. PA/AS(LM)/MISC/ 2020 dated 18.05.2020 and for inclusion of name of petitioner's daughter in the minority quota after conducting MDCAT, was dismissed.

Issue: i) Whether the reserved quota of 2% seats through notification No. PA/AS(LM)/MISC/ 2020 dated 18.05.2020 in Public Sector Higher Education Institutes for religious minorities under the Punjab Minorities Empowerment Package can be extended to admission in educational institutions?

ii) Whether any person can represent another without the knowledge or against the

wishes of the other person?

Analysis: i) The policy decision of the Government through afore-noted notification dated 18th May 2020 reserving 2% quota in Public Sector High Education Institutes for religious minorities under the Punjab Empowerment Package has been made applicable to candidates who apply to join government service and not for candidates who seek admission to educational institutions as students. This fact has been also affirmed by the Counsel for the respondent-UHS. Nothing has been placed on the record to show that the afore-referred notification was extended to admissions of students in educational institutions especially MBBS and BDS students. This court cannot extend the policy decision of the government taken in service matter in Educational institutions to be applicable to admissions of students to said educational institutions or other such institutions as this Court cannot take the role of policy maker and substitute policy framed by the competent authority by policy of its own.

ii) The vires of the notification/policy or law have also not been called in question for which the appellant could claim to have *locus standi* to file the constitutional petition and appeal. Even the prayer of the constitutional petition already reproduced above shows that the appellant seeks direction to the respondents to entertain his application on behalf of his daughter, which shows that the appellant's daughter has not filed any application with the respondents for redress of grievance. The entire proceedings have been initiated by the appellant without any apparent authority to represent his daughter in the said proceedings whereas no law authorized any person to represent another without the knowledge or against the wishes of the other, for which reference may be placed on 2007 CLC 483 (Karachi) (Syed Imtiaz H. Rizvi versus Abdul Wahab and another).

Conclusion: i) The reserved quota of 2% seats through notification No. PA/AS(LM)/MISC/ 2020 dated 18.05.2020 in Public Sector Higher Education Institutes for religious minorities under the Punjab Minorities Empowerment Package cannot be extended to admission in educational institutions especially MBBS and BDS students.

ii) No law authorized any person to represent another without the knowledge or against the wishes of the other person.

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22. **Lahore High Court**
Silver Star Insurance Company Limited, Lahore v.
M/s Kamal Pipes Industries, Lahore & another
RFA No.10241 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC750.pdf

Facts: The appellant called into question a judgment passed by Insurance Tribunal, Lahore, whereby insurance petition, filed by respondent No.1, was allowed and the claim was partly decreed to the extent of remaining amount along with the liquidated damages from the date of filing of the claim till the realization of the amount.

Issues: i) Whether a party can turn around to wriggle out from the consequences of its admission during judicial proceedings?
ii) What is the Doctrine of Approbate and Reprobate?
iii) Whether miscellaneous applications must be decided before determination of a controversy in all eventualities?

Analysis: i) An admission/ statement/ undertaking, by a party, during the judicial proceedings has to be given sanctity while applying the principle of legal estoppel and estoppel by conduct as well as to respect moral and ethical rules. Hence, at any subsequent stage, a party cannot turn around to wriggle out from the consequence of such admission. If disclaimer therefrom is allowed as a matter of right, then it will definitely result into distrust of the public litigants over the judicial proceedings. Article 114 of the Qanun-e-Shahadat Order, 1984 provides that when a person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative is allowed in any suit or proceedings between the parties to deny the truth of that thing. This provision enacts a rule of evidence whereby a person is not allowed to plead contrary to a fact or a state of thing which he formerly asserted as existing and made the other party to believe it as such and then acted on it on such belief. In fact, this principle is founded on equity and justness with straightforward objective to prevent fraud and ensure justice.
ii) The Latin maxim *"Qui Approbat non Reprobat"* quite literally translates to *"the one who approbates, cannot reprobate"* or *"that which I approve, I cannot disapprove".* The Doctrine of Approbate and Reprobate was established upon the Scottish laws and is now an essential principle of equity. To approve or reject anything is to approbate or reprobate. A person cannot approbate and reprobate something simultaneously, according to the law. The Doctrine of Approbate and Reprobate is also commonly known as the 'Doctrine of Election' in English Law. The Doctrine of Election bases itself upon the maxim *"Allegans contraria non est audiendus"* which means when people make comments that contradict one another, they will not be heard.
iii) It is not persistent rule that in all eventualities, the miscellaneous applications ought to have been decided before final determination of the controversy because this principle is adhered to for the sake of justice. If the matter is otherwise conclusively determined by the Court, the sole factum of indecision of some application(s) shall not frustrate the proceedings/ verdict of the Court.

Conclusion: i) A party cannot turn around to wriggle out from the consequences of its admission during judicial proceedings.
ii) The Doctrine of Approbate and Reprobate envisages that as per law a person cannot approbate and reprobate something simultaneously.
iii) It is not persistent rule that in all eventualities, the miscellaneous applications ought to have been decided before final determination of a controversy.

23. **Lahore High Court**
Muhammad Afzal etc. v. The State etc.
Criminal Appeal No.64331-J of 2019 etc.
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC925.pdf

Facts: Criminal Appeal was filed by appellant/convict against his "conviction & sentence" and Criminal Revision was filed by complainant for enhancement of sentence of convict.

Issues: i) How the Court shall make its opinion upon the "opinion of expert"?
ii) What would be the estimated time since death if rigor mortis has not been set in and when it has been developed?
iii) What would be the consequences if eyewitnesses have themselves opted to narrate exact locale of the entry wounds in their statements and same is not confirmed by medical evidence?
iv) Whether the evidence of a witness who introduces dishonest improvement in the case can be relied upon?
v) Whether the witness who denies admitted facts can be termed as reliable witness?
vi) Whether the testimony of a chance witness can be completely believed?
vii)Whether the motive is of any help to the case of prosecution; when substantive piece of evidence in the form of ocular account has been disbelieved?
viii) Whether the abscondance of the appellant can be considered as a proof of the charge?

Analysis: i) As far as "opinion of expert" is concerned, it must be based upon the settled principles on the subject and relevant treatises but if it is otherwise then same has to be examined carefully on touchstone of relevant principles on the subject and treatises and if it has been found contrary to those, then it shall be treated and considered as ipse dixit and Court shall make its opinion while preferring settled principles on the subject found in relevant treatises;
ii) In Sub-continent (Indo-Pak), rigor mortis commences in 2-3 hours after death, takes about 12 hours to develop from head to foot, persists for another 12 hour, and takes about 12 hours to pass off. Thus, the presence and extent, or absence of rigor mortis helps to provide a rough estimate of the time since death. As for example, if rigor mortis has not set in, the time since death would be within 2 hours and if it has developed, the time since death would be within about 12-24 hours.
iii) If eyewitnesses have themselves opted to narrate exact locale of the entry wounds in their statements and same is not confirmed by medical evidence, then none-else but prosecution has to suffer.
iv) It is well settled that witness who introduces dishonest improvement for strengthening the case, cannot be relied.
v) It is trite of law that witness who denies admitted facts cannot be termed as reliable witness.

vi) Testimony of a chance witness is "suspect" evidence and cannot be accepted without pinch of salt.
vii) As far as motive is concerned, it is notable that in case of murder of a person by his trusted/closely related person, if any cause of murder is alleged/claimed by the prosecution, same attains vital importance. But when substantive piece of evidence in the form of ocular account has been disbelieved, then motive is of no help to the case of prosecution as the same loses its efficacy.
viii) So far as abscondance of the appellant is concerned, suffice it to say that it has to be proved like any other fact, however, when warrant of arrest reveals that it was not issued to any police officer or public servant for execution, similarly, it has not been mentioned in the proclamation that in how much period or till which date, accused had to surrender; therefore, both warrant and proclamation are considered defective, and mandatory requirements in the same have not been fulfilled and prosecution could not prove this limb of its case. It is important to mention here that abscondance is not proof of the charge.

Conclusion: i) Upon "opinion of expert" the Court shall make its opinion while preferring the settled principles on the subject found in relevant treatises.
ii) The estimated time since death would be within 2 hours if rigor mortis has not been set in and the estimated time since death would be within about 12-24 hours if rigor mortis has been developed.
iii) If the eyewitnesses have themselves opted to narrate exact locale of the entry wounds in their statements and same is not confirmed by medical evidence, then prosecution has to suffer.
iv) The evidence of a witness who introduces dishonest improvement in the case cannot be relied upon.
v) The witness who denies admitted facts cannot be termed as reliable witness.
vi) The testimony of a chance witness is "suspect" evidence and cannot be completely believed.
vii) When substantive piece of evidence in the form of ocular account has been disbelieved, then motive is of no help to the case of prosecution.
viii) The abscondance of the appellant cannot be considered as a proof of the charge and is required to be proved like any other fact.

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24. **Lahore High Court**
Mubarik Ali alias Makhan v. Government of the Punjab etc.
Writ Petition No. 27557 of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC8921.pdf

Facts: The Petitioner is presently confined in the Central Jail, Lahore and is suffering from a chronic liver disease with splenomegaly ascites and a paraumbilical hernia. He made an application under section 401 Cr.P.C. to the Additional Chief Secretary (Home), Government of the Punjab, for suspension/ remission of his sentence which was dismissed. Through this petition under Article 199 of the

Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), he has assailed the said order before this Court.

Issues: i) Whether the President under Article 45 of the Constitution is empowered to grant pardon, reprieve and respite, and remit, suspend or commute any sentence passed by any court, tribunal or authority?
ii) Whether section 402-C Cr.P.C. insofar as it clogs that authority granted to the President by Article 45 of the Constitution is ultra vires the Constitution?
iii) Whether section 2 of the Probational Release Act, 1926 empowers the Provincial Government to release a prisoner by license on the conditions imposed if his antecedents or conduct in prison reflects that he is likely to abstain from crime and lead useful and industrious life when released from prison?
iv) Whether in extreme cases where the Code of Criminal Procedure places an embargo on the Provincial Government (like the offences under Chapter XVI of the PPC), it may forward the case to the President with a request to consider it for remission or commutation of sentence under Article 45 of the Constitution?

Analysis: i) Article 45 of the Constitution empowers the President to grant pardon, reprieve and respite, and remit, suspend or commute any sentence passed by any court, tribunal or authority. In paragraph 26 of the aforementioned judgment the FSC expressly stated that it had no jurisdiction to examine any provision of the Constitution in view of Article 203-B(c) so it could only "advise" the President to keep the above principles in mind while exercising those powers.
ii) The legal position that emerges from the above discussion is that the authority granted to the President by Article 45 of the Constitution is on a high pedestal. It is separate from the Code of Criminal Procedure, 1898, and is not subject to its syncopation or that of the other subsidiary statutory or executive provision. Hence, section 402-C Cr.P.C. insofar as it clogs that authority is ultra vires the Constitution and has no force.
iii) The Petitioner is undergoing a life sentence for the murder of Muhammad Yaqub. He made an application under section 401 Cr.P.C. to the Additional Chief Secretary for suspension/remission of his punishment which was not maintainable because the legal heirs of the deceased had not given consent in terms of section 402-C Cr.P.C. Nevertheless, the Additional Chief Secretary treated it as a request for parole under section 2 of the Probational Release Act. There can be no objection to it. The said section empowers the Provincial Government to release a prisoner by license on the conditions imposed if his antecedents or conduct in prison reflects that he is likely to abstain from crime and lead useful and industrious life when released from prison. The Good Conduct Prisoners' Probational Release Rules, 1927 (the "Probational Release Rules"), supplement the Act. Even though the object of these provisions is the rehabilitation of the convict in society after his release and not medical parole, the Government may legitimately entertain an individual's application if he qualifies thereunder.
vi) The prisoners suffering from a serious illness and those who are old and infirm have a right to be considered for premature release. The Jail Superintendents are obligated to report such cases to the Inspector General of Prisons who should

submit them to the Provincial Government for appropriate orders. In extreme cases where the Code of Criminal Procedure places an embargo on the Provincial Government (like the offences under Chapter XVI of the PPC), it may forward the case to the President with a request to consider it for remission or commutation of sentence under Article 45 of the Constitution. An eligible convict may also approach the President directly under Article 45 for relief.

Conclusion: i) The President under Article 45 of the Constitution is empowered to grant pardon, reprieve and respite, and remit, suspend or commute any sentence passed by any court, tribunal or authority.
ii) Section 402-C Cr.P.C. insofar as it clogs that authority granted to the President by Article 45 of the Constitution is ultra vires the Constitution.
iii) Section 2 of the Probational Release Act, 1926 empowers the Provincial Government to release a prisoner by license on the conditions imposed if his antecedents or conduct in prison reflects that he is likely to abstain from crime and lead useful and industrious life when released from prison.
iv) In extreme cases where the Code of Criminal Procedure places an embargo on the Provincial Government (like the offences under Chapter XVI of the PPC), it may forward the case to the President with a request to consider it for remission or commutation of sentence under Article 45 of the Constitution.

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25. **Lahore High Court, Lahore**
Mst. Resham Begum (deceased) through L.Rs. v. Kenth, etc.
Civil Revision No.907 of 2015.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC909.pdf

Facts: The predecessor of the petitioners instituted a suit and sought declaration to the effect that she being daughter is entitled to inherit 1/3rd share from the land but inheritance was sanctioned only in favour of widow, which is against facts, law, liable to be set-aside and all subsequent mutations are also liable to be cancelled having no effect upon her rights. Trial court decreed the suit whereas the appellate court dismissed the suit. The petitioner has called into question the validity & legality of the judgment and decree of the learned Appellate Court.

Issue: i) What is the procedure for inheritance of tenancy under the Colonization of Government Lands Act, 1912 (Act V of 1912)?
ii) Whether the daughters can inherit the tenancy rights in the presence of widow?
iii) Whether the law of limitation is ignored whenever property is claimed on the basis of inheritance?

Analysis: i) Section 20 of the Colonization of Government Lands Act, 1912 (Act V of 1912) deals with inheritance of tenancy rights which describes that upon the death of original tenant, in the absence of male lineal descendants, the tenancy shall devolve upon the widow of the tenant until she dies or remarries, failing the widow tenancy to devolve upon the un-married daughters of the tenant until they died or marry or lose their rights under the provisions of the Act, 1912. Section 20

of the Act, 1912, governs the succession to the tenancy rights of the original tenant whereas, section 21 of the Act, 1912, contains the rule of successions of the tenant who inherited the same from the original tenant. The rules of succession contained in clauses "a", "b", & "c" of Section 20 of the Act, 1912 provide that a widow inherited the tenancy under Section 20(b) in the absence of male lineal and is subject to the condition that she will hold the estate only till she remarries or dies or otherwise losses her right under the provisions of the Act, 1912. Meaning thereby, the estate being conferred on her was only limited one and the character of this limited estate was determined only by the statute.

ii) In presence of widow, daughters will not inherit the tenancy rights and they will only succeed under Clause "c" when neither any male lineal descendants are available nor any widow is survived at the time of opening of succession of tenancy rights.

iii) The august Supreme Court of Pakistan while observing that law of limitation was not to be ignored entirely or brushed aside whenever property was claimed on the basis of inheritance, in a case titled "Mst. GRANA through Leal Heirs and others versus SAHIB KAMALA BIBI and others" (PLD 2014 SC 167)

Conclusion: i) Upon the death of original tenant, in the absence of male lineal descendants, the tenancy shall devolve upon the widow of the tenant until she dies or remarries, failing the widow tenancy to devolve upon the un-married daughters of the tenant until they died or marry or lose their rights under the provisions of the Act, 1912.

ii) In presence of widow, daughters will not inherit the tenancy rights.

iii) Law of limitation was not to be ignored entirely or brushed aside whenever property was claimed on the basis of inheritance.

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26. **Lahore High Court**
Muhammad Sajid v. The State, etc.
Criminal Appeal No.301 of 2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC888.pdf

Facts: Appellant being juvenile faced trial in case under sections 377/377-B PPC and on conclusion of trial, the learned Juvenile Court, convicted the appellant under section 377 PPC and sentenced him to ten years' simple imprisonment along with fine Rs.10,000/-; in default whereof to undergo further two months' simple imprisonment. The appellant was also convicted under section 377B PPC and sentenced for fourteen years' simple imprisonment along with fine of Rs.10,00,000/-; in default whereof to undergo six months' simple imprisonment. Both the sentences were ordered to run concurrently and benefit of section 382-B of Cr.P.C. was extended to him. The conviction and sentences have been questioned through the instant criminal appeal.

Issues: i) Whether the language, legislator applied to draft the offence of 'Sexual abuse' contains each and every thing in a boat for its omnibus sailing on all sorts of acts which makes its applicability difficult?

ii) Whether the words used in section 377-A PPC for describing different types of offences required different sentencing zones to meet principles and purposes of sentencing?

iii) Whether the definition of "Sexual abuse" under section 377-A PPC can be termed as a bad piece of legislation, open to exploitation very easily?

iv) Whether graver offence would engulf the minor under the doctrine of merger?

Analysis: i) The language, legislator applied to draft the offence of 'Sexual abuse' contains each and every thing in a boat for its omnibus sailing on all sorts of acts and that too without the definition of terms used for explaining such offences in one section of law which not only makes its applicability difficult but creates problems for investigators/ prosecutors and the courts to propose particular charge or to find out standards to evaluate the charge for appropriate sentences. While proposing sentence for all sorts of acts mentioned in the section, legislator has completely failed to attend the sentencing principles and purposes.

ii) The words used in section 377-A PPC for describing different types of offences require different sentencing zones to meet principles and purposes of sentencing, but legislator has not taken care of such requirement which is causing serious prejudice, damage and injustice to oppressed people who are easy prey for false implication as scapegoat. So much so legislator has not defined the words 'fondling, stroking, caressing, exhibitionism, voyeurism' used in section 377-A PPC, therefore, its self-interpretation can produce inconsistent approaches to reach out for proof of such offence.

iii) It is also mentioned in section 377-A PPC that any other obscene act shall also be included in the definition of sexual abuse. The above definitions clearly reflects that they cannot be offences of same gravity but all of them entail minimum sentence of 14 years; therefore, do not cater to the requirement of sentencing for an offence in true sense. Thus, it can be termed as a bad piece of legislation, consequently a bad law, open to exploitation very easily. This type of legislation give rise to consideration that in fact, it may be said that all newly-made statutes are at first merely nominal law, and it requires a further process of growth, adaptation to the actual conditions of society, and confirmation by tacit consent of the members of the community, before they can attain the rank of essential law; however, instead of ripening gradually into essential law, such statutes are eliminated in the course of time by one of the three processes: repeal; obsolescence; and destructive interpretation by the courts.

iv) In criminal law, if a defendant commits a single act that simultaneously fulfills the definition of two separate offenses, merger will occur. This means that the lesser of the two offenses will drop out, and the accused will only be charged with the greater offense. This prevents double jeopardy problems from arising.

Conclusion: i) Yes, the language, legislator applied to draft the offence of 'Sexual abuse' contains each and every thing in a boat for its omnibus sailing on all sorts of acts which makes its applicability difficult.
ii) Yes, the words used in section 377-A PPC for describing different types of offences required different sentencing zones to meet principles and purposes of sentencing.
iii) Yes, the definition of "Sexual abuse" under section 377-A PPC can be termed as a bad piece of legislation, open to exploitation very easily.
iv) Yes. graver offence would engulf the minor under the doctrine of merger.

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27. **Lahore High Court**
Ghulam Yasin etc. v. Hussain Bakhsh etc.
C. R. No. 1053 of 2004
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC773.pdf

Facts: This Civil Revision is directed against the impugned Judgment and Decree passed by the Additional District Judge, whereby, the suit for declaration instituted by the Respondents/Plaintiffs against the Petitioners/Defendants was decreed by reversing the Judgment and Decree passed by the Civil Judge.

Issues: i) Whether revisional jurisdiction under Section 115 of the CPC could be exercised by the court suo motu?
ii) Whether an objection as to the admissibility of a document can be raised at any stage of trial, appeal or revision?
iii) Whether the protection accorded in Article 85(2) of the QSO to public record of private documents is applicable?
iv) What is the procedure to prove the execution of the registered document which is disputed?

Analysis i) Section 115 of the Code of Civil Procedure, 1908 (the "CPC") confers even suo motu jurisdiction upon this Court in exercise of revisional jurisdiction vested in it. Revisional jurisdiction is discretionary, pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a Revision Petition exercises its suo motu jurisdiction to examine and correct errors of jurisdiction committed by a subordinate Court or otherwise condones delay by exercising the discretion vested in the Court.
ii) It was observed by the Apex Court that generally, an objection as to the mode of proof regarding a document, its contents or its execution is required to be taken, when a particular mode of proof is adopted at the stage of recording of evidence. In contrast, an objection as to the admissibility of a document can be raised at any stage of trial, appeal or revision even if it has not been taken when the document is tendered in evidence.
iii) Article 85(5) of the QSO (Section 74(5) of the Evidence Act) expressly excludes registered documents, the execution of which is disputed and as such, the protection accorded in Article 85(2) of the QSO (Section 74(2) of the

Evidence Act) to public record of private documents was not applicable.
iv) Once the execution of the registered First Sale Deed was disputed, it became a private document which was required to be produced and proved after complying with the requirements of Article 76 of the QSO (Section 65 of the Evidence Act). Moreover, the rebuttable presumption encapsulated in Article 100 of the QSO (Section 90 of the Evidence Act) mandates that the document must be produced from any custody which the Court in a particular case considers proper and in such an eventuality, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed or attested by the persons by whom it purports to be executed and attested. Article 101 extends the provisions of Article 100 of the QSO (Sections 90-A & 90 of the Evidence Act) to certified documents which are not less than 30 years old stipulating that such certified copy may be produced in proof of the contents of the document which it purports to be a copy. The First Sale Deed was never produced through proper custody and even otherwise, the presumption was rebutted in an effective manner as stated aforesaid.

Conclusion: i) Section 115 of the CPC confers suo motu jurisdiction upon the Court in exercise of revisional jurisdiction vested in it.
ii) An objection as to the admissibility of a document can be raised at any stage of trial, appeal or revision even if it has not been taken when the document is tendered in evidence.
iii) The protection accorded in Article 85(2) of the QSO to public record of private documents is not applicable.
iv) Once the execution of the registered Deed is disputed, it becomes a private document which is required to be produced and proved after complying with the requirements of Article 76 of the QSO.

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28. **Lahore High Court**
Khawar Mumtaz, etc. v. Deputy Commissioner, etc.
Writ Petition No.15163 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC791.pdf

Facts: This petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is directed against impugned order whereby permission to the petitioners to hold "Aurat march", on the eve of International Women's Day, has been declined for two-fold reasons. Firstly, that the activities involve display of controversial cards and banners for awareness of women's rights and secondly, Jamaat-e-Islami has also announced a program against the said "Aurat march" on the same day.

Issues: Whether an order of refusal to grant permission to hold the proposed march can be passed on mere apprehension that the said permission would trigger law and order situation?

Analysis: A perceived and/or apprehended conflict between the two groups cannot be made an excuse to completely refuse the right to assemble to both the groups. The right to assemble is a constitutionally guaranteed right and the same has to be exercised in a manner that it does not undermine the public order. This right is to be exercised through the prism of public order. It is expected that slogans at a peaceful protest can always be better worded to avoid provocation, hate or outrage.

Conclusion: A perceived and/or apprehended conflict between the two groups cannot be made an excuse to completely refuse the right to assemble to both the groups.

LATEST LEGISLATION/AMENDMENTS

1. Vide University of Gujrat (Amendment) Act 2022 amendments in sections 3 and 5 of the University of Gujrat Act, 2004 have been made.
2. Vide Notification F. 22(34)/2021-Legis., dated 19.01.2023 (through The Pakistan Nursing Council (Amendment) Act, 2023) amendments in sections 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 23, 24, 25, 26 and the Schedule, substitution of sections 2 and 3 and insertion of sections 2A, 3A, 9A, 9B, 9C, 9D, 9E, 9F, 9G, 18A, and 26A of The Pakistan Nursing Council Act, 1973 have been made.
3. Vide Notification No. PHC/NOT./2023/24 dated 28.02.2023 Punjab Health Care Commission issued Punjab Health Care Commission Human Resources Regulations, 2023.
4. Vide Notification No. PRA/Oreders.06/2021/264 issued dated 01.03.2023, published in official Punjab Gazette on 07.03.2023, The Punjab Revenue Authority in the exercise of powers conferred under subsection (1) of section 12 of the Punjab Sales Tax on Services Act 2012 (XLII of 2012) exempted the whole sales tax payable on services provided to the Embassy of the UAE.
5. Vide Notification No. CLC/AO 35-1/2019/1184 issued dated 10.02.2023 and published in official Punjab Gazette on 02.03.2023 the Board of Governors Children Library Complex under section 18 of the Punjab Government Education and Training Institutions Ordinance 1960 made the Children Library Complex, Lahore Employees (Benevolent Fund) Regulations 2022.
6. Vide Notification No. SO(P&C)5-28/2019(P) dated 06.03.2023, amendments in para 2 of Punjab Government Advertisement Policy for all departments of Punjab Government have been made.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/The-Doctrine-of-Lis-Pendens

The Doctrine of Lis Pendens by Parishi Jain

The branch of 'Law of Property' has transposed drastically since the advent of the 'Transfer of Property Act, 1882'. Majority of the sections codified under the said act grounds on equitable principles to establish the right of any owner of a property to transfer or dispose of the immovable property with ease. However, the "Transfer of Property pending suit relating thereto" enlisted under Section 52 of the act was worded in order to restrict such right of alienation of immovable properties in instances where a dispute regards to the rights of the said property is pending in a competent court of law. The nature of this section is not 'generalized' but rather it only binds the specific parties involved. Section 52 of the Transfer of Property Act, 1882 finds its roots in the age-old doctrine of 'Lis Pendens' which literally translates to 'pending litigation'. This doctrine is based on the common law principle of "utlite pendente nihil innovetur" which means 'during the pendency of litigation, nothing new interest should be introduced or created in respect of the property.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Humanitarian-Emergency

Humanitarian Emergency by Vineet Priyadarshi, Akash Tirkey

A humanitarian emergency is a situation of are high rates of mortality or malnutrition, the spread of illness and epidemics, health emergencies, and numerous other issues that have a negative impact on the lives of the residents of that community or that particular place. Inadequate access to safe shelter, food, water, and sanitation are further factors. In general, this condition results from a lack of protection in regions of the world that already experience ongoing inequality, poverty, and a lack of essential amenities; and a catalyst that worsens things: Environmental disasters like tsunamis, earthquakes, typhoons, etc. and political events like armed conflicts, ethnic and religious persecution, etc.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Not-Keeping-up-with-the-Times-An-Analysis-of-the-Trademarks-Act-1999

Not Keeping up with the Times: An Analysis of the Trademarks Act, 1999 by Harsh Dabas

Any company depends on the Identification and design language to connect with its customers and relate to the products and services it offers. A company that succeeds and gains widespread recognition eventually becomes a household name, which aids in its expansion. There are several instances where a product of a company is recognized by its distinguishing mark. Such a mark is known as a trademark, and it can be any word, phrase, symbol, or even a mix of these things that distinguishes the products or services of a company. It is essential since it

allows a brand to stand out from the competitors and makes it easier for customers to recognise the former. In India, the Trademarks Act of 1999 governs matters relating to infringement and protection. This Article analyzes the need to revise the Act and how its 2017 counterpart has cropped up the Constitutionality debate once again.

4. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11196-023-09992-z

The Governing-Law Anchor in Legal Translation-A Homicide Case Study by Slávka Janigová

The study is aimed to test the governing-law anchor in the comparative analysis of legal terminology to harmonize the clash of legal cultures in legal translation. It is considered as an adjustment to a juritraductological approach to legal translation which invites legal translators to merge the tools of jurilinguistics, comparative law and traductology in the comparative analysis of legal concepts before selecting a suitable translation solution (Monjean-Decaudin, in: Research methods in legal translation and interpreting, Routledge, 2019). Rather than transposing a text from a source law system to a target law system, legal translators are believed to operate in the bi-semiotic environment of two legal cultures as navigators of their recipients toward understanding the legal concepts under the governing law of the document. To this end a comparative conceptual analysis, that correlates with the parametrization method (Matulewska in Stud Logic Gramm Rhetor 45:161–174, 2016), should be anchored in the analysis of the source law concepts (Šarčević in New Approach to Legal Translation, Kluwer Law International, The Hague, 2000). First, the componential and taxonomic analyses were used to identify conceptual markers/parameters of source concepts to serve as tertia comparationis for the subsequent search of their functional equivalents in the target legal culture. Source concepts and their functional equivalents were subsequently subject to a comparative componential analysis aimed to reveal a degree of their match based on which coinage operations were activated in selecting suitable translation strategies. We hypothesized that the change in the governing-law perspective would trigger changes in translation solutions. The governing-law-anchored process of comparative analysis was detailed and exemplified by the analysis of the conceptual field of Homicide in the Slovak law, English law, and the US Model Penal Code.

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s10691-023-09517-w

The Coloniality of Contemporary Human Rights Discourses on 'Honour' in and Around the United Nations by Hasret Cetinkaya

In United Nations (UN) human rights reporting and analysis, 'honour' has been systematically conflated with 'honour-related violence' (HRV). However, honour and HRV are not the same thing. In this article I examine contemporary UN human rights discourses around honour. I argue that these discourses are underpinned by racialised and orientalist-colonial imaginaries which falsely categorise people and places as either having or not having honour. This

conflation presents honour as a cultural problem attributed to racialised communities mostly associated with the Muslim World. Adopting a critical post- and de-colonial perspective, I undertake a discourse analysis of UN human rights documents to expose orientalist tropes that reproduce epistemic and material violence against honour. There are three strategies employed to commit this violence: first, through the reduction of honour to physical and emotional HRV—a violence predicated upon the logic of coloniality and the orientalist division of the world into modern and pre-modern states; second, by associating honour as violence with Muslims and migrant communities, the discourse furthers structural Islamophobia; third, by reproducing colonial saviour narratives that designate honour as control over women's sexuality. The human rights discourse on honour forecloses upon alternative ways of understanding what honour is and means for those who live with it. As such, the international human rights discourse on honour extends the coloniality of power and the geopolitics of knowledge.

6. LATEST LAWS

https://www.latestlaws.com/articles/a-look-in-the-future-impact-and-adoption-of-medtech-in-the-healthcare-industry-196634/

A Look in the Future: Impact and Adoption of MedTech in the Healthcare Industry by Pradnesh Warke, Subham Biswal, Tanay Jha

This is the age of technological revolution, and it is turning the keys for the future in today's world concerning life sciences and healthcare sectors from monitoring of patients through continuous monitoring devices to robotic-assisted surgeries. The shift from traditional to analytical decision-making has moved the needle in the right direction and the early adoption of these contemporary trends will be highly crucial and of vital importance. The emergence of digital health technologies has fast-tracked the MedTech evolution where newer technologies such as Apple watches, sensors, tracking devices, clinical decision-making tools using artificial intelligence (AI), robotic-assisted surgeries, machine learning (ML) algorithms etc. are being used as new standards of care.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-03-2023 to 31-03-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Saadat Khan & others v. Shahid-ur-Rehman & others
Civil Petition No.262-P of 2017
Mr. Justice Umar Ata Bandial, Mr. Justice Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._262_p_2017.pdf

Facts: The petitioners sought leave to appeal against a judgment of the Peshawar High Court, whereby the High Court had upheld, in revision, the judgment of the appellate court non-suiting the petitioners on the issue of limitation.

Issues: (i) Whether limitation does not apply where a person seeks to enforce his right of inheritance in the estate of his deceased predecessor?
(ii) When does the right of a person to sue for declaration of right of inheritance in the estate of his deceased predecessor accrues?
(iii) Whether the criterion for determination of actual denial of right as to joint property is different in cases of co-sharers as compared to strangers?
(iv) Whether mere omission by brothers to pay a share of the profits or produce of the joint property to their sisters amounts to actual denial of rights of the sisters?
(v) Whether a fraudulent sale, gift or mutation of shares of sisters in joint property by brothers amounts to actual denial of rights of sisters hence giving rise to compulsory cause of action?
(vi) When would limitation starts to run in case sisters are deprived of their shares in joint property through fraud by brothers?
(vii) Whether the benefit of section 18 of the Limitation Act, 1908 is available against any person who is a transferee in good faith and for valuable consideration?

Analysis: (i) In view of the provisions of the residuary Article 120 of Schedule-I to the Limitation Act 1908, there can hardly be any suit to which the bar of limitation does not apply. As per the said Article a suit for which no period of limitation is provided elsewhere in the Schedule, the period of limitation for that suit is six years from the time when the right to sue accrues. No specific Article of Schedule-I to the Limitation Act provides a period of limitation for a suit instituted by a person, under Section 42 of the Specific Relief Act 1877, for declaration of his ownership rights to any property against a person denying his said rights; therefore, the residuary Article 120 applies to such suit. A suit instituted by a female legal heir for declaration of her ownership rights as to the property left by her deceased father in his inheritance, against her brother who denies her rights is thus governed by the provisions of Article 120. To decide whether such a suit is barred by limitation, the six-year period of limitation provided by Article 120 is to be counted from the time when the right to sue for declaration accrues as provided therein.
(ii) The question, when the right to sue for declaration has accrued in a case, depends upon the facts and circumstances of that case, as it accrues when the

defendant denies (actually) or is interested to deny (threatens) the rights of the plaintiff as per Section 42 of the Specific relief Act 1877. The actual denial of rights gives rise to a compulsory cause of action and obligates the plaintiff to institute the suit for declaration of his rights, if he wants to do so, within the prescribed period of limitation; while in case of a threatened denial of rights, it is the option of the plaintiff to institute such a suit on a particular threat. On the actual denial of rights, the cause of action and the consequent right to sue matures for instituting the suit for declaration; whereas every threatened denial of rights gives rise to a fresh cause of action, and thus a fresh right to sue accrues on such a denial.

(iii) Because of the special characteristics of their relationship, the criterion for determining the actual denial of a co-sharer's rights as to joint property by the other co-sharer is different from the one that is applied between strangers. Co-sharers have a relationship of trust and support for each other. Possession of joint property with one co-sharer is considered to be for and on behalf of all the co-sharers. A co-sharer who is not in actual possession is considered to be in constructive possession of the joint property. Each co-sharer protects the joint property against trespassers for the benefit of all the co-sharers. Even if one co-sharer acquires possession of some portion of the joint property in consequence of legal proceedings initiated by him against a trespasser, he is deemed to be in possession of that portion of the joint property, on behalf of all the co-sharers. Against this backdrop, the actual denial of a co-sharer's rights as to joint property by the other co-sharer is not to be readily inferred. Actual denial of a co-sharer's rights by the other co-sharer may occur when the latter does something explicit in denial of the former's rights. A mere oral negation, even made several times, of each other's rights by the co-sharers on different disputes as to the use and sharing of the profits of the joint property, but without doing any overt act to oust a co-sharer from the ownership of the joint property, cannot be treated as an actual denial of the rights and thus does not necessitate to sue for declaration of ownership rights.

(iv) Mere omission to pay a share of the profits or produce of the joint property to their sisters by the brothers in possession of the joint property does not in itself constitute a repudiation of the sisters' rights, nor does a wrong entry as to the inheritance rights in the revenue record oust the sisters from their ownership of the joint property as the devolution of the ownership of the property on legal heirs of a person takes place under the Islamic law of inheritance immediately on the death of that person without any intervention of anyone and without the sanction of the inheritance mutation in the revenue record.

(v) The position is, however, different when the brothers in possession of the joint property make a fraudulent sale or gift deed or get sanctioned some mutation, whether of sale or gift etc., in the revenue record claiming that their sisters have transferred their share in the joint property to them, or when they on the basis of a wrong inheritance mutation start selling out or otherwise disposing of the joint property claiming them to be the exclusive owners thereof. In such

circumstances, the brothers by their overt act expressly repudiate the rights of their sisters in the joint property, and oust them from the ownership of the joint property. Their acts are, therefore, a clear and actual denial of the rights of the sisters, which give rise to a compulsory cause of action and obligates the sisters to institute the suit for declaration of their rights, if they want to do so, within the prescribed period of limitation.

(vi) Although, by the said acts of the brothers, the right accrues to the sisters to sue for declaration of their rights, but if they by means of fraud are kept from the knowledge of those overt acts, the time limit of six years provided in Article 120 for instituting the suit for declaration against brothers or any person claiming through them otherwise than in good faith and for a valuable consideration, is to be computed from the time when the fraud of the brothers first became known to the sisters, by virtue of the provisions of Section 18 of the Limitation Act. The "fraud" contemplated by Section 18 means suppression of those acts or transactions that give rise to the cause of action from coming into the knowledge of the plaintiff. A deliberate concealment of facts intended to prevent discovery of the right to sue is also a "fraud" within the meaning of the term used in this Section, but an open act of a party cannot be said to be a fraudulent act of concealment and is therefore not covered by this Section.

(vii) The benefit of Section 18 is, however, not available against any person who though claims through the defrauding party but is a transferee in good faith and for a valuable consideration. That is why this Court has treated differently the two types of cases: (i) where the joint property is still in possession of the defrauding brothers or their legal heirs; and (ii) where the joint property has been alienated further to third persons- the transferees in good faith and for a valuable consideration.

Conclusion: (i) Limitation does apply where a person seeks to enforce his right of inheritance in the estate of his deceased predecessor.

(ii) The right of a person to sue for declaration of right of inheritance in the estate of his deceased predecessor accrues when the defendant denies (actually) or is interested to deny (threatens) such rights of the plaintiff.

(iii) The criterion for determination of actual denial of right as to joint property is different in cases of co-sharers as compared to strangers.

(iv) Mere omission by brothers to pay a share of the profits or produce of the joint property to their sisters does not amount to actual denial of rights of the sisters.

(v) A fraudulent sale, gift or mutation of shares of sisters in joint property by brothers amounts to actual denial of rights of sisters hence giving rise to compulsory cause of action.

(vi) In case sisters are deprived of their shares in joint property through fraud by brothers then limitation will be computed from the time when the fraud of the brothers first became known to the sisters.

(vii) The benefit of section 18 of the Limitation Act, 1908 is not available against any person who is a transferee in good faith and for valuable consideration.

2. **Supreme Court of Pakistan**
Federation of Pakistan through Secretary Establishment Division, Islamabad etc. v. Misri Ladhani and others
Civil Appeals No. 21 & 22 of 2022
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._21_2021.pdf

Facts: These Civil Appeals with leave of the Court are directed against the judgment passed by learned High Court of Sindh, whereby the learned High Court vide impugned judgment directed the competent authority to notify the proforma promotion of the respondent No.1 in BS-21 with effect from the date on which the CSB recommended his case for promotion in BS-21 with all ancillary benefits.

Issues: i) Whether the competent authority is bound to approve the promotion of an officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made?
ii) Whether the officer or official, who expires or superannuates after the recommendations of CSB or DPC and before issuing of the notification, shall stand exempted from assumption of the charge of the higher post?
iii) Whether the competent authority has power or jurisdiction to approve, remand or reject the recommendations of CSB or DPC?

Analysis: i) The concept of promotion is provided under Section 9 of the Civil Servants Act, 1973, which prescribes that a civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post. In Sub-Section (3), it is clearly provided that promotions to the posts in BPS-20 and BPS-21 and equivalent shall be made on the recommendations of the Selection Board, which shall be headed by the Chairman, Federal Public Service Commission. According to Sub-Clause (b) of Rule 2 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, (APT Rules, 1973) Central Selection Board (CSB) means a Board constituted by the Federal Government for the purposes of selection for promotion or transfer to a post in BPS-18 in the District Management Group, Police Group and posts in BPS-19 to 21 and equivalent, consisting of such persons, as may be appointed by the Federal Government from time to time. It is further provided in Rule 7 of the APT Rules, 1973 that promotions and transfers to posts in BPS-2 to BPS-18 and equivalent shall be made on the recommendations of appropriate Departmental Promotion Committee ("DPC") and promotions and transfers to posts in BPS-19 to BPS-21 and equivalent shall be made on the recommendation of the Selection Board. At this juncture, Rule 7 (a) is also very significant, which explicates that the competent authority may approve the promotion of an officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made. According to Rule 7 of the APT Rules, 1973, the competent authority may approve the promotion of an

officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made but nowhere is it said that the competent authority is by all means bound to accept the recommendations of CSB or DPC.

ii) It is further provided in Sub-Rule (2) that notwithstanding anything in FR-17, the officer or official, who expires or superannuates after the recommendations of CSB or DPC and before issuing of the notification, shall stand exempted from assumption of the charge of the higher post. The principal appointing officer or an officer so authorized will give a certificate to the effect that the officer or official has expired or superannuated. Moreover, Rule 8 further expounds that only such person as possesses the qualification and meet the conditions laid down for the purpose of promotion or transfer to a post, shall be considered by the DPC or the Selection Board, as the case may be.

iii) It is lucidly provided under Rule 5 of the Civil Servants Promotion (BPS-18 to BPS 21) Rules, 2019 that the recommendation made by the Central Section Board, Departmental Selection Board or Departmental Promotion Committee shall have no effect unless approved by the appointing authority concerned with further condition specifically in sub-rule 3 that appointing authority shall have powers to approve or reject or remand back the recommendations of the Central Section Board, Departmental Selection Board or Departmental Promotion Committee, whereas in sub-rule (4) it is further provided that in case of rejection or remanding back any recommendation, the competent authority shall record reasons for doing so.

Conclusion: i) According to Rule 7 of the APT Rules, 1973 the competent authority is not bound to approve the promotion of an officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made.

ii) Yes, according to Rule 7(2) of APT Rules, 1973, the officer or official, who expires or superannuates after the recommendations of CSB or DPC and before issuing of the notification, shall stand exempted from assumption of the charge of the higher post.

iii) Yes, under Rule 5 of the Civil Servants Promotion (BPS-18 to BPS 21) Rules, 2019 the competent authority has the power or jurisdiction to approve, remand or reject the recommendations of CSB or DPC.

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3. **Supreme Court of Pakistan**
Jind Wadda and others v. General Manager
NHA (LM & IS), Islamabad and others.
Civil Appeal No.700 of 2014
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._700_2014.pdf

Facts: Through the instant appeal filed under Section 54 of the Land Acquisition Act,

1894 read with Article 185 of the Constitution of the Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment of the Peshawar High Court whereby their RFA was dismissed.

Issues: Whether it is incumbent upon land-owners to produce independent, trustworthy and credible evidence for their claim qua enhancement of the compensation?

Analysis: When appellants have failed to produce any independent, trustworthy and credible evidence for their claim qua enhancement of the compensation. The burden of proof in such cases is 'incumbent' upon land-owners.

Conclusion: Yes, it is incumbent upon land-owners to produce independent, trustworthy and credible evidence for their claim qua enhancement of the compensation.

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4. **Supreme Court of Pakistan**
Suo Moto Case No. 4 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/s.m.c._4_2022.pdf

Facts: The Suo Moto was taken regarding grant of Additional 20 Marks to Hafiz-e-Quran while admission in RIBBS/ BDS Degree under Regulation 9 (9) of the MBBS and BDS (Admissions, House Job and Internship) Regulations, 2018.

Issues: i) Whether PEMRA's complete prohibition to criticize judges offends the constitution, law, morality, and Islam?
ii) Whether the Chairman of PEMRA, alone, does constitute PEMRA?
iii) Whether institutions which are funded by the public can be referred to as state institutions?
iv) Whether the Constitution or the Supreme Court Rules, 1980 grant to the Chief Justice (or to the Registrar) the power to make special benches?
(v)Whether the Supreme Court Rules, 1980 provide how to attend Suo Motu cases?
(vi) Whether collective determination by the Chief Justice and the Judges of the Supreme Court can be assumed by only the Chief Justice?

Analysis: i) The Judiciary would be flawed if it is not open to constructive criticism. The Judiciary exists to serve the people and should embrace observations, opinions, and critique as it also serves as a check on its own functioning. The people's feedback also helps identify shortcomings, which can thereafter be addressed. Constructive criticism serves the interest of the Judiciary as it helps improve its performance. The relationship between the litigant, who is the service-user, and the Judiciary, which is the service-provider, should be collaborative, with the common goal of improving the service. Forbidding criticism neither serves the interest of the people nor of the Judiciary. Islam does not prohibit the criticism of Judges. Believers must speak the truth. Prophet Muhammad (peace and blessings

be upon him) taught that the highest form of jihad (struggle) is to speak up against an oppressor, and if despite seeing wrongdoing people do nothing, then they too will be punished. Judges adjudicate, and at times hold others to account. Therefore, it would be constitutionally, legally, morally, and religiously indefensible to absolve Judges from accountability. Prescribing something for others but not abiding by it oneself is most offensive to Almighty Allah and He castigates hypocrites. PEMRA's complete prohibition to criticize Judges offends the Constitution, law, morality, and Islam.

ii) The Chairman of PEMRA, alone, does not constitute PEMRA. The law which established and governs PEMRA states that, 'All orders, determinations and decisions of the Authority [PEMRA] shall be taken in writing and shall identify the determination of the Chairman and each member separatel y.' PEMRA comprises of the 'Chairman and twelve members'. However, the Prohibition Order does not disclose if the members had any say in the matter, let alone whether a meeting of the members took place, how many attended it and their determinations. This lack of disclosure by a statutory-regulatory body is of concern.

iii) State institutions are neither mentioned in the Constitution nor in PEMRA's law. Institutions which are funded by the public may be referred to as public institutions, acknowledging the public's ownership, and that they serve the public. When the phrase public institution is substituted with state institution, it is not inconsequential phraseology; as the public's ownership of the institution is severed and renders it unaccountable.

iv) Neither the Constitution nor the Rules grant to the Chief Justice (or to the Registrar) the power to make special benches, select Judges who will be on these benches and decide the cases which they will hear. There is also no additional, incidental, ancillary, or residual power with the Chief Justice which could be used to do this. Yet, unfortunately, this is being done, and sometimes with grave repercussions. When benches are tailored and Judges of a particular understanding or inclination are placed together to hear a particular case, then doubts, suspicion, and misgivings arise. A decision from an adjudicatory process, which is perceived to be structured to obtain a particular decision, invariably results in severe criticism. The matter assumes criticality when objections taken on the constitution of Special Benches, and requests made for hearing by the Full Court, are not attended to, and no order disposing of such objections and requests is passed.

v) With regard to article 184(3) of the Constitution there are three categories of cases. Firstly, when a formal application seeking enforcement of Fundamental Rights is filed. Secondly, when (suo mot-u) notice is taken by the Supreme Court or its Judges. And, thirdly cases of immense constitutional importance and significance (which may also be those in the first and second category). Order XXV of the Rules only attends to the first category of cases. There is no procedure prescribed for the second and third category of cases. The situation is exacerbated as there is no appeal against a decision under Article 184(3) of the

Constitution. The Rules also do not provide how to attend to the following matters: (a) how such cases be listed for hearing, (b) how bench/benches to hear such cases be constituted and (c) how Judges hearing them are selected.

vi) The Supreme Court is empowered to make makes rules attending to the aforesaid matters. The Supreme Court comprises of the Chief Justice and all Judges." The Constitution does not grant to the Chief Justice unilateral and arbitrary power to decide the above matters. With respect, the Chief Justice cannot substitute his personal wisdom with that of the Constitution, Collective determination by the Chief Justice and the Judges of the Supreme Court can also not be assumed by an individual, albeit the Chief Justice.

Conclusion: i) PEMRA's complete prohibition to criticize judges offends the constitution, law, morality, and Islam.

ii) The Chairman of PEMRA, alone, does not constitute PEMRA.

iii) Institutions which are funded by the public cannot be referred to as state institutions.

iv) The Constitution or the Supreme Court Rules, 1980 do not grant to the Chief Justice (or to the Registrar) the power to make special benches.

(v) The Supreme Court Rules, 1980 do not provide how to attend Suo Motu cases.

(vi) Collective determination by the Chief Justice and the Judges of the Supreme Court cannot be assumed by only the Chief Justice.

Dissenting Note By <u>Mr. Justice Shahid Waheed</u>

Issues: i) What types of orders a Court ordinarily pass during the proceeding of any case?

ii) Whether the Hon'ble Chief Justice is empowered to constitute a bench, special or regular?

iii) If any Judge of the Bench constituted by the Hon'ble Chief Justice has any objection, what would be the proper course for him?

iv) Whether a court should try any question and also pass order thereon which is not directly and substantially in issue in a case pending before it?

v) Whether any member of a Bench, after having accepted the administrative order of the Hon'ble Chief Justice, is estopped to question the constitution of the Bench?

Analysis: i) Be it noted that during the proceeding of any case, a Court ordinarily passes three types of orders, the first type of order is that of regulatory nature whereby the proceedings of the case are regulated, managed, or controlled. The second type of order relates to a formal decision of a Court about a claim or dispute, and this may be called adjudicatory order. While the third type is regulatory cum adjudicatory order and it not only contains a formal expression of any decision of a Court on a particular issue but also a direction for further progress of the case.

ii) The first point to be examined is whether the objection to the constitution of this Bench could be brought under consideration in this case. I think it cannot for two reasons. One, a Bench, special or regular, is constituted by an administrative

order of the Hon'ble Chief Justice, and as such, the present Bench in conformity with the principle settled in Suo Moto Case No.4 of 2021 (PLD 2022 SC 306), has been lawfully constituted to hear this case. It is to be noted that judgment in the Suo Moto Case No.4 of 2021 is of a Five-Member Bench and thus, takes precedence over all precedents of this Court regarding the power of the Hon'ble Chief Justice to constitute any kind of Benches. It appears that for this reason neither the Attorney General for Pakistan nor the PMDC's lawyer had any objection to the constitution of this Bench. Given these circumstances, in my humble view, none of the Judges of this Bench can object to the constitution of the Bench, and if they do so, their status immediately becomes that of the complainant, and consequently, it would not be appropriate for them to hear this case and pass any kind of order thereon.

iii) Forbye, judicial propriety requires that if any Judge of the Bench has any objection, the proper course for him is either to recuse himself from the Bench or to refer the matter to the Hon'ble Chief Justice with the concurrence of other Judges of the Bench, so that the case is assigned to some other Bench.

iv) I hold the view that no Court should try any question and also pass order thereon which is not directly and substantially in issue in a case pending before it. In the case at hands, the matter in issue is whether the memorization of the Holy Quran is a relevant criteria for the determination of the candidates for an MBBS or BDS degree. Indubitably, the above-stated second question is not related to the issue involved in this case, and thus, it cannot be brought under debate, nor can any conclusion be drawn thereon.

v) The administrative order of the Hon'ble Chief Justice regarding the constitution of the Bench becomes fait accompli when a Judge in compliance thereof starts hearing the case. Hence, any Member of this Bench, after having accepted the administrative order of the Hon'ble Chief Justice, is estopped to question the constitution of the Bench on the well known doctrine of estoppel.

Conclusion: i) During the proceeding of any case, a Court ordinarily passes three types of orders i.e. regulatory nature, adjudicatory order, and regulatory cum adjudicatory order.

ii) The Hon'ble Chief Justice is empowered to constitute a bench, special or regular.

iii) If any Judge of the Bench constituted by the Hon'ble Chief Justice has any objection, the proper course for him is either to recuse himself from the Bench or to refer the matter to the Hon'ble Chief Justice with the concurrence of other Judges of the Bench, so that the case is assigned to some other Bench.

iv) No court should try any question and also pass order thereon which is not directly and substantially in issue in a case pending before it.

v) Any member of a Bench, after having accepted the administrative order of the Hon'ble Chief Justice, is estopped to question the constitution of the Bench.

5. **Supreme Court of Pakistan**
Muhammad Rafiq v. Mst. Ghulam Zoharan Mai & another
Civil Appeal No. 2613 of 2016
Mr. Justice Qazi Faez Isa, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2613_2016.pdf

Facts: The appellant has filed civil appeal against order of Lahore High Court passed in Civil Revision which was allowed in favour of respondents, who through suit before trial court challenged the gift in favour of appellant.

Issues: i) Whether mere production of photocopy of register maintained by the sub-registrar is sufficient to prove the gift deed?
ii) Whether revenue authority can change the revenue record regarding entry of gift transaction merely on the basis of photocopy of register maintained by the sub-registrar which is not even registered gift deed?
iii) Whether a party who challenges the gift transaction is under obligation to implead revenue authority or produce/summon the officer/official as witness?

Analysis: i) Primary evidence of the gift deed would be the gift deed itself, but if it is not produced, a certified copy of the gift deed can be produced as secondary evidence. The sub-registrar or any officer/official from his office can be produced/summoned by the beneficiary to testify that the photocopy which was produced was a true/certified copy from the said register. But mere production of photocopy of register maintained by the sub-registrar is not sufficient to prove the claim of gift…
ii) If the revenue authority changes the revenue record regarding entry of gift transaction on the basis of photocopy of register maintained by the sub-registrar they do not act in accordance with the law. They ought to issue notices to the heirs of deceased donor to consider any objection that they may have. To have acted on the basis of a purported extract from the sub-registrar's register and to have changed the revenue record on this basis is not permissible…
iii) A party who challenges the gift transaction is not obliged to array the revenue authority nor is obliged to produce/summon any officer/official of it as a witness because such party has denied the gift and did not rely upon the said gift. It is for the party who relied upon the purported gift or gift mutation has to establish the same. And, it was for such party to have produced/summoned the concerned officer/official from the sub- registrar's office and from the revenue authority.

Conclusion: i) Mere production of photocopy of register maintained by the sub-registrar is not sufficient to prove the gift deed.
ii) Revenue authority cannot change the revenue record regarding entry of gift transaction merely on the basis of photocopy of register maintained by the sub-registrar which is not even registered gift deed.
iii) The party who challenges the gift transaction has no obligation to implead revenue authority or produce/summon the officer/official as witness.

6. **Supreme Court of Pakistan**
Muhammad Yousaf v. Addl. District Judge, Multan and others
Civil Petition No 6482 of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._6482_2021.pdf

Facts: Respondent No. 3 filed a composite family suit for dower, dowry articles etc. whereas the petitioner filed a civil suit for cancellation of entries of Nikah Nama. The learned trial court vide consolidated judgment partially decreed the suit of respondent No. 3 whereas the suit of the petitioner was dismissed. The petitioner and respondent No. 3 filed appeals. The appeal of respondent No. 3 was partially accepted whereas that of the petitioner was dismissed. Again the petitioner opted to file a writ petition against both the decrees i.e. decree of dismissal of his appeal as well as the decree of partial acceptance of appeal of respondent No, 3 which was dismissed. Through this petition filed under Article 185(3) of the Constitution, petitioner has sought leave to appeal against the judgment passed by the Lahore High Court.

Issues: i) Whether the cases of different jurisdictions can be consolidated in a single proceeding?
ii) Whether a suit challenging the validity of any entry of the Nikahnama is to be tried by the family court?
iii) What would be the legal status of family suits pointing a finger at any entry of the Nikahnama instituted before and pending trial or filed subsequent to the Family Courts (Amendment) Act 2015 (XI of 2015)?

Analysis: i) It is a cardinal principle of law that causes emanating from different jurisdictions cannot be consolidated in a single proceeding. A civil matter cannot be consolidated with a criminal matter, so also it cannot be consolidated with a family matter.
ii) The Family Courts Act, 1954 was amended in Punjab and a new residuary entry - "any other matter arising out of the Nikahnama" - was introduced at serial no. 10 in Part I of the Schedule to the Act (by way of Family Courts (Amendment) Act 2015 (XI of 2015) which stated that a suit challenging the validity of any entry of the Nikahnama is to be tried exclusively by the family court.
iii) Any suit pointing a finger at any entry of the Nikahnama instituted before and pending trial or filed subsequent to the above amendment shall be deemed to have been filed as a family suit and to be tried or transferred or deemed to have been transferred to a family court if already being tried by such court.

Conclusion: i) No, the cases of different jurisdictions cannot be consolidated in a single proceeding.
ii) After the amendment in Family Courts Act, 1964 vide Family Courts (Amendment) Act 2015 (XI of 2015), a suit challenging the validity of any entry

of the Nikahnama is to be exclusively tried by the family court.
iii) Family suits pointing a finger at any entry of the Nikahnama instituted before and pending trial or filed subsequent to the Family Courts (Amendment) Act 2015 (XI of 2015) shall be deemed to have been filed as a family suit and to be tried or transferred or deemed to have been transferred to a family court.

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7. **Supreme Court of Pakistan**
Muhammad Imran v. The State etc.
Criminal Petition No. 1212-L of 2022
Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1212_l_2022.pdf

Facts: Through the instant petition, the petitioner has assailed the order passed by the learned Single Judge of the learned Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered under Section 379 PPC, in the interest of safe administration of criminal justice.

Issues: i) Whether liberty of a person is a precious right and the same cannot be taken away merely on bald and vague allegations?
ii) Whether while granting pre-arrest bail, the merits of the case can be touched upon by the Court?

Analysis: i) It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.
ii) It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court.

Conclusion: i) Yes, liberty of a person is a precious right and the same cannot be taken away merely on bald and vague allegations.
ii) While granting pre-arrest bail, the merits of the case can be touched upon by the Court.

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8. **Supreme Court of Pakistan**
Pakistan Electronic Media Regulatory Authority v.
Pakistan Broadcasters Association & others
Civil Appeal No.1518 of 2013
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1518_2013.pdf

Facts: The respondents No. 2 to 8, being private broadcasters owning and operating different television channels, were issued various show cause notices in 2010 by the appellant/PEMRA, demanding payment of surcharge on account of late payment of annual fee pertaining to the licences granted to the respondents by the appellant. The respondents challenged the vires of the said surcharge by filling a

constitutional petition before the High Court which was allowed. Petitioners have assailed the said judgment through this petition.

Issues: i) Whether PEMRA may revoke and suspend any licence?
ii) Whether rules made under a parent statute can go beyond the scope of the said statute?
iii) What is status of regulations which do not draw their power from the parent statute?
iv) What is principle to interpret the fiscal statutes?

Analysis: i) It also substituted Section 30 of the Ordinance, which, through Section 30(1)(a), now provides that PEMRA may revoke and suspend any licence if the licensee fails to pay the licence fee, annual renewal fee or any other charges including fine, if any. The term "other charges", however, has not been defined therein.
ii) It is settled law that the rules made under a parent statute cannot go beyond the scope of the said statute and nor can they enlarge the scope of the statutory provisions therein. The power of rule-making is an incidental power that must follow and not run parallel to the parent statute.
iii) Furthermore, regulations must be made by the authority of the parent statute and regulations that do not draw their power from the parent statute are also ultra vires to the said parent statute.
iv) It is trite law that fiscal statutes are to be interpreted strictly and there is no room for any intendment therein.

Conclusion: i) PEMRA may revoke and suspend any licence if the licensee fails to pay the licence fee, annual renewal fee or any other charges including fine, if any.
ii) Rules made under a parent statute cannot go beyond the scope of the said statute
iii) Regulations which do not draw their power from the parent statute are ultra vires to the said parent statute.
iv) The fiscal statutes are to be interpreted strictly and there is no room for any intendment therein.

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9. **Supreme Court of Pakistan**
Fakhar Nawaz v. Administrative Secretary/Senior Member Board of Revenue,Peshawar, etc.
C.M.A.10945 of 2022 In C.P.3884 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._10945_2022.pdf

Facts: The main Civil Petition of the Petitioner was dismissed for non-prosecution whereupon the Petitioner filed the instant restoration application which has not been filed by the original AOR or drawn by the original ASC but by the newly appointed AOR and ASC.

Issues: Whether a restoration application filed before the Supreme Court by a new AOR without the consent of the earlier AOR or without the leave of the court is maintainable?

Analysis: We have drawn the attention of the learned counsel to Rules 6, 15, 23 and 24 of Order IV of the SC Rules…The restoration application is not only silent regarding the legal requirements mentioned in the SC Rules but is also in violation of the same. The application fails to show how the present ASC has appeared in this case without the instructions of the earlier AOR as required under Rule 6; the application does not disclose as to why the application was not filed by the earlier AOR as per Rule 15; how did the petitioner authorize and how did the new AOR file his power of attorney without the consent of the earlier AOR or without the leave of the Court as required under Rule 23; it is also not clear as to how the earlier AOR has been removed as no AOR can withdraw from the case without the leave of the Court as provided under Rule 24. The above shows that the instant application has been filled in violation of the SC Rules and neither the Petitioner, the AOR nor the ASC have bothered to pay any heed to the SC Rules before filling this application. This is most disconcerting especially because the new AOR has totally overlooked and bypassed the SC Rules. This restoration application being in flagrant disregard of the SC Rules is not maintainable.

Conclusion: A restoration application filed before the Supreme Court by a new AOR without the consent of the earlier AOR or without the leave of the court is not maintainable.

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10. **Supreme Court of Pakistan**
The Province of Sindh through Chief Secretary & others v.
Ghulam Shabbir and others.
Civil Appeals No. No.52-K to 71-K of 2022
Mr. Justice Muhammad Ali Mazhar, Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._52_k_2022.pdf

Facts: Through these appeals the petitioner assailed the judgment passed by the learned Sindh Service Tribunal ("Tribunal") in Appeals whereby the appeals of the respondents were disposed of with the direction to the appellants to consider the respondents for promotion to BPS-17 with effect from the date when the posts were fallen vacant in the quota.

Issues: i) Whether an acting charge appointment amounts to an appointment by promotion on regular basis or whether it confer any vested right for regular promotion?
ii) Whether the acting charge appointment can be made for an indefinite period?
iii) What is meant by the doctrine of legitimate expectation?

Analysis: i) However, it is further clarified in the 1974 APT Rules that appointment on acting charge basis shall be made on the recommendations of the DPC or PSB I or

II, as the case may be, with a further rider that acting charge appointment shall not amount to appointment by promotion on regular basis for any purpose including seniority and it shall not confer any vested right for regular promotion to the post or grade held on acting charge basis but, according to Sub-rule 9, the civil servant appointed on acting charge basis is entitled to draw fixed pay equal to the minimum pay on which his pay would have been fixed had he been appointed to that post on regular basis.

ii) Consistent with Sub-rule 4 of Rule 8-A of the 1974 APT Rules, acting charge appointment can be made against posts which are likely to fall vacant for a period of six months or more and against vacancies occurring for less than six months, but it is somewhat conspicuous in the case of the present respondents that the acting charge continued for up to three years without any logical justification or rhyme or reason and at the end of the day the promotion was regularized without any demur but with immediate effect which is a sticking point. … If assignment of duties on acting charge basis is allowed to be continued for an unlimited period of time then it amounts to deflecting and frustrating the very spirit of the rules. It is the obligation of the competent authority to decide the fate of an acting charge holder within the cutoff date fixed in the rules with all eventualities rather than allowing them to continue the acting charge for a long period and then one fine morning, according regularization of promotion to the acting charge holder and treating the service of the incumbent during acting charge *non est*. To stretch or continue acting charge or adhoc arrangement on own pay scale (OPS) for an extensive period rather than making timely appointments or filling the post by promotion according to the ratio or quota, as the case may be, creates misgivings and suspicions and such a tendency is highly destructive and deteriorative to the civil servant service structure.

iii) The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. In fact, a legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government or a public authority. This doctrine is basically applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation. As per Halsbury's Laws of England, Volume 1(1), 4th Edition, paragraph 81, at pages 151-152, it is prescribed that "A person may have a legitimate expectation of being treated in certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice."

Conclusion: i) An acting charge appointment shall not amount to an appointment by promotion on regular basis and it shall not confer any vested right for regular promotion.

ii) The acting charge appointment cannot be made for an indefinite period rather can only be made against posts which are likely to fall vacant for a period of six months or more and against vacancies occurring for less than six months.
iii) The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority.

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11. **Lahore High Court**
The State v. Manzoor Ahmad, (Manzoor Ahmad versus The State. and (Sultan Ahmad versus The State, etc.
Murder Reference No.129 of 2019, Crl. Appeal No.44496-J of 2019 and Crl. Appeal No.37914 of 2019
Ms. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC1238.pdf

Facts: The appellant, was involved in case F.I.R. registered under Sections 302, 34 P.P.C., at P.S. and was tried by the learned Additional Sessions Judge. The trial court seized with the matter in terms of the judgment, convicted the appellant under Section 302(b) PPC as Tazir and sentenced to Death for committing Qatl-e-Amd, with the direction to pay compensation of Rs.15,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to undergo 06-months S.I further.

Issues: i) What is the evidentiary value of site plan?
ii) When a witness takes specific plea of his presence, whether he must give explanation for his presence?
iii) Whether acquittal creates double presumption of innocence in favour of accused?

Analysis: i) Although the site plan is not a substantive piece of evidence in terms of Article 22 of the Qanun-e-Shahadat Order, 1984, as held in the case of "Mst. Shamim Akhtar v. Fiaz Akhtar and two others" (PLD 1992 SC 211) but it reflects the view of the crime scene. The same can be used to contradict or disbelieve eyewitnesses.
ii) When for the presence, if witnesses took the specific plea, there must be an explanation for their presence there. The deposition of a chance witness whose presence at the place of the incident remains doubtful should be discarded. Conduct of the chance witness after the incident may also be considered, particularly the condition of the dead body of the deceased.
iii) We have also taken note of the settled principle of criminal jurisprudence that unless it can be shown that the lower court's judgment is perverse or that it is completely illegal. No other conclusion can be drawn except the guilt of the accused or misreading or non-reading of evidence resulting into a miscarriage of justice. Even otherwise, when a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to his case. The

acquittal order cannot be interfered with, whereby an accused earns double presumption of innocence.

Conclusion: i) The site plan is not a substantive piece of evidence in terms of Article 22 of the Qanun-e-Shahadat Order, 1984 but the same can be used to contradict or disbelieve eyewitnesses
ii) If a witness takes the specific plea of his presence, there must be an explanation for his presence there.
iii) When a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to his case. The acquittal order cannot be interfered with, whereby an accused earns double presumption of innocence.

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12. **Lahore High Court**
Aziz Khan v. The State & another
Crl. Appeal No.39152 of 2019
Ms. Justice Aalia Neelum, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC9067.pdf

Facts: Through this appeal filed under Section 48 of the CNSA, 1997, appellant has called in question his conviction and sentence under Section 9(c) of the CNSA, 1997.

Issues: i) When a document can be exhibited by the trial court?
ii) How the document is required to be exhibited under the rules of Lahore High Court Rules and Orders?
iii) Under what circumstances the benefit of doubt is extended in favour of the accused?

Analysis: i) A document can only be exhibited when it is relevant and admissible in evidence. Prior to exhibiting a document, question of its admissibility must be decided by the trial court. Exhibit is a noun, which is earmarked for a document to be produced in evidence and given nomenclature by using alphabets or numbers for identification.
ii) Rule 14-H, Part B, Chapter 24, Volume III of the Lahore High Court Rules and Orders provides a self-explanatory procedure for exhibiting a document to be read in evidence. The learned trial court is under the bounden duty to see that the aforementioned Rule has been followed in its true letter and spirit. Where a document consists of more than one page, every page should be labelled and duly signed by the learned trial court as envisaged under the aforementioned Rule.
iii) It is golden principle of criminal law that a single circumstance creating reasonable doubt would be sufficient to smash the veracity of prosecution case and enough to extend the benefit of doubt in favour of the accused, not as a matter of grace or concession but as of right.

Conclusion: i) A document can only be exhibited by the trial court when it is relevant and admissible in evidence.

ii) Under the Rule 14-H, Part B, Chapter 24, Volume III of the Lahore High Court Rules and Orders, every page of the document is required to be labelled and duly signed by the learned trial.

iii) A single circumstance creating reasonable doubt is sufficient to extend the benefit of doubt in favour of the accused.

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13. **Lahore High Court**
Bilal Moeen Butt alias Bilal Hussain Butt v. The State etc.
Crl. Misc. No. 49770-B of 2021
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC9943.pdf

Facts: Through this petition, petitioner seeks post arrest bail in case FIR registered for offence under Section 489-F PPC.

Issues: i) What would be status of case at post-arrest bail stage if dishonest intention of an accused involved in issuing subject cheque requires further determination?

ii) If accused makes out his case as one of further inquiry, whether his previous criminal record without any conviction may be based to disentitle him to the grant of post arrest bail?

Analysis: i) A regular and smooth business relationship of the parties existed as well as the accused had been paying the due amounts to the complainant in near past. Dishonest intention of the accused involved in issuing of subject cheque is the question requiring determination by the learned trial court after recording of evidence.

ii) Seven other cases were alleged having previously been registered against the accused but he has not been convicted in any one of those. Accused makes out his case as one of further inquiry.

Conclusion: i) If dishonest intention of the accused involved in issuing subject cheque requires further determination, then case would be one of further inquiry into his guilt.

ii) If accused makes out his case one of further inquiry, then his previous criminal record, without any conviction, is not sufficient to disentitle him to the grant of post arrest bail.

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14. **Lahore High Court**
Muhammad Hamza v. The State etc.
Crl. Misc. No.11382-B of 2023
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2023LHC963.pdf

Facts: Through this petition, the petitioner has sought post arrest bail in case FIR registered for offence u/s 366 of PPC.

Issues: What would be fate of case at post-arrest bail stage if the culpability of the petitioner for an offence punishable under Section 336 PPC requires further determination by the trial court?

Analysis: Section 336 PPC manifests that intention to cause hurt or knowledge that the alleged act is likely to cause hurt is a necessary requirement to constitute offence under Section 336 PPC. But when occurrence prima facie seems accidental in nature, then section 336 PPC would not be applicable.

Conclusion: If the culpability of the petitioner for an offence punishable under Section 336 PPC requires further determination by the trial court, it will make the case as one of further inquiry into petitioner's guilt entitling him for post-arrest bail.

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15. **Lahore High Court**
Ahsan Nawaz v. Judge Family Court, etc.
W.P.No.355 of 2023
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC959.pdf

Facts: Through this petition, judgment and decree passed by respondent No.1 has been assailed, by virtue of which a suit for recovery of maintenance allowance and dower filed by respondent No.2 against the petitioner has been decreed to the extent of maintenance allowance.

Issues: Where a Nikah between the spouses has been performed, however, the marriage is not consummated as the Rukhsati has not taken place, in such an eventuality, whether a wife is entitled to maintenance allowance?

Analysis Section 9 of the Ordinance spells out that where a husband fails to maintain his wife, she in addition to seeking other legal remedies (as contemplated in West Pakistan Family Courts Act 1964) can also seek maintenance allowance. It shall not be out of place to mention here that no condition of Rukhasti or consummation of marriage has been mentioned therein. (…) claim of maintenance by the wife is not conditional with the rukhsati or consummation of marriage. It has also been elaborated that in such circumstances the conduct of the spouses will be of utmost importance while granting a claim of maintenance. (…) A wife who is willing to, but cannot, discharge her marital obligations for no fault of her own, rather is prevented to do so by any act or omission of her husband is legally entitled to receive her due maintenance from her husband, and the latter cannot benefit from his own wrong."

Conclusion: Claim of maintenance by the wife is not conditional with the rukhsati or consummation of marriage.

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16. **Lahore High Court**
Millat Tractors Limited v. Federal Board of Revenue & others
I.C.A No.83099 of 2022
Mr. Justice Shahid Karim, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC1332.pdf

Facts: This is an appeal under Section 3 of the Law Reforms Ordinance, 1972 and brings a challenge to the order by a learned Single Judge. The relief claimed in the

constitutional petition was for seeking a declaration regarding SRO to be struck down as having been issued without lawful authority. Further reliefs were claimed on the basis of the former SRO under which the appellant claimed the benefit of refund of sales tax from the respondents.

Issues: i) Whether Federal Board of Revenue has the power to take away vested rights and to upset past transactions?
ii) Whether Section 50 of the Sales Tax Act, 1990 does confer power upon FBR to make retrospective application of an amendment made in the Sales Tax Rules, 2006?
iii) How eligible person can be defined under Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012?
iv) Whether an enactment which prejudicially affects vested rights or the legality of past transactions can be given retrospective operation?
v) Whether any earlier notification contained a representation which was acted upon, its effect could have been nullified by an executive act?

Analysis: i) FBR neither has the power to take away vested rights and to upset past transactions nor to apply a notification retrospectively under the purported powers conferred by section 50 of the Sales Tax Act, 1990.
ii) Section 50 does not confer power upon FBR to make retrospective application of an amendment made in the Sales Tax Rules, 2006.
iii) A reference to definition of the term "eligible person" would also be apt under the circumstances. According to the definition an eligible person mean a manufacturer of agricultural tractors who supplies tractors to a person holding a valid proof of land holding such as agricultural pass book and copy of record of rights of agricultural land.
iv) In our jurisprudence the rule is now settled and vouched by respectable authority that an enactment which prejudicially affects vested rights or the legality of past transactions cannot be given retrospective operation. This rule is based on the principle of promissory estoppel and legitimate expectation.
v) The question came up for discussion in M/s Army Welfare Sugar Mills Ltd. and others v. Federation of Pakistan and others (PTCL 1993 CL 188) and the Supreme Court of Pakistan once again delved into the doctrine of promissory estoppel and went on to hold that a representation through a statutory regulatory order (SRO) could only be withdrawn by a legislative act. In M/s Army Welfare Sugar Mills too the benefit granted by a notification was sought to be withdrawn by a subsequent notification and it was concluded that the earlier notification contained a representation which could have been rescinded before it was acted upon or if it was acted upon, its effect could have been nullified by statutory provision and not by an executive act. This means that vested rights could not be impaired either by an executive act or by the exercise of powers delegated by the legislature unless the legislature has specifically granted delegation to enact retrospective measures… In the guise of making rules, vested and concluded rights could not have been taken away by the enactment of a notification which

was to take effect retrospectively. This could only have been done by the legislature under its primary power to legislate.

Conclusion: i) Federal Board of Revenue neither has the power to take away vested rights and to upset past transactions nor to apply a notification retrospectively.
ii) Section 50 does not confer power upon FBR to make retrospective application of an amendment made in the Sales Tax Rules, 2006.
iii) An eligible person mean a manufacturer of agricultural tractors who supplies tractors to a person holding a valid proof of land holding such as agricultural pass book and copy of record of rights of agricultural land.
iv) An enactment which prejudicially affects vested rights or the legality of past transactions cannot be given retrospective operation.
v) Any earlier notification contained a representation which was acted upon its effect could have been nullified by statutory provision and not by an executive act.

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17. **Lahore High Court**
Shah Jahan & another v. Province of Punjab & others
W.P.No.76524 of 2022
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC1127.pdf

Facts: The Govt. of the Punjab notified Gujrat as the 10th Division of the Punjab. Through Notification under Section 4 of the Land Acquisition Act, 1894, issued by District Collector, Gujrat (impugned Notification) acquisition proceedings have been set in motion regarding private land measuring 184K-OM. This has been challenged in this and connected W.P. by the landowners. Both petitions are being decided by this common judgment.

Issues: i) Whether any area of forest which qualifies to be treated as forest can be put to any other use when the department has remained fail to declare such area either as a protected forest or reserve forest?
ii) Whether the department without any reasonable cause can justify the acquisition and setting up of the project on an area which comprises of agricultural and forest land?

Analysis: i) According to the reports filed by the departments, when the area has not been declared either as a protected forest or reserve forest under the provisions of the Forest Act, 1927, this does not make any difference since the area qualifies to be treated as such and notifications ought to have been issued in this regard by the Forest Department. This failure to do so will not detract from the fact that the area under acquisition is a reserve forest and cannot be put to any other use unless the provisions of section 27 of the Act, 1927 are scrupulously followed.
ii) The department without any reasonable cause cannot justify the setting up of the project on an area which comprises of agricultural and forest land and to change the nature of forest land and carry out construction for setting up of a

Divisional Headquarter. It is also unjustified to cut trees which are standing on the forest area and to change the status of land used for flood mitigation in any manner. The act of the respondents contravenes the holding of High Court in Public Interest Law Association of Pakistan as well as of Shah Zaman Khan by the Supreme Court of Pakistan. No, acquisition of agricultural and cultivable farmlands can be done on the basis that it offends Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973.

Conclusion: i) The area of forest which qualifies to be treated as forest cannot be put to any other use when the department has remained fail to declare such area either as a protected forest or reserve forest unless the provisions of section 27 of the Act, 1927 are scrupulously followed.
ii) The department without any reasonable cause cannot justify the acquisition and setting up of the project on an area which comprises of agricultural and forest land as it offends Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973.

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18. **Lahore High Court**
Ayaz Mehmood v. Musadaq Riaz & 2 others
R.F.A. No. 51 of 2023
Mr. Justice Mirza Viqas Rauf, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC1010.pdf

Facts: This appeal is filed u/s 96 of CPC against the ex-parte judgment and decree passed by learned Civil Judge whereby the suit for specific performance and injunction, instituted by the appellant, has been dismissed. The appeal is accompanied by an application seeking to exclude the period for pursuing the remedy before forum without jurisdiction i.e. the learned District Court.

Issues: i) What is status of plaint returned under order VII Rule 10 of CPC for presentation before competent forum?
ii) Whether section 14 of the Limitation Act is applicable to the appeals??
iii) How the litigant, who seeks the exclusion of time period for pursuing remedy in forum without jurisdiction, ought to plead relevant facts and who has initial burden to prove the same?
iv) Whether wrong advice of a counsel can be permitted as grounds for excluding period consumed in pursuing remedy in wrong forum?
v) Whether availing of remedy within time provided by law is merely a technicality?

Analysis: i) There is no cavil to the settled proposition of law that where the plaint is returned under Order VII, Rule 10 of the Code for its representation before the Court of competent jurisdiction, for all intent and purposes, it is treated as a fresh institution.
ii) It is equally an established principle that although section 14 of the Limitation Act has no direct application to the appeals but the principles enumerated therein

can be taken into the consideration by the Court while ascertaining the availability of 'sufficient cause' for condonation of delay under section 5 of the Limitation Act.

iii) It is incumbent upon the litigant, seeking exclusion of time period for pursuing remedy in forum without jurisdiction, to plead the facts to justify the grant of relief and by reasonably demonstrating due diligence and good faith in pursuing the matter before the learned Court having no jurisdiction to adjudicate. The initial burden, to show the above elements for seeking to exclude the period consumed in prosecuting case before learned forum without jurisdiction, is on the applicant pleading such relief.

iv) In "Abdul Ghani" case the court has observed that in circumstances where error of pursuing remedy before forum is fairly obvious and it could have been avoided by exercising even little diligence or adopting some care, even the wrong advice of a counsel cannot be foundation for enlargement of time consumed in pursuing remedy before wrong forum…

v) Availing of remedy within the period provided by law is not merely a technicality. Section 5 or section 14 of the Limitation Act, 1908 are not intended to add premium to the carelessness or to validate lack of vigilance and required caution by a litigant.

Conclusion: i) Where the plaint is returned under Order VII, Rule 10 of the Code for its representation before the Court of competent jurisdiction, for all intent and purposes, it is treated as a fresh institution.

ii) Although section 14 of the Limitation Act has no direct application to the appeals but the principles enumerated therein can be taken into the consideration by the Court while ascertaining the availability of 'sufficient cause' for condonation of delay.

iii) The litigant ought to plead relevant facts to justify the grant of relief and by reasonably demonstrating due diligence and good faith in pursuing the matter before the learned Court having no jurisdiction to adjudicate. Applicant has initial burden to prove these elements.

iv) Wrong advice of a counsel cannot be permitted as grounds for excluding period consumed in pursuing remedy in wrong forum where error of pursuing remedy at wrong forum could have been avoided by exercise of even little diligence.

v) Availing of remedy within time provided by law is not merely a technicality.

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19. **Lahore High Court**
Muhammad Suqrat v. The learned Addl. District Judge, etc.
W.P.No. 2827 of 2016
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC992.pdf

Facts: This writ petition stems out from judgment of the learned Additional District Judge allowing the revision against order of the learned Judge Family Court/Executing Court, whereby respondent is directed to hand over dower in

shape of 04 tola gold ornaments or its price to petitioner in execution of decree passed under section 10 (4) of the Family Courts Act, 1964.

Issues: Whether an order under section 10 (4) of the Family Courts Act, 1964 decreeing suit for dissolution of marriage on the basis of Khula subject to return of dower is a decree under section 13 of the Act ibid and is executable as such?

Analysis: Section 2 (2) of the Code of Civil Procedure (V of 1908) describes decree as the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and it may be either preliminary or final. Section 13 of the Family Courts Act, 1964 provides the manner of enforcement of decrees while the manner & form of decree is provided in Rules 16 & 17 of the West Pakistan Family Court Rules, 1965. The order is compound when suit for dissolution of marriage is decreed in terms of section 10 (4) of the Act ibid, dissolving the marriage interse parties as well as making it subject to return of dower.

Conclusion: An order under section 10 (4) of the Family Courts Act, 1964 decreeing suit for dissolution of marriage on the basis of Khula subject to return of dower is a decree falling in section 13 of the Act ibid and is executable as such.

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20. **Lahore High Court**
Fazal Karim & 2 others v. Mehboob Khan (deceased) through his legal heirs
C.R.No.212-D of 2018
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC1297.pdf

Facts: The petitioners instituted a suit for permanent injunction, which was resisted by the respondents, by moving an application under Order VII Rule 11 "CPC" on the ground that suit is barred by law and is not maintainable. The application was accepted. Feeling aggrieved, the petitioners preferred an appeal but of no avail and the appeal was dismissed in limine, hence this civil revision petition.

Issues: i) Whether a co-sharer/co-owner can institute a suit for injunction for the protection of his rights without seeking partition?
ii) Whether there is any exception to the general rule that a co-sharer can institute a suit for permanent injunctions against a co-sharer?

Analysis: i) Law is consistent to this effect that every co-sharer/co-owner is owner in each and every inch of the joint property until it is partitioned by metes and bounds. It is also an oft repeated principle of law that a co-sharer/co-owner cannot change the nature of the joint property or raise construction without consent of the other co-sharers/co-owners. If a co-sharer is dispossessed from the joint property in his/her possession by any other co-sharer, the remedy lies for regaining his/her possession either in a suit under section 9 of the Specific Relief Act, 1877 or by way of a suit for partition.

ii) The matter, however, would become different in a case when a co-sharer intends to change the nature of the joint holding or threatens the other co-sharers to divest from their right in the joint property as co-owner. In such a case, such co-owner can institute a suit for injunction restraining the former from changing the nature of the joint land or raising any construction upon the same. In the said eventuality, it is for the former to first of all get the joint land partitioned

Conclusion: i) A co-sharer/co-owner cannot institute a suit for injunction for the protection of his rights without seeking partition.
ii) Yes, there is an exception to the general rule that a co-sharer can institute a suit for permanent injunctions against a co-sharer who intends to change the nature of the joint holding or threatens the other co-sharers to divest from their right in the joint property as co-owner.

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21. **Lahore High Court**
Mst. Asma Abdul Waris v. State Bank of Pakistan & 4 others
ICA No. 18654 of 2023
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC1286.pdf

Facts: State Bank of Pakistan declined to interfere in the orders of other bank in the service matter due to lack of jurisdiction and the constitutional petition of the appellant against the order of the State Bank of Pakistan was also dismissed. Through this Intra Court Appeal, filed under Section 3 of the Law Reforms Ordinance, 1972, the appellant has called in question order passed in the constitutional petition.

Issues: i) Whether the State Bank of Pakistan has jurisdiction to hear and decide service matters of employees of other Banks?
ii) What would be the legal consequences when anything required to be done in a particular manner is not done in the said manner?

Analysis: i) Section 11 of the Banking Companies Ordinance, 1962 deals with prohibition of employment of managing agents and restrictions on certain forms of employment and does not relate to the service matters of other employees of banks or their cases about terms and conditions of service and termination. Hence, the State Bank of Pakistan has no jurisdiction to hear and decide service matters of employees of Banks and where a jurisdiction is not vested by, law, the courts would not ordinarily confer said jurisdiction on any authority for the reason that jurisdiction could not be conferred by parties even by consent.
ii) It is settled by now that where a thing is required to be done in a particular manner, it must be done in the said manner and not otherwise as the same would be against the intention of legislature and not sustainable. Anything done to the contrary would be illegal, ex-facie erroneous and unsustainable in law.

Conclusion: i) The State Bank of Pakistan has no jurisdiction to hear and decide service

matters of employees of other Banks.
ii) When anything required to be done in a particular manner is not done in the said manner; the same would be against the intention of legislature and would be illegal, ex-facie erroneous and unsustainable in law.

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22. **Lahore High Court**
Munir Ahmad, Advocate High Court v. Province of Punjab, through Chief Secretary, etc.
W.P.No.18733 of 2023
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC1082.pdf

Facts: The petitioner through this Constitutional petition prayed for issuance of directions to the respondents, to conduct fair and free transparent elections in view of Article 218 (3) read with Article 220 of the Constitution of Islamic Republic of Pakistan, 1973.

Issues: Whether news items can be relied upon for reaching to conclusion that as certain officers have shown their inability to facilitate the conduct of Election etc. therefore, Election Commission has failed to proceed with matters of conduct Election?

Analysis: The Election Commission of Pakistan has not raised any plea against any of the officers that he/she is not helping in conducting the election in a proper manner or that it is not in a position to hold elections in a fair manner. Therefore, there is nothing substantially available on record to establish that the Election Commission of Pakistan had failed to implement Articles 218 and 220 of the Constitution and was not proceeding with the matter of conduct of elections in fair manner in letter and spirit.

Conclusion: Mere news items cannot be relied upon for reaching to conclusion that as certain officers have shown their inability to facilitate the conduct of Election etc. therefore, Election Commission has failed to proceed with matters of conduct Election.

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23. **Lahore High Court**
Muhammad Naseem etc. v. Province of Punjab through Collector, District Bhakkar etc.
C.R.No.112&113/2014
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC998.pdf

Facts: Through these civil revisions, the petitioners have challenged the validity of the judgment & decree passed by the learned Civil Judge who dismissed the suit for declaration and permanent injunction filed by the petitioners and also assailed the consolidated judgment & decree whereby the learned Additional District Judge,

dismissed the appeals of the petitioners.

Issues: i) Whether it is necessary for inferior owners (adna maalikan) to get permission from superior owners (aala maalikan) to be remained in possession of land after offer them share of produce (nazrana / jhaar)?
ii) Whether a person can claim right of inferior ownership (adna malkiyat) by breaking barren (barani) land?
iii) Whether any of the litigating parties could be allowed to re-agitate the matter in a subsequent suit or proceedings when once a matter is decided finally between the parties to suit or proceedings?

Analysis: i) It is an essential pre-requisite for the inferior ownership (adna maalikan) that they shall approach the superior owners (aala maalikan) and offer them share of produce (nazrana / jhaar) and take permission to be remain in possession.
ii) Mere the cultivation is not a sole criterion / reason to confer proprietary rights on the basis of entry in the column No.6 of Jamabandi as " قبضہ با شرع ما لکان بوجہ نو توڑ "as it neither creates any right of ownership in favour of the any person nor declares them as inferior owner (adna maalikan).
iii) The subsequent suit on the same issue or cause of action is not maintainable under Section 11 of CPC, which provision envisages that no Court shall try a suit or issue in which the matter directly or substantially in issue has already been decided in former suit between the same parties or between the parties under whom they or anyone of them remained litigating against same title which issue has earlier been raised and has finally been heard and decided by Court of competent jurisdiction. The object of the principle of res-judicata is to make end of the lis and also to prevent multiplicity of litigation. That once a matter is decided finally between the parties to suit or proceedings then none from the said litigating parties could be allowed to re-agitate the matter in a subsequent suit or proceedings.

Conclusion: i) Yes, it is necessary for inferior owners (adna maalikan) to get permission from superior owners (aala maalikan) to be remained in possession of land after offer them share of produce (nazrana /jhaar).
ii) A person cannot claim right of inferior ownership (adna malkiyat) by breaking barren (barani) land.
iii) Any of the litigating parties could not be allowed to re-agitate the matter in a subsequent suit or proceedings when once a matter is decided finally between the parties to suit or proceedings.

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24. **Lahore High Court**
Malik Zulfiqar Ahmad etc. v. Mosaddaq Parvaiz etc.
C.R.No.49148/2020
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC1319.pdf

Facts: Through this civil revision the petitioners have challenged the validity of the

judgment & decree passed by the learned Additional District Judge who accepted the appeal of the respondent No.1, set aside the judgment & decree passed by the learned Civil Judge and decreed the suit for specific performance of agreement along with permanent injunction filed by the respondent No.1.

Issues: i) On whom the burden of proof of contract lies in case of subsequent contract?
ii) What would be the legal consequences of non-production of material witnesses in evidence?
iii) Whether amount may be claimed as compensation in case of default of the contract?

Analysis: i) Initial onus of proof of contract is on the shoulder of a subsequent vendee to prove that his case falls within the purview and parameter of Section 27 of the Specific Relief Act, 1877 and that he is a transferee of the land for value, the consideration has been paid in good faith and that he had no notice of the earlier contract of the property.
ii) Non-production of material witnesses amounts to withholding of the best evidence and it would be legally presumed that if the said witnesses would be produced in the evidence, they would have deposed against the petitioners/defendants, as such presumption under Article 129 (g) of Qanun-e-Shahadat Order, 1984 clearly does not give them any favour.
iii) Section 20 of Act ibid provides that the amount may be claimed as compensation in case of default of the contract.

Conclusion: i) In case of subsequent contract, the burden of proof of contract lies on the subsequent vendee to prove that his case falls within the purview and parameter of Section 27 of the Specific Relief Act, 1877.
ii) Non-production of material witnesses in evidence amounts to withholding of the best evidence and such presumption becomes unfavorable to the party withholding best evidence under Article 129 (g) of Qanun-e-Shahadat Order, 1984.
iii) Yes, under Section 20 of the Specific Relief Act, 1877 the amount may be claimed as compensation in case of default of the contract.

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25. **Lahore High Court**
Humaira Mehboob v. Summit Bank Limited etc
E.F.A.No.20277 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1313.pdf

Facts: This appeal in terms of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 arising out of execution proceedings calls in question the vires of order whereby learned Judge Banking Court proceeded to dismiss the application filed by the Appellant. She also challenges order regarding fixation of reserve price of the mortgaged property.

Issues: i) Whether a judgment debtor is estopped from its own conduct to file objection belatedly when he/she did not file objection on the report of evaluator regarding valuation of the property at the time of filing report?
ii) Whether the Banking Court is to fix reserve price of the mortgaged property on the report of evaluator appointed by the court or on the report of an evaluator privately hired by the judgment debtor?
iii) Whether anything stops a judgment debtor to locate and bring forward a buyer of his choice either in the auction or before the Court prior to the sale if the property is being sold for a price which in the estimation of the judgment debtor is on the lower side?

Analysis: i) The record does not show that at the time of filing this report, the Appellant has ever filed an objection while the "Banking Court" in order dated 13.03.2023 observed that "an opportunity was given to the judgment debtor for submission of objection on the valuation report but the judgment debtor has not filed the objection at that time and reserve price was fixed on 09.02.2023. The judgment debtor filed the objection petition at belated stage just to linger on execution proceedings". Admittedly, execution proceedings are underway since year 2014 and the Appellant was well aware about it but she knowingly did not file objections at the relevant time rather the same were filed belatedly on 18.03.2023 as is evident from the order sheet attached with record so she is estopped from her own conduct.
ii) Pertinently, fixing the value of the property is a matter of opinion, and the Court cannot give its opinion on such a point. It appears that the object of the above proviso is to relieve the Court from the burden of affirming the accuracy of the value of the property shown in the proclamation of sale and to enable the prospective purchaser to form his own opinion relying upon the estimates given by the parties. After all, Order XXI Rule 66 (2) (e) CPC stipulates that the proclamation shall contain every other thing which the Court considers material for a purchaser to know in order to judge the nature and value of the property. Notwithstanding the afore-mentioned provision, with the availability and benefit of the evaluation reports from the PBA approved evaluators, the Courts do fix the reserve price of the properties being put to auction on the basis of the value placed therein. In the case in hand, the Appellant, while relying upon her evaluation report, has invited this Court to disregard the report prepared by the "Evaluator". The contention so raised cannot be accepted. The fact that the evaluation report prepared under the instructions of the Appellant places higher price of the mortgaged property than the evaluation report, which the "Evaluator" prepared under the directions of the "Banking Court", should not form basis for rejecting the latter report. The preference would always be given to evaluation report prepared under the orders of the Courts rather than a report which is prepared at the behest of a judgment debtor. In this case, the reserve price was fixed by the "Banking Court" based on the report of "Evaluator" hence it ensures reasonableness, fairness and otherwise promotes transparency whereas mere bald

assertion of inadequacy of reserve price fixed by a private evaluator not appointed by the Court is per se no ground to re-fix the reserve price especially when no substantial injury was otherwise caused. It is not uncommon for the judgment debtors to prepare the evaluation report showing exaggerated value of the mortgaged properties in order to delay and frustrate the auction process. It may again be emphasized that evaluation report by the "Evaluator" was prepared under the orders of the "Banking Court" and, therefore, the selection is not between the evaluation reports of the contesting purchasers that the Court is merely accepting the value placed by one side as ipse dixit.

iii) Nothing stops a judgment debtor to locate and bring forward a buyer of his choice either in the auction or before the Court prior to the sale if the property is being sold for a price which in the estimation of the judgment debtor is on the lower side. For this very purpose Rule 83 Order 21 CPC has been enacted under which Court sales can be postponed to enable a judgment debtor for raising money through private sale of the property.

Conclusion: i) A judgment debtor is estopped from its own conduct to file objection belatedly when he/she did not file objection on the report of evaluator regarding valuation of the property at the time of filing report.

ii) The Banking Court is to fix reserve price of the mortgaged property on the report of evaluator appointed by the court and not on the report of an evaluator privately hired by the judgment debtor.

iii) Nothing stops a judgment debtor to locate and bring forward a buyer of his choice either in the auction or before the Court prior to the sale if the property is being sold for a price which in the estimation of the judgment debtor is on the lower side.

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26. **Lahore High Court**
The State v. Muhammad Shahid alias Shada.
Crl. Appeal No.1026 of 2016
Mr. Justice Asjad Javaid Ghural, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC9073.pdf

Facts: Through the instant appeal, filed under section 417 Cr.P.C, the State has assailed the vires of impugned order passed by learned Additional Sessions Judge, in which accused person/respondent was acquitted by the learned trial court while exercising jurisdiction under section 265-K Cr.P.C from the charge in offence under section 9(c) of the Control of Narcotic Substances Act, 1997, during the pendency of the trial.

Issues: i) Whether summoning of an accused is a mechanical process?

ii) Whether prosecution should be stifled in its very inception while exercising power under section 265-K Cr.P.C. by the learned trial court?

iii) Whether power under section 265-K Cr.P.C can only be used in exceptional cases with reasons as to satisfaction of court regarding the non-probability of conviction of the accused?

iv) Whether prosecution can be deprived of the opportunity of producing evidence under the garb of the power conferred by section 265-K Cr.P.C?

Analysis: i) From bare perusal of section 204(1) Cr.P.C, it becomes abundantly clear that summoning of an accused is not a mechanical process rather trial court applies its judicious mind and only summons an accused when there is sufficient ground available to further proceed with the trial. The expressions 'existence of sufficient ground' and 'prima facie case' have been construed by the Courts interchangeably.

ii) It is a settled law that prosecution should not be stifled in its very inception while exercising power under section 265-K Cr.P.C. by the learned trial court. Where a prima facie case is made out against the accused, he should not be acquitted under section 265-K Cr.P.C. which amounts to stifle the prosecution at its very inception.

iii) No doubt section 265-K Cr.P.C. empowers the trial court to acquit the accused person(s) at any stage of the case if, after hearing the accused and prosecutor, the court considers that there is no probability of conviction of the accused. But, before rendering such an opinion, the court must give reasons as to its satisfaction regarding the non-probability of conviction of the accused. Power under this section can only be used in exceptional cases where the court reaches the conclusion that the prosecution has no case against the accused and there is not an iota of the probability of his conviction.

iv) It is a settled law that the prosecution cannot be deprived of the opportunity of producing evidence under the garb of the power conferred by section 265-K Cr.P.C, especially in such cases where allegations against the accused require recording of evidence. Depriving a complainant to prove his case through oral or documentary evidence is not a fair exercise of jurisdiction under aforementioned section. Stifling the prosecution is not the purpose of this section. Section 265-K Cr.P.C. is an exception to the general rule therefore, it must be construed strictly. Provisions of sections 249-A & 265-K Cr.P.C. contain an exception to the general rule that an accused should be declared guilty or innocent after affording full opportunity to prosecution and defense to prove their case.

Conclusion: i) Summoning of an accused is not a mechanical process.

ii) Prosecution should not be stifled in its very inception while exercising power under section 265-K Cr.P.C. by the learned trial court.

iii) Yes, power under section 265-K Cr.P.C can only be used in exceptional cases with reasons as to satisfaction of court regarding the non-probability of conviction of the accused.

iv) Prosecution cannot be deprived of the opportunity of producing evidence under the garb of the power conferred by section 265-K Cr.P.C.

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27. **Lahore High Court**
Muhammad Farman v. The State
Crl. Misc. No. 72710/B of 2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC1346.pdf

Facts: Through this application, the petitioner seeks pre-arrest bail in case FIR registered for offences under sections 21(1), 21(2)(b), and 21-A of the Agricultural Pesticides Ordinance, 1971.

Issues: Does the 'expired pesticide' fall in the definition of 'substandard' given in clause (rr) of section 3 of the Ordinance?

Analysis: "Substandard" products are those which are authorized but do not fulfil their quality standards or specifications. In this sense, they are distinct from "falsified" products, which intentionally or fraudulently misrepresent their identity, composition or source. Falsification includes substitutions and reproduction and/or manufacturing of an unauthorized product. Falsified products consist of innovator and generic products and items that lack active ingredients, have insufficient active ingredients, have the wrong ingredient, and/or contain hazardous contaminants or pathogens.

Product labels have various dates, each with its own meaning. Manufacturers use these dates to share special information with buyers. The "expiry date" advises buyers of the date up to which the manufacturer expects his product to retain its claimed efficacy, safety, quality or potency. The use-by-date alerts consumers when the product's quality may degrade. The phrase "best by date" indicates that the item's taste, flavour or texture may deteriorate beyond that date. Therefore, even after the "best before date", a product can be consumed because it is safe though it may not be as good as if used within the stipulated time limit. On the other hand, once the "expiry date" passes, the product is not fit for consumption. The term "substandard" in section 3(rr) applies to two types of products: (a) the pesticide whose strength or purity falls below the purported standard or quality specified on its label or under which it is sold; (b) the pesticide whose valuable ingredient has been wholly or partially extracted. Pesticides that have passed their expiration date lose their effectiveness. They may also change chemical composition, harming not just the crop but also people and the environment. Pesticides sprayed too close to water might drift and deposit fine spray droplets away from their target, contaminating surface water. Drift incidents can pollute surface water more than runoff or leaching. Therefore, expired pesticides are included in part (a) of the definition of "substandard" given in section 3(rr) of the Ordinance. Consequently, the provisions of section 21(2)(b) apply when a person sells expired pesticides.

Conclusion: Yes, the 'expired pesticide' falls in the definition of 'substandard' given in clause (rr) of section 3 of the Ordinance.

28. **Lahore High Court**
Liaquat Ali v. The State etc.
Crl. Misc. No.7517/B of 2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC1228.pdf

Facts: By this application, the Petitioner seeks post-arrest in case FIR registered at Police Station ANF, for offences under sections 9(2)(Item 9), and 15 of Control of Narcotic Substances Act, 1997 (XXV of 1997).

Issues: i) What is difference between retrospective law and ex post facto law?
ii) What type of protection under Article 12 of Constitution is provided against retrospective punishment?
iii) What is the aim and object of CNSA?

Analysis i) In Nabi Ahmed and another v. Home Secretary, Government of West Pakistan, and others (PLD 1969 SC 599), the Supreme Court of Pakistan held that there is no fundamental difference between retrospective law and ex post facto law. The former is used in civil and the latter in criminal matters, which are more serious by definition.
ii) Article 12 guarantees protection with reference to the time of the act or omission which may subsequently be made punishable and to the commission of an offence for which a heavier or a different kind of penalty may be imposed by legislation that takes effect from a previous date. The time of the commencement of a proceeding to impose the punishment is not critical to the protection. This distinction is important. As a result, while every law that alters the legal rules of evidence or any other procedural rule is prohibited by the American ex post facto clause, it is not barred by Article 12 of our Constitution.
iii) The CNSA consolidates and amends the law relating to narcotic drugs, psychotropic substances, and controlled substances. It inter alia aims to control their production, processing and trafficking and implement the provisions of the international conventions in this regard. Section 2 of the CNSA defines the aforesaid terms which are supplemented by the Schedule thereto.7 Section 2(za) empowers the Federal Government to declare any substance to be a psychotropic substance by notification in the official Gazette.8 Under section 7(2), it can make rules to permit and regulate the import, export, and transhipment of narcotic drugs, psychotropic or controlled substances through a licence or permit.

Conclusion: i) There is no fundamental difference between retrospective law and ex post facto law. The former is used in civil and the latter in criminal matters.
ii) Article 12 guarantees protection with reference to the time of the act or omission which may subsequently be made punishable and to the commission of an offence for which a heavier or a different kind of penalty may be imposed by legislation that takes effect from a previous date.
iii) The CNSA consolidates and amends the law relating to narcotic drugs, psychotropic substances, and controlled substances. It inter alia aims to control

their production, processing and trafficking and implement the provisions of the international conventions in this regard.

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29. **Lahore High Court**
MCB Bank Limited v. Tanveer Spinning and Weaving Mills and others
Civil Original Suit No.175411 of 2018
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1191.pdf

Facts: The Defendants filed leave to defend the suit under Section 10 of the Financial Institution (Recovery of Finances) Ordinance, 2001 whereby they prayed to grant them unconditional leave to appear and defend the suit.

Issues: Whether the restructuring or renewal of financial facilities is to be recognized as an obligation in terms of section 2(e) of the Financial Institution (Recovery of Finances) Ordinance, 2001?

Analysis: It may be noted that renewal, rescheduling, restructuring of a finance facility only ensued upon default, non-payment, delayed payment or inability in payment of outstanding liability by a customer who normally sought such concession upon admission of his liability…the restructuring or renewal of loan in favor of customer by a financial institution as facility comes within the purview of obligation as defined under Section 2(e) of the Ordinance…. Furthermore, the performance of any undertaking and fulfilment of a promise relating to repayment of finance is also an obligation within the meaning of the Ordinance.

Conclusion: The restructuring or renewal of financial facilities is to be recognized as an obligation in terms of section 2(e) of the Financial Institution (Recovery of Finances) Ordinance, 2001.

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30. **Lahore High Court**
MCB Bank Limited v. M/S MAZCO Industries Private Limited etc.
Execution Application No.64900 of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1039.pdf

Facts: The Applicant/ Judgment Debtor filed an application under Sections19(7) and 2(b) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 seeking transfer of the Execution Application to the Banking Court while taking the plea of lack of pecuniary jurisdiction of High Court.

Issues: Whether a decree in a banking suit passed by High Court is liable to be transferred on the ground that the amount of decree ultimately passed by High Court is less than the amount claimed in the suit by plaintiff and the decreed amount fell below the threshold of pecuniary limit of High Court for the exercise of its jurisdiction?

Analysis: The Banking Court which initially assumed the jurisdiction on the basis of the value fixed by the decree-holder in the plaint was the only forum which had the pecuniary jurisdiction to execute the decree and to decide all ancillary matters relating to the execution, discharge and satisfaction of the decree…If during the pendency of the suit the value of subject-matter is increased or decreased, the Court will not lose jurisdiction because jurisdiction once obtained is not taken away by increase or decrease in the value of the subject-matter and the Court can proceed with the adjudication of the suit while as per section 19 of the Ordinance a banking suit on pronouncement of a judgment even in case of consent decree automatically stands converted into execution proceedings before the same court which decided the case.

Conclusion: A decree in a banking suit passed by High Court is not liable to be transferred on the ground that the amount of decree ultimately passed by High Court is less than the amount claimed in the suit by plaintiff and the decreed amount fell below the threshold of pecuniary limit of High Court for the exercise of its jurisdiction.

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31. **Lahore High Court**
Deputy Registrar of Companies v. Mukhtar
Textiles Mills Limited and 8 others
C.M.No.02 of 2018 in C.O.No.39619 of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1032.pdf

Facts: The Company was wound up on the grounds of suspension of its business operation, laying off entire staff in order to avoid incurring expenditure. While passing the winding up order, the Court appointed official liquidator with direction to submit preliminary report. During winding up proceedings, instant application for recalling of winding up order has been filed and the petitioner raised objection to the maintainability of the petition.

Issues: i) Whether court is empowered to declare dissolution of a company void?
ii) What are conditions on which Court has the discretion to stay the winding up proceedings?

Analysis: i) Plain reading of section 414 of the Companies Act, 2017 reveals that it empowers the Court to declare dissolution of a company void in case application for the purpose was filed either by the liquidator or any person who appears to the Court to be interested, within two years of the date of dissolution of the Company.
ii) A bare reading of the said Section reveals that two conditions are required to be satisfied for bringing an order of stay of winding up in existence (i) filing of an application either of the Official Liquidator or of any creditor or contributory or of the registrar or the Commission or a person authorized by it for stay of winding up proceedings; (ii) proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed. If the above two conditions are

satisfied, the Court has the discretion to stay the winding up proceedings, either altogether or for a limited time by imposing appropriate terms and conditions. Pertinently, consequence of winding up order was that all the assets of the company would come under the control of the Court and management of the company would vest with liquidator instead of Directors and the Chief Executive of the company.

Conclusion: i) Section 414 of the Companies Act, 2017 empowers the Court to declare dissolution of a company void in case application for the purpose was filed either by the liquidator or any person who appears to the Court to be interested.
ii) Two conditions are required on which Court has the discretion to stay the winding up proceedings which are (i) filing of an application either of the Official Liquidator or of any creditor or contributory or of the registrar or the Commission or a person authorized by it for stay of winding up proceedings; (ii) proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed.

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32. **Lahore High Court**
DG Khan Cement Company Limited etc. v. Federal Board of Revenue etc.
Case No: W.P.No.52043 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1074.pdf

Facts: Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioners have challenged impugned show cause notice and subsequent notice issued by Respondent No.4 under Section 11(2) of the Sales Tax Act, 1990.

Issues: i) Whether under Provisions of Section 8 of 1990 Act the exclusion of adjustment/refund of input tax does have any nexus with the taxable activity?
ii) What functions are performed by the Federal Board of Revenue under the Federal Board of Revenue Act, 2007?

Analysis: i) Provisions of Section 8 of 1990 Act, manifests that the exclusion of adjustment/refund of input tax does not have a nexus with the taxable activity/supply of the registered person and parameters regarding adjustment of input tax are given in Sub-Sections (a) to (m) of this Section. The mechanism provided in Section 8 will be read together with the provisions contained in Sections 2 and 7 of 1990 Act when such kind of exercise regarding input tax is carried out by the competent authority.
ii) The Respondent/Federal Board of Revenue (the "FBR") functions under the Federal Board of Revenue Act, 2007 (the "2007 Act") and in terms of Section 4(1) (a) and (k) of this Act, it has to act in implementing the provisions of all fiscal laws, by (i) taking appropriate action; (ii) making policy; and (iii) issuing rules & regulations or guidelines in a clear, transparent, effective and expedient manner. High Court has already declared the FBR as a Regulatory Body to deal

with all the tax related affairs under relevant provisions of the 2007 Act.

Conclusion: i) Under Provisions of Section 8 of 1990 Act the exclusion of adjustment/refund of input tax does not have any nexus with the taxable activity.
ii) Federal Board of Revenue functions under the Federal Board of Revenue Act, 2007 and in terms of Section 4(1) (a) and (k) of this Act, it has to act in implementing the provisions of all fiscal laws.

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33. **Lahore High Court**
Mukhtar Ahmad Butt v. Addl. District Judge, etc.
W.P. No. 33436 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC9048.pdf

Facts: Through this constitutional petition, petitioner has called in question order passed by Senior Civil Judge whereby while allowing application of the respondents for framing of additional issues, request of the petitioner to discard the written statement filed by the respondents, on the ground of having been filed after delay of 53 days, has been declined. Petitioner has also called in question order passed by Addl. District Judge, whereby appeal filed by the petitioner against the afore-referred order has also been dismissed.

Issues: i) Whether written statement filed subsequent to the period of thirty days as provided under proviso to rule 1 of Order VIII C.P.C is to be discarded?
ii) Whether Court is empowered as provided under rule 1 of Order VIII C.P.C. to permit a party to file written statement within specified or extended time?
iii) Whether passed by the Courts below are ordinarily interfered with by High Court?

Analysis: i) Although, proviso to rule 1 of Order VIII C.P.C. provides that written statement is to be filed within period not ordinarily exceeding thirty days but the said rule does not provide that written statement filed subsequent to the said period of thirty days is to be discarded. The words used in the proviso are „that the period allowed for filing the written statement shall not ordinarily exceed thirty days‟. The phrase „shall not ordinarily exceed‟ cannot be read as „shall not exceed' by treating the word 'ordinarily' as redundant as the same is not permissible under the law as no word in a law could be treated as superfluous or redundant and has to be given effectto in letter and spirit. Reliance in this behalf may be placed upon judgments reported as "Waqar Zafar Bakhtawari and 6 others Vs. Haji Mazhar Hussain Shah and others" (PLD 2018 SC 81), "Syed Mushahid Shah and others Vs. Federal Investment Agency and others" (2017 SCMR 1218) and "Dr. Zahid Javed Vs. Dr. Tahir Riaz Chaudhary and others" (PLD 2016 SC 637). Reliance may also be placed on the case of "Engineer Zafar Iqbal Jhagra and others Vs. Federation of Pakistan and others" (PLD 2013 SC 224) wherein it is provided that general principle of statutory interpretation was that the language of legislature must not be rendered superfluous. The phrase „shall not ordinary exceed thirty

days‟ gives discretion to the Court to allow a party to file written statement even beyond period of thirty days and when such a discretion is exercised by allowing time to the other party to file written statement which is availed by the said party and written statement is filed within timeframe provided by the Court, the other party cannot raise objection against the said written statement by asking the Court to discard the same as having been belatedly filed.

ii) The power of the Court provided under rule 1 of Order VIII C.P.C. to permit a party to file written statement within specified or extended time, as is evident from the phrase, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit‟, cannot be curtailed by the proviso as a proviso is ordinarily an exception to the general rule and cannot be so interpreted to render the provision of main Section as redundant or ineffective or without any legal effect. Reliance in this behalf may be placed on judgments reported as "Federal Land Commission through Chairman Vs. Rais Habib Ahmed and others" (PLD 2011 SC 842) and "Enmay Zed Publications (Pvt.) through Director General Vs. Sindh Labour Appellate Tribunal through Chairman and 2 others" (2001 SCMR 565) wherein it is provided that proviso to a section operates as an exception and cannot render redundant or ineffective the substantial provisions of the main section. Needless to add that even otherwise the proviso to rule 1 of Order VIII C.P.C. provides discretion to Court to bind defendants to file written statement within thirty days or permit them to file the same beyond the said time period but the same does not curtail, in any manner, the power of the Court to allow a party to file written statement beyond thirty days.

iii) It is settled by now that discretionary orders passed by the Courts below are not ordinarily interfered with by this Court and order allowing the respondents to file written statement beyond thirty days was a discretionary order and this Court is not inclined to interfere in the said order on that account as well.

Conclusion: i) Written statement filed subsequent to the period of thirty days as provided under proviso to rule 1 of Order VIII C.P.C is not to be discarded.

ii) Court is empowered as provided under rule 1 of Order VIII C.P.C. to permit a party to file written statement within specified or extended time.

iii) Discretionary orders passed by the Courts below are not ordinarily interfered with by High Court.

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34. **Lahore High Court**
Mian Zafar Haider v. Deputy Commissioner etc.
Writ Petition No. 5740 of 2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2018LHC4068.pdf

Facts: Through this constitutional petition, the petitioner has called in question order passed by Deputy Commissioner, whereby services of the petitioner were put under suspension with immediate effect on account of willful absence from duty.

Issues: i) Whether the High Court can go into the factual determination of the matter while exercising its constitutional jurisdiction?
ii) Whether suspension is a temporary measure wherein an employee has to receive his full emoluments?
iii) Whether the High Court in its constitutional jurisdiction could consider the intermediate stages of the proceedings relating to terms and conditions of a civil servant when the said orders are to merge in the final order likely to be passed?

Analysis: i) Although the petitioner claims that his attendance is marked in the office of the Tehsildar but this Court cannot go into the factual determination of the matter while exercising its constitutional jurisdiction.
ii) Suspension is a temporary measure wherein an employee has to receive his full emoluments, although no work during his suspension is usually taken from the said employee.
iii) The matter relates to terms and conditions of service of an employee and the order of suspension is not a punishment. If any final order is passed against the petitioner as a result of proceedings under PEEDA Act, he would have remedy before the departmental authorities and Service Tribunal. This Court in its constitutional jurisdiction could not consider the intermediate stages of the proceedings relating to terms and conditions of a civil servant when the said orders are to merge in the final order likely to be passed. Besides, piecemeal decisions are not the intention of law. Moreover, bar of Article 212 of the Constitution would be applicable in the present case.

Conclusion: i) The High Court cannot go into the factual determination of the matter while exercising its constitutional jurisdiction.
ii) Suspension is a temporary measure wherein an employee has to receive his full emoluments.
iii) The High Court in its constitutional jurisdiction could not consider the intermediate stages of the proceedings relating to terms and conditions of a civil servant when the said orders are to merge in the final order likely to be passed.

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35. **Lahore High Court**
Aila Azhar and another v. Ali Kuli Amin-ud-Din and others
W.P. No.21798 of 2022
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC1147.pdf

Facts: The instant constitutional petition stemmed from order of Addl. District Judge in terms whereof the revision petition was accepted, order of the trial court was set aside and the application for consolidation of two suits was allowed.

Issues: (i) Whether cross-suits involving admitted joint property as well as disputed joint property may be consolidated for adjudication through single trial?

(ii) Whether all the joint properties must be the subject-matter of a suit of partition?

(iii) Whether trial court is competent to pass decree on the basis of admissions made in cross-suits to the extent of some of the properties included in the subject-matter of such suits?

Analysis: (i) Under Order XIV, Rules 1 and 2, C.P.C. issues are framed from the material controversies and propositions of law and fact raised inthe pleadings of parties and are not limited to the issues raised in the plaint alone. Rule 1(5) of Order XIV, C.P.C. mandates that on reading the plaint and the written statement and after such examination of the parties as mayappear necessary, the court shall ascertain that upon what material propositions of law or fact, the parties are at variance; and shall thereupon proceed to frame issues on which right decision of the case appears to depend. It is clear from bare reading of the provision that the material propositions of law or fact raised in the pleadings of the parties by both sides (i.e. plaintiffs and defendant) shall become subject matter of issues…This being so; in situation where parties are the same, the subject matter of the two suits raised in the pleadings i.e., plaint and written statement is the same, the questions for determination of issues will be the same and that it will require common evidence for decision; propriety demands that the two suits be consolidated to follow the rule of convenience for parties and to avoid contradictory decisions and unnecessary delay. It appears to be in these circumstances that an amendment was made in Order II, C.P.C. whereby Rule 6-A was added by Lahore High Court Notification No. 237/Legis/XI-Y-26, Gazette of Punjab dated 22.8.2018.

(ii) The rule is that partial partition shall not be allowed and the entirety of the properties be included irrespective of possession…It is consistent rule that all the properties that are jointly owned must be subject matter of the suit, instead of the partition of one property while leaving the other properties out for subsequent proceedings.

(iii) No doubt that the trial court is competent to pass decree on the basis of admissions made in the pleadings under Order XII, Rule 6, C.P.C. which would only apply to the properties that are admitted either by the petitioners or by the respondent.

Conclusion: (i) Cross-suits involving admitted joint property as well as disputed joint property may be consolidated for adjudication through single trial.

(ii) All the joint properties must be the subject-matter of a suit of partition.

(iii) Trial court is competent to pass decree on the basis of admissions made in cross-suits to the extent of some of the properties included in the subject-matter of such suits.

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36. **Lahore High Court**
Shehzad Nawaz and others v. Mst. Raaj Begum and others
R.S.A. No.25 of 2015
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC1219.pdf

Facts: The instant second appeal is directed against judgments and decree in terms whereof the suit for declaration of respondent was decreed by the trial court and appeal there against was dismissed by the first appellate court.

Issues: i) Whether in a second appeal concurrent findings of fact could ordinarily be challenged?
ii) What are the mandatory ingredients of gift?
iii) Whether question of limitation is also applicable in the cases where fraud and collusion are alleged?
iv) Whether gift mutations are merely a tool to deprive the daughter from their inherited share?

Analysis: i) In a second appeal concurrent findings of fact could not ordinarily be challenged unless any serious misreading of evidence was pointed out or serious questions of law were raised.
ii) To prove gift, it was incumbent to allege and prove three mandatory ingredients. The declaration of gift, acceptance of gift and transfer of possession of the property. It was also necessary to specifically mention the time, place and names of persons in whose presence these prerequisites were performed.
iii) It was observed by the Supreme Court Of Pakistan to the effect that gift mutation having been challenged on grounds of fraud and collusion, the contention that suit was barred by time did not have any force, as where fraud and collusion are alleged and established question of limitation cannot help the beneficiary thereof.
iv) The gifts were only a device to deprive the daughters from inheritance and the gift mutations were sanctioned to bypass the law of inheritance; and that gift being based on a fraudulent intent which vitiates even the most solemn transactions notwithstanding the bar of limitation Courts would not act as helpless bystanders and allow a fraud to perpetuate

Conclusion: i) In a second appeal concurrent findings of fact could not ordinarily be challenged unless there is any serious misreading of evidence or question of law raised.
ii) The declaration of gift, acceptance of gift and transfer of possession of the property are the mandatory ingredients to prove the gift.
iii) There is no question of limitation if fraud is alleged.
iv) Yes, the gifts are only a device to deprive the daughters from inheritance and the gift mutations are sanctioned to bypass the law of inheritance

37. **Lahore High Court**
Munir Ahmed v. The Federation of Pakistan
W.P. No.80733 of 2022.
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC1180.pdf

Facts: Through this writ petition, the petitioner has challenged the decision of the Government whereby he was declined to provide the record of Tosha-khana.

Issues: Whether the record of Tosha-khana can be made public?

Analysis: There is no second thought that ownership of gift(s) received exclusively vests in the Government of Pakistan. Undoubtedly, the option of purchase is available to the recipient but only upon fulfilling the procedural and codal / legal requirements. And upon payment of price, as determined, ownership in the gifts is conferred on the recipient – [there are gifts, whose prices are either below the permissible limit or so insignificant that retention is allowed without any payment. This category of gifts is different]. I concur with the submissions of the learned Additional Attorney General that gifts are not provided to the individuals, out of any personal affection or bonding, but being the Government / Public functionaries, representing the State of Pakistan - this status/privilege is an essential qualification for the recipient of gift(s). Families/members of official delegations are subject to the same limitations, obligations and procedure(s), as applicable to the Government / Public functionaries. In every case, the dominion over the gift(s) remains with the Government and possession of the gifts is a mere entrustment. Recipient(s), entrusted with the property, may seek purchase of gifts but subject to the procedure prescribed for disposal – which inter alia includes the first step of disclosure of gift(s), declaration of intention to purchase, assessment/ascertainment of the price and payment of consideration. And unless all these requisite conditions are met, the ownership in the gift(s) or dominion over them vests and continues to vest in the Government, and the recipient is merely a trustee, holding gift(s) on behalf of the Government of Pakistan –gift(s), held as trustee, will not even became part of the estate of the recipient unless procedure prescribed is followed. In view of the above, it is declared that act of non-disclosure, non-declaration or non-payment of price qua the gift(s) is culpable wrongdoing, attracting malfeasance, misconduct and breach of trust. It is expected that Government / Public functionaries, those who had received the gift(s) but had, so far, neither disclosed nor declared the identity of gifts, must voluntarily declare receipt/possession of gifts, failing which said persons are likely to be exposed to criminal action or departmental proceedings, as the case may be. It is pertinent to mention that criminal breach of trust is otherwise a punishable offence under Pakistan Penal Code 1860. Nobody is above the law, nor anyone could be allowed to make gains or enrich itself at the expense of causing loss to the State and prejudice to the people of Pakistan. It is believed that claim of immunity pleaded is nothing but a figment of the colonial mindset, which

mindset must be abandoned/off-loaded now, if the Rule of law and equality before the law need to be established. Now, after seventy-five years of our independence it is imperative that the people of Pakistan be treated as citizens/fountainhead of all power, instead of being the subjects in a colonial set-up. People of Pakistan have the right to know the details of 'Tosha-Khana', what was gifted and who gifted it.

Conclusion: Yes, the record of the Tosha-khana can be made public.

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38. **Lahore High Court**
Fayyaz Ahmad etc. v. The State, etc.
Criminal Appeal No.654 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1106.pdf

Facts: Appellants along with 130 co-accused faced trial before Anti-Terrorism Court, Bahawalpur in case FIR under sections 302/ 353/ 224/225/ 295-B/324/ 435/ 436/ 395/148/149/ 458/ 186/427/ 201/ 337-A(2)/ 337-F(i)/342 PPC read with section 7 Anti-Terrorism Act, 1997 and on conclusion of trial vide judgment dated 31.03.2022 along with twenty two co-accused, the present accused/appellants were convicted and sentenced.

Issues: What are the evidential requirements to sustain a conviction in an offence of rioting?

Analysis An offence is a statement of facts embodied in a section of law which are to be proved as required through the definition given in such section of law. We know 'riot' is a disturbance of the peace by several persons, assembled and acting with a common intent in exercising a lawful or unlawful enterprise in a violent and turbulent manner. Bifurcating such definition into segments will show that disturbance of peace, like obstruction of roads, damage to property or injuries to persons, is to be proved by the evidence of illegal acts at the site, and that too by several persons, and if it was a lawful act then violent or turbulent manner shall be proved; both situations require that a pre-concert is to be proved for attracting common intent, or the circumstances which united the people to act with common intent at spur of the moment. (…) Riot, rout, and unlawful Assembly are related offences, yet they are separate and distinct. A 'rout' differs from a 'riot', in which the persons involved do not actually execute their purpose but merely move toward it. The degree of execution that converts rout into riot is often difficult to determine. (…) when force or violence will be used by an unlawful assembly with the intent mentioned therein then it would become an offence of rioting. (…) In such a case, to sustain a conviction for rioting, it is essential for prosecution first to prove the existence of an unlawful assembly with a common object and then to prove that one or more members of the assembly used violence or force in furtherance of the common object. (…) Mere presence of the appellant at the place of occurrence is never sufficient to prove that he shared the common object

of the unlawful assembly. The provisions of the above referred sections do not require conviction and punishment merely on the basis of only presence or identification of the appellant as member of the mob.

Conclusion: To sustain a conviction for rioting, it is essential for prosecution first to prove the existence of an unlawful assembly with a common object and then to prove that one or more members of the assembly used violence or force in furtherance of the common object. Mere presence of one at the place of occurrence is never sufficient to prove that he shared the common object of the unlawful assembly.

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39. **Lahore High Court**
Mirza Muhammad Akbar Baig. v Add. District Judge, etc.
Writ Petition No.6002 of 2022.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC983.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, petitioner has challenged the vires of order passed by learned Appellate Court whereby while accepting the appeal of the respondent No.3 her execution petition was restored.

Issues: i) What is the limitation for filing of an execution petition before the Family Court?
ii) Whether the learned Appellate Court can condone the delay in filing the appeal?

Analysis: i) Perusal of Section 13 of the West Pakistan Family Courts Act, 1964 reveals out that no limitation is provided for filing of an execution petition in family cases. Provisions of Limitation Act, 1908 are not applicable in family matters in stricto-senso. As no specific period of limitation for implementation of decree of dower has been fixed therefore whenever wife moves the legal forum for satisfaction of her right, husband is under legal obligation to satisfy the decree.
ii) Right of appeal is not merely a matter of procedure; rather it is a substantive right. There is no cavil that in terms of Rule 22 of the Family Courts Rules, 1965, an appeal under Section 14 of the Family Courts Act, 1964 shall be preferred within a period of 30 days of the passing of decree or decision but appellate Court is vested with the power to condone any delay in filing the appeal on showing sufficient cause by the appellant.

Conclusion: i) No limitation is provided for filing of an execution petition in family cases.
ii) The learned Appellate Court can condone the delay in filing the appeal on showing sufficient cause.

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40. **Lahore High Court**
Safdar Yar Khan, etc. v. Mohammad Iqbal Khan, etc.
Regular Second Appeal No.56 of 2005.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC1048.pdf

Facts: Through this Regular Second Appeal appellants have assailed the vires of judgments & decrees of the Courts below whereby suit of respondent No.1 was decreed concurrently.

Issues: i) Whether civil court has jurisdiction after the repeal of Settlement Laws particularly when the question of fraud & forgery is also involved?
ii) Whether the limitation runs against the void transaction?

Analysis i) After the repeal Act XII of 1957 the only forum to determine whether a property is available property or not, is the Civil Court and not the Residual Authorities. (…)The question of fraud & forgery is determinable only by the Civil Court, particularly in the settlement cases, where after the repeal of Settlement Laws no other forum is available for adjudicating such dispute. Notified Officer appointed under the Repeal Act do not possess jurisdiction to declare P.T.O & P.T.D as illegal, null & void on the ground of fraud & forgery. After repeal of Settlement Laws, this jurisdiction only vested with the Civil Court."
ii) Where fraud and forgery is alleged, the time is computed from the date of knowledge. (…) It is well settled principle of law that fraud vitiates even the most solemn transaction. Any transaction based on fraud would be void. Limitation does not run against void transaction. Mere efflux of time did not extinguish the right of any party. Notwithstanding the bar of limitation, the matter can be considered on merit so as not to allow fraud to perpetuate.

Conclusion: i) The question of fraud & forgery is determinable only by the Civil Court, particularly in the settlement cases, where after the repeal of Settlement Laws no other forum is available for adjudicating such dispute.
ii) Where fraud and forgery is alleged, the time is computed from the date of knowledge and limitation does not run against void transaction.

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41. **Lahore High Court**
Mst. Irshad Bibi v. Ghulam Mustafa, etc.
Civil Revision No.970 of 2012.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC1158.pdf

Facts: Petitioner instituted a suit for declaration against the respondents by contending therein that she is owner in possession of suit property; impugned sale mutation as well as subsequent entries in the revenue record made on the basis of said mutation is against the law as she never appointed general attorney for sale of her property. Learned trial court dismissed the suit; feeling aggrieved petitioner

preferred an appeal which was partially accepted. Respondents filed civil revision for the dismissal of the same whereas petitioner filed revision for decreeing the suit in toto.

Issues: i) Who is to prove the execution of oral sale mutation and general power of attorney if property is sold by general attorney?
ii) Whether it is imperative for the vendees to establish that the transaction was undertaken with a title holder in order to enforce a sale of immovable property?
iii) Whether transaction involving property of illiterate women is to be treated at par with Pardanasheen lady and what are the requirements if such transaction is involving anything against her apparent interest?
iv) Whether attestation of mutation itself furnishes a proof of sale?
v) Whether mutation is document of title and how the entries of mutation are proved?
vi) Whether the High Court is to give its findings after appraisal of evidence if both the courts below are at variance?
vii) Which powers should be exercised under the general power of attorney?
viii) Whether the execution of power of attorney creates absolute right of attorney over the property?
ix) What is the procedure to prove when no attesting witness is found?
x) If there are numerous cuttings on oral sale mutation then what inference can be drawn?
xi) Whether the fraud vitiates the transaction and whether limitation runs against void transaction?
xii) When the limitation commences where a person is by means of fraud kept from the knowledge of his right to institute a suit?
xiii) When right to sue accrues to a person against the other for declaration of his right?

Analysis: i) If suit property is sold by general attorney through oral sale mutation, in order to establish valid execution of the transaction, respondents have to prove not only the general power of attorney, the ingredients of sale but also the execution of the mutation through cogent and reliable evidence.
ii) In order to enforce a sale of immoveable property it is imperative for the vendees to establish that the transaction was undertaken with a title holder; there was an offer made which was accepted; the parties had no incapability; there was consensus at idem; that it was settled against valid consideration and that it was accompanied by the delivery of possession.
iii) Transaction involving property of illiterate women is to be treated at par with Pardanasheen lady and where a transaction involved anything against her apparent interest, it must be established that independent, impartial and objective advice is available to her and the nature, scope, implication and ramifications of the transaction entering into is fully explained to her and she understood the same.

iv) Attestation of mutation by itself does not furnish proof of sale and whenever any such transaction was questioned, the onus laid on the beneficiary to prove the transaction and every ingredient thereof as well as the document if executed for its acknowledgment.

v) Mutation is always sanctioned through summary proceedings and to keep the record updated and for collection of revenue, such entries are made in the relevant register under Section 42 of the Land Revenue Act, 1967 and it had no presumption of correctness prior to its incorporation in the record of rights. However, entries in the mutation are admissible in evidence but the same are required to be proved independently by the persons relying upon it through affirmative evidence. Oral transaction reflecting therein did not necessarily establish title in favour of the beneficiary. Mutation could not by itself be considered a document of title and may have been attested as an acknowledgment of past transaction.

vi) To reach a just conclusion, scanning of the whole evidence is necessary as conclusion drawn by both the courts below are at variance. Guidance sought from the judgment of august Supreme Court of Pakistan titled "Mst. Azra Gulzar V. Muhammad Farooq and another (2022 SCMR 1625)".

vii) It is settled principal of law that there must not be any uncertainty or vagueness in the power of attorney. Power of attorney should be construed strictly and only such powers qua the explicit object which were expressly and specifically mentioned in the power of attorney should be exercised by the agent as conceded to have been dedicated to him.

viii) The execution of power of attorney neither amounts to be divesting the principal of the authority over the subject matter nor does it amount to absolute right of the attorney over the property as its owner. The attorney has to act as an agent of the principal. There is a restriction that the attorney has to take the principal in confidence before converting the property of the principal on the force of the power of attorney into personal use or for the benefit of his near relatives. If an attorney intends to exercise right of sale in his favour or in favour of next of his kin, he has to consult the principal before exercising that right and he should firstly obtain the consent and approval of the principal after acquainting her with all the material circumstances. In this regard guidance sought from august Supreme Court of Pakistan titled "Muhammad Ashraf & 02 others V. Muhammad Malik & 02 others (PLD 2008 SC 389)".

ix) Article 80 of Qanun-e-Shahadat Order, 1984 provides the procedure how to prove when no attesting witness is found. It is obligatory upon the respondents to prove this fact that their witnesses had been died or cannot be traced out. Reliance is placed on "Ghulam Sarwar (Deceased) Through L.RS., and others versus. Ghulam Sakina" (2019 SCMR 567). The respondents had a way to prove the factum of death by leading secondary evidence.

x) If there are numerous cuttings on the alleged oral sale mutation, the said cuttings which have been made on the mutation were sufficient to declare the

impugned sale null & void. Reliance is placed upon the case law cited as "Mst Hameedan Bibi & another V. Muhammad Sharif (2017 YLR 239)."

xi) It is well settled principle of law that fraud vitiates even the most solemn transaction. Any transaction based on fraud would be void. Limitation does not run against void transaction. Mere efflux of time did not extinguish the right of any party. Notwithstanding the bar of limitation, the matter can be considered on merit so as not to allow fraud to perpetuate. In this regard, I seek guideline from the cases of Hon"ble Supreme Court of Pakistan reported as "PEER BAKHSH through LRs and others vs. Mst. KHANZADI and others" (2016 SCMR 1417);"Muhammad Iqbal versus Mukhtar Ahmad" (2008 SCMR 855)"Mst. Raj Bibi etc. versus Province of Punjab, etc." (2001 SCMR 1591) and "Hakim Khan versus Nazeer Ahmad Lughmani" (1992 SCMR 1832).

xii) Where a person is by means of fraud kept from the knowledge of his right to institute a suit. In such circumstances, the period of limitation commences from the date when the fraud first became known to the "person injuriously affected". Such injuriously affected person can, therefore, institute a suit within the limitation period specified for such suit in the First Schedule ("Schedule") to the Limitation Act, but computing it from the date when he first had knowledge of the fraud, whereby he was kept from knowledge of his right to institute the suit. Thus, section 18 of Limitation Act is an umbrella provision that makes the limitation period mentioned in the Articles of the Schedule, begin to run from the time different from that specified therein.

xiii) The right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his right. The august Supreme Court of Pakistan in its recent judgment titled "RABIA GULA and others Vs. MUHAMMAD JANAN and others" (2022 SCMR 1009) while interpreting two actions that cause the accrual of right to sue, to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right.

Conclusion: i) Respondents have to prove not only the general power of attorney, the ingredients of sale but also the execution of the mutation through cogent and reliable evidence.

ii) In order to enforce a sale of immoveable property it is imperative for the vendees to establish that the transaction was undertaken with a title holder.

iii) Transaction involving property of illiterate women is to be treated at par with Pardanasheen lady and where a transaction involved anything against her apparent interest, it must be established that independent, impartial and objective advice is available to her.

iv) Attestation of mutation by itself does not furnish proof of sale.

v) Mutation is not document of title and entries of mutation are required to be proved independently by the persons relying upon it through affirmative evidence.

vi) The High Court is to give its findings after appraisal of evidence if both the courts below are at variance.

vii) The powers qua the explicit object which were expressly and specifically mentioned in the power of attorney should be exercised by the agent.
viii) The execution of power of attorney does not create absolute right of attorney over the property.
ix) It is obligatory upon the respondents to prove this fact that their witnesses had been died or cannot be traced out.
x) If there are numerous cuttings on the alleged oral sale mutation, it is sufficient to declare the impugned sale null & void.
xi) Any transaction based on fraud would be void and limitation does not run against void transaction.
xii) The period of limitation commences from the date when the fraud first became known to the "person injuriously affected".
xiii) The right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right.

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42. **Lahore High Court**
Bashir Ahmed v. The State etc., Mst. Sajeela Zakir v. Ahmed and four others and Mst. Sajeela Zakir v. The State etc.
Criminal Appeal No.223 of 2021, P.S.L.A No.19 of 2021 and Crl. Revision No.98 of 2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1090.pdf

Facts: Five accused persons faced trial before learned Additional Sessions Judge, Bahawalnagar in a private complaint under sections 302/148/149 PPC arising out of an FIR under sections 302/148/149/34 PPC police station Takhat Mahal, District Bahawalnagar and on conclusion of trial appellant was convicted.

Issues: i) Whether prosecution is under obligation to prove its case beyond reasonable doubt at all stages of a criminal case?
ii) Whether it is not the quantity rather the quality which is required to establish a charge by the prosecution?
iii) What is deflection of bullet and ricochet effect in cranial cavity?

Analysis: i) It is well settled proposition of law that the prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case.
ii) This court is conscious of the fact that it is not the quantity rather the quality which is required to establish a charge by the prosecution and similarly it is for the prosecution to choose as to which of the witnesses can be useful to it, but having said that the prosecution cannot escape its liability to bring home the guilt against the accused beyond any shadow of doubt.
iii) Presence of bullet inside the body without exit wound does not mean that it was not a close-range fire because the locale from where it entered was a

zygomatic bone, bullet jacketed in the skull while touching the maxilla bone which are very hard bones of the body and even due to ricocheting effect bullet usually deflect inside the body (…) The ricochet effect is different in the cranial cavity as compared to other part of the body.

Conclusion: i) The prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case.
ii) The prosecution is required to produce the quality and not a quantity of evidence to establish a charge.
iii) The ricochet effect is different in the cranial cavity as compared to other part of the body and due to ricocheting effect bullet usually deflect inside the body.

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43. **Lahore High Court**
Hafiz Ali Raza v. Deputy Commissioner, Lahore, etc.
W.P.No.20258 of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1304.pdf

Facts: The petitioner has challenged the vires of Order passed by Deputy Commissioner, Lahore by which thirteen persons have been put under preventive detention.

Issues: (i) Whether section 3 of the Maintenance of Public Order Ordinance, 1960 can be invoked on the sole basis of source report without any tangible evidence against a detenue?
(ii) Whether High Court lacks jurisdiction to dilate upon the issue of preventive detention as per section 23 of the Maintenance of Public Order Ordinance, 1960?

Analysis: (i) The purpose of section 3 is to prevent any person from acting in any manner prejudicial to public safety or the maintenance of public order. For ascertaining such act, it is essential that some material in tangible form should be available. Learned Assistant Advocate General states that only a source report is sufficient to prevent imminent danger by putting the person in captivity. Executive authority no doubt can take action on any source report in rare cases but then it becomes mandatory to collect the material to justify detention and the minimum period for collection of such material is impliedly reflected in section 3 (6) of Ordinance…Such material should obviously be in tangible form like; SMS/Voice messages, Whats app Messages or of other social media accounts, Pamphlets/handouts, Posters, Photographs, Paintings, Caricatures, Books/Literature, Newspapers, Audio/Video CDs, Electronic and Digital material, Wall chalking, Banners/Pena flex, recording of demonstrations in Rallies, Material on face book, twitter or any other social media account, call records, geo fencing through CDR, Speeches in Public Meetings , Radio & T.V. shows, Surveillance report in any form, Reports from international agencies, Suspicious transaction report from any financial institution, membership record of affiliated association or political party etc. On collection of such material there must be a standard satisfaction of authority for necessity to make an order for

preventive detention which means that there must be some reasonable grounds to justify the order.

(ii) High court in Constitutional jurisdiction can entertain the request of the petitioner for declaring the detention of the detenus as illegal. While the power of the executive todetain is written into the specific preventative detention laws, the authority for judicial review comes from Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, which expands the jurisdiction of the High Court to include orders, "directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner." Individuals that are preventatively detained also need not wait for their appearance before Review Board to seek judicial review of their detention.

Conclusion: (i) Section 3 of the Maintenance of Public Order Ordinance, 1960 cannot be invoked on the sole basis of source report without any tangible evidence against a detenue.

(ii) High court can exercise its Constitutional jurisdiction under Article 199 to entertain the request of the petitioner for declaring his detention under the Maintenance of Public Order Ordinance, 1960 as illegal.

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44. **Lahore High Court**
Mst. Beenish v. Additional District Judge etc.
Writ Petition No.16930 of 2020
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC975.pdf

Facts: Through this petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed judgment passed by the learned Appellate Court below whereby the appeal of respondent against ex-parte judgment and decree, passed by the learned Trial Court in favour of the petitioner, was accepted and the case was remanded for decision afresh.

Issues: i) Whether law of limitation is not merely a technicality and the same should be applied in strict sense?

ii) Whether in time barred appeal, without addressing the question of limitation, matter can be remanded?

Analysis: i) It is now well-settled principle of law that the law of limitation is not a mere technicality, rather it is to be observed and applied in its strict sense. If there is any delay in filing the appeal, each and every day is to be explained for its condonation. Furthermore, filing appeal by the respondent beyond the period of limitation created certain rights in favour of the petitioner more particularly when the respondent recorded a statement before the learned Executing Court, which could not be readily brushed aside unless some sound reason is available to

condone the delay and ignore the statement recorded during the course of judicial proceedings, which is conspicuously missing in this case.
ii) The appeal of the respondent was time barred and, without addressing the question of limitation through cogent reasons so as the effect of statement of the respondent before learned Executing Court, remanding the matter to the learned Trial Court, is an error apparent on the face of record. Constitutional petition against such remand order is maintainable and merits interference by this Court in its supervisory jurisdiction.

Conclusion: i) The law of limitation is not a mere technicality, rather it is to be observed and applied in its strict sense.
ii) Without addressing the question of limitation in time barred appeal, through cogent reasons, remanding the matter to the learned Trial Court, is an error.

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45. **Lahore High Court**
Shahid Muneer Sattar v. Mst. Mamoona Asad Raza etc.
FAO No.59 of 2019, 64 of 2019
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC9025.pdf

Facts: Through this single judgment, the titled as well as connected appeal are simultaneously being decided as both the appeals lay challenge to the same judgment of the learned Trial Court whereby the award, rendered by the learned Arbitrator, was made Rule of Court in terms of Section 17 of the Arbitration Act, 1940 and the suit instituted by respondents No. 1 and 2 was decreed giving rise to common questions of law and fact, which require opinion of this Court.

Issues: i) Whether the Court can traverse beyond the award and substitute its opinion as if it were an Appellate Court?
ii) Whether the award is binding upon the person who was neither party to the agreement nor participated in the arbitration proceedings?

Analysis: i) It is settled law that the Courts have supervisory jurisdiction in arbitration matters and the award made therein cannot be set aside on the ground that it was erroneous or that the Arbitrator could possibly have reached some other decision. However, the Court is entrusted with power to modify or correct the award on the ground of imperfect form or clerical errors, or decision on questions not referred, which are severable from those which were referred. Similarly, the Court has also power to remit the award when it has left some matters, referred undetermined, or when the award is indefinite, or where the objection to the legality of the award is apparent on the face of the award.
ii) The award is not binding upon the person who is neither a party to the Agreement nor directed by the court to nominate the arbitrator nor participated in the arbitration proceedings.

Conclusion: i) The Court cannot traverse beyond the award and substitute its opinion as if it were an Appellate Court.
ii) The award is not binding upon the person who is neither party to the agreement nor participated in the arbitration proceedings.

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46. **Lahore High Court**
Shabnam Dil Muhammad v. District Police Officer, etc.
Writ Petition No.48196 of 2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC9054.pdf

Facts: The petitioner filed a Habeas Corpus Petition under Section 491 of the Code of Criminal Procedure, 1898 for the recovery of her daughter, who was stated to be an illegal and improper custody of her husband. Detenue was recovered and produced before the Court by the police, who, in unequivocal terms, stated that she was illegally detained by respondent No. 2 and was also subjected to physical and mental torture. The petition filed under Section 491 Cr.P.C. was also converted into a writ petition filed under Article 199 of the Constitution and was numbered by the office accordingly.

Issues: i) Whether the Punjab Protection of Women against Violence Act, 2016 is a beneficial one, enacted to eliminate and combat the menace of violence against women?
ii) How a remedial statute can be defined?
iii) Whether High Court can issue a writ in the nature of mandamus directing the government to bring any law into force?

Analysis: i) After going through the provisions of the Women Act, it is crystal clear that the legislation is a beneficial one, enacted to eliminate and combat the menace of violence against women and cater to the needs of women who are subjected to violence. The provisions of the Women Act reflect that it is a remedial statute that introduces social reform by improving the conditions of women, victims of violence, who could not have been fairly treated in the past.
ii) A remedial statute was defined in the Hooghly Mills Company Case, observing that "If we look at the modern legislative trend we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, whereas penal statutes are sometimes enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty." Remedial statutes are enacted keeping in view the welfare and benefit of social justice. Such remedial statutes need to be interpreted in a very liberal manner.
iii) I would also like to attend to the legal proposition that where the Government has been empowered to appoint a date for the enforcement of the law by the legislature, can this Court issue a writ in the nature of mandamus directing the

government to bring that law into force. If the legislature sets down an objective criterion or test for the enforcement of a law, it is viable to measure, by employing the power of judicial review, the cause of the inaction on the part of the Government. But where the legislature has left the matter entirely to the discretion of the Government without providing any objective standard, a writ in nature of mandamus cannot be issued but it does not mean that the legislature ever intended that the Government may exercise a veto over its constitutional mandate of making law by not bringing the same into force for an indefinite period. Such conduct of the Government would amount to negating and nullifying the constitutional mandate of the legislature.

Conclusion: i) The Punjab Protection of Women against Violence Act, 2016 is a beneficial one, enacted to eliminate and combat the menace of violence against women and cater to the needs of women who are subjected to violence. Object and provisions of the Act, 2016 have been interpreted in the judgment.
ii) Remedial statutes are statutes which are enacted keeping in view the welfare and benefit of social justice.
iii) Where the legislature has left the matter entirely to the discretion of the Government without providing any objective standard, a writ in nature of mandamus cannot be issued but it does not mean that the legislature ever intended that the Government may exercise a veto over its constitutional mandate of making law by not bringing the same into force for an indefinite period.

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47. **Lahore High Court**
Mirza Waqar Ahmad etc. v. Ayesha Zeeshan, etc.
Writ Petition No. 23024 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC965.pdf

Facts: Respondent filed an application for custody of the minors, which was dismissed by the learned Senior Civil Judge (Family Division) and the appeal which was preferred by Respondent was partly allowed to entrust her custody of the minor daughters, however, order of the trial court was maintained to the extent of custody of the minor sons vide judgment passed by the learned Additional District Judge. The petitioners through this Constitutional Petition have assailed the judgment of the learned Appellate Court.

Issue: i) Whether there is any distinction between custody of the minor and the guardianship?
ii) Whether the wishes and willingness of the minor carry weight for the determination of his/her welfare whilst deciding the question of custody?

Analysis: i) Law maintains a distinction between custody and guardianship and respective rights and obligations in that regard under the Guardian and Wards Act, 1890. The definition of 'guardian' in section 4(2) appears to include the concept of custody, unless the same has been exclusively awarded by the court to a party who is not

the guardian of a minor. Custody under the Act involves a right to upbringing of a minor. On the other hand, guardianship entails the concept of taking care of the minor even in situations when the guardian does not have domain over the corpus of the child. A father is considered to be a natural guardian of a minor, since even after separation with the mother, and even when the mother has been granted custody of a minor, he is obligated to provide financial assistance to the minor. The liability to maintain the minor is not only religious and moral but legal. The right of custody of minor is subordinate to the fundamental principle i.e. welfare of the minor. Maintenance of child is the duty of father and the mother cannot be deprived of custody due to her inability to maintain the child for lack of resources.

ii) As regards plea of the petitioners that learned Appellate Court in the impugned judgment has ignored the wishes and willingness of the minor daughters, suffice it to observe that minor is not always the best judge of where his or her welfare lies, as held by the Supreme Court of Pakistan in the case of Mst. Aisha vs. Manzoor Hussain and others (PLD 1985 Supreme Court 436). Minor girls in the instant case are in their impressionable and tender ages; therefore, it would not be appropriate to attach much weight to their wishes in order to determine where their welfare in relation to their custody lies. Even otherwise, it is to be seen how confident in forming opinion and expressive they are without any influence.

Conclusion: i) Law maintains a distinction between custody and guardianship and respective rights and obligations in that regard under the Guardian and Wards Act, 1890. The definition of 'guardian' in section 4(2) appears to include the concept of custody, unless the same has been exclusively awarded by the court to a party who is not the guardian of a minor.

ii) It would not be appropriate to attach much weight to the wishes and willingness of the minor for the determination of his/her welfare whilst deciding the question of custody because the minor is not always the best judge of where his or her welfare lies.

LATEST LEGISLATION/AMENDMENTS

1. Vide the Islamabad Capital Territory Local Government (Amendment) Act, 2023, sub-section (1) of section 6 of the Islamabad Capital Territory Local Government Act, 2015 is substituted.
2. Vide the Capital Development Authority (Amendment) Act, 2023, clause (f) of section 8 of the Capital Development Authority Ordinance, 1960 is omitted while amendment has been made in section 15 and new section 49G is inserted.
3. Vide the Finance (Supplementary) Act, 2023, section 3, Eight Schedule and Ninth Schedule of the Sales Tax Act, 1990 are amended. Moreover, sections 37 and 37A of the Income Tax Ordinance, 2001 have been amended while new section 236CB is also inserted. Furthermore, the First Schedule of the Federal Excise Act, 2005 has been amended.

4. The Pakistan Global Institute Act, 2023 has been enacted to provide for the establishment of the Pakistan Global Institute.
5. Vide Notification No. SO(F-I) 3-9/2022, dated 23.02.2023, amendment has been made in the Schedule of the Punjab Prevention of Speculation in Essential Commodities Act, 2023.

SELECTED ARTICLES

1. HARWARD LAW REVIEW

https://harvardlawreview.org/wp-content/uploads/2023/01/136-Harv.-L.-Rev.-824.pdf

Personal Precedent at the Supreme Court by Richard M. Re

Personal precedent is a judge's presumptive adherence to her own previously expressed views of the law. This essay shows that personal precedent both does and should play a central role in Supreme Court practice. For example, personal precedent simultaneously underlies and cabins institutional precedent — as vividly illustrated by Dobbs v. Jackson Women's Health Organization. Further, the Justices' use of personal precedent is largely inevitable, as well as beneficial in many cases. Still, the Justices should manage or reform their use of personal precedent, including by limiting its creation. Finally, and most fundamentally, personal precedent challenges conventional theories of legality. Though typically excluded from the law, personal precedent may actually be its building block.

2. HUMAN RIGHTS LAW REVIEW

https://academic.oup.com/hrlr/article/22/2/ngac001/6542245?searchresult=1

The Draft Convention on the Right to Development: A New Dawn to the Recognition of the Right to Development as a Human Right? by Roman Girma Teshome

The draft Convention on the Right to Development is being negotiated under the auspices of the Human Rights Council. This article seeks to explore the merits and the added value of the draft in terms of its normative contents particularly compared with its soft law predecessor—the Declaration on the Right to Development. It argues that the draft is a momentous step in the recognition of the right to development as a human right not only because it is binding, if adopted, but also contains concrete, detailed and implementable norms. While it maintained the abstract and aspirational formulation of norms under the Declaration to a certain extent, the draft also addresses some of the prevailing gaps and limitations of the Declaration.

3. CAMBRIDGE LAW JOURNAL

https://www.cambridge.org/core/journals/cambridge-law-journal/article/cornerstone-of-our-law-equality-consistency-and-judicial-review/4BB0FECFB8136E322926F921D8F5FED4

The Cornerstone of Our Law: Equality, Consistency and Judicial Review by Michael Foran

Equality before the law is a foundational principle of the common law and is of particular importance for administrative law, given the connection between judicial review and the rule of law. Analysis as to the precise requirements of this principle can help us better to understand the role that obligations to act consistently play within judicial review. This article will examine whether consistency ought to be classed as a separate ground of review and argue that this is unnecessary. Examination of the role that legal equality plays within common law reason generally will shed light on the role that it plays within administrative law in particular. Consistency is best conceived as a background principle, informed by the value of legal equality, housed within reasonableness review and not as a separate ground of review that could elide the distinction between review and appeal.

4. MANUPATRA

https://articles.manupatra.com/article-details/Right-to-life-And-Custodial-Deaths

Right to life and Custodial Deaths by Sparsh Srivastava

Article 21of the Constitution states that "No person shall be deprived of his life or personal liberty except according to procedure established by law.". The SC in the Francis Coralie Mullin Case observed that the ambit of article 21 includes "the right to live with human dignity and all that goes along with it". But it seems, these rights could not find space to trickle down to the persons under custody. Custodial death (and custodial violence) is a major concern as it is gross violation basic human rights and infringement of the Fundamental rights. The paper aims at dealing with one of the many incidents keeping in view the prevailing laws and judicial pronouncements. The large number cases of custodial torture and deaths highlights the dark side of the Indian criminal justice system depicting the brutal behaviour faced by people under custody ultimately costing them their life. The paper categorically albeit concisely elaborates the legal positioning of the same.

5. MANUPATRA

https://articles.manupatra.com/article-details/The-Doctrine-of-Lis-Pendens

The Doctrine of Lis Pendens by Parishi Jain

The branch of 'Law of Property' has transposed drastically since the advent of the 'Transfer of Property Act, 1882'. Majority of the sections codified under the said act grounds on equitable principles to establish the right of any owner of a property to transfer or dispose of the immovable property with ease. However, the "Transfer of Property pending suit relating thereto" enlisted under Section 52 of the act was worded

in order to restrict such right of alienation of immovable properties in instances where a dispute regards to the rights of the said property is pending in a competent court of law. The nature of this section is not 'generalized' but rather it only binds the specific parties involved. Section 52 of the Transfer of Property Act, 1882 finds its roots in the age-old doctrine of 'Lis Pendens' which literally translates to 'pending litigation'. This doctrine is based on the common law principle of "utlite pendente nihil innovetur" which means 'during the pendency of litigation, nothing new interest should be introduced or created in respect of the property'.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-04-2023 to 15-04-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

CORRIGENDUM

1. **Supreme Court of Pakistan**
K-Electric Limited through its CEO, Karachi v. Federation of Pakistan through Secy. M/o Energy and thr. Secy. M/o Finance Pakistan Secretariat, Islamabad and other.
C.A.1011/2020 to CA.1119/2020, CA.1185/2020 to CA.1191/2020, CP.3428/2020, CP.1145-K/2020, CP.3775/2020 to CP.3780/2020.
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1011_2020.pdf

Facts: The Appellants before the Court are K-Electric Limited and the consumers of electricity supplied by K-Electric, who have all collectively challenged the impugned judgment, passed by the High Court of Sindh, Karachi. Leave was granted on 27.11.2020 to consider whether the disputed Corrigendum dated 22.01.2020 is enforceable against the consumers of K-Electric.

Issues: i) With whom authority to determine the tariff and adjust electricity based subsidies in the tariff lies?
ii) What is subsidy and how long it remains operative?
iii) Whether the subsidy merges in tariff?
iv) Whether subsidy is outcome of decision of NEPRA?
v) Whether the consumer can claim subsidy as a matter of right?
vi) Whether High Court has jurisdiction to calculate the tariff?

Analysis: i) The Act and the Policy Guidelines, all make clear that NEPRA determines the tariff, be it annual, multi-year or uniform and the Federal Government notifies the tariff. So far as any adjustments to the tariff are concerned, they are also to be made by NEPRA, whether it is under Section 31 of the Act, being a monthly adjustment or under the 2014 Guidelines, being quarterly or bi -annual adjustment. The SOT is also to be issued by NEPRA, detailing the tariff and the charges it contains. Hence, the impugned judgment could not have declared the manner in which K-Electric should charge consumers for peak hours and off-peak hours based on the Federal Government subsidy. This squarely falls within the domain of NEPRA. Furthermore, tariff determination is a complex and technical process, for which, NEPRA has been established. A detailed regime exists with procedures, process and guidelines on tariff determination which in no manner empowers the Federal Government to determine or adjust the tariff. This is the clear mandate of the Act yet for some reason confusion persisted with reference to K-Electric and its uniform tariff, possibly due to its unique nature. However, the 2021 Policy have made clear to the Federal Government that they cannot determine the uniform tariff nor make adjustments to the tariff nor issue any SOT even for K-Electric as this must be done by NEPRA.
ii) The Federal Government is well within its right to introduce, modify or withdraw subsidies. This is an integral part of its socio-economic policies, which NEPRA must give effect to as per Section 31 of the Act. So a consumer of

electricity is entitled to a subsidy as long as it is offered by the Federal Government and is bound by any modifications or withdrawals made by the Government. To give effect to a subsidy it is built into the tariff, as its obvious outcome is to reduce the price of electricity. So a subsidy is given effect through the tariff. There is no vested right in favour of the consumer with reference to a subsidy, simply because the subsidy is built into the tariff. Effectively, a subsidy is a relief package offered to consumers and remains operative for as long as it is required as per Government policy.

iii) In order to take the benefit of the subsidy, it has to be calculated in terms of the tariff, therefore, even if, it is reflected as a part of the tariff or separately it remains a subsidy and does not merge into the tariff.

iv) Essentially, it is based on a policy decision of the Federal Government and is not the outcome of a NEPRA determination. As per Section 31 of the Act, NEPRA is guided by government policies and must consider them, which means that it must reflect the subsidy through the tariff.

v) There is no vested right in favour of the consumer with reference to a subsidy, simply because the subsidy is built into the tariff. Effectively, a subsidy is a relief package offered to consumers and remains operative for as long as it is required as per Government policy. (…) the Consumers have no vested right to claim the benefit of a subsidy, which is based on Government policies.

vi) High Court had no jurisdiction to calculate the tariff as a dispute pertaining to the tariff should be decided by NEPRA.

Conclusion: i) Tariff determination is a complex and technical process, for which, NEPRA has been established. Only NEPRA can determine the tariff and adjust electricity based subsidies in the tariff. Federal Government notifies the tariff.

ii) A subsidy is a relief package offered to consumers and remains operative for as long as it is required as per Government policy.

iii) Subsidy even if is reflected as a part of the tariff or separately it remains a subsidy and does not merge into the tariff

iv) Subsidy is based on a policy decision of the Federal Government and is not the outcome of a NEPRA determination.

v) Consumers have no vested right to claim the benefit of a subsidy, which is based on Government policies.

vi) High Court has no jurisdiction to calculate the tariff as a dispute pertaining to the tariff should be decided by NEPRA.

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2. **Supreme Court of Pakistan**
Nawabzada Abdul Qadir Khan v. Land Acquisition Collector Mardan & others etc.
C.A.364-P/2019 etc
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Jamal Khan Mandokhail, Mrs. Jutice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._364_p_2019.pdf

Facts: Through instant Appeals, the Appellants have challenged a judgment of the High Court, whereby Regular First Appeals were allowed and the judgements and decrees of the Additional District Judge-VIII/Judge Referee Court were modified to the extent that the quantum of compensation for all the land acquired under notification dated 16.09.2008 was set at Rs.125,000/- per marla.

Issues: i) How many matters are need to be taken in consideration by a Referee Court while determining compensation for land acquired under the LAA 1894?
ii) What will be the effect whenever a government exercises its eminent domain under the LAA 1894?
iii) What is the intention of the legislature behind Section 23 while determining compensation?
iv) Whether the word "interest" in Section 34 of the LAA 1894 is interest stricto sensu and what is its purpose?
v) Whether the state and the landowners are equal in terms of bargaining power?
vi) Whether the consent from the affected land owners is required under the law before the state can exercise eminent domain under the LAA 1894?

Analysis: i) A bare perusal of Section 23 shows that according to the LAA 1894, there are six matters that need to be taken into consideration by a Referee Court in determining compensation for land acquired under the LAA 1894. While the market value of the land acquired at the time of possession may be the first matter a Court must take into consideration, it is not the only matter. The Court is bound to consider when a determination has to be made under Section 23 of the LAA 1894. Instead, the other five considerations, from their very text, imply that whenever a Court is to consider the quantum of compensation, it must be duly aware and cognisant of the loss being caused to the landowners due to the Federal or Provincial Government's exercise of eminent domain under the LAA 1894.
ii) Landowners will deprived of their constitutionally-guaranteed proprietary rights under Article 24 of the Constitution of Pakistan, 1973 whenever a government, be it Federal or Provincial, exercises eminent domain under the LAA 1894.
iii) The intention of the legislature behind Section 23 is one where a Court, when determining compensation under the said Section, needs to be considerate and sympathetic to those who have been subjected to eminent domain by the government. Section 23 allows the Court to bring landowners, who have been subjected to eminent domain, back to their positions before the eminent domain was exercised.
iv) Unlike riba/interest that accrues out of a financial obligation between the parties, the word "interest" in Section 34 of the LAA 1894 is not interest stricto sensu. The interest awarded to landowners under Section 34 is compensatory in nature that allows the Court to compensate the landowners for the financial loss landowners would suffer from the date of acquisition till payment of compensation by the acquiring authority.

v) Unlike a financial transaction, where parties are often assumed to be equal in bargaining power and are deemed to be consenting to a transaction, an exercise of eminent domain cannot in any sense be construed as either a consenting transaction between the parties involved (i.e. the State and the landowners) nor can it be assumed by any stretch of imagination that the state and the landowners are equal in terms of bargaining power.
vi) Eminent domain is a unilateral power of the government and no consent from the affected landowners is required under the law before the state can exercise eminent domain under the LAA 1894.

Conclusion: i) A bare perusal of Section 23 shows that according to the LAA 1894, there are six matters that need to be taken into consideration by a Referee Court in determining compensation for land acquired under the LAA 1894.
ii) Landowners will deprived of their constitutionally-guaranteed proprietary rights under Article 24 of the Constitution of Pakistan, 1973 whenever a government exercises eminent domain under the LAA 1894.
iii) The intention of the legislature behind Section 23 is to be considerate and sympathetic to those who have been subjected to eminent domain by the government.
iv) The word "interest" in Section 34 of the LAA 1894 is not interest stricto sensu but it is compensatory in nature.
v) The state and the landowners are not equal in terms of bargaining power.
vi) No consent from the affected landowners is required under the law before the state can exercise eminent domain under the LAA 1894.

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3. **Supreme Court of Pakistan**
Muhammad Nawaz v. Addl. District & Sessions Judge, etc.
Civil Petition No.2414-L of 2015
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2414_l_2015.pdf

Facts: The petitioner sought leave to appeal against an order of the Lahore High Court, whereby the High Court dismissed his writ petition filed against an order of the revisional court, reversing the order of the trial court, and allowing the application of the respondents for DNA test.

Issues: (i) Whether a DNA test of a person can be ordered in a civil case without his consent?
(ii) Whether an adverse presumption can be drawn against a person who is not a party to civil proceedings and refuses to give consent and present himself for his DNA test?

Analysis: (i) The conducting of the DNA test of a person, without his consent, infringes his fundamental rights to liberty and privacy guaranteed by Articles 9 and 14 of the Constitution of the Islamic Republic of Pakistan...These fundamental rights, are subject to law and can only be interfered with if so regulated by law made by the

legislature. Further, as per the constitutional command of Article 4 of the Constitution, no action detrimental to the liberty, body or reputation of a person can be taken except in accordance with the law, nor can a person be compelled to do that which the law does not require him to do. This being the constitutional mandate, any executive or judicial act taken in respect of the rights to liberty, privacy, body or reputation of a person must be backed by some law. A court order for the DNA test of two persons as a means of identifying their genetic relationships interferes with their right to privacy and liberty. This test can be ordered only either with the consent of the persons concerned or without their consent if permissible under a law. We are aware of certain provisions of criminal law which permit the DNA test of an accused person without his consent, but no civil law has been brought to our notice which allows this test in civil cases without the consent of the person concerned.

(ii) It may be pertinent to mention here that in a civil case, if the person upon whom the onus to prove his genetic relationship with another person lies, does not give consent for his DNA test, and thus withholds such evidence, the court may draw an adverse presumption against the claim of such person and presume that such evidence, if produced, would be unfavourable to him, as per Article 129(g) of the Qanun-e-Shahadat 1984. But the court cannot draw such an adverse presumption if a person, who is not a party to the proceedings before it, does not give his consent and present himself for his DNA test. Further, the presumption under Article 129(g) of the Qanun-e-Shahadat 1984 being permissive, not obligatory, in nature, the court may or may not draw such presumption in the peculiar facts and circumstances of a case.

Conclusion: (i) A DNA test of a person cannot be ordered in a civil case without his consent.
(ii) An adverse presumption cannot be drawn against a person who is not a party to civil proceedings and refuses to give consent and present himself for his DNA test.

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4. **Supreme Court of Pakistan**
Public Interest Law Association of Pakistan registered under the Societies Act, 1860 through authorized person Chaudhry Awais Ahmed v. Province of Punjab through Chief Secretary, Civil Secretariat, Lower Mall, Lahore and others.
Civil Petition No.55 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._55_2020.pdf

Facts: This Petition impugns order passed by the High Court wherein the Petitioner, in public interest, challenged the lack of environmental approvals for grant of small-scale mining licences or leases. The issue is the grant of small-scale license or lease for mining minor minerals like sand, gravel and sandstone which are issued without considering the impact on the environment.

Issues: i) What is the basic requirement to start any project related to mines as per the

Punjab Environmental Protection (Review of Initial Environmental Examination and Environmental Impact Assessment) Regulations, 2022 (Regulations)?
ii) Whether relevance of Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) reports can be ignored; how it is vital in the projects of mining under Mines and Minerals Department (MDD)?

Analysis: i) The Regulations clearly specify the requirement of an IEE or EIA, which is a fundamental and basic step before a project starts, so as to ensure that an adverse effect on the environment has been considered and addressed. This is because even the exploration and mining of minor minerals has an adverse impact on the environment, which includes deforestation, pollution, production of toxic waste water, loss of habitats and disruption of the ecosystem.
ii) The relevance of the IEE and EIA cannot be ignored. Not only do the IEE and EIA consider the environmental impact of the project but can also include standards and initiatives to improve sustainability of the sector. This can be vital in projects of mining under the MMD. They also prescribe mitigation measures and put in place a monitoring method through an Environment Management Plan (EMP). The EMP provides the basic framework for implementing and managing mitigation and monitoring measures. It identifies the environment issues, the risks and recommends the required action to manage the impact. This is vital because not only does the miner know what its obligations are, it also gives the MMD and the EPA a framework to follow and to ensure its compliance. Hence, all factors considered the IEE and EIA ensure that the project is sustainable and all possible environmental consequences have been identified and addressed adequately.

Conclusion: i) The Regulations clearly specify the requirement of an IEE or EIA, which is a fundamental and basic step before a mines project starts.
ii) The relevance of the IEE and EIA cannot be ignored. This can be vital in projects of mining under the MMD. They also prescribe mitigation measures and put in place a monitoring method through an EMP.

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5. Supreme Court of Pakistan
Oil and Gas Regulatory Authority through its Chairperson and another v. Sui Southern Gas Company Limited through its Chairperson and another & etc.
Civil Petitions No.797 of 2021, 1799-L, 171-L & 172-L of 2022 and 1657-L of 2021
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._797_2021.pdf

Facts: All the Civil Petitions have a common Petitioner, the Oil and Gas Regulatory Authority (OGRA) constituted under the Oil and Gas Regulatory Authority Ordinance, 2002 (Ordinance) which is aggrieved by the impugned judgment and orders which find that the Gas Utility Court under the Gas (Theft Control and Recovery) Act, 2016 (2016 Act) has exclusive jurisdiction to prosecute disputes

of consumers.

Issues: i) Whether jurisdiction of the Gas Utility Court is exclusive and no other court or authority can exercise jurisdiction with respect to all matters that are covered by the 2016 Act?

ii) Whether purposes of both of the statutes, the Oil and Gas Regulatory Authority Ordinance, 2000 and the Gas (Theft Control and Recovery) Act, 2016 are different?

Analysis: i) Section 5(5) clarifies that for matters which fall under the jurisdiction of the Gas Utility Court, it enjoys exclusive jurisdiction and no other court or authority can exercise jurisdiction with respect to these matters. Section 5(6)(a), however, allows the Gas Utility Court or consumer to seek remedy before any other forum prescribed under any law which will include OGRA. However, pursuant to this provision OGRA does not enjoy concurrent jurisdiction with the Gas Utility court… In view of the foregoing, it is clear that while OGRA may entertain complaints against a licensee under the Regulations, it does not enjoy concurrent jurisdiction with the Gas Utility Court which has exclusive jurisdiction to adjudicate upon all matters under the 2016 Act. OGRA is, at best, a dispute resolution forum where disputes may be resolved informally, however, the Gas Utility Court is a court with all its inherent powers which has the authority to adjudicate upon and award punishment against offences made out under the 2016 Act.

ii) It is clear that the purposes of both of the statutes under consideration are different. The Ordinance was enacted to provide for the establishment of OGRA and to define its functions and jurisdiction for regulating its activities. Whereas, the 2016 Act was enacted to provide for prosecution of cases of gas theft and other offences relating to gas and to provide a procedure for recovery of amounts due. Therefore, even though the Ordinance gives OGRA the power to resolve dispute of consumers, it is a dispute resolution forum, where the issues provided for in the Regulations can be settled amicably by OGRA between the consumer and the gas company. It is not a court and cannot prosecute the matter like the Gas Utility Court. Consequently, Section 5(6) of the 2016 Act, in our opinion, clarifies that the gas company or a consumer may seek any remedy before any court, tribunal or forum which may otherwise be available to it under the law, however, the Gas Utility Court is the only court which can prosecute cases of gas theft and the offences as prescribed under Sections 14 to 19 of the 2016 Act. Accordingly, if a consumer does not want to prosecute a case before the Gas Utility Court, they may approach OGRA for resolution of their dispute.

Conclusion: i) Jurisdiction of the Gas Utility Court is exclusive and no other court or authority can exercise jurisdiction with respect to all matters that are covered by the 2016 Act.

ii) Purposes of both of the statutes, Ordinance and the 2016 Act are different. Ordinance is an amicable dispute resolution forum whereas, 2016 Act provides

for prosecution of cases of gas theft and other offences relating to gas and to provide a procedure for recovery of amounts due.

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6. **Supreme Court of Pakistan**
Pakistan Electronic Media Regulatory Authority (PEMRA) through its Chairman & another v. M/s ARY Communications Private Limited (ARY Digital) through its Chief Executive Officer & another.
Civil Petition No.3506 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3506_2020.pdf

Facts: Through this petition, the petitioner has challenged the decision of Sindh High Court whereby the appeal of the respondent was allowed and the prohibition order against the respondent was set aside.

Issue: Whether Section 27(a) of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 ("PEMRA Ordinance") is an independent and self-governing provision or whether its applicability requires the opinion of the Council of Complaints in terms of Section 26(2) of the PEMRA Ordinance read with the Pakistan Electronic Media Regulatory Authority (Councils of Complaints) Rules 2010 ("Councils of Complaints Rules")?

Analysis: It has also been argued on behalf of PEMRA that the Councils of Complaints have no power to receive and review complaints against any "advertisement" under Section 26(2), while PEMRA has such power under Section 27(a); therefore, the power of PEMRA under Section 27(a) is independent of the provisions of Section 26. It is true that the word "advertisement" is not mentioned in subsection (2) of Section 26 but it is found mentioned in subsection (5) thereof. The omission of this word in subsection (2) of Section 26 appears to be an accidental one, as it does not fit within the overall intent of the legislature manifested from reading the provisions of Section 26 as a whole. Needless to say that the ultimate object of the process of interpretation of a statute is to find out what the legislature must have intended and then to give effect to that intent of the legislature, and in order to give effect to the manifest intent of the legislature, the courts can supply the inadvertent omission of the draftsman by reading the necessary words in the statute. Subsection (5) of Section 26 clearly empowers the Councils of Complaints to make a recommendation to PEMRA for the action of censure or fine against a licensee for violation of the codes not only of programmes content but also of advertisements. The provisions of subsection (5) of Section 26 thus make the intent of the legislature abundantly clear that it intended to confer the power on the Councils of Complaints to receive and review complaints against any aspects of programmes or advertisements, which shall be so read in subsection (2) of Section 26, in order to give effect to that manifest intent of the legislature.

Conclusion: Section 27(a) of the PEMRA Ordinance is not an independent and self-governing provision; it rather requires for its applicability the opinion of a Council of Complaints regarding the objectionable aspect of a programme or advertisement in terms of Section 26(2) of the PEMRA Ordinance read with the Councils of Complaints Rules.

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7. **Supreme Court of Pakistan**
Noor Kamal and Asad Kamal @ Syed Kamal v. The State and another.
Criminal Petition No. 1720 of 2022
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1720_2022.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the judgment passed by the learned Single Judge of the Peshawar High Court, with a prayer to grant post-arrest bail on statutory ground in the interest of safe administration of criminal justice.

Issues: i) What is continuous period of detention on which an accused can claim post-arrest bail on statutory ground in cases of non-bailable offences, which are not punishable with death?
ii) Whether an accused is entitled for the concession of post arrest bail on rule of consistency alone?

Analysis: i) A plain language of proviso 3 to sub-Section (1) of Section 497 Cr.P.C. clearly reveals that in cases of non-bailable offences, which are not punishable with death where the accused has been detained for a continuous period exceeding one year and it is found that the delay in the trial has not been occasioned due to any act or omission of the accused, the Court shall direct that the accused be released on bail. This Court has time and again held that liberty of a person is a precious right, which cannot be taken away without exceptional foundations.
ii) The co-accused of the petitioners namely Usman, who was ascribed the similar role, has been granted post-arrest bail by this Court, therefore, the petitioners are entitled for the concession of post arrest bail on this score alone.

Conclusion: i) An accused can claim post-arrest bail on statutory ground in cases of non-bailable offences, which are not punishable with death on detention for a continuous period exceeding one year.
ii) An accused is entitled for the concession of post arrest bail on rule of consistency alone.

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8. **Supreme Court of Pakistan**
WAPDA through Chairman and others v. Alam Sher and others.
Civil Appeal No. 2619 of 2016
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2619_2016.pdf

Facts: The appellants filed appeal under Section 54 of the Land Acquisition Act, 1894, thereby assailing the judgment passed by the Peshawar High Court, whereby the Regular First Appeal filed by the appellants was dismissed and the order of the Judge Land Acquisition was upheld wherein the Court enhanced the compensation amount.

Issues: (i) Whether under section 23 the Land Acquisition Act 1894, a landowner is entitled to compensation only to the extent of the market value of the acquired property?
(ii) Whether oral evidence can be considered while determining the compensation amount for an acquired property?
(iii) Whether the Supreme Court in its appellate jurisdiction can determine any ground or question of fact not pleaded or raised by the parties at any forum below?

Analysis: (i) Mode of determining the compensation of acquired land is provided in Section 23 of the Land Acquisition Act, 1894, which depicts that the landowner is entitled to compensation and not just market value, as such, any loss or injury occasioned by its severing from other property of the landowner, by change of residence or place of business and loss of profits are also relevant factors.
(ii) While conducting said exercise, oral evidence, if found credible and reliable can also be taken into consideration. The requirement of Article 71 of the Qanun-e-Shahadat Order, 1984, squarely requires that it should be produced directly if the same is in oral form.
(iii) This is settled law that Supreme Court in its appellate jurisdiction would generally not determine any ground or question of fact that had not been pleaded or raised by the parties at any stage before the Referee Court or the High Court and has been for the first time raised in appeal before Supreme Court.

Conclusion: (i) Under Section 23 of the Land Acquisition Act, 1894, the landowner is entitled to compensation not just based on market value of the acquired property but any loss or injury occasioned by its severing from other property of the landowner, by change of residence or place of business and loss of profits are also relevant factors.
(ii) Oral evidence, if found credible can be considered while determining the compensation amount for an acquired property.
(iii) The Supreme Court in its appellate jurisdiction cannot determine any ground or question of fact not pleaded or raised by the parties at any forum below.

9. **Supreme Court of Pakistan**
Pirzada Noor-ul-Basar v. Mst. Pakistan Bibi and others.
Civil Appeal No. 23-P of 2017
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._23_p_2017.pdf

Facts: Through this appeal, the appellant has assailed the judgment passed by the learned Single Judge of the Peshawar High Court, whereby the Civil Revision filed by the respondent No. 1 was allowed, the judgments and decrees of the learned two courts were set aside and the suit of the respondent No.1/plaintiff was decreed.

Issues: i) Whether the Supreme Court in its appellate jurisdiction can determine any ground or question of fact that had not been pleaded or raised by the parties at early stage before the lower court & High Court and has been for the first time raised in appeal before it?
ii) What is the period of limitation to file suit regarding the matter related to wrong entries in the revenue record and from which date it is to be counted?

Analysis: i) This is settled law that this Court in its appellate jurisdiction would generally not determine any ground or question of fact that had not been pleaded or raised by the parties at early stage before the lower court & High Court and has been for the first time raised in appeal before this Court. The appellant has no right to raise an absolutely new plea before this Court and seek a decision on it nor could such plea be allowed to be raised as a matter of course or right on the pretext of doing complete justice.
ii) The respondent never said that she did not receive the dower rather it was her claim that she is enjoying the proceeds/fruit of the land. Therefore, the matter in-fact related to wrong entries in the revenue record and the same in no way can be termed as a matter relating to dower. The learned High Court by placing reliance on the judgment of this Court reported as Abdul Sattar Khan Vs. Rafiq Khan (2000 SCMR 1574) and Articles 120 and 144 of the Qanun-e-Shahdat Order, 1984 has rightly held that the period of six years is to be counted from the date when the right to sue accrued.

Conclusion: i) The Supreme Court in its appellate jurisdiction cannot determine any ground or question of fact that had not been pleaded or raised by the parties at early stage before the lower court & High Court and has been for the first time raised in appeal before it.
ii) The period of limitation to file suit regarding the matter related to wrong entries in the revenue record is six years and it is to be counted from the date when the right to sue accrued.

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10. **Supreme Court of Pakistan**
Ahtisham Ali v. The State
Criminal Petition No.13-K of 2023
Mr. Justice Munib Akhtar, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._13_k_2023.pdf

Facts: This Criminal Petition for leave to appeal is brought to entreat pre-arrest bail in FIR registered under Sections 324, 380, 427, 337-A(i), 337-F(i) and 34 of the Pakistan Penal Code, 1860.

Issues: i) What are the essential requirements to constitute an offence punishable u/s 34 PPC?
ii) What are the governing principles of a pre-arrest bail?

Analysis: i) So far as the applicability of Section 34 of PPC is concerned, it lays down the principle of constructive liability whereby if several persons would unite with a common purpose to do any criminal offence, all those who assist in the completion of their object would be equally guilty. The foundation for constructive liability is the common intention in meeting accused to do the criminal act and the doing of such act in furtherance of common intention to commit the offence. In order to constitute an offence under Section 34 PPC, it is not required that a person should necessarily perform any act by his own hand, rather the common intention presupposes prior concert and requires a prearranged plan. If several persons had the common intention of doing a particular criminal act and if, in furtherance of their common intention, all of them joined together and aided or abetted each other in the commission of an act, then one out of them could not actually with his own hand do the act, but if he helps by his presence or by other act in the commission of an act, he would be held to have himself done that act within the meaning of Section 34 PPC.
ii) It is a well settled exposition of law that the grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. By all means, while applying for pre-arrest bail, the petitioner has to satisfy the Court with regard to the basic conditions quantified under Section 497 of the Code of Criminal Procedure, 1898 Cr.P.C vis-à-vis the existence of reasonable grounds to confide that he is not guilty of the offence alleged against him and the case is one of further inquiry. In the case of Rana Abdul Khaliq Vs The State and others (2019 SCMR 1129), this Court held that grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; it is a protection to the innocent being hounded on trumped up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the

advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. While in the case of Rana Muhammad Arshad Vs Muhammad Rafique and another (PLD 2009 SC 427), this Court has discussed the framework and guidelines for granting bail before arrest under Section 498, Cr.P.C. by the High Courts and Courts of Session. It was held that the exercise of this power should be confined to cases in which not only a good prima facie ground is made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the petitioner were to be arrested and refused bail, such an order would, in all probability, be made not from motives of furthering the ends of justice in relation to the case, but from some ulterior motive, and with the object of injuring the petitioner, or that the petitioner would in such an eventuality suffer irreparable harm.

Conclusion: i) To constitute an offence under Section 34 PPC, it is not required that a person should necessarily perform any act by his own hand; rather the common intention presupposes prior concert and requires a prearranged plan.
ii) Grant of pre-arrest bail is an extraordinary relief which essentially requires considerations of mala fide, ulterior motive or abuse of process of law.

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11. **Supreme Court of Pakistan**
Muhammad Raqeeb v. Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar & others.
Civil Appeal No.1414 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/c.a._1414_2021.pdf

Facts: This Civil Appeal of leave of the Court is directed against the judgment passed by the Peshawar High Court whereby the writ petition filed by the appellant to receive the pensionary benefits in second round of litigation before the same Court was dismissed.

Issues: i) Whether the contractual employees performing their duties on project post could claim regularization in terms of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009?
ii) What is the doctrine of estoppel under Article 114 of the Qanun-e-Shahadat Order, 1984?
iii) What is the doctrine of res judicata explicated under Section 11 of the Code of Civil Procedure, 1908?

Analysis: i) Section 2(b) of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 refers to the definition of “employee” as employment status

of an employee appointed by the Government on ad hoc or contract basis or second shift/night shift, but does not include the employees for project posts, or those appointed on work charge basis, or those who are paid out of contingencies. According to Section 3 of the 2009 Act, only those employees who were appointed on contract or ad hoc basis and were holding the post on December 31, 2008 or till the commencement of the 2009 Act were deemed to have been validly appointed on regular basis. While reading this provision in conjunction with the definition of "employee" provided under the 2009 Act it is lucidly clear that the persons performing their contractual duties for project post or on work charge basis or who are paid out of contingencies were excluded from the definition of employee. Hence by all means the contractual employees performing their duties on project post could not claim regularization in terms of the aforesaid Act.

ii) Article 114 of the Qanun-e-Shahadat Order, 1984 defines the doctrine of estoppel under which, when a person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

iii) The doctrine of finality is primarily focused on a long-lasting and time honored philosophy enshrined in the legal maxim "Interest reipublicae ut sit finis litium" which recapitulates that "in the interest of the society as a whole, the litigation must come to an end" or "it is in the interest of the State that there should be an end to litigation" and latin maxim "Re judicata pro veritate occipitur" which expounds that a judicial decision must be accepted as correct. Once a judgment attains finality between the parties it cannot be reopened unless some fraud, mistake or lack of jurisdiction is pleaded and established. Finality of judgments culminates the judicial process, proscribing and barring successive appeals or challenging or questioning the judicial decision keeping in view the rigors of the renowned doctrine of res judicata explicated under Section 11 of the Code of Civil Procedure, 1908. When the controversy attains finality under the doctrine of past and closed transaction, the controversy cannot be reopened by the Court in the second round of litigation which on the face of it is an abuse of process of the Court.

Conclusion: i) The contractual employees performing their duties on project post could not claim regularization in terms of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009.

ii) Under Article 114 of the Qanun-e-Shahadat Order, 1984 which defines the doctrine of estoppel, when a person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

iii) Under the doctrine of res judicata explicated under Section 11 of the Code of Civil Procedure, 1908, when the controversy attains finality by the Court, it

cannot be reopened in the second round of litigation unless some fraud, mistake or lack of jurisdiction is pleaded and established.

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12. **Supreme Court of Pakistan**
Ansar etc. v. The State etc.
Jail Petition No. 405 of 2021 and Criminal Petition No. 946 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._405_2021.pdf

Facts: Petitioners along with co accused were tried by the learned Additional Sessions Judge, pursuant to a case FIR under Sections 302/324/396 PPC for committing dacoity cum murder and for attempting to take life of one victim. The learned Trial Court while acquitting the co-accused, convicted the petitioners. In appeal, the learned High Court maintained the convictions and sentences recorded by the learned Trial Court.

Issues: i) Whether minor discrepancy in evidence will make the prosecution case doubtful?
ii) When a witness remains consistent on all material particulars and there is nothing in evidence to suggest that he deposed falsely; whether the non-holding of identification parade would be fatal for the prosecution case?
iii) What is the difference between the 'robbery' and the 'dacoity'?
iv) What does the word 'conjointly' used in Sections 391/396 PPC indicates?

Analysis: i) The contradiction in the statement of a witness may be fatal for the prosecution case but minor discrepancy in evidence will not make the prosecution case doubtful. Where discrepancies are of minor character and do not go to the root of the prosecution story and do not shake the salient features of the prosecution version, they need not be given much importance.
ii) It is settled law that holding of identification parade is merely a corroborative piece of evidence. If a witness identifies the accused in court and his statement inspires confidence; he remains consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, then even the non-holding of identification parade would not be fatal for the prosecution case.
iii) Bare reading of Section 391 & 396 PPC makes it manifestly clear that the 'dacoity' can be said to be an exaggerated version of robbery. If five or more persons conjointly commit or attempt to commit robbery it can be said to be committing the 'dacoity'. Therefore, the only difference between the 'robbery' and the 'dacoity' would be the number of persons involved in conjointly committing or attempt to commit a 'robbery'. The punishment for 'dacoity' and 'robbery' would be the same except that in the case of 'dacoity' the punishment of imprisonment for life can be awarded. However, in the case of 'dacoity with murder' the punishment of death has also been provided in the statute.
iv) An immediate feature of Sections 391 & 396 PPC which strikes at first reading is that the word “conjointly” has been used in these provisions of law, which is

not used anywhere in Pakistan Penal Code except in the afore-said provisions. It appears that this word has been deliberately preferred over the word 'jointly'. 'Conjointly' indicates jointness of action and understanding. Everyone acts in aid of other. 'Conjointly' means to act in joint manner, together, unitedly by more than one person. Thus the use of word 'conjointly' in Sections 391/396 PPC indicates that five or more robbers act with knowledge and consent and in aid of one another or pursuant to an agreement or understanding, i.e., unitedly. The joint reading of Sections 391 and 396 of PPC makes it abundantly clear that for the offence of dacoity, the essential pre-requisite is the joint participation of five or more persons in the commission of the offence. If in the course thereof any one of them commits murder, all members of the assembly would be guilty of dacoity with murder and would be liable to be punished as enjoin thereby.

Conclusion: i) Minor discrepancy in evidence will not make the prosecution case doubtful.
ii) When a witness remains consistent on all material particulars and there is nothing in evidence to suggest that he deposed falsely; the non-holding of identification parade would not be fatal for the prosecution case.
iii) The only difference between the 'robbery' and the 'dacoity' is the number of persons involved in conjointly committing or attempt to commit a 'robbery'.
iv) The word 'conjointly' used in Sections 391/396 PPC indicates that five or more robbers act with knowledge and consent and in aid of one another or pursuant to an agreement or understanding, i.e., unitedly. If in the course thereof any one of them commits murder, all members of the assembly would be guilty of dacoity with murder and would be liable to be punished as enjoin thereby.

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13. **Supreme Court of Pakistan**
Khan Afsar v. Mst. Qudrat Jan widow etc.
Civil Petitions No.3573 and 3574 of 2020
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3573_2020.pdf

Facts: The petitioner, in both cases, has challenged the concurrent findings of all three courts below, which had maintained the findings of all four rungs of adjudicatory hierarchy provided under revenue law.

Issues: When cause of action for a mortgagor to redeem the mortgage and recover the possession of the mortgaged property would commence?

Analysis: The cause of action for a mortgagor to redeem the mortgage and recover the possession of the mortgaged property would commence from the point when the mortgagor can, under the terms of the mortgage, redeem the mortgage property or recover the possession thereof. Thus, the crucial determining factor for commencement of the period of limitation would depend on the terms of the mortgage agreement entered into between the parties. When the term of the mortgage is agreed and fixed the cause of action of the /mortgagors to redeem the mortgage of the disputed property would accrue from the date of the expiry of the

fixed term and thereafter the limitation period of sixty years would commence. Where, under the terms of the agreement, the mortgage is for a fixed period but without a specific date of expiry of the term. In such a case, the right of redemption can only arise on the expiration of a specified period and not before and the limitation would commence from the expiry of the period so fixed. Where, under the terms of the agreement, neither any specific date nor any term is fixed. In such a case, limitation would run from the date of the agreement of mortgage.

Conclusion: When the term of the mortgage is agreed and fixed, the cause of action of the mortgagor to redeem the mortgage of the disputed property would accrue from the date of the expiry of the fixed term. Where the mortgage is for a fixed period but without a specific date of expiry of the term, the right of redemption can only arise on the expiration of a specified period and not before. Where, under the terms of the agreement, neither any specific date nor any term is fixed; limitation would run from the date of the agreement of mortgage.

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14. **Lahore High Court**
Sajid alias Saji v. The State, etc.
Crl. Appeal No.241575-J/2018
Mr. Justice Muhammad Ameer Bhatti, HCJ
https://sys.lhc.gov.pk/appjudgments/2023LHC2048.pdf

Facts: The learned ASJ awarded imprisonment for life to the petitioner u/s 302 read with Section 34, P.P.C. in a private complaint, which is under challenge through the accompanying appeal. The petitioner through the instant petition, has sought suspension of his sentence and admitting him to bail till disposal of the main appeal, on statutory ground of delay in decision of appeal pending for a period of more than four and half years.

Issue: Whether a convict is entitled to bail on completion of statutory period?

Analysis: The appellant's appeal against conviction is pending in the Court for the last more than four years, without any fault on his part, whereas proviso (c) of Section 426(1A), Cr.P.C. stipulates release of those convicts whose appeals could not be heard according to the parameter given in it declaring it statutory right of the convict to claim his bail if he had already served such period. It is held that during pendency of his appeal, the applicant has earned a statutory right to be released on bail in terms of proviso (c) of Section 426(1A), Cr.P.C.

Conclusion: Proviso (c) of Section 426(1A), Cr.P.C. stipulates release of those convicts whose appeals could not be heard according to the parameter given in it declaring it statutory right of the convict to claim his bail if he had already served such period.

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15. **Lahore High Court**
Chairman National Highway Authority and another v. Abdul Hameed etc.
Case Diary No.9494 of 2023
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC1413.pdf

Facts: Office has raised objection against maintainability of the petition filed under Land Acquisition Act, 1894 (the Act, 1894) on the ground that the petitioners should avail the proper remedy against the impugned order.

Issues: i) Whether the procedure provided under CPC is applicable to proceedings before the Referee Court?
ii) When a party opts to file proceedings under any law, whether further remedy is also governed under the same law or not?

Analysis: i) In ordinary course, an order dismissing application filed under Order IX rule 13 CPC is appealable in terms of Order XLIII CPC. As far as proceedings on a Reference, filed under section 18 of the Land Acquisition Act, 1894, are concerned, the same are to be governed under CPC in terms of section 53 of the Act, 1894. From the above, it is crystal clear that the procedure provided under CPC is applicable to proceedings before the Referee Court until and unless it has specifically been ousted.
ii) It is well entrenched by now that when a party opts to file proceedings under any law, further remedy is governed under the same law. Insofar as the case in hand is concerned, when the petitioner himself filed application under Order IX rule 13 CPC for setting aside of ex-parte proceedings and decree, further remedy is to be governed under CPC and not the Act, 1894, especially when the appeal provided under the Act, 1894, is inapplicable in the present case.

Conclusion: i) The procedure provided under CPC is applicable to proceedings before the Referee Court until and unless it has specifically been ousted.
ii) When a party opts to file proceedings under any law, then further remedy is also governed under the same law.

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16. **Lahore High Court**
The State through Prosecutor General, Punjab v. Judge, Anti-Terrorism Court No.1, Lahore.
Writ Petition No.29571/2013
Mr. Justice Ali Baqar Najafi, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2022LHC9108.pdf

Facts: Through this petition under Article 199 of the Constitution, the petitioner calls in question the validity of order of learned Judge, Anti-Terrorism Court whereby Public Prosecutor's application under Section 10(3) (e)(iii) & (f) of the Punjab Criminal Prosecution Service Act, 2006 read with Section 494 Cr.P.C. for withdrawal of prosecution of Case FIR in respect of offences u/s 353,186,427,336,148 & 149 PPC, 16 MPO and Section 7 of Anti-Terrorism Act,

1997 was turned down.

Issue: Whether u/s 10(3) (e)(iii) & (f) of the Punjab Criminal Prosecution Service Act, 2006 and Section 494 Cr.P.C., a public prosecutor is vested with an authority to withdraw prosecution of any person either generally or in respect of any one or more offences?

Analysis: From the bare reading of the Section 10(3) (e)(iii) & (f) of the Punjab Criminal Prosecution Service Act, 2006 and Section 494 Cr.P.C., it is manifestly clear that, a public prosecutor is vested with an authority to withdraw prosecution of any person either generally or in respect of any one or more offences but the same is subject to the "consent" of the Court. The consent of the Court implies its judicial discretion, which undoubtedly can be exercised by applying its judicial mind. While exercising its discretion, it is the bounden duty of the court to ensure that normal course of justice is not deflected for unseen reasons and there should be no indication of throttling the prosecution. Objective criteria relatable to public policy or public peace and administration of justice is squarely missing in the instant case. The ground that 9/10 co-accused have already been acquitted by the trial court is directly related to the detailed appreciation of the evidence, which cannot be undertaken for the purpose of deciding whether "consent" to the withdrawal of application should be accorded or not. No doubt, the legislature has empowered the Public Prosecutor to withdraw prosecution of any person either generally or in respect of any one or more offences prior to the pronouncement of judgment but at the same time a clog has been placed that the same shall be subject to the "consent of the Court". In this way a sacred duty has been bestowed upon the court to see that the permission is not sought for on the grounds extraneous to the interest of justice and the offences which are against the State go unpunished merely for the reasons that the Government has decided not to prosecute such offenders under the law. If the accused is of the view that his case is at par to that 9/10 acquitted co-accused then the same could better be adjudged during judicial process of trial and not in isolation and secrecy of government department.

Conclusion: From the bare reading of the Section 10(3) (e)(iii) & (f) of the Punjab Criminal Prosecution Service Act, 2006 and Section 494 Cr.P.C., it is manifestly clear that, a public prosecutor is vested with an authority to withdraw prosecution of any person either generally or in respect of any one or more offences but the same is subject to the "consent" of the Court.

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17. **Lahore High Court**
Amer Saleem v. Nadeem Akhtar Mirza and another.
R.F.A. No.23090 of 2017
Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC1419.pdf

Facts: This single judgment shall decide the captioned appeal as well as connected appeal having been filed against one and the same impugned judgment and decree wherein the learned trial Court has dismissed both the suits.

Issues: i) Whether it is necessary to produce attesting witnesses where the execution of a document is admitted by the executant himself?
ii) What is the mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908?
iii) Whether the court can compare the signatures of any party with the admitted ones?

Analysis: i) The simple reading of Article 81 of the Qanun-e-Shahadat Order, 1984 divulges that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary. It is a settled principle of law that admitted facts need not to be proved, so production of two attesting witnesses where the execution of a document is admitted is not necessary.
ii) It is the mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908 that where unequivocal and categorical admission as well as no objection on decreeing suit has been pressed before court then the Court may upon such application make such order, or give such judgment as the Court may think just.
iii) The court can compare the signatures of any party with the admitted ones in exercise of jurisdiction under Article 84 of the Qanun-e-Shahadat Order, 1984.

Conclusion: i) Where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary.
ii) It is the mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908 that where admission as well as no objection on decreeing suit has been pressed then the Court may upon such application make such order, or give such judgment as the Court may think just.
iii) The court can compare the signatures of any party with the admitted ones.

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18. **Lahore High Court**
Muhammad Farooq Azam (deceased) through L.Rs and others v. Mst. Hooran Bibi.
R.S.A.No.65 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1428.pdf

Facts: This regular second appeal has been filed against the judgment and decree passed by learned appellate Court which has accepted the appeal and consequently dismissed suit of the appellants.

Issues: i) Whether an illiterate, rustic and village household lady is also entitled to the same protection which is available to the Parda observing lady under the law?
ii) What is scope of appeal under Section 100 of the Code of Civil Procedure 1908?

Analysis: i) An old and illiterate lady is entitled to the same protection which is available to the Parda observing lady under the law.
ii) The scope of second appeal is restricted and limited to the grounds mentioned in Section 100 of the Code of Civil Procedure 1908 as Section 101 of the Code of Civil Procedure 1908 expressly mandates that no second appeal shall lie except on the grounds mentioned in Section 100 of the Code of Civil Procedure 1908.

Conclusion: i) An illiterate, rustic and village household lady is also entitled to the same protection which is available to the Parda observing lady under the law.
ii) Second appeal shall lie only on the grounds mentioned in Section 100 of the Code of Civil Procedure 1908.

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19. **Lahore High Court**
Sheikh Muhammad Aslam v. Muhammad Ali Nawaz, etc.
R.F.A. No. 1228 of 2015
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2059.pdf

Facts: The appellant instituted a suit for recovery of money on the basis of cheque under Order XXXVII, Rules 1 & 2 of CPC against the respondents. The learned trial Court dismissed the suit; hence, the instant regular first appeal.

Issues: i) Who is liable to pay the disputed amount of a negotiable instrument?
ii) Whether evidence beyond pleadings is admissible?
iii) What would be effect of non-production of best witness in circumstances of case?

Analysis: i) When the sections 29 and 29-A of the Negotiable Instruments Act, 1881 are read together and considered, it can safely be inferred that a person (in this case legal heirs) is liable only to pay the disputed amount of a negotiable instrument when he signs the same and not otherwise.
ii) It is a settled principle of law that a party cannot go beyond the pleadings and if anything is produced or brought on record beyond pleadings the same cannot be considered being inadmissible.
iii) In case of non-production of best witness in circumstances of the case, the adverse presumption as per Article 129(g), Qanun-e-Shahadat Order, 1984 arises against the appellant that had he been produced in the witness box, he would not have supported the stance of the appellant.

Conclusion: i) A person is liable only to pay the disputed amount of a negotiable instrument when he signs the same and not otherwise.
ii) Evidence beyond pleadings cannot be considered being inadmissible.
iii) In case of non-production of best witness in circumstances of the case, the adverse presumption as per Article 129(g), Qanun-e-Shahadat Order, 1984 arises against the appellant that had he been produced in the witness box, he would not

have supported the stance of the appellant.

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20. **Lahore High Court**
Muhammad Asif Nawaz, etc v. Muhammad Nawaz, etc.
Civil Revision No.22422 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2065.pdf

Facts: The petitioners instituted a suit for declaration against the respondents with the averments that the petitioners purchased the disputed house and their father/respondent No.1 was a benamidar. The respondent No.1 transferred the suit house in the name of respondents No.2 and 3 vide registered sale deed. The petitioners prayed for declaratory decree with further prayer to cancel the registered sale deed. The learned trial Court dismissed suit of the petitioners. The petitioners being aggrieved preferred an appeal but the same was dismissed. Hence the instant revision petition has been filed.

Issues: i) What is the criteria for determining the question, whether a transaction is a Benami transaction or not?
ii) Whether initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar?
iii) Whether concurrent findings on record can be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis: i) Criteria for determining the question, whether a transaction is a Benami transaction or not, inter alia, the following factors are to be taken into consideration as elaborated in Muhammad Sajjad Hussain v. Muhammad Anwar Hussain (1991 SCMR 703):- (i) Source of consideration; (ii) From whose custody the original title deed and other documents came in evidence; (iii) Who is in possession of the suit property; and (iv) Motive for the Benami transaction.
ii) The initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar.
iii) As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Conclusion: i) Criteria for determining the question, whether a transaction is a Benami transaction or not, inter alia, the following factors are to be taken into consideration:- (i) Source of consideration; (ii) From whose custody the original title deed and other documents came in evidence; (iii) Who is in possession of the suit property; and (iv) Motive for the Benami transaction.
ii) The initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar.
iii) The concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

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21. **Lahore High Court**
Abdul Karim v. Mst. Ruqqia Begum (deceased) through L.Rs. and others.
Civil Revision No.77 of 2010
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2050.pdf

Facts: The respondents / plaintiffs challenged the gifts in favour of the petitioner by instituting a suit for declaration and permanent injunction, with the allegations that the power of attorney was fraudulent and deceased was suffering from paralysis and was unable to appoint his attorney. The petitioner contested the suit, learned trial Court dismissed suit of the respondents who being aggrieved preferred an appeal and the learned appellate Court accepted the appeal; hence, the instant revision petition.

Issues: i) Whether it is necessary that general power of attorney must contain a clear separate clause in order to achieve certain object?
ii) Whether the statement of scribe can be equated with the statement of marginal witness?
iii) Whether mutation is title deed and who is to prove the same?
iv) The findings of which court would be given preference in case of inconsistency in findings of the courts below?

Analysis: i) In order to achieve the object it must contain a clear separate clause devoted to the said object, reliance is placed on Fida Muhammad v. Pir Muhammad Khan (deceased) through Legal Heirs and others (PLD 1985 Supreme Court 341). When the position is no such separate clause has been mentioned in the purported general power of attorney, the said power of attorney cannot be utilized for effecting a gift by the attorney without intentions and directions of the principal to gift the property, which intentions and directions must be proved on record. Reliance in this regard is placed on Mst Naila Kausar and another v. Sardar Muhammad Bakhsh and others (2016 SCMR 1781).
ii) The statement of scribe cannot be equated with the statement of marginal witness. In this regard reliance is placed on Hafiz Tassaduq Hussain Vs. Muhammad Din through Legal Heirs and others (PLD 2011 Supreme Court 241), Sajjad Ahmad Khan v. Muhammad Saleem Alvi and others (2021 SCMR 415) and Sheikh Muhammad Muneer v. Mst. Feezan (PLD 2021 Supreme Court 538) wherein it has been held:- '14. As regards the scribe he was not shown or described as a witness in the said agreement, therefore, he could not be categorized as an attesting witness.'
iii) Mutation per se is not a deed of title and is merely indicative of some previous oral transaction between the parties; so whenever any mutation is challenged burden squarely lies upon the beneficiary of such mutation to prove not only the mutation but also the original transaction, which he was required to fall back upon.

iv) It is a settled principle, by now, that in case of inconsistency between the findings of the learned trial Court and the learned Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary. Reliance is placed on Amjad Ikram v. Mst. Asiya Kausar and 2 others (2015 SCMR 1), Madan Gopal and 4 others v. Maran Bepari and 3 others (PLD 1969 SC 617) and Muhammad Nawaz through LRs. v. Haji Muhammad Baran Khan through LRs. and others (2013 SCMR 1300).

Conclusion: i) It is necessary that general power of attorney must contain a clear separate clause in order to achieve certain object.
ii) The statement of scribe cannot be equated with the statement of marginal witness.
iii) Mutation is not a deed of title and the burden to prove lies upon the beneficiary of such mutation.
iv) In case of inconsistency between the findings; the findings of learned Appellate Court must be given preference in the absence of any cogent reason to the contrary.

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22. **Lahore High Court**
The State v. Asjad Mehmood.
Murder Reference No.100 of 2019
Asjad Mehmood v. The State.
Crl. Appeal No.44525-J of 2019
Mr. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC1385.pdf

Facts: The appellant has assailed his conviction and sentence recorded by the learned Addl. Sessions Judge, in a State case F.I.R , an offence under Section 302 PPC, registered at the police station, whereby the learned trial court convicted the appellant , under Section 302 (b) PPC as Ta'zir and sentenced to death with the direction to pay Rs.3,00,000/- as compensation to the legal heirs of the deceased under Section 544-A of Cr.P.C, which would be recoverable as arrears of land revenue and in case of default in payment thereof, he would further undergo 06-months S.I. Feeling aggrieved by the judgment of the learned trial court, the appellant has assailed his conviction and sentence by filing an appeal. The learned trial court also referred Murder Reference to confirm the death sentence awarded to the appellant, as both the matters arising from the same judgment of the learned trial court are being disposed of through this consolidated judgment.

Issues: i) Whether conviction can be based on absconsion alone especially when ocular evidence has been disbelieved?
ii) Whether delay in lodging the FIR , is fatal to the prosecution's case?
iii) What would be the effect if the prosecution withholds its material witness?

Analysis: i) The appellant was indeed absconding, but in the present case, the substantive piece of evidence in the shape of an ocular account has been disbelieved; therefore, no conviction can be based on absconsion alone.
ii) Delay in lodging the first information report often results in consultation and deliberation, which is a creature of an afterthought. The prosecution failed to explain the delay in reporting the incident and the delay in conducting a post-mortem examination of the dead body of deceased. Hence, these circumstances raise considerable doubt regarding the veracity of the case and suggests delay in reporting the incident in lodging the first information report which is fatal to the prosecution's case...
iii) Thus, it was established from the evidence of PW-1 and PW-2 that PW informed the police about the incident and said witness was given up being un-necessary, therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984 that had the witness PW, been appeared in witness box, then his testimony would have been un-favourable to the prosecution...

Conclusion: i) When ocular evidence is disbelieved, no conviction can be based on absconsion alone.
ii) Yes, delay in lodging the FIR is fatal to the prosecution case and same results consultation and deliberation.
iii) An adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984, if material witness was given up being un-necessary.

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23. **Lahore High Court**
The State v. Muhammad Nasir @ Bhola.
Murder Reference No. 104 of 2019
Muhammad Nasir @ Bhola v. The State.
Crl. Appeal No. 44570 of 2019
Mrs. Justice Aalia Neelum, Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2072.pdf

Facts: The appellant was involved in an offence under Section 302 P.P.C. The trial court sentenced him to death for committing Qatl-e-Amd with the direction to pay compensation to the legal heirs of the deceased and in case of default thereof, to further undergo 06-months imprisonment. Feeling aggrieved by the judgment of the learned trial court, the appellant has assailed his conviction by filing the instant appeal. The learned trial court also referred to confirm the death sentence awarded to the appellant.

Issues: i) What will be the effect on the case if there is unexplained delay in lodging of FIR?
ii) Whether the evidence of chance witnesses can be accepted and what circumstances are to be kept in view to accept the ocular evidence of chance witnesses?

iii) Whether motive is a double-edged sword that cuts both sides and it can be a ground to hold the accused guilty?

Analysis: i) The evidential value of the First Information Report will be reduced if it is made after the unexplained delay, particularly when it creates a suspicion that the informant had sufficient opportunity to concoct a story and falsely implicate the accused.

ii) The evidence of chance witnesses can be accepted. The statements of such witnesses adequately explain the presence of witnesses, and such evidence stands the test of caution and scrutiny. It can only be relied upon if the proof has a ring of truth and is cogent, credible, and trustworthy. Similarly, the conduct of the chance witnesses is also a relevant factor while appreciating his evidence. The occasion for the presence at the time of occurrence, the opportunity to witness the crime, the normal conduct of the witness to the victim, and his predisposition towards the accused, are some of the circumstances to be kept in view to weigh and accept the ocular evidence of chance witnesses. It is not the quantum of the evidence but the quality and credibility of the witnesses that lends assurance to the court for acceptance.

iii) Motive is a double-edged sword that cuts both sides/ways. If, on the one hand, it provided a motive for the accused to commit the occurrence in question, on the other hand, it equally provided to the first informant to implicate his rival. Based on the motive to commit the crime, the accused cannot lead a judgment of conviction. Prove of motive by itself may not be a ground to hold the accused guilty.

Conclusion: i) The evidential value of the First Information Report will be reduced if it is made after the unexplained delay.

ii) The evidence of chance witnesses can be accepted and conduct, presence at the time of occurrence, the opportunity to witness crime, normal conduct to victim, predisposition towards accused are some circumstances to be kept in view to accept their evidence.

iii) Motive is a double-edged sword that cuts both sides/ways but prove of motive by itself may not be a ground to hold the accused guilty.

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24. **Lahore High Court**
Malik Muhammad Yaqoob etc. v Government of the Punjab etc.
Writ Petition No.30365/2022
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC1365.pdf

Facts: Through this Constitutional Petition, the petitioners have challenged the orders passed by the respondents that the petitioners were not regularized on the ground that they were overage at the time of recruitment and later on also terminated their services.

Issue: What is the effect if age relaxation order passed by appointing authority has not been recalled/cancelled and in meanwhile the Regularization Policy and Notification were issued?

Analysis: If the age relaxation orders, passed by the appointing Authority under the Rules, being not set-aside/cancelled during the contract service, then the respondent-department has been estopped subsequently to deny regularization under Regularization Policy or Notification on the ground that the applicant at the time of appointment was beyond the prescribed age limit of 30 years.

Conclusion: If age relaxation order passed by appointing authority has not been recalled/ cancelled and in meanwhile the Regularization Policy and Notification were issued then regularization cannot be denied.

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25. **Lahore High Court**
Faisal Aziz Malik v. Returning Officer (PP-82-Khushab-1).
Election Appeal No.24133/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2096.pdf

Facts: This Election Appeal has been filed under Section 63 of the Elections Act, 2017 against the order passed by the Returning Officer, whereby the appellant's nomination papers have been rejected through the impugned order for being outstanding liability of loan against the appellant.

Issues: i) What is the cut-off date for disqualification of a candidate under Article 63(1)(n) & (o) of the Constitution for failure to pay the loan, government dues and utility expense?
ii) Whether nomination papers can be rejected under Section 62(10) of the Act, 2017 when candidate entered into Settlement Agreement till the date for filing of nomination papers?

Analysis: i) The plain reading of Article 63(1)(n) of the Constitution shows that a person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora, if he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, co-operative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off. Whereas under Sub-Article (o) of Article 63(1) of the Constitution, he will be disqualified, if he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers. The words "at the time of filing his nomination papers", used in Article 63(1)(o) of the Constitution, manifest that cutoff date envisaged under Article 63(1)(n) or (o) of the Constitution before which the disqualification be removed, is the time of filing

of nomination papers.

ii) No doubt Section 62(10) of the Act is a non obstante clause and under said sub-section where a candidate deposits any amount of loan, tax or government dues and utility expenses payable by him of which he is unaware at the time of filing of his nomination papers, such nomination papers shall not be rejected on the ground of default in payment of such loan, taxes or government dues and utility expenses. However, while interpreting similar Section 14(3A) of ROPA, the learned Full Bench of this Court in Rashid's Case supra held that this provision is inconsistent with Article 63(1)(o) of the Constitution and disrupts the harmony of the Constitutional provision which cannot be permitted through sub-constitutional legislation…Beside the above observation by the learned Full Bench of this Court, in any case the non-obstante provision of Section 62(10) of the Act can only be attracted where the candidate must show that he was unaware at the time of filing of his nomination papers about the loan, tax, government dues and utility expenses payable by him and he has paid the same before his nomination papers were rejected.

Conclusion: i) Cutoff date envisaged under Article 63(1)(n) or (o) of the Constitution before which the disqualification be removed, is the time of filing of nomination papers.

ii) Nomination papers cannot be rejected under Section 62(10) of the Act, 2017 when candidate entered into Settlement Agreement till the date for filing of nomination papers.

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26. **Lahore High Court**
Muhammad Iqbal v. Returning Officer, PP-85 Essa Khail.
Election Appeal No.24513/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2122.pdf

Facts: This Election Appeal has been filed under Section 63 of the Elections Act, 2017 against the order passed by the Returning Officer, whereby the appellant's nomination papers have been rejected through the impugned order on the ground that his seconder did not appear at the time of scrutiny of his nomination papers.

Issues: i) Whether nomination papers of a candidate can be rejected due to absence of his seconder at the time of scrutiny?

ii) Whether non-appearance of proposer or seconder before returning officer, when specifically required for verification the genuineness of their signature or for any other purpose relating to the scrutiny of nomination papers can be fatal?

Analysis: i) The plain reading of sub-section (2) of Section 62 of the Act shows that the candidates, their election agents, the proposers and seconders and one other person authorized in this behalf by the candidate, and a voter who has filed an objection may attend the scrutiny of nomination papers. The word "may", used in Section 62(2) of the Act, depicts that it is not mandatory for the proposer and seconder to appear before the Returning Officer at the time of scrutiny and

therefore, without any objection from any person merely due to absence of the seconder at the time of scrutiny, the nomination papers of the appellant could not be rejected.

ii) No doubt, under Section 62(9) of the Act the Returning Officer may, on either of his own motion or upon an objection, conduct a summary enquiry and may reject the nomination papers, if he is satisfied with the grounds mentioned therein including that the signature of the proposer or seconder is not genuine. This provision cannot be construed that presence of proposer or seconder is mandatory but it means that where presence of proposer or seconder was specifically required by the Returning Officer to verify the genuineness of their signature or for any other purpose relating to the scrutiny of nomination papers then their absence could be fatal and nomination papers could be rejected. However, mere absence of the proposer or seconder cannot be a sole ground to reject the nomination papers.

Conclusion: i) Nomination papers of a candidate cannot be rejected due to absence of his seconder at the time of scrutiny.

ii) Non-appearance of proposer or seconder before returning officer, when specifically required for verification the genuineness of their signature or for any other purpose relating to the scrutiny of nomination papers can be fatal and nomination papers can be rejected.

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27. **Lahore High Court**
Muhammad Rizwan Nowaiz Gill v. The Returning Officer PP-77, Sargodha-VI, etc.
Election Appeal No.24144/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2131.pdf

Facts: This Election Appeal is directed u/s 63 of the Elections Act, 2017 (Act) against the order passed by the Returning Officer whereby the nomination papers of the appellant were rejected.

Issues: i) Whether a specific order or declaration is to be passed by court for a person to be disqualified under Article 62 (1) (f) of Constitution?

ii) Whether issuance of general directions by Supreme Court to Election Commission in a judgment against a person, to initiate proceedings against all such persons who are accused of commission of corrupt practices or committing forgery, can be treated as declaration against such person under Article 62 (1) (f) of the Constitution?

iii) How the election laws more particularly disqualification provisions to disenfranchising a candidate ought to be construed?

Analysis: i) Whenever a person is required to be disqualified under Article 62 (1) (f) of the Constitution by the Court, a specific declaration in this regard is to be made.

ii) When no specific declaration under Article 62 (1) (f) of the Constitution was

passed in a judgment against a person but general directions were issued to the Election Commission to initiate criminal proceedings against all such persons who were accused of commission of corrupt practices or committing forgery. The said general observations cannot be treated as declaration against such person under Article 62 (1) (f) of the Constitution to debar him for lifetime to contest the elections…

iii) It is settled law that election laws more particularly disqualification provisions to disenfranchising a candidate, thus depriving him of a valuable right of franchise guaranteed under the Constitution are to be strictly construed and any ambiguity is to be resolved in favour of candidate who could be permitted to participate in the electoral process.

Conclusion: i) Whenever a person is required to be disqualified under Article 62 (1) (f) of the Constitution by the Court, a specific declaration in this regard is to be made.

ii) Issuance of general directions by Supreme Court to Election Commission in a judgment against a person, to initiate proceedings against all such persons who are accused of commission of corrupt practices or committing forgery, cannot be treated as declaration against such person under Article 62 (1) (f) of the Constitution.

iii) The election laws more particularly disqualification provisions to disenfranchising a candidate ought to be construed strictly and any ambiguity is to be resolved in favour of candidate who could be permitted to participate in the electoral process.

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28. **Lahore High Court**
Muhammad Osman Gull v. Federation of Pakistan etc.
W. P. No. 52559 of 2022
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC1548.pdf

Facts: Through this judgment instant writ petition as well various other writ petitions shall be decided. Petitioners, being taxpayers, have claimed the taxation under Section 7E of the Finance Act, 2022 as ultra vires of Federal Legislature's field of competence, listed in Entries 50 (post eighteenth amendment) and 47 of Fourth Schedule to the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution").

Issues: i) What is meant by taxation?

ii) How direct and indirect taxes are levied on taxpayer?

iii) Generally what types of taxes are imposed on a person or property and on transaction?

iv) Whether the federation can impose the tax on the items not mentioned in the Federal Legislative List?

v) Why after the 1962 Constitution till 18th Amendment, the Capital Gain Tax is excluded from Entry 47 and placed in Entry 50 of the Legislative List Part I?

vi) What is the effect of omitting the phrase, "on capital gains" from the Entry 50

of the Legislative List Part I through 18th Amendment?

vii) What is the effect of omission of Entries 45 & 46 along with amendment in Entry 50, where the phrase "taxes on immoveable property" is excluded after 18th amendment?

viii) What is the effect of inserting subsection (1A) and Section 7E in the Finance Act, 2022?

ix) Whether the Entry 47 of the Legislative List Part I admits the imposition of presumptive tax?

x) What is the Fair Market Value, introduced in Section 7E of the Finance Act, 2022?

xi) Whether the Federal Legislature is competent, under Entry 47 of the Legislative List, to treat fair market value of an immoveable property as income?

xii) Whether the clauses (i) to (iv) of Section 7E (2)(d) of Finance Act, 2022 of excluding some persons from the levy of Capital Value Tax are discriminatory in nature and against the fundamental rights guaranteed under Article 25 of the Constitution?

Analysis: i) Taxation is compulsory exaction or enforced contribution, collected by state, under its sovereign authority, to carry into effect its mandates and for performance of manifold functions by the governments at Federal, Provincial or Local Government level.

ii) Taxes are mainly classified as direct and indirect. Direct tax is one, burden of which cannot be shifted to someone else, but for indirect tax, it can be to end consumer. Direct taxes are primarily taxes on a natural person's net income or net worth. Taxes on net income are based on the taxpayer's ability to pay and taxes on net worth are levied on the total value of his assets owned, minus liabilities. Indirect taxes are levied on the production or consumption of goods and services or on transactions, including imports and exports.

iii) The event or incidence of all kinds of taxation, direct or indirect, is to be decided by the legislature through enactment, influenced by political, economic, and social factors, as well as international agreements and treaties. The incidence of taxation also determines whether the tax is on a person, property or a transaction. Taxes on a person or property are generally direct taxes, and tax on transaction is indirect for it goes with the transaction and falls where the transaction terminates.

iv) The Constitution of Pakistan recognizes the power of taxation, as basic characteristic of sovereignty, under its Article 7, with only condition that the state should be 'empowered by law' to impose any tax or cess. The condition is reiterated in Article 77 as is reflected in its caption "Tax to be levied by law only". Article 142 bestows legislative competence upon the Federation and the Provinces. The Federation has exclusive power to impose tax, through legislation, with respect to the kinds and nature of taxes mentioned in the Federal Legislative List [means Federal Legislative List in Fourth Schedule as defined in Article 70(4)] ("FLL") and the taxes not listed therein can only be imposed by the

Provinces.

v) After 1962 Constitution till 18th Amendment, immoveable property was always an essential component of Assets, bestowing competence to tax Capital Value of Assets to Federation. The exclusion of immoveable property was only for the purpose of charging Capital Gain Tax. The Capital Gain Tax always was and is a part of income tax, competence of which is under Entry 47, and reason for placing it in Entry 50 was to exclude the immovable property from the definition of Capital Assets, only for the purpose of capital gain.

vi) After change in Entry 50 through 18th Amendment, the effect of omitting the phrase, "on capital gains" is that now capital gain is taxable on immoveable property, under Section 37(1) of the Ordinance of 2001, because capital gain is not a tax on property but a limb of income tax, on the receipt or gain by a person on transfer or sale of property and not on the property.

vii) There is a difference between taxes on immoveable property and tax on income arising from immoveable property. Burden of income tax, including capital gain tax is on person who receives the income. Whereas burden of taxes on immoveable property is on the property and goes with the property if not taxed before the sale or transfer. Like Estate Tax paid by the estate itself, before assets are distributed to heirs and inheritance taxes are paid by those who inherit property. Gift tax is levied so that the inheritance and estate tax cannot be avoided by transferring property prior to death. In Pakistan, estate tax was charged under Estate Duty Act 1950, which was repealed in 1979, without any debate or deliberation. It was within competence of Federation under Entry 46 'Estate Duty on property' along with Entry 45 'Duties in respect of succession to property'. Both the entries, imposing tax on immoveable property, are repealed by 18th Amendment along with the amendment in Entry 50, where after the phrase "taxes on immoveable property" is excluding "taxes" on immovable property and not the immovable property itself from capital assets, value of which is to be taxed under Entry 50. Omission of Entries 46 & 45 along with amendment in Entry 50, collectively shows that all taxes, burden of which is on the immoveable property are excluded from competence of the Federation.

viii) The subsection (1A) and impugned Section 7E are inserted through Finance Act 2022, simultaneously. Agriculture land is now part of assets, for the purpose of capital gain tax. Self-owned agriculture land where agriculture activity is carried out is, however, excluded under Section 7E(2)(c), from chargeability of impugned tax. In impugned Section 7E, capital asset is separately defined under subsection (4)(a), which "means property of any kind held by a person, whether or not connect with a business". However, by sub clause (iv) to the subsection (4)(a), all moveable assets are excluded from the definition of asset. Interestingly, the levy under Section 7E has targeted only immoveable property by excluding all moveable assets from the definition of capital assets.

ix) It is important to note that presumptive tax was purely based on or akin to Entry 52 and it is observed, in particular, that Entry 47 does not admit the imposition of presumptive tax because the expression 'taxes on income' means

working out of income based on computation under various provisions of the taxing statute.

x) The Fair Market Value, before introducing it in Section 7E, is defined in Section 29(3) of the ITO 1979 for the purpose of determining the cost of acquisition to tax Capital Gain under Section 27, where profit and gain from transfer of a capital asset is deemed as income of the year in which transfer took place. Under Section 29(1) & (2), the fair market value is related to the date on which it become property of the assessee or the date of transfer and presumption here is for redetermination of the received profit and gain. Under Section 12(12) certain transactions of assets, like lease or purchase are deemed as income accrued or arise in Pakistan. The Commissioner is given power to determine the cost of acquisition, considering the sale or lease as per market value. The deeming under Section 12(12) is of a consideration of sale, purchase or lease, whereas under Section 7E there is no profit or gain or transfer of the asset, in particular of the immoveable property.

xi) Income is defined under Section 2(29) of the Ordinance of 2001, which uses expression "and any amount treated as income" to confer power of presuming income, but the word, "amount" has significance of receiving something, in other words only an amount or receipt can be presumed as income and not a notional fair market value. Since the phrase, "treated to have derived, as income", used in the impugned Section 7E, fails the test of the principles and the provisions, ibid, to presume anything as income, therefore, it is held that Federal Legislature is not competent, under Entry 47, to treat fair market value of an immoveable property as income. However, to save the legislation, within competence under Entry 50, the principle of reading down is applied and held that the phrase, ibid, shall not be read in subsection (2) as part of Section 7E.

xii) The legislature has excluded i) a Shaheed or dependents of a shaheed belonging to Pakistan Armed Forces ii) a person or dependents of the person who dies while in the service of Pakistan armed forces or Federal or provincial government iii) a war wounded person while in service of Pakistan armed forces or Federal or provincial government iv) an ex-serviceman and serving personal of armed forces or ex-employees or serving personnel of Federal and provincial governments, being original allottees of the capital asset duly certified by the allotment authority in clauses (i) to (iv) of Section 7E (2)(d) of Finance Act 2022 from taxing Capital Value Tax but the legislature has ignored the persons, who have inherited the immoveable property but are not capable of paying Capital Value Tax, particularly when the tax is on person and not the property. This omission makes the levy 'expropriatory and confiscatory', for those who might have to sell the asset to be taxed, for paying the tax. Equality clause in Article 25, envisages, in light of the judgments, that similarly placed persons or a class should bear, equal burden of a particular taxation; otherwise the persons who are left out and taxed shall bear extra burden of the tax, of those who are excluded from taxation. It offends fundamental rights guaranteed under Article 25 of the Constitution, hence being discriminatory in nature.

Conclusion: i) Taxation is enforced contribution, collected by state, under its sovereign authority, to carry into effect its mandates and for performance of manifold functions by the governments at Federal, Provincial or Local Government level.

ii) Direct taxes are primarily taxes on a natural person's net income or net worth and indirect taxes are levied on the production or consumption of goods and services or on transactions, including imports and exports.

iii) Generally, taxes on a person or property are direct taxes, and tax on transaction is indirect for it goes with the transaction and falls where the transaction terminates.

iv) No, the federation cannot impose the tax on the items not mentioned in the Federal Legislative List.

v) After the 1962 Constitution till 18th Amendment; the Capital Gain Tax is excluded from Entry 47 and placed in Entry 50 of the Legislative List Part I to exclude the immovable property from the definition of Capital Assets, only for the purpose of capital gain.

vi) The effect of omitting the phrase, "on capital gains" from the Entry 50 of the Legislative List Part I through 18th Amendment is that now capital gain is taxable on immoveable property, under Section 37(1) of the Ordinance of 2001 as the capital gain is not a tax on property but a limb of income tax, on the receipt or gain by a person on transfer or sale of property and not on the property.

vii) After 18th amendment, omission of Entries 45 & 46 along with amendment in Entry 50, collectively shows that all taxes, burden of which is on the immoveable property are excluded from competence of the Federation.

viii) By inserting subsection (1A) and Section 7E in the Finance Act, 2022 the agriculture land is now part of assets, for the purpose of capital gain tax. However, Self-owned agriculture land where agriculture activity is carried out is excluded under Section 7E(2)(c) from chargeability of impugned tax.

ix) Entry 47 of the Legislative List Part I does not admits the imposition of presumptive tax.

x) Fair Market Value, before introducing it in Section 7E the Finance Act, 2022, is defined in Section 29(3) of the ITO 1979 for the purpose of determining the cost of acquisition to tax Capital Gain under Section 27, where profit and gain from transfer of a capital asset is deemed as income of the year in which transfer took place.

xi) Federal Legislature is not competent, under Entry 47 of the Legislative List, to treat fair market value of an immoveable property as income.

xii) Yes, the clauses (i) to (iv) of Section 7E (2)(d) of Finance Act, 2022 of excluding some persons from the levy of Capital Value Tax are discriminatory in nature and against the fundamental rights guaranteed under Article 25 of the Constitution.

29. **Lahore High Court**
Haroon Farooq v. Federation of Pakistan & others.
W.P No.59599 of 2022
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC1450.pdf

Facts: The petitioner invites this Court to square the provisions of section 124-A of PPC with Articles 14, 19 and 19A of the Constitution and to hold that since section 124-A of PPC contravenes and offends the fundamental rights enshrined in these Articles of the Constitution it is void in view of Article 8 of the Constitution which provides that any law insofar as it is inconsistent with the rights conferred by Chapter I Part II of the Constitution shall to the extent of such inconsistency be void.

Issues: i) How the offence u/s 124-A PPC is constituted; whether crime under this section is distinguished from other offences?
ii) Whether any fundamental right conferred through the constitution can be curtailed?
iii) Whether section 124-A PPC contravenes Article 19 of the Constitution of Pakistan 1973?
iv) What is the purpose of providing freedom to the press, whether it is linked with the freedom of speech?
v) Whether freedom of speech is incomplete without freedom of press?
vi) Whether section 124-A PPC has any impact on freedom of press?
vii) Why should not a citizen or a member of press be charged with sedition?
viii) Whether any limitation can be imposed on freedom of speech or press?
ix) What will be the effect on media and press if section 124-A of PPC is allowed to stand in its present form?
x) Whether the offence of sedition is comprised in any of the exceptions mentioned in article 19 of Constitution?

Analysis: i) The exciting or attempting to excite certain feelings to the authority of the Government is sufficient to constitute the offence. It follows that section 124-A is quintessentially a colonial law and has its genesis in the colonial rule. It was enacted to perpetrate and entrench British rule in the sub-continent. It has to be distinguished from other crimes which are commonly found to afflict a human society. Sedition belongs to the species of offences which had no other purpose but suppression of people's voices by the colonial masters.
ii) Constitutional democracy enshrines fundamental rights which are conferred upon people and the most cherished of those rights is the right to freedom of speech and expression. There cannot be an abridgement of speech unless it falls within the strict confines of the exceptions to Article 19 of the Constitution.
iii) S.124-A of PPC requires unpacking to establish that it contravenes Article 19. First and foremost, the offence, as couched, makes serious inroads into the right of freedom of speech and of the press. In a broadly worded provision which gives

wide leeway to a Government, the offence restricts spoken and written words both by the people and the press. This impacts the people in a number of ways.

iv) The whole purpose of providing for freedom of press is to enable democracy to flourish by keeping the citizenry informed and which will, in turn, feed into the entire democratic process through the right to vote. Thus both, right to freedom of speech and freedom of press are inextricably linked to each to form a whole and constitute the main planks on which the edifice of democracy rests. The Constitution makers did not merely provide a right to freedom of speech and expression but added a further condition that the press shall be free so that the flow and transmission of information to the citizens may not be censored.

v) Right to freedom of speech is incomplete without freedom of press and which in turn, secures the right to have access to information in all matters of public importance. The Constitution guaranteed freedom of speech by Article 19 and lest its significance be lost, enacted Article 19A to confer a right to have access to information in all matters of public importance.

vi) S.124-A of PPC seriously dents the right to publish freely by the press and to impart information through different platforms used by media. Any writings on political issues or discourse on matters of public importance may be caught by the mischief of S.124-A of PPC and would have the unpalatable effect of inhibiting free press.

vii) The people of this country are the masters and the holders of offices of the Government are the public servants. This situation cannot be rendered topsy-turvy by arming the public servants with the power to stifle the masters. Section 124-A of PPC connotes a stark regression in the protection of right guaranteed by Article 19 and must yield in its favour. Section 124-A of PPC is incompatible with the foundational principles of constitutional democracy and as a relic of past, must be consigned to oblivion. It has no place in a society which relishes new ideas and critical analysis to advance itself. The prohibition of mere criticism of Government that does not invite violence reflects an antiquated view of the relationship between the state and society.

viii) Article 19 of the Constitution expressly provides that the right of freedom of speech and expression are subject to reasonable restrictions imposed by law and enumerated in Article 19 itself. It permits restrictions to be imposed by law to save the interests expressly mentioned therein and one consequence of making rights subject to restrictions is that restrictions can be imposed to protect only those interests as are expressly mentioned and none other. It follows indubitably that the restrictions must have nexus with one of the expressly mentioned interests and none else. Cases abound where the superior courts have held that if a restriction did not cover the expressly mentioned interests, then that restriction offended against the Constitution and was ultra vires. Exceptions to freedom of expression must be justified as being necessary in a democracy.

ix) If section 124-A of PPC is allowed to stand in its present form, the media and the press would also be caught by its mischief and contrary to its role of informing the general public regarding issues of a political nature will be shackled

by its ability to do so by the provisions of section 124-A of PPC which would pose a constant threat to a free press to write freely and to dispense information without any fear of prosecution. In a true constitutional democracy the media and the press owe a duty to the public for dissemination of information. That duty is thrown into jeopardy by the provisions of section 124-A of PPC.

x) The offence of sedition enacted through section 124- A of PPC is not comprised in any of the exceptions mentioned in Article 19 of the Constitution. Further section 124-A of PPC abridges and limits political speech which cannot be countenanced in a free constitutional democracy with freedom of speech and press as the core values.

Conclusion: i) The exciting or attempting to excite certain feelings to the authority of the Government is sufficient to constitute the offence u/s 124-A PPC; crime under this section is distinguished from other offences.

ii) There cannot be an abridgement of speech unless it falls within the strict confines of the exceptions to Article 19 of the Constitution.

iii) Section 124-A of PPC contravenes Article 19 of the Constitution of Pakistan 1973.

iv) The purpose of providing for freedom of press is to enable democracy to flourish by keeping the citizenry informed and it is linked with the freedom of speech.

v) Freedom of speech is incomplete without freedom of press.

vi) S.124-A of PPC seriously dents the right to publish freely by the press.

vii) A citizen or a member of press should not be charged with sedition because section 124-A of PPC is incompatible with the foundational principles of constitutional democracy and as a relic of past, must be consigned to oblivion.

viii) Freedom of speech and expression are subject to reasonable restrictions imposed by law and enumerated in Article 19 itself.

ix) Section 124-A PPC would pose a constant threat to a free press to write freely and to dispense information without any fear of prosecution.

x) The offence of sedition enacted through section 124-A of PPC is not comprised in any of the exceptions mentioned in Article 19 the Constitution of Pakistan 1973.

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30. **Lahore High Court**
Civil Aviation Authority v. Haji Pervez Ahmad Khan & others.
I.C.A No. 296 of 2010
Mr. Justice Mirza Viqas Rauf Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC1435.pdf

Facts: Through this I.C.A, the petitioner has challenged the decision of the learned Single Judge whereby writ petition filed by respondents was accepted.

Issue: Whether the land acquired under Land Acquisition Act 1894 can be taken back on the ground of being lying surplus by the party from whom it was acquired?

Analysis: From the bare reading of the provisions of Capital Development Authority Ordinance, 1960 it clearly manifests that it contains an independent mechanism for the acquisition and the provisions of Land Acquisition Act. 1894 or the rules framed thereunder are alien to the scheme provided therein. Even if we assume that after vesting of the land in the Civil Aviation Authority by virtue of the Pakistan Civil Aviation Authority Ordinance, 1982 the provisions of the Land Acquisition Act, 1894 as well as rules framed thereunder would come into play in terms of Section 5(8) of the said 'Ordinance'. As per Rule 14 of the 'Rules of 1983' the power to restore the possession of acquired land to the persons from whom it was acquired lies with the Government and that too in the case, when the Department of the Government or a local authority for which land was acquired proposed to abandon the public purpose for which it was acquired. The respondents are claiming restoration of meagre part of acquired land on the ground that it has become surplus. Rule 14 ibid thus cannot be stretched in favour of the respondents.

The claim of the respondents that land in question has become surplus, is founded upon a demarcation report, which has no legal value unless it is weighed after recording of evidence. There are only oral assertions to this effect and there is no concrete material that the acquiring/beneficiary department did not utilize the land for the purpose for which it was acquired. Even otherwise, matter relating to return of acquired land cannot be left at the whims of the ex-landowners. Allowing the respondents to claim part of acquired land having become surplus would open a pandora box and a flood gate for other landowners as well.

Conclusion: The land acquired under Land Acquisition Act 1894 cannot be taken back on the ground of being lying surplus by the party from whom it was acquired.

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31. **Lahore High Court**
Nisar Ahmed v. Haji Fazal Dad.
Civil Revision No. 865-D of 2015
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2021LHC9997.pdf

Facts: Through this petition under Section 115 of the Code of Civil Procedure, 1908, the petitioner calls in question the judgment & decree dismissing his appeal against judgment & decree of the Trial Court, whereby his application seeking amendment in plaint was dismissed and respondent's application under Order VII Rule 11 of the Code ibid was allowed to the effect of rejection of plaint.

Issues: i) What would be the limitation for instituting a suit for pre-emption in case sale is effected through registered sale deed?
ii) If a case is covered by any specific earlier clauses i.e. section 30 (a) to (c) of the Punjab Pre-emption Act, 1991, then whether clause in section 30 (d) of said Act can be resorted to?

iii) Whether limitation for instituting a suit for pre-emption provided in section 30 of the Punjab Pre-emption Act, 1991 can be commanded and controlled by section 31 of said Act dealing with issuance of notice of sale?

Analysis: i) Section 30 of the Punjab Pre-emption Act, 1991 provides that the period of limitation for a suit to enforce a right of pre-emption shall be four months from the date: (a) of the registration of the sale deed; (b) of the attestation of the mutation, if the sale is made otherwise than through a registered sale deed; (c) on which the vendee takes physical possession of the property if the sale is made otherwise than through a registered sale deed or a mutation; or (d) of knowledge by the pre-emptor, if the sale is not covered under paragraph (a) or paragraph (b) or paragraph (c).

ii) Section 30 of the Punjab Pre-emption Act, 1991 provides four eventualities to compute the limitation for instituting a suit for pre-emption. All four are independent and contemplating different events for the purpose of calculating the limitation for a suit to enforce a right of pre-emption. Clause in section 30 (d) of Act ibid is not an exception to the provision, rather it is a residual provision and would only come into play if none of the preceding clauses are applicable or attracted.

iii) Sections 30 & 31 of the Pre-emption Act, 1991 are independent in their nature and both the provisions have no effect and impact upon each other. Had it been the intent of legislature to make the period of limitation provided under Section 30 of Act ibid as a subservient to the requirement of Section 31 of Act ibid, the legislature would have clearly indicated its intention by the use of appropriate expression and/or words in either of the two sections.

Conclusion: i) In case of sale through registered sale deed, the limitation for instituting a suit for pre-emption is four months from the date of the registration of such deed.

ii) If a case is covered by any specific earlier clauses of section 30 (a) to (c) of the Pre-emption Act, 1991, then section 30 (d) of Act ibid cannot be resorted to.

iii) The combined analysis of section 30 and section 31 of the Punjab Pre-emption Act, 1991, clearly reflects that limitation for instituting a suit for pre-emption cannot be commanded and controlled by the latter provision.

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32. **Lahore High Court**
Sakhi Muhammad, etc. v. Haji Ahmed, etc.
Civil Revision No.190-D of 2012
Mr. Justice MirzaViqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2021LHC10003.pdf

Facts: This revision petition impugns judgment & decree dismissing appeal of petitioners preferred against preliminary decree passed by trial court in suit of respondents seeking decree of possession through partition along with permanent injunction in connection with joint suit property interse parties, pleaded to have attained residential character, wherein petitioners are allegedly intending to effect alienation in excess of their share.

Issues: i) When a party relying upon the private partition could claim any right in property in the suit for its partition?

ii) Whether the suit for partial partition of joint property is maintainable?

iii) What tests are for determination of agricultural status of land and if the status of suit property is determined as agricultural in nature, then whether the civil court has jurisdiction to adjudicate the matter?

(iv) What type and extent of constructions on agricultural land do not exclude it from the purview of section 135 of the Punjab Land Revenue Act, 1967, for the purposes of partition proceedings?

v) What is doctrine of election?

Analysis: i) Section 147 of Punjab Land Revenue Act, 1967 evinces that if a party is relying upon some family settlement with regard to partition of joint land, any party interested therein has to apply to the Revenue Officer for obtaining an order for affirmation of such partition. Furthermore, Chapter 18 of the Land Record Manual provides a procedure in partition cases and clause 18.1 especially deals with private partitions.

ii) Partition has to be sought for all the undivided immovable property and partial partition thereof would not be competent if the suit property is part of Khewat and is not separable from the property situated in other Khasra numbers of the same Khewat.

iii) In order to determine whether the land is agricultural, two tests are prescribed; one negative that is the property should not be occupied as the site of a building in town or village and the other positive that it should be occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture. If the answer to the first question be in the affirmative, then depending upon its' situation in a town or village, it is either urban or village immovable property; it is not agricultural land. But if it is land occupied or let for agricultural purposes, then the buildings on it are also agricultural land. The suit for immovable undivided property situated in Abadi Deh shall be triable exclusive by the Civil Court whereas immovable undivided property outside Abadi Deh shall be partitioned by revenue hierarchy. Section 135 of the Punjab Land Revenue Act, 1967 confers power upon a Revenue Officer to make partition of land, on application of any joint owner, whereas, Section 172 of the Act ibid excludes expressly jurisdiction of civil courts in any matter which the Government, Board of Revenue, or any Revenue Officer, is empowered by the Act to dispose of.

iv)The term “land” is defined in section 2(3) of the Punjab Alienation of Land Act, 1900,as that it means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture etc. Whereas, Section 3(1) of the Punjab Land Revenue Act, 1967, states that nothing in this Act applies to land which is occupied as the site of a town or village, and is not assessed to land revenue and section 136(b) (iii) of the said Act provides that partition of any land which is occupied as the site of a town or village, may be refused if, in the opinion of the Revenue Officer, the partition of such property is likely to cause inconvenience to the co-sharers or other persons directly or indirectly interested therein, or to diminish the utility thereof to those person.

v) The moment a party to lis intended to commence any legal proceedings to enforce any right, invoke a remedy or vindicate an injury, he had to elect from amongst hosts of actions or remedies available under the law. The doctrine of election is founded by the courts of law from the principles of waiver, abandonment of a known right, claim, privilege, relief as contained in Order II Rule, principles of res-judicata in Section 11of the Code of Civil Procedure, 1908 and estoppels in Article 114 of the Qanun-e-Shahadat Order, 1984.

Conclusion: i) In absence of any order of the Revenue Officer, party relying upon the private partition would be precluded to claim any right in joint land in a suit for partition of the same.
ii) The suit for partial partition of joint property is not maintainable.
iii) The matter of partition of agricultural land falls within the exclusive domain of Revenue Officer and the jurisdiction of Civil Court is barred under the law.
iv) In absence of sound proof of Abadi at the disputed land, without any notification of Collector or special orders of Board of Revenue showing the land in question having been included within the site of town and village, any constructions would not change nature of agricultural land and do not exclude it from the purview of section 135 of the Punjab Land Revenue Act, 1967.
v) The choice to initiate and pursue one out of host of available concurrent or co-existent proceedings/actions and remedy from a forum of competent jurisdiction is vested with the party to a lis but when once choice was exercised and election was made, then such party is precluded from launching another proceedings to seek a relief or remedy contrary to what would be claimed or achieved by adopting other proceeding/action and remedy, which in legal parlance is recognized as doctrine of election.

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33. **Lahore High Court**
Imtiaz Ali v. Muhammad Sadiq.
C.R.No. 206-D of 2023
Mr. Justice MirzaViqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC1621.pdf

Facts: The plaint, in petitioner's suit seeking decree for specific performance of agreement to sell etc., was rejected by learned trial court under Order VII, Rule 11 of the Code of Civil Procedure, 1908, and his consequent appeal against said order of rejection of plaint was dismissed as well, hence this petition under section 115 of Code ibid.

Issues: i) If a first suit seeking decree for specific performance of an agreement to sell is withdrawn with conditional permission of court to file a fresh one, then whether time spent in proceedings of such earlier suit may be deducted for the purpose of limitation of the subsequent suit?
ii) When revisional jurisdiction may be invoked under section 115 of the Code of Civil Procedure, 1908?

Analysis: i) In terms of Article 113 of the Limitation Act, 1908, suit for specific performance of an agreement to sell is to be instituted within three years from the date fixed for the performance or, if no such date is fixed, when the plaintiff has noticed that performance is refused. Order XXIII, Rule 2 of the Code of Civil Procedure, 1908 caters the situation that, for the purpose of limitation, first withdrawn suit is not to be taken into consideration at all and time spent there in proceedings of such earlier suit is not to be deducted for the subsequent suit whilst dealing with question of limitation. Limitation cannot be stopped if it once starts running.
(ii) The scope of revisional jurisdiction is circumscribed to the eventualities mentioned in section 115 of the Code of Civil Procedure, 1908. The revisional powers are limited and can only be exercised when the petitioner succeeds in establishing that the impugned order or judgment suffers legal infirmities hedged in section 115 of the Code ibid.

Conclusion: i) Earlier suit withdrawn with conditional permission of court to file a fresh one is not to be taken into consideration at all and time spent in proceedings of such suit is not to be deducted for the purpose of limitation of the subsequent suit.
ii) The revisional jurisdiction may be invoked only if some patent illegality is floating on the surface of the record.

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34. **Lahore High Court**
Gulzar Hussain etc., v. Abdur Rasool etc.
C.R.NO. 1038 of 2014
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC1628.pdf

Facts: The respondent no.1 being the legal heir of the daughter of deceased original owner of suit property filed a suit for declaration claiming that the inheritance mutations relating to the legacy of said deceased have been sanctioned illegally depriving his daughter. Said suit was decreed followed by dismissal of consequent appeal. This petition under section 115 of Civil Procedure Code, 1908, is filed against both said concurrent judgments & decrees.

Issues: i) Has the time limitation any effect on right of filing a suit to challenge the validity of mutations of inheritance?
ii) What is the scope of revisional jurisdiction?

Analysis: i) When the validity of mutations is questioned on basis of fraud and misrepresentation then the limitation starts from the date of knowledge. But limitation cannot be pleaded as a hurdle in the way of claiming right of inheritance. Under the Muslim Law of inheritance, the land automatically devolved on legal heir, the moment predecessor died. It is immaterial that ownership of the legal heir was not recorded in the mutation of inheritance, which is not a title document. The legal heir was a co-sharer in the land in dispute to the

extent of share since time of death of her predecessor, thus there was no question of suit being barred by time.
ii) The jurisdiction of revision is not meant to unearth another possible view from the evidence which is contra to the findings rendered by two courts of competent jurisdiction. The jurisdiction of revision is to be exercised while keeping in view the principles enshrined in section 115 of CPC.

Conclusion: i) Law is settled that no one will be deprived of his/her ancestral property on the basis of fraud merely on account of limitation.
ii) The exercise of powers of revision is always guided by the necessary pre-conditions laid down in the section 115 of CPC.

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35. **Lahore High Court**
Muhammad Younis etc. v. Federation of Pakistan through Secretary Defence, Islamabad etc.
W.P.No.251251/2018
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC1350.pdf

Facts: Brief facts of the case, as mentioned in this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 are that the petitioners are owners of land situated in revenue estate of District. Military Lands & Cantonments authorities took possession of the land including the land owned by the petitioners for establishing Cantonment and constructed a boundary-wall around it. Thereafter, the respondents dispossessed the petitioners from their aforesaid owned land. The petitioners alleged that the possession of land was taken without adopting the legal process.

Issue: Whether State or its Department without the consent of the owner and without purchasing and acquisitioning can get possession of his land?

Analysis: As a moral, religious, constitutional and legal sanctity is attached to the fundamental rights of the citizen under Articles 23, 24 & 38 of the Constitution, whereby every citizen has the right to hold and use his property for his fiscal and social wellbeing and Article 3 of the Constitution placed the state under obligation to eliminate all forms of exploitation of citizens. Thus, it is not behove of a State or its Department to take away property of the individual without adhering to the principle of law. There is no cavil and cudgel that fortunately we have a written Constitution and written law with regard to every field of life and State institution/government functionary are placed under mandatory obligation to act in accordance with law, thus any willful non-compliance of the principles of law will be a dangerous menace which would lower the dignity of the country in the Comity of the Nations. Thus, the right to hold and use of the land by the owner of the said land cannot be taken away forcibly at the whims & caprice of State functionaries except as provided under the law and after payment of fair compatible compensation.

Conclusion: Forcible taking over possession of land of citizen by state functionaries without acquiring the land in accordance with law and without payment of any compensation is not only illegal but also unconstitutional.

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36. **Lahore High Court**
Commissioner Inland Revenue, Zone-II, LTU, Lahore v. M/s Shezan International Ltd., Lahore
PTR No.147 of 2013
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1379.pdf

Facts: The respondent taxpayer, a public limited company, filed income tax return but same was amended being found erroneous. The respondent-taxpayer filed appeal before Commissioner (Appeals) which was partially allowed and feeling aggrieved, the respondent filed second appeal which was allowed. Hence, instant tax reference by department.

Issue: Whether merger of two or more companies give rise to any taxable event?

Analysis: It is well-settled that merger of two or more companies is essentially a process of corporate reconstruction whereby assets of merging companies were either clubbed or brought together in the surviving or new company, however, proprietary rights of assets remained intact. No financial transaction could be said to have taken place between the merging companies. As such in the scheme of merger arrangement, there does not take place any sale, disposition, exchange or relinquishment or extinguishment of any right on the part of the amalgamating companies that gives rise to any income or gain resulting in a taxable event. If upon merger, the net assets of the merging companies remain unaltered as also the proprietary interest of the shareholders in the amalgamated company remains the same, a corporate merger does not give rise to any taxable event.

Conclusion: If upon merger, the net assets of the merging companies remain unaltered as also the proprietary interest of the shareholders in the amalgamated company remains the same, a corporate merger does not give rise to any taxable event.

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37. **Lahore High Court**
Director Intelligence & Investigation-FBR, through Additional Director, Faisalabad v. Muhammad Imran & others.
Customs Reference No.66929 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2126.pdf

Facts: The applicant-department filed reference application under Section 196 of the Customs Act, 1969 pertaining to dismissal of an appeal of the applicant-department by the Customs Appellate Tribunal.

Issue: Whether the jurisdiction for adjudication in respect of Section 32 of the Customs Act, 1969 lies with the customs officials at the port of entry or with the customs

officials at the port of destination?

Analysis: If any mis-declaration is made by the importer, it is deemed to be in contravention to the provisions of section 32(1) of the Act of 1969, however this provision does not provide any guidance in respect of jurisdiction for adjudication by the customs officials. This provision read with Rules 335 & 338 merely empowers the customs officials at the port of entry to examine whether the declaration made is correct and goods correspond to the declaration. These provisions give authority to customs officials at entry stage to take cognizance of the contravention, if any, but it will not confer the powers of adjudication as well which will remain with the customs officials posted at the port of destination.

Conclusion: The jurisdiction for adjudication in respect of Section 32 of the Customs Act, 1969 lies with the customs officials at the port of destination.

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38. **Lahore High Court**
Ghulam Shabbir @ Shaboo v. The State, etc.
Criminal Appeal No.1344 of 2019
Mr. Justice Asjad Javaid Ghural, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC10020.pdf

Facts: Through this criminal appeal the appellant assailed the judgment passed by the learned Additional Sessions Judge, whereby at the conclusion of the trial, in case F.I.R registered under Section 9(c) of the Control of Narcotic Substances Act, 1997, he was convicted and sentenced to rigorous imprisonment for four years and six months with fine of Rs.10,000/- and in default thereof to further undergo simple imprisonment for three months. The benefit of Section 382-B Cr.P.C. was extended to the appellant.

Issues: i) What is the purpose of Section 342 Cr.P.C?
ii) Whether it is necessary to put every important and incriminating material before accused so as to enable him to answer and explain his position?
iii) Whether the word 'generally' appearing in sub section (1) of Section 342 Cr.P.C. does limit the nature of the questioning?
iv) Whether the statement of an accused under Section 342 Cr.P.C. is mere a formality and evidence which is not put to him during such statement can be used against him?

Analysis: i) Bare reading of Section 342 Cr.P.C. it is manifestly clear that the entire purpose of this Section is to afford the accused a fair and proper opportunity of explaining circumstances, which appears against him.
ii) It is necessary that attention of the accused must be brought to all the vital parts of the evidence brought against him by the prosecution, which is likely to be considered by the Court against him. The purpose is to establish a direct dialogue between the Court and the accused and to put every important and incriminating material before him so as to enable him to answer and explain his position. The

question put to an accused must be fair and couched in a manner, which even an ignorant and illiterate person may be able to appreciate and understand.
iii) The word 'generally' appearing in sub section (1) of Section 342 Cr.P.C. does not limit the nature of the questioning to one or more questions of a general nature relating to a case but it means that the question should relate to the whole case generally.
iv) The statement of an accused under Section 342 Cr.P.C. is not a mere formality rather it was a bounden duty of the trial Court to question the accused on proven circumstances or proven evidence. The circumstances/ evidence, which is not put to an accused in his examination under Section 342 Cr.P.C., cannot be used against him and liable to be excluded from consideration.

Conclusion: i) The purpose of Section 342 Cr.P.C is to afford the accused a fair and proper opportunity of explaining circumstances, which appears against him.
ii)Yes, it is necessary to put every important and incriminating material before accused so as to enable him to answer and explain his position.
iii) The word 'generally' appearing in sub section (1) of Section 342 Cr.P.C. does not limit the nature of the questioning but it means that the question should relate to the whole case generally.
iv) The statement of an accused under Section 342 Cr.P.C. is not a mere formality and evidence which is not put to him during such statement cannot be used against him.

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39. **Lahore High Court**
Sh. Irfan Raza v. Province of Punjab, etc.
Writ Petition No.67011/2021
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC10045.pdf

Facts: By way of this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks direction to respondents No.2 & 3 for decision of his application moved before them within the stipulated time.

Issue: What is the main responsibility of the petitioner seeking the issuance of the writ of mandamus?

Analysis: The petitioner has not been able to show as to why sought for writ of mandamus be issued. Mandamus is not writ of right it is not consequently granted of course but the Court exercises this discretion only if it is convinced that the petitioner has come to the Court with clean hands and for just cause. Apparently, the petitioner has his own axe to grind behind the scene and by means of filing this writ petition he has made an abortive attempt to use the authority of this Court as a tool to reach at his desired goal. The petition contains ambiguous and general nature of allegations against various officials/officers of Canal Department without any substantive material. If the petitioner has any proof qua the illegality of the

officials, he may approach high ups of the said department. Apparently, the petitioner is trying to use the shoulder of this Court to harass and blackmail the public functionaries which cannot be allowed.

Conclusion: The petitioner must show that he has come to the Court with clean hands and for just cause.

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40. **Lahore High Court**
Mubbashar Farooq v. Addl. Sessions Judge, etc.
Crl.Misc.26602-M/2022
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2022LHC9098.pdf

Facts: Through this petition under Section 561-A Cr.P.C. the petitioner has called in question validity of impugned orders passed by the learned courts below. The learned Trial Court dismissed application under Section 249- A Cr.P.C. for pre-mature acquittal in case in respect of an offence u/s 489-F PPC, and the learned Revisional Court dismissed his revision against the order of learned Trial Court.

Issues: i) Whether the Magistrate is empowered to acquit an accused at any stage of the case?
ii) What are the pre-requisites for constitution of an offence under Section 489-F PPC?

Analysis: i) The Legislature has empowered the Magistrate to acquit an accused at any stage of the case, if after hearing the Prosecutor and accused it arrived at a definite conclusion that the charge is groundless or there is no probability of conviction of the accused.
ii) There are following three pre-requisites for constitution of offence under Section 489-F PPC:- (i) Issuance of cheque with dishonest intention. (ii) Cheque was issued towards payment of loan or fulfilment of an obligation. (iii) Cheque was dishonoured.

Conclusion: i) The Magistrate is empowered to acquit an accused at any stage of the case if the charge is found to be groundless or there is no probability of conviction of the accused..
ii) Issuance of cheque is with dishonest intent, payment of loan or fulfilment of obligation and finally cheque dishonoured are the pre-requisites to constitute an offence u/s 489-F PPC.

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41. **Lahore High Court**
Azhar Nawaz v. Addl. Sessions Judge, etc.
Writ Petition No. 67828/2022
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2022LHC9104.pdf

Facts: Through this writ petition, the petitioner has challenged the legality and propriety

of order passed by the learned Ex-Officio Justice of Peace, whereby upon the application of respondent filed under Section 22-A Cr.P.C. a direction has been issued for registration of case against the petitioner.

Issue: Whether a cheque issued by an account holder to himself can create any criminal liability?

Analysis: While going through the section 489-F PPC, one can easily draw the conclusion that foundational element to constitute an offence under this provision is issuance of cheque with dishonest intent, the cheque should be towards repayment of loan or fulfillment of an obligation and lastly that the cheque in question is dishonoured. It is thus quite evident that in order to attract the provision of Section 489-F PPC, intention of the account holder to cause wrongful gain to one person or wrongful loss to another was sina qua non. In case where there was a "self cheque" it can easily be presumed that the amount for which the cheque was issued was to be paid to the drawer himself and obviously the drawer would not dishonestly issue cheque to himself and the said cheque in any eventuality cannot be presumed to be issued towards repayment of loan or fulfillment of any obligation to oneself. For clarity, it is held that if in column of "pay" of any cheque, the word "self" "cash", "in person" is written or left blank then offence under Section 489-F PPC is not made out. Now the question arises that if the cheque is issued to "Self" but the same was handed over to someone else for collection of funds and upon its dishonor if such person approaches the police for registration of case then what would be its fate. The answer is quite simple and straightforward. In that eventuality, it would only be considered a bearer cheque open for encashment by anyone to whom the drawer does not owe or might not intended to pay anything.

Conclusion: A cheque issued by an account holder to himself doesn't create any criminal liability.

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42. **Lahore High Court**
Muhammad Zubair v. The State & another.
Criminal Appeal No.265 of 2015
Shaukat Hussain v. The State & another.
Criminal Revision No.152 of 2015
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC10036.pdf

Facts: Learned Additional Sessions Judge, for offences under Sections 302, 337-F(i), 337-F(ii), 148 & 149 PPC, at the conclusion of trial convicted the appellant under Section 302(b) PPC and sentenced to Rigorous Imprisonment for life and to pay the compensation of Rs.400,000/- to the legal heirs of deceased under Section 544-A Cr.P.C. and in default thereof to further undergo simple imprisonment for six months along with benefit of Section 382-B Cr.P.C.The appellant filed criminal appeal against his conviction and sentence and the complainant also

sought enhancement of sentence of convict through filing separate Criminal Revision.

Issues: i) Whether prompt lodging the crime report as well as sharp proceedings of the post mortem examination on the dead body of the deceased rules out every hypotheses of fabrication?
ii) Whether under section 302 (c) P.P.C. the quantum of sentence is under discretion of the Court?
iii) Whether sudden provocation, spur of the moment and exclusion of pre-meditation at the time of occurrence are necessary elements to be proved in order to get benefit of section 302 (c) PPC?

Analysis: i) The promptness in lodging the crime report as well as sharp proceedings of the post mortem examination on the dead body of the deceased rules out every hypotheses of consultation, fabrication and deliberation.
ii) In the mischief of Section 302 (c) P.P.C. the legislature has left the quantum of sentence under discretion of the Court keeping in view facts and circumstances of each case.
iii) Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. While inflicting sharp edged weapon at the most vital part of the body of the deceased, the assailant acted in a cruel manner, which is yet another factor making him ineligible for the benefit of above said exception.In such circumstances there exists no occasion of sudden provocation, spur of the moment and exclusion of pre-meditation at the time of occurrence in order to bring the aassailant's case under the ambit of Section 302 (c) PPC.

Conclusion: i) Yes, prompt lodging the crime report as well as sharp proceedings of the post mortem examination on the dead body of the deceased rules out every hypotheses of fabrication.
ii) Yes, under section 302 (c) P.P.C. the quantum of sentence is under discretion of the Court.
iii) Yes, sudden provocation, spur of the moment and exclusion of pre-meditation at the time of occurrence are necessary elements to be proved in order to get benefit of section 302 (c) PPC.

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43. **Lahore High Court**
The State v. Muhammad Ishaque
Writ Petition No.13218/2018
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC1443.pdf

Facts: The petitioner called in question validity of an order passed by the Judge Electricity Utilities Court, whereby thesaid court while referring to the provisions

of Section 462-O PPC opined that in cases of theft of electricity only a "complaint" can be filed by a duly authorized officer and the FIR could not be registered in such like cases.

Issue: Whether the provisions of Section 462-O PPC prohibit registration of First Information Report in offences mentioned in Chapter XVII-B, PPC?

Analysis: By declaring the offences mentioned in Chapter XVII-B as cognizable intention of the legislature is manifestly clear that registration of FIR in such like offences was very much permissible… taking cognizance of an offence by a Court is entirely a distinct feature from lodging of the crime report or investigation of an offence by the police or any other investigating agency… Section 462-O PPC only deals with taking cognizance of an offence by a Court, as such the same does not place an embargo upon reporting of an offence by the Officer not below Grade-17 to the police or registration of FIR pursuant to such report/complaint. There seems no confusion in the criminal jurisprudence that in order to cause arrest of an accused in a cognizable offence, registration of FIR is *sina qua non*. Therefore, by no stretch of imagination it can be concluded that by inserting Section 462-O PPC intention of the legislature was to place an embargo upon registration of First Information Report in cases mentioned in Chapter XVII-B.

Conclusion: The provisions of Section 462-O PPC does not prohibit registration of First Information Report in offences mentioned in Chapter XVII-B, PPC.

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44. **Lahore High Court**
Muhammad Imran v. The State etc.
Criminal Appeal No.157/2012
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2021LHC10027.pdf

Facts: The appellant has challenged the vires of judgment passed by the Additional Sessions Judge in a case FIR in respect of offence under Sections 302 & 34 of Pakistan Penal Code, 1860 whereby he was convicted and sentenced with imprisonment for life.

Issues: (i) Whether the testimony of a witness in a criminal trial can be relied upon once he proves to have made material improvements?
(ii) What is the effect of inordinate delay in conducting post-mortem examination of a dead body?
(iii) Whether the statement of an accused is to be considered in its entirety and accepted as a fact in case the prosecution evidence is discarded?

Analysis: (i) It is well settled principle of criminal administration of justice that once a witness proves to have made material improvements, his testimony cannot be relied upon.
(ii) The inordinate delay in conducting the post-mortem examination of dead body

is indicative of the real possibility that the time had been consumed by the prosecution for maneuvering and concocting the prosecution story and manage the eye witnesses against the appellant.
(iii) It is well settled law that when the prosecution evidence is discarded, the statement of an accused is to be considered in its entirety and accepted as a fact.

Conclusion: (i) The testimony of a witness in a criminal trial cannot be relied upon once he proves to have made material improvements.
(ii) An inordinate delay in conducting the post-mortem examination of dead body creates doubts regarding truthfulness of the prosecution story as well as the presence of eye witnesses at the place of occurrence at the time of occurrence.
(iii) The statement of an accused is to be considered in its entirety and accepted as a fact in case the prosecution evidence is discarded.

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45. **Lahore High Court**
Zubaida Khanum v. District Police Officer etc.
Writ Petition No. 18561/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2106.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), is directed against the order passed by the Ex-officio Justice of Peace, whereby the application of the petitioner for the registration of a cross version was dismissed.

Issues: (i) Can second FIR be registered on a new/different version of the same incident involving the commission of a cognizable offence?
(ii) Can a cross-version be recorded in a case after the conclusion of the trial?

Analysis: i) In Pakistan, there was a lack of judicial consensus on registering a second FIR. Finally, in Sughran Bibi v. The State (PLD 2018 SC 595), a 7-member Bench of the Supreme Court rendered an authoritative decision which also addressed the ancillary question of how the police should record and investigate new/different versions of the same incident if a second FIR cannot be registered. The apex Court held that the FIR is essentially an "incident report" because it informs the police for the first time that an occurrence involving the commission of a cognizable offence has taken place. Once the FIR is registered, the occurrence is regarded as a "case", and every step in the ensuing investigation under sections 156, 157, and 159 Cr.P.C. is a step taken in that case. The Investigating Officer should not be swayed by the contents of the FIR, and he is under no obligation to establish that version. He must instead find out the truth. He should gather information from those who appear to be familiar with the details of the incident. A fresh FIR is not required for each new piece of information he obtains during the process or the discovery of a new circumstance relevant to the commission of the offence. Such further information or knowledge is part of the ongoing

investigation into the same case, which began with the registration of the FIR. After completing the investigation, the Investigating Officer should file a report under section 173 Cr.P.C. on the real facts that he discovers, regardless of the version of the incident advanced by the first informant or any other version brought to his notice by any other person. In Sughran Bibi, the Supreme Court iterated that the power to investigate is related to the offence and is not limited to the facts mentioned in the FIR. If the information received by the police about the commission of a cognizable offence also includes details of how and by whom it was committed, or anything regarding its background, that is only the informant's version of the incident. The Investigating Officer should not accept it unqualifiedly as the whole truth. Moreover, all versions of the incident are recorded under section 161 Cr.P.C., whether supplemental or divergent, and all of them are part of the same "case" that originated with the registration of the FIR as aforesaid. The restriction under section 154 Cr.P.C. that FIRs can be registered only regarding cognizable offences does not apply to cross versions. It is for the obvious reason that they are recorded under section 161 Cr.P.C., as mandated by Sughran Bibi. However, registration of a cross-version does not obligate the Investigating Officer to arrest the accused immediately. There must be sufficient justification for it. Finally, in view of the Supreme Court's ruling in Sughran Bibi, there is no scope for recording a second FIR for the same incident, even for a cross version.

ii) Although reinvestigation or further investigation is permissible, it cannot be done routinely. There are several limitations, one of which is that it cannot be when the trial is over. Bahadur Khan v. Muhammad Azam and others (2006 SCMR 373) is a case in point. According to the facts, Dilawar Khan was driving a Datsun pickup when he hit Raza and killed him. Raza's family alleged that it was a murder rather than an accident. Consequently, they shot Dilawar in retaliation a few months later. Bahadar Khan lodged FIR in respect of that occurrence. The trial court convicted accused Muhammad Arif and sentenced him to death but acquitted co-accused Muhammad Akram and Mir Hassan of the charge. The High Court acquitted Arif and convicted Akram and Mir Hassan, and sentenced them to life. The Supreme Court set aside Mir Hassan's conviction but upheld Akram's conviction and sentence. Subsequently, the prosecution submitted challan under sections 212, 120-B/34 PPC against two more persons, Muhammad Azam and Abdullah Khan, in the court which conducted the previous trial. The Additional Sessions Judge convicted Muhammad Azam under section 212 PPC and acquitted Abdullah, his co-accused. Bahadur Khan contended before the Supreme Court that the facts constituting the offence under sections 212 and 120-B/34 PPC came to light during the investigation of another case having nexus with the murder case of Dilawar Khan. Therefore, on completion of the investigation, a challan, which was in continuation of the one filed earlier, was submitted to the trial court that decided the murder case. Bahadur argued that the subsequent challan was competent and the Additional Sessions Judge had rightly convicted Muhammad Azam. There was no prohibition on the police to reinvestigate or further

investigate the lateral aspects of the case which came to light subsequently. They could submit a new report under section 173 Cr.P.C. However, no law allows recording a statement under section 161 Cr.P.C. once a case is decided. After the Supreme Court's ruling in Sughran Bibi that all versions after filing the FIR are recorded under section 161 Cr.P.C., reinvestigation or further investigation in a concluded case is impossible. Since Sughran Bibi's case merely prohibits the registration of a second FIR, not a cross-version. Therefore, so long as the trial has not concluded, it can be permitted, even at a belated stage, to prevent a miscarriage of justice. If the (original) FIR has been taken to its logical end, the only option for the individual who wishes to prosecute another on his cross-version is to file a private complaint.

Conclusion: i) After the Supreme Court's ruling in Sughran Bibi case, there is no scope for recording a second FIR for the same incident, even for a new/different/cross version.
ii) A cross version cannot be recorded in a case after the conclusion of trial.

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46. **Lahore High Court**
Muhammad Waqar alias Fauji v. The State etc.
Crl. Misc. No.76558/T/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2141.pdf

Facts: By this petition under section 526 Cr.P.C., the petitioner seeks the transfer of the aforesaid case from one court to another court of competent jurisdiction on the ground that the instructions issued by the High Court have not been followed for determining the venue of the trial.

Issue: In Sessions trials, whether a magistrate must seek the choice of the accused person/s regarding the venue of his/their trial except Hadood cases while exercising his powers u/s 190 Cr.P.C?

Analysis: According to the instructions of the Lahore High Court conveyed through letter No.7886/RHC/MIT of 25th May 1999, session cases (excluding Hadood cases) should normally be tried at the District Headquarters. Nonetheless, when the accused appears before the Magistrate for the purpose of section 190 Cr.P.C., he should give him the choice of a trial at the subdivision. If there are multiple accused and they all do not consent to the trial at the sub-division, the Sessions Judge shall decide the place of trial at his discretion. In the present case, the Magistrate observed that the case was exclusively triable by the Court of Session and mechanically forwarded it to the Sessions Judge, Narowal, for "appropriate orders". As per the supra letter, he was obligated to ask the accused whether they preferred that their trial be held at the District Headquarters or the Sub-Division when they appeared before him. He was required to document the fact that he had provided such an option to the accused. Nothing on the record indicates that he gave the petitioner and his co-accused that choice. The supra letter gives the

accused a valuable right to choose the place of trial which cannot be denied to him. If the complainant party has any issue, it has a legal remedy under section 526 Cr.P.C.

Conclusion: A magistrate must seek the choice of the accused person/s regarding the venue of his/their trial except Hadood cases while exercising his powers u/s 190 Cr.P.C.

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47. **Lahore High Court**
Ghulam Fareed v. Government of Punjab, etc.
W.P. No. 78710 of 2022
Mr.Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC1609.pdf

Facts: Through this constitutional petition, the petitioner has called in question the action of the respondents, whereby despite being at Serial No. 1 of the merit list on the basis of written exam, the petitioner has not been selected for appointment against the post of Constable.

Issue: Whether a High Court can interfere in marks awarded by the Interview Board?

Analysis: As regards the question of failure in interview on account of obtaining less mark than required, this court may refer to some cases earlier decided by courts of law. The Hon'ble Supreme Court of Pakistan in judgment reported as 2014 SCMR 157 (Muhammad Ashraf Sangri v. Federation of Pakistan and others) while considering the cases of employees, who had not been selected on the basis of interview has observed that High Court cannot interfere in marks awarded by the Interview Board unless mala fide or bias or for that matter patent error is floating on the surface of the record because an interview is a subjective matter relating to fitness of any candidate for a particular post and could at best be assessed by functionaries, who were entrusted with such responsibility.

Conclusion: High Court cannot interfere in marks awarded by the Interview Board unless mala fide or bias or for that matter patent error is floating on the surface of the record.

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48. **Lahore High Court**
Mazhar Hussain and others v. Mst. Jantan Bibi and others.
C.R. No.20075 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC1598.pdf

Facts: The petitioners filed revision petition regarding a suit for declaration filed against the respondents which was concurrently dismissed by the trial court as well as the first appellate court.

Issues: i) When does the limitation period commences for enforcement of contract of sale the performance of which is refused?
ii) Whether an appellate court has jurisdiction to consider request of a party for

permission of additional evidence if the party had never applied for additional evidence before the trial court?

iii) Whether an appellate court is required to decide an appeal by recording issue-wise findings?

Analysis: i) The provision of Article 113 of the Limitation Act, 1908 mandates that in the cases where date is fixed for the performance of the contract in the agreement itself then three years period will commence from the date so mentioned therein and if no such date is fixed then from the date the buyer had noticed that the performance was refused..

ii) Under Rule 27 of Order XLI, C.P.C. the appellate court has jurisdiction to consider the permission for additional evidence provided the evidence was refused by the court below illegally or the appellate court while considering the evidence on record reaches the conclusion that additional evidence is necessary for the correct determination of the case or that the existing evidence is not sufficient to reach the conclusion one way or the other.

(iii) Order XX, Rule 5, C.P.C. applies to the suit and to the judgment of the trial court, the trial court decided the case issue-wise and recorded independent findings for rendering decision on all the issues. In appeal under Rule 31 of Order XLI, C.P.C. the court was required to consider the points raised in appeal at the time of hearing, the reasons recorded bythe trial court and to decide the same by recording the reasons thereof. Appellate court is not required to decide the appeal by recording issue-wise findings but only the points raised at the time of hearing were to be looked into.

Conclusion: i) The limitation period for enforcement of contract of sale, the performance of which is refused, commences from the date as fixed for the performance of the contract in the agreement itself and if no such date is fixed then from the date the buyer had noticed that the performance was refused.

ii) An appellate court should not consider request of a party for permission of additional evidence if the party had never applied for additional evidence before the trial court except where the appellate court while considering the evidence on record reaches the conclusion that additional evidence is necessary for thecorrect determination of the case or that the existing evidence is not sufficient to reach the conclusion one way or the other.

iii) An appellate court is not required to decide an appeal by recording issue-wise findings but only the points raised at the time of hearing are to be looked into.

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49. **Lahore High Court**
The State v. Muhammad Ashraf.
Murder Reference No. 13 of 2021
Muhammad Ashraf v. The State and another.
Criminal Appeal No. 418 of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC9438.pdf

Facts: The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant in case FIR registered in respect of an offence under section 302 P.P.C. and feeling aggrieved, appellants lodged the Criminal appeal assailing his conviction and sentence.

Issue: i) What is the bounden duty of a chance witness for confidence inspiring evidence?
ii) What is effect of non-production of vehicle used by chance witness to arrive at the place of occurrence?
iii) What are Estimator variables and how these leads to misidentifications?
iv) What can be inferred from the open eyes and mouth of the deceased?

Analysis: i) It is bounden duty of a chance witness to provide a convincing reason for his presence at the place of occurrence, at the time of occurrence and is also under a duty to prove his presence by producing some physical proof of the same.
ii) The non-production of the vehicle used by the chance witness to arrive at the place of occurrence and the failure of the Investigating Officer of the case to produce the same before the learned trial court leads to only one conclusion that being a chance witness he failed to prove the mode through which he arrived at the place of occurrence. His failure to prove the said fact can vitiate the trust in his being a truthful witness.
iii) Estimator variables are factors related to the witness, like distance, lighting, or stress during the occurrence, which factors are directly related to the capacity of a witness to first observe and then to retain the features of the accused for him to subsequently remember them with such clarity so as to make a correct identification later during the test identification parade proceedings. The scientific research establishes that "estimator variables" negatively affect the memory process. In the tumult of the occurrence, the possibility of false identification does exist. An assortment of Estimator variables can affect and cloud memory and lead to misidentifications.
iv) The open eyes and mouth of the deceased force a hostile interpretation against the prosecution's version regarding the presence of the prosecution witnesses at the place of occurrence, at the time of occurrence.

Conclusion: i) It is bounden duty of chance witness to provide a convincing reason for his presence at the place of occurrence.

ii) The non-production of the vehicle used by the chance witness can vitiate the trust in his being a truthful witnesses.
iii) Estimator variables are factors related to the witness, like distance, lighting, or stress during the occurrence.
iv) The open eyes and mouth of the deceased force a hostile interpretation against the prosecution's version regarding the presence of the prosecution witnesses.

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50. **Lahore High Court**
The State v. Hafiz Muhammad Akmal.
Murder Reference No. 11 of 2021
Haji Musheer Ahmad and three others v. The State and another.
Criminal Appeal No. 294 of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC9472.pdf

Facts: The learned Trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the one of the convicts in case FIR registered under sections 302, 324,148 and 149 P.P.C. and feeling aggrieved, appellants lodged the Criminal appeal assailing their convictions and sentences.

Issue: i) Whether recovery of the weapon of offence made in clear violation of section 103 of the Code of Criminal Procedure, 1898 has any evidentiary value in the eyes of the law?
ii) What is meant by an attempt to commit a crime?
iii) How it can be determined whether an attempt to commit a crime had been made or not?
iv) Whether non-proof of the alleged motive by the prosecution can be considered a mitigating circumstance in favour of the accused?

Analysis: i) With regard to the recovery of the Pistol made from the appellant, it is observed that the said recovery of the weapon has no evidentiary value in the eyes of the law as the same was made in clear violation of section 103 of the Code of Criminal Procedure, 1898. The recovery of the Pistol made from the appellant cannot be used as incriminating evidence against the appellant, being evidence which was attained through illegal means and hence hit by the exclusionary rule of evidence. Section 103 of the Code of Criminal Procedure, 1898 is of vital significance to render search proceedings both transparent and creditable. The provisions of this section, unfortunately, are honoured more in disuse than compliance.
ii) An attempt as an indictable crime means an intentional act with a view to attaining a definite end but which is not achieved because of a circumstance, independent of the will of the offender, who makes the attempt. Attempt to commit a crime is an inchoate crime. The intention coupled with some overt act to achieve that intention amounts to crime as it is an attempt to commit a crime. An

attempt is known as preliminary crime or inchoate crime as it is something which is not yet complete.

iii) There are certain tests for determining whether an attempt to commit a crime had been made or not. *Proximity test* measures the accused's progress by examining how close the accused was to completing the offence. The proximity rule requires that the amount left to be done, not what has already been done, that is to be analyzed for determining whether any attempt had been made for committing a crime. *Res ipsa loquitur* means the thing speaks for itself. To determine whether any attempt was made to commit a crime, the facts themselves can be examined and taken as proof of whether any attempt was made or not. The term *Locus Poenitentiae* means that a person cannot be charged for an attempt if he is in position to give up or abandon his plan out of his own accord after the formation of mens rea and does that. Such intentional withdrawal prior to the commission or attempt to commit the act will be termed as mere preparation for the commission of the crime and no legal liability will be imposed.

iv) It has been held in a number of judgments of the august Supreme Court of Pakistan that if a specific motive has been alleged by the prosecution, then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence and non-proof of motive may be considered a mitigating circumstance in favour of the accused. The august Supreme Court of Pakistan has held in the case of "Mst. Nazia Anwar v. The State and others" (2018 SCMR 911), while considering the penalty for an act of commission of Qatl-i-amd, as under :- "In these circumstances it is quite obvious to me that the motive asserted by the prosecution had remained utterly unproved. The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder."

Conclusion: i) The recovery of the weapon of offence made in clear violation of section 103 of the Code of Criminal Procedure, 1898 has no evidentiary value in the eyes of the law.

ii) An attempt to commit a crime means an intentional act with a view to attaining a definite end but which is not achieved because of a circumstance, independent of the will of the offender, who makes the attempt.

iii) There are certain tests for determining whether an attempt to commit a crime had been made or not which are *Proximity test*, *Res ipsa loquitur* and *Locus Poenitentiae.*

iv) Non-proof of the alleged motive by the prosecution can be considered a mitigating circumstance in favour of the accused.

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51. **Lahore High Court**
The State v. Allah Diwaya etc.
Murder Reference No. 09 of 2020
Allah Diwaya and another v. The State and another.
Criminal Appeal No. 181 of 2020
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC9398.pdf

Facts: Convicts were tried along with the co-accused of the convicts, by the learned Additional Sessions Judge, in case F.I.R registered in respect of offences under sections 302, 337- L(2) and 34 P.P.C. for committing the Qatl-i-Amd. The learned trial court convicted and sentenced them. Feeling aggrieved, convicts lodged Criminal Appeal assailing their convictions and sentences. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentences of death awarded to the appellants.

Issues: i) Whether injuries of P.W are only indication of his presence at the spot and are not affirmative proof of his credibility and truth?
ii) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused of a convict can be believed against the convict?
iii) Whether the evidence of the recoveries can be used as incriminating evidence which was obtained through illegal means?
iv) Whether motive is only a corroborative piece of evidence?
v) Whether onus to prove the facts in issue never shifts and always lies on the prosecution?
vi) Whether benefit of doubt arising out of a single circumstance can be extended to accused?

Analysis: i) The stamp of injuries on the person of a witness may be proof of his presence at the place of occurrence, at the time of occurrence, however the same can never guarantee a truthful deposition. Injuries statedly received by a witness during an incident do not warrant acceptance of his evidence without scrutiny. At the most, such traumas can be taken as an indication of his presence on the spot, but still his evidence is to be scrutinized on the benchmark of principles laid down for the appraisal of evidence. It is not a given that a witness who suffered injuries during the occurrence will depose nothing but the truth. Even otherwise, it is not a simple presence of a witness at the crime scene but his credibility, which makes him a reliable witness. It has been held by the august Supreme Court of Pakistan repeatedly that the facts which an injured witness narrates are not to be implicitly accepted rather, they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not.
ii) The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the

accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has repeatedly held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. We have noted that the view should be that "the testimony of one detected in a lie was wholly worthless and must of necessity be rejected." If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim falsus in uno falsus in omnibus.

iii) The Investigating Officer of the case did not join any witness of the locality during the recovery (…) which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recoveries cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence. The provisions of section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more in disuse than compliance.

iv) It is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then motive alone cannot be made the basis of conviction. Even otherwise, a tainted piece of evidence cannot corroborate another tainted piece of evidence.

v) Suffice it to observe that the onus to prove the facts in issue never shifts and always lies on the prosecution. That the law is quite settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased.

vi) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) The injuries on the person of a witness may be proof of his presence at the place of occurrence, at the time of occurrence, however the same can never guarantee a truthful deposition.

ii) If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim falsus in uno falsus in omnibus.

iii) The evidence of the recoveries cannot be used as incriminating evidence, which was obtained through illegal means and hence hit by the exclusionary rule of evidence.

iv) Yes, the motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then motive alone cannot be made the basis of conviction.

v) If the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had admitted the occurrence.

vi)The benefit of doubt must be extended to an accused not as a matter of concession but as of right.

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52. **Lahore High Court**
The State v. Muhammad Shahbaz.
Murder Reference No. 09 of 2021
Muhammad Shahbaz v. The State and another.
Crl. Appeal No. 254 of 2021
Muhammad Shakir v. The State and another.
Criminal Appeal No. 729-J of 2017
Muhammad Rafique v. The State and two others.
Criminal Appeal No.36 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1679.pdf

Facts: The appellants/convicts filed respective criminal appeals against their convictions and sentences and the learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the first appellant being originated from the same judgment. The complainant of the case also filed Criminal Appeal against the acquittal of the co-accused from the charge under section 302 P.P.C.

Issues: i) Whether presence of injuries stamp a witness to be a truthful one?

ii) Whether delay in recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value?

iii) Whether courts are allowed by law to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events?

iv) What will be the effect where the motivation was against the complainant or witness and the accused did not cause any harm to him?

v) Whether recovery of case property in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 can be used as incriminating evidence?

vi) Whether motive alone can be made the basis of conviction?

vii)Whether a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right?

Analysis: i) It is not a given that a witness who suffered injuries during the occurrence will depose nothing but the truth. Even otherwise, it is not a simple presence of a witness at the crime scene but his credibility, which makes him a reliable witness. the facts which an injured witness narrates are not to be implicitly accepted rather, they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not.

ii) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay.

iii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

iv) In a scenario where the motivation was against the complainant or the witnesses but the accused did not cause any harm to them, notwithstanding being within the range of their firing, would reveal that the said witnesses had not witnessed the occurrence.

v) When Investigating Officer of the case did not join any witness of the locality during the recovery of case property than action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recovery cannot be used as incriminating evidence against the accused person being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence. The provisions of section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more in disuse than compliance…

vi) It is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then motive alone cannot be made the basis of conviction. Even otherwise, a tainted piece of evidence cannot corroborate another tainted piece of evidence.

vii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) Presence of injuries does not stamp a witness to be a truthful one.

ii) Yes, delay in recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value.

iii) Yes, courts are allowed by law to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events under Article 129 of the Qanun-e-Shahadat Order, 1984.

iv) Where the motivation was against the complainant or witness and the accused did not cause any harm to him than it would reveal that the said witnesses had not witnessed the occurrence.

v) Recovery of case property in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 cannot be used as incriminating evidence.

vi) Motive alone cannot be made the basis of conviction.

vii) Yes, a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right.

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53. **Lahore High Court**
The State etc. v. Mahnaz Ali etc.
Murder Reference No. 06 of 2022 etc.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1641.pdf

Facts: Three accused were tried together in respect of offences under Sections 302 and 34 P.P.C., for committing the Qatl-i-Amd of deceased. The learned trial court, convicted one accused and the co-accused of the convict were acquitted by the learned trial court. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Who are the chance witnesses and whether they are duty bound to prove their presence by producing some physical proof of the same?
ii) Whether the conduct of closely related witnesses that he would be watching the proceedings as mere spectators for as long as the occurrence continued falls under the ambit of common course of natural events and human conduct as provided under Article 129 of the Qanun-e-Shahadat, 1984?
iii) What inference is drawn against the prosecution when written application is neither prompt nor spontaneous?
iv) What does the delay in reporting the matter to the police evidence?
v) What does the delay in the post-mortem examination reflect?
vi) Whether the accused could be convicted merely on the basis of a presumption that since the murder of a person has taken place in his house, therefore, he must have committed that murder?
vii) On whom the burden to prove the guilt of the accused beyond doubt lies and when the burden is shifted upon the accused?
viii) When the benefit of doubt is extended in favor of an accused?

Analysis: i) The eye witnesses who are residents of some other houses and are not the inmates of the house wherein the occurrence has taken place are therefore the chance witnesses and declared not worthy of reliance. "Chance witnesses" are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same.
ii) No person having ordinary prudence would believe that such closely related witnesses would remain watching the proceedings as mere spectators for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant. Such behavior, on the part of the witnesses, runs counter to natural human conduct and behavior. Article 129 of the Qanun-e-Shahadat, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.
iii) The written application which is neither prompt nor spontaneous nor natural, rather a contrived, manufactured and a compromised document. Sufficient doubts

have arisen and inference against the prosecution has to be drawn in this regard.

iv) The delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence.

v) It has been repeatedly held by the august Supreme Court of Pakistan that delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

vi) The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts the presence of some eye-witnesses and such claim of the prosecution is not established by it, there the accused person could not be convicted merely on the basis of a presumption that since the murder of a person has taken place in his house, therefore, it must be he and none else who would have committed that murder.

vii) The law on the burden of proof, as provided in Article 117 of the Qanune-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged. On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. Then, the burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.

viii) It is a settled principle of law that for giving the benefit of the doubt, it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) The eye witnesses who are residents of some other houses and are not the inmates of the house wherein the occurrence has taken place are thus, chance witnesses. Chance witnesses are duty bound to prove their presence by producing some physical proof of the same.

ii) The conduct of closely related witnesses that he would be watching the proceedings as mere spectators for as long as the occurrence continued does not fall under the ambit of common course of natural events and human conduct as

provided under Article 129 of the Qanun-e-Shahadat, 1984.

iii) Doubtful inference is drawn against the prosecution when written application is neither prompt nor spontaneous.

iv) The delay in reporting the matter to the police evidences the absence of the witnesses at the time of occurrence, at the place of occurrence.

v) The delay in the post-mortem examination reflects the absence of witnesses from the place of occurrence.

vi) No, the accused could not be convicted merely on the basis of a presumption that since the murder of a person has taken place in his house, therefore, he must have committed that murder.

vii) The burden to prove the guilt of the accused beyond doubt mandatorily lies on the prosecution and can never be shifted to the accused. However, when the prosecution is able to discharge the burden of proof by establishing the elements of the offence burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.

viii) Only a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend the benefit of doubt in favor of an accused.

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54. **Lahore High Court**
The State v. Muhammad Sharif.
Murder Reference No. 45/2018,
Muhammad Sharif v. The State and another.
Criminal appeal No.282/2018
Shahid Bashir v. The State and 2 others.
Criminal appeal No. 580/2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9283.pdf

Facts: Trial in case, pertaining offences of murder etc., eventuated in awarding death sentence to convict and acquittal of his co-accused, feeling aggrieved, convict lodged Criminal Appeal assailing his conviction & sentence and the learned trial court submitted Murder Reference seeking confirmation or otherwise of said death sentence as well as the complainant filed Criminal Appeal against the acquittal of the co-accused.

Issues: i) What would be revealed in a scenario involving the motivation of assailants against the complainant/witness who did not sustain harm despite of being within the range of firing of assailants at the time of occurrence?

ii) What would be effect of the failure of the prosecution to prove the availability of light source at the place & time of occurrence?

iii) What is the effect of delayed conduct of the post-mortem examination of deceased on conclusion of a murder case?

iv) What would be evidentiary value of recovery of the Kalashnikov rifle & live bullets if such recovery is made in violation of S.103 of the Code of Criminal Procedure, 1898 coupled with situation that said recovered articles were not sent for forensic examinations?

v) If altercation of convict had taken place with complainant having not resulted in any harm during occurrence, then what would be status of motive alleged against convict to commit the *Qatl-i- Amd* of the deceased?
vi) Whether mere abscondence of an accused can be read in isolation against him?
vii) Whether the suggestions of counsel for accused put to prosecution witness during cross-examination may be used to substantiate the prosecution case?
viii) Whether mere medical evidence may be used to recognize a culprit in case of an unobserved incidence?

Analysis: i) In the midst of firing by as many as six accused persons, the complainant did not receive even a single scratch on his body during the whole occurrence. If the complainant had been present in the view of the assailants, then he would not have been spared. Blessing the complainant, the person with whom the assailants had a direct dispute with, is implausible and opposed to the natural behaviour of any accused with such an incredible consideration and showing him such favour.
ii) The electric bulbs allegedly available and lit at the place & time of occurrence, enabling the witnesses to rightly identify the accused with their individual roles at night time, were neither produced to the Investigating Officer nor did the Investigating Officer take same into possession at the time of his visit to the place of occurrence. The absence of any light source has put the whole prosecution case in dark. Hence, identification of assailants by prosecution witnesses cannot be relied upon.
iii) The inordinate, unexplained and substantial delay in the post-mortem examination of the dead body clearly establishes that the witnesses, claiming to have seen the occurrence, were not present at the time of occurrence and the delay in the post-mortem examinations was used to procure their attendance as well as to formulate a dishonest account of the occurrence after consultation & planning.
(iv) Action of the Investigating Officer for not joining any witness of the locality during recovery of the Kalashnikov rifle & live bullets was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898, leaving such recovery obtained through illegal means hit by the exclusionary rule of evidence. Moreover, the recovered Kalashnikov rifle & live bullets were never sent to the office of the Punjab Forensic Science Agency, Lahore for their comparison with the empties collected from the place of occurrence. Even no report of the Punjab Forensic Science Agency, Lahore was brought on record to suggest that the recovered Kalashnikov rifle & five bullets were in working condition.
v) The convict had no proved motive to commit the *Qatl-i- Amd* of the deceased, rather his altercation had allegedly taken place with the complainant. Had the motive been true, then the complainant would not have been let off without any injury. There is an evocative muteness in the prosecution case with regard to the minutiae of the motive alleged.
vi) The fact of abscondence of an accused can only be used as a corroborative piece of evidence.

vii) The onus to prove the facts in issue never shifts and always lies on the prosecution. The law is quite settled by now that if the prosecution fails to prove its case against an accused person, then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased. The suggestions as put by the learned counsel representing the accused, hardly provide any substantiation to the prosecution case.

viii) If the only piece of evidence left to be considered was the medical evidence with regard to the injuries on the dead body of the deceased observed by Doctor concerned, same is of no assistance.

Conclusion: i) If the motivation of assailants was against the complainant/witness, having not been caused any harm despite of being within the firing range of assailants at the time of occurrence, it would reveal that the said complainant/witness had not witnessed the occurrence.

ii) The failure of the prosecution to prove the availability of any light source at the place & time of occurrence has repercussions, entailing the failure of the prosecution case.

iii) Delay in conducting post-mortem of deceased is reflective of the absence of witnesses at place & time of occurrence and the sole purpose of such delay is to procure the presence of witnesses for advancing a false narrative to involve any person.

iv) The recovery of the Kalashnikov rifle & live bullets, if effected in violation to S.103 of the Code of Criminal Procedure, 1898 followed by not sending said recovered articles for forensic examinations, does not prove any fact in issue or relevant fact.

v) If altercation of convict had taken place with complainant who had not sustained any harm during occurrence, then motive alleged against convict to commit the *Qatl-i- Amd* of the deceased would stand not proved.

vi) Mere abscondence of an accused cannot be read in isolation, but it has to be read along with the substantive piece of evidence.

vii) The suggestions of counsel for accused put to prosecution witness during cross-examination may hardly provide any substantiation to the prosecution case as burden to prove fact in issue lies on prosecution.

viii) Medical evidence, by its nature and character, cannot recognize a culprit in case of an unobserved incidence.

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55. **Lahore High Court**
The State v. Jan Muhammad alias Jani and Shah Dost (since dead).
Murder Reference No. 126 of 2019
Jan Muhammad alias Jani v. The State.
Criminal Appeal No. 817-J of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9247.pdf

Facts: The appellant/convict was tried along with co-accused (since dead) in the case instituted upon a private complaint in respect of offences under sections 302, 460 and 34 P.P.C. The learned trial court sentenced the appellant with death under section 302(b) P.P.C. as *Tazir*. On the other hand the trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Whether the failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence is fatal to the prosecution case?
ii) What is meant by *Rigor Mortis*?
iii) Whether an inordinate and unexplained and substantial delay in the post-mortem examination of the dead body creates doubts regarding the presence of eye witnesses at the time of occurrence?
iv) Whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused can be believed against other accused?
v) Whether motive and recovery have any evidentiary value if ocular account is found to be unreliable?
vi) Whether for giving the benefit of the doubt to an accused it is necessary that there should be so many circumstances creating doubts?

Analysis: i) The absence of any light source has put the whole prosecution case in the dark. It was admitted by the witnesses themselves that it was a dark night and they had used the light of an electric bulb, never produced, to identify the assailants during the occurrence and as the prosecution witnesses failed to prove the availability of such a light source, their statements with regard to them identifying the assailants cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.
ii) *Rigor Mortis* is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate. Similarly, the reverse process with which *rigor mortis* disappears is called *algor mortis*.
(iii) The inordinate and unexplained and substantial delay in the post-mortem examination of the dead body clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellant escaping from the place of occurrence had not seen the occurrence and were not present at the time of occurrence and the delay in the post-mortem examination was used to procure their attendance and formulate a dishonest account of the occurrence, after consultation and planning. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.
(iv) The proposition of law in Criminal Administration of Justice, that a common

set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of the same offence, is now a settled proposition. The august Supreme Court of Pakistan has held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. We have noted that the view should be that "*the testimony of one detected in a lie was wholly worthless and must of necessity be rejected."* If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case.

(v) It is an admitted rule of appreciation of evidence that motive and recovery are only corroborative pieces of evidence and if the ocular account is found to be unreliable, then motive and recovery have no evidentiary value and lost their significance.

(vi) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence is fatal to the prosecution case.

ii) *Rigor Mortis* is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death.

iii) An inordinate and unexplained and substantial delay in the post-mortem examination of the dead body creates doubts regarding the presence of eye witnesses at the time of occurrence.

iv) The evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused cannot be believed against other accused.

v) If the ocular account is found to be unreliable, then motive and recovery have no evidentiary value and lost their significance.

vi) For giving the benefit of the doubt to an accused it is not necessary that there should be so many circumstances rather a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient.

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56. **Lahore High Court**

Malik Waseem ur Rehman v. The Province of Punjab through Deputy Commissioner/ Head of District Administration, Rahim Yar Khan and Two Others.

Intra Court Appeal No. 19 of 2023

Mr. Justice Sadiq Mahmud Khurram,Mr. Justice Muhammad Amjad Rafiq.

https://sys.lhc.gov.pk/appjudgments/2023LHC1855.pdf

Facts: The appellant was serving as Accountant in the Municipal Committee, who was proceeded under the Punjab Employees Efficiency, Discipline & Accountability Act, 2006. He was terminated from service on the basis of Inquiry Report and his representation against Inquiry was also dismissed. Then, the appellant filed an appeal before the Deputy Commissioner which was partially accepted and penalty of termination from service was converted into "compulsory retirement from service". The Municipal Committee filed another petition before the Deputy Commissioner for review of the aforesaid order, which petition was accepted. The validity and authenticity of the order by the Deputy Commissioner was assailed through the Writ Petition, which petition was dismissed, hence this Intra Court Appeal.

Issues: i)Whether the Intra Court Appeal is competent in view of the proviso to section 3 (2) of the Law Reforms Ordinance, 1972 if applicable law provides at least one appeal etc. against original order?
ii) What are the meanings of the expressions" original", "original order"and "proceedings" as used in the proviso to subsection (2) of section 3 of the Law Reforms Ordinance, 1972?

Analysis: i)The proviso to section 3 (2) of Law Reforms Ordinance, 1972 states that appeal shall not be available or competent under section 3 of the Ordinance ibid before a Division Bench of this Court if the petition brought before High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 arises out of any proceedings in which the law applicable provided for at least one appeal, one revision or one review to any Court, Tribunal or authority against the original order. This means that the relevant order may not necessarily be the one which is impugned in the writ petition, but the test is that whether the original order passed in the proceedings is subject to appeal, revision or review under the relevant law. The test is whether the original order passed in the proceedings subject to an appeal under the relevant law, irrespective of the fact whether the remedy of appeal so provided was availed of or not.
ii) August Supreme Court, while interpreting the word "original order" under proviso to section 3 (2) of the Law Reforms Ordinance, 1972, held that the expression "original order" in section 3(2) of the Ordinance, is used in generic sense in contradistinction to orders passed in appeal, revision or review. The word "original" in the context of Copyright Act, 1911, as follows: "The word "original" does not mean that the work must be the expression of original or invented thought…but that the work must not be copied from another work, that it should originate from the author." The term "proceedings" as defined in the book "Words and phrases": "The term `proceedings' is a very comprehensive term, and, generally speaking, moans a prescribed course of action for enforcing a legal right, and hence it necessarily embraces the requisite steps by which judicial action is invoked. It is the step towards the objective, to be achieved, for instance the judgment in a pending suit.

Conclusion: i) When the remedies of appeal and revision or review are available against the order of imposition of penalty by the "competent authority", which was to be treated as the original order for the purpose of section 3(2) of the Law Reforms Ordinance, 1972, then the Intra Court Appeal is not competent.
ii) The word "original" is susceptible to different meanings in the context of a particular statute. It does not always mean "first in order". Apparently the meaning of the expression "original order" is the order with which the proceedings under the relevant statute commenced.While the "proceeding" commences with the first step by which the machinery of the law is put into motion in order to take cognizance of the case.

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57. **Lahore High Court**
The State v. Muhammad Ishaq etc.
Murder Reference No. 08 of 2022
Muhammad Ishaq and four others v. The State and another.
Criminal Appeal No. 205 of 2022
Mr. Justice Sadiq Mahmud Khurram,Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1725.pdf

Facts: The appellants (convicts) through their criminal appeal, assailing their convictions and sentences. The learned trial court submitted murder reference seeking confirmation or otherwise of the sentences of death awarded to the appellants (convicts).

Issues: i) Whether a chance witnesses is under a bounden duty to provide a convincing reason for his presence at the place of occurrence at the time of occurrence?
ii) Whether the apparent flaws in the statement of eye witnesses make the statements of eye witnesses of unworthy of any reliance?
iii) Whether the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence?
iv) Whether the delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses?
v) Whether the evidence which has been disbelieved against an acquitted accused can be believed against the co-accused?
vi) Whether recovery of weapon of offence effected from accused in violation of section 103Code of Criminal Procedure, 1898 can be relied upon?
vii) Whether the safe custody of the empty shells of the bullets and cartridges collected from the place of occurrence to the police station and from the Police Station to the Punjab Forensic Science Agency is necessary to prove the recovery of firearm weapons?
viii) Whether independent evidence is required by the prosecution to prove the alleged motive?
ix) Whether a single circumstance creating reasonable doubt in the mind of a

prudent person is sufficient to extend benefit of doubt to an accused as of right?

Analysis: i) The chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and are also under a duty to prove their presence by producing some physical proof of the same…

ii) These apparent flaws in the statements of both the prosecution witnesses PW-1 and PW-2, who otherwise narrated all the complex and varied details of the occurrence, have led us to an irresistible conclusion that the statements of the witnesses are not worthy of any reliance and are to be rejected outright...

iii) The scrutiny of the statements of the prosecution witnesses reveals that the written application PW-1 was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard and the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence...

iv) The reason which is apparent for the delayed conducting of the post-mortem examinations of the dead bodies of the deceased and the delayed submission of police papers to the Medical Officer is that by that time the details of the occurrence were not known and the said time was used not only to procure the attendance of the witnesses but also to fashion a false narrative of the occurrence. No explanation was offered to justify the said delay in receiving the complete documents from the police and the delay in conducting the post-mortem examinations. These facts clearly establish that the witnesses claiming to have seen the occurrence were not present at the time of occurrence and the delay in the post-mortem examination was used to procure their attendance and formulate a dishonest account, after consultation and planning. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

v) The question for determination before this Court now is that whether the evidence which has been disbelieved qua the acquitted co accused of the appellants can be believed against the appellants. The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has repeatedly held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. We have noted that the view should be that "the testimony of one detected in a lie was wholly worthless and must of necessity be rejected." If a

witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case.

vi) The recovery of weapons cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery of weapons, which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recovery of weapons cannot be used as incriminating evidence against the appellants, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence...

vii) The safe custody and safe transmission of the empty shells of the bullets and cartridges collected from the place of occurrence to the police station and from the Police Station to the Punjab Forensic Science Agency, could not be proved. In this manner, the recovery of weapons could not be proved and cannot be considered as a relevant fact for proving any fact in issue...

viii) No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.

ix) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) A chance witnesses is under a bounden duty to provide a convincing reason for his presence at the place of occurrence at the time of occurrence.

ii) The apparent flaws in the statement of eye witnesses make the statements of eye witnesses of unworthy of any reliance.

iii) The delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence.

iv) The delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses.

v) The evidence which has been disbelieved against an acquitted accused cannot be believed against the co-accused.

vi) Recovery of weapon of offence effected from accused in violation of section 103Code of Criminal Procedure, 1898 cannot be relied upon.

vii) The safe custody of the empty shells of the bullets and cartridges collected from the place of occurrence to the police station and from the Police Station to the Punjab Forensic Science Agency is necessary to prove the recovery of firearm weapons.

viii) Independent evidence is required by the prosecution to prove the alleged motive.

ix) A single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit of doubt to an accused as of right.

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58. **Lahore High Court**
The State v. Rashid etc.
Murder Reference No. 95 of 2019
Rashid and another v. The State and another.
Criminal Appeal No. 725 of 2019
Sohail Aslam v. The State and two others.
Criminal Appeal No.839 of 2019
Mr. Justice Sadiq Mahmud Khurram,Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9172.pdf

Facts: The appellants (convicts) through their criminal appeal, assailing their convictions and sentences. The learned trial court submitted murder reference seeking confirmation or otherwise of the sentences of death awarded to the appellants (convicts). The complainant of the case also filed criminal appeal against the acquittal of the co-accused persons.

Issues: i) Whether failure to prove the presence of eye witnesses at the place of occurrence vitiates the trust of court in the eye witnesses?
ii) Whether the failure of the prosecution to prove the presence of any source of light and also lit at the place of occurrence has condemnatory consequences for the prosecution?
iii) What is the meaning of the term rigor mortis?
iv) Whether the inordinate and unexplained and substantial delay in the post-mortem examination is reflective of the absence of witnesses?
v) Whether the recovery effected in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 can be used as incriminating evidence against the accused?
vi) Whether the report of Punjab Forensic Science Agency regarding empty shells of the bullets taken into possession from the place of occurrence sent to Punjab Forensic Science Agency with delay and after the arrest of accused has any evidentiary value?
vii) If the ocular account is found to be unreliable, whether motive and recovery have any evidentiary value?
viii) Where all the other pieces of evidence relied upon by the prosecution have been disbelieved and discarded, whether the conviction can be upheld on the basis of medical evidence alone?
ix) Whether a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit of doubt to an accused as of right?
x) Once an acquittal is recorded in favour of accused, whether the courts competent to interfere in the acquittal order should be slow in converting the same into conviction?

Analysis: i) The prosecution was under a bounden duty to establish that the occurrence had

indeed taken place when the prosecution witnesses had arrived at the place of occurrence and the failure to prove any reason for the prosecution witnesses, to have proceeded from their houses to the place of occurrence and their presence at the place of occurrence has vitiated our trust in the prosecution witnesses...

ii) The failure of the prosecution to prove the presence of any source of light and also lit at the place of occurrence has condemnatory consequences for the prosecution.

iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate.

iv) The inordinate and unexplained and substantial delay in the post-mortem examinations of the dead bodies and submission of the police papers to the Medical Officer clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellants escaping from the place of occurrence had not seen the occurrence and were not present at the time of occurrence and the delay in the post-mortem examinations was used to procure their attendance and formulate a dishonest account of the occurrence, after consultation and planning. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

v) The recovery of the pistol and two live bullets from the appellant and the recoveries of the motorcycle and the pistol and two live bullets from the appellant cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the said recoveries, which action of her was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recoveries cannot be used as incriminating evidence against the appellants, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence...

vi) The empty shells of the bullets taken into possession from the place of occurrence were sent to Punjab Forensic Science Agency on 06.10.2016 when there was no reason for keeping the empty shells, which were taken into possession on 11.09.2016, at the Police Station and not sending them to the office of Punjab Forensic Science Agency, Lahore till after the appellants had been arrested. In this manner the said report of Punjab Forensic Science Agency, has no evidentiary value as the possibility of fabrication is apparent...

vii) It is an admitted rule of appreciation of evidence that motive and recovery are only corroborative pieces of evidence and if the ocular account is found to be unreliable, then motive and recovery have no evidentiary value and lost their significance.

viii) As all the other pieces of evidence relied upon by the prosecution, in this case, have been disbelieved and discarded by us, therefore, the appellants' conviction cannot be upheld on the basis of medical evidence alone.

ix) It is a settled principle of law that for giving the benefit of the doubt it is not

necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

x) It is important to note that according to the established principle of the criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse.

Conclusion: i) Failure to prove the presence of eye witnesses at the place of occurrence vitiates the trust of court in the eye witnesses.

ii) Failure of the prosecution to prove the presence of any source of light and also lit at the place of occurrence has condemnatory consequences for the prosecution.

iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death.

iv) The inordinate and unexplained and substantial delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

v) The recovery effected in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 cannot be used as incriminating evidence against the accused being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.

vi) The report of Punjab Forensic Science Agency regarding empty shells of the bullets taken into possession from the place of occurrence sent to Punjab Forensic Science Agency with delay and after the arrest of accused has no evidentiary value.

vii) If the ocular account is found to be unreliable, motive and recovery have no evidentiary value.

viii) Where all the other pieces of evidence relied upon by the prosecution have been disbelieved and discarded, the conviction cannot be upheld on the basis of medical evidence alone.

ix) A single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit of doubt to an accused as of right.

x) Once an acquittal is recorded in favour of accused, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse.

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59. **Lahore High Court**
The State v. Khuda Bakhsh.
Murder Reference No. 08 of 2021
Khuda Bakhsh and another v. The State and another.
Criminal Appeal No. 244 of 2021
The State v. Muhammad Zafar Iqbal.
Criminal Revision No. 166 of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2002.pdf

Facts: The learned Trial Court submitted the Murder Reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the one of the convicts in case FIR registered under sections 302 and 34 P.P.C. and feeling aggrieved, appellants lodged the Criminal appeal assailing their convictions and sentences and the State also filed Criminal Revision seeking the enhancement of the sentence of the other convict.

Issue: i) Whether the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 has any value?
ii) What does the inordinate delay in reporting the matter to the police have effect on the case of prosecution?
iii) What is the scope and concept of Dying Declaration?
iv) What is the procedure and parameters for recording Dying declaration?
v) Whether the contradictions in the ocular account of the occurrence and the medical evidence have any effect on the case of the prosecution?

Analysis: i) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay. The august Supreme Court of Pakistan in the case of "Abdul Khaliq Vs. The State" (1996 SCMR 1553) has held as under: "It is a settled position of law that late recording of 161, Cr.P.C. statement of a prosecution witness reduces its value to nill unless there is plausible explanation for such delay".
ii) This inordinate delay in reporting the matter conclusively proves that the written application submitted by PW-5 and the formal F.I.R were prepared after probe, consultation, planning, investigation and discussion. As many as three days and twelve hours were taken to invent a false and dishonest narrative of the written application of PW-5. The scrutiny of the statements of the prosecution witnesses reveals that the written application of PW-5 was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard and the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence.
iii) Dying declaration, generally, stands for the statement of a person who is in

expectation of his death and relates to the causes of his death. Such a statement is admissible in evidence though its maker does not appear in the witness box so as to provide an opportunity of cross-examination to an accused facing the charge of his murder. The admissibility of the dying declaration is an exception to the general rule which makes inadmissible the hearsay evidence. Dying declaration can be made basis for awarding conviction provided it is free from the menace of prompting and tutoring and is proved to have been made by none other than the deceased himself. The paramount reason of attaching importance and credibility to such a statement is the presumption that a dying person seldom lies.

iv) For recording of dying declaration no hard and fast rules are laid down, however, a wade through the provisions of the Police Rules, 1934 reveals that a procedure and brief guidelines are provided in chapter-25, Rule 21. From where, it can be gathered that preferably such a statement is to be recorded either by a Magistrate or in the presence of a gazetted police officer and in absence thereof in front of two or more unconcerned reliable witnesses. However, if neither of the above mentioned persons are available, only then such a statement can be recorded in the presence of two or more police officers.

v) The contradictions in the ocular account of the occurrence and the medical evidence clearly establish that the prosecution miserably failed to prove the charge against the appellants and such contradictions sound the death knell for the prosecution case and prove to be the cause of its sad demise. Had the witnesses seen the occurrence then there did not exist any possibility that they would fallen into error.

Conclusion: i) The delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay.

ii) The inordinate delay in reporting the matter conclusively proves that the formal F.I.R was prepared after probe, consultation, planning, investigation and discussion and sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard

iii) Dying declaration, generally, stands for the statement of a person who is in expectation of his death and relates to the causes of his death. The paramount reason of attaching importance and credibility to such a statement is the presumption that a dying person seldom lies.

iv) For recording of Dying Declaration no hard and fast rules are laid down, however, preferably such a statement is to be recorded either by a Magistrate or in the presence of a gazetted police officer and in absence thereof in front of two or more unconcerned reliable witnesses.

v) The contradictions in the ocular account of the occurrence and the medical evidence clearly establish that the prosecution miserably failed to prove the charge against the accused.

60. **Lahore High Court**
The State v. Allah Rakha.
Murder Reference No. 14 Of 2021
Allah Rakha and Another v. The State and Another.
Criminal Appeal No. 408 Of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem.
https://sys.lhc.gov.pk/appjudgments/2022LHC9328.pdf

Facts: The appellants were tried under sections 302, 452, 324, 337-F(vi), 337-L(2), 34 and 109 PPC and convicted by trial court. Feeling aggrieved from the judgment of the Trial Court, the convicts lodged this Criminal Appeal assailing their conviction and sentences, while the learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) When a recovery made during investigation is considered as hit by the exclusionary rule of evidence?
ii)If there is only one circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then whether the accused would be entitled to the benefit of such doubt?
iii) Whether mentioning of inmates of house as eye-witnesses in a promptly lodged F.I.R. can be assumed as result of deliberation?
iv) When an offender is absolved from sentence of death by way of *qisas*, being a minor at the time of occurrence in a case of *Qatl-i-amd*, then can the Court award him the punishment of death or imprisonment for life by way of *Tazir*?

Analysis: i)The recovery of the motorcycle from the appellant cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the said recovery, which his action was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recovery of the motorcycle cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.
ii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".
iii) When the eye-witnesses were inmates of the house wherein the occurrence had taken place, then they were nothing but natural witnesses and their presence at the place of incident cannot be doubted in any manner. Further, the names of the eye-witnesses could not have been mentioned in such a promptly lodged F.I.R. if they had not been with the deceased persons at the time of their death.

iv)The difference of punishment for *Qatli-amd* as *Qisas* and *Tazir* provided under sections 302(a) and 302(b) P.P.C., respectively is that in a case of *Qisas*, Court has no discretion in the matter of sentence, whereas in case of *Tazir* Court may award either of the sentence provided under section 302(b) P.P.C., and exercise of this direction in the case of sentence of *Tazir* would depend upon the facts and circumstances of the case.

Conclusion: i)When any independent witness of locality is not associated with proceedings of recovery of weapons, then the mandatory provisions of section 103, Cr.P.C. had flagrantly been violated in that regard making such recovery hit by the exclusionary rule of evidence.
ii) If there is a circumstance creating reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt not as a matter of grace and concession, but as a matter of right.
iii) Prompt recourse to law straight at the police station excludes every possibility of deliberation or consultation in nominating the inmates of house as eye-witnesses in F.I.R.
iv) When an offender is absolved from sentence of death by way of *qisas*, being a minor at the time of occurrence in a case of *Qatl-i-amd*, the Court may, keeping in view the circumstances of the case, award him the punishment of death or imprisonment for life by way of *Tazir*.

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61. **Lahore High Court**
Muhammad Aslam v. The State and Another.
Crl. Misc. No.6795-M of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9506.pdf

Facts: Through this petition filed under section 561-A of the Code of Criminal Procedure (Cr.P.C) 1898, the petitioner has prayed that the benefit of section 382-B of Cr.P.C, 1898 may be extended to him.

Issues: i) Whether it is mandatory for a court to extend the benefit of 382-B Cr.P.C either awarding the sentence of imprisonment or converting it into imprisonment?
ii) Whether the benefit of 382-B of Cr.P.C can be extended after the disposal of a case or an appeal, when no reason for refusing such a benefit is given?

Analysis: i) Section 382-B, Cr.P.C. was added by the Law Reforms Ordinance, 1972. The word "shall" was substituted for the word "may" by the Code of Criminal Procedure (Second Amendment) Ordinance (Ordinance No. LXXI of 1979). This substitution by the word “shall” means that this provision was mandatory, and it was obligatory for the Courts to give this benefit to the accused who was awarded the sentence of imprisonment. This benefit was also available to a person who was awarded a death sentence by the trial court but subsequently the same was reduced. A legal valuable right has been conferred upon the accused after the amendment of section 382-B, Cr.P.C., and this right cannot be ignored or refused.

Needless to add that the object of granting this benefit under section 382-B Cr.P.C is to compensate the accused for the unnecessary delay that had been caused in the commencement and the conclusion of his trial. Therefore, the Courts must take into consideration the period that the accused spends in jail prior to his conviction.

ii) Admittedly, this Court while disposing of the appeal of the petitioner had not considered the aspect of withholding the benefit of section 382-B of the Code of Criminal Procedure, 1898 to the petitioner and the judgment in this behalf is silent on the point. In the case of Liaqat Hussain v. State (PLD 1995 SC 485), it was noted that the trial Court and the Federal Shariat Court had not pointed out any circumstance which would justify the denial of the extension of the benefit of section 382- B, Cr.P.C., to the appellant in the said case. Thus, while maintaining the conviction and sentences of the appellant awarded by the trial Court and affirmed by the Federal Shariat Court, the august Supreme Court of Pakistan directed that the benefit of section 382-B, Cr.P.C. would be extended to the appellant. Since this Court, while passing the judgment, did not give any reason for not extending the benefit provided under section 382-B of the Code of Criminal Procedure, 1898 to the petitioner, thus, same is extended by invoking the inherent power under section 561-A, Cr.P.C.

Conclusion: i) It is mandatory for a court to extend the benefit of section 382-B Cr.P.C of 1898 while awarding the sentence of imprisonment or converting it into imprisonment.

ii) The benefit of section 382-B PPC can be extended by a court even after the disposal of a case or an appeal unless it has been considered and denied with reasons.

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62. **Lahore High Court**
The State v. Muhammad Arslan.
Murder Reference No. 46 of 2022
Muhammad Arslan v. The State and another.
Crl. Appeal No. 584 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9209.pdf

Facts: The appellant filed criminal appeal against his conviction and sentence and the learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the appellant being originated from the same judgment.

Issues: i) Whether a chance witness is under a bounden duty to provide a convincing reason for his presence at the place of occurrence?

ii) Whether a close relative would remain silent spectator for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant?

iii) Whether delay in the post mortem examination is reflective of the absence of witnesses from the place of occurrence?

iv) Whether burden of proof lies upon prosecution to establish the guilt of the

accused for the commission of the crime for which he is charged, beyond any doubt?

v) Whether burden of proof will be shifted upon accused when the prosecution established the elements of the offence?

vi) Whether article 122 of the Qanun-e-Shahadat, 1984 can be used to undermine the well-established rule of law that the burden is on the prosecution and never shifts?

vii)Whether a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right?

Analysis: i) Chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and are also under a duty to prove their presence by producing some physical proof of the same.

ii)No person having ordinary prudence would believe that closely related witnesses would remain watching the proceedings as mere spectators for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant. It only proves that the deceased was at the mercy of the assailant and no one was there to save her. Such behaviour, on the part of the witnesses, runs counter to natural human conduct and behaviour. Article 129 of the Qanun-e-Shahadat, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

iii) Delay in the post-mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

iv) The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged.On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise.

v) It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. It has to be kept in mind that Article 122 of the Qanun-e-Shahadat, 1984 comes into play only when the prosecution has proved the guilt of the accused by producing sufficient evidence, except the

facts referred in Article 122 Qanun-e-Shahadat, 1984, leading to the inescapable conclusion that the offence was committed by the accused. Then, the burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.

vi) In a criminal case, the burden of proof is on the prosecution and article 122 of the Qanun-e-Shahadat, 1984 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. If the article was to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. Article 122 of the Qanun-e- Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts.

vii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) Yes, a chance witness is under a bounden duty to provide a convincing reason for his presence at the place of occurrence.

ii) No close relative would remain silent spectator for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant.

iii) Yes, delay in the post mortem examination is reflective of the absence of witnesses from the place of occurrence.

iv) Yes, burden of proof lies upon prosecution to establish the guilt of the accused for the commission of the crime for which he is charged, beyond any doubt.

v) Yes, burden of proof will be shifted upon accused when the prosecution established the elements of the offence.

vi) Article 122 of the Qanun-e-Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts.

vii) Yes, a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right.

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63. **Lahore High Court**
The State v. Khateeb Hussain.
Capital Sentence Reference No.2 of 2021
Khateeb Hussain v. The State and another.
Criminal Appeal No. 43-ATA of 2021
Zafar Hussain v. The State and another.
Criminal Appeal No. 34-ATA of 202
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1958.pdf

Facts: The learned trial court submitted Reference under section 374 Cr.P.C. read with section 30(2) of the Anti-terrorism Act, 1997 for confirmation or otherwise of the death sentences awarded to one of the appellants in case FIR registered in respect of an offence under sections 302, 353 and 109 P.P.C. and under sections 7, 11-W and 21-I of the Anti-terrorism Act, 1997 and feeling aggrieved, the appellants lodged the Criminal appeals assailing their convictions and sentences.

Issues: i) Whether it is a tradition in Pakistan that after the death, people immediately close the eyes and mouth of the deceased and what does it infer?
ii) What does the promptitude in lodging of the F.I.R proves?
iii) What does the promptitude proves in the holding of the post mortem examination of the dead body of the deceased?
iv) What is evidentiary value of video footage if investigation officer has not recorded the statement of the person who had recorded the said video footage?
v) Whether the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-terrorism Act, 1997 per se constitute the offence of terrorism?
vi) Whether only creating of sense of fear or insecurity in the society is by itself terrorism?

Analysis: i) It is correct that it is a tradition in Pakistan that after the death, people immediately close the eyes and mouth of the deceased. The closed eyes and mouth of the deceased at the time of the preparation of the inquest report proves the presence of the witnesses at the place, at the time of occurrence.
ii) The promptitude in lodging of the F.I.R. establishes the presence of the witnesses at the place of occurrence, at the time of occurrence.
iii) The promptitude in the holding of the post mortem examination of the dead body of the deceased proves that the prosecution witnesses had witnessed the occurrence and after completing all the formalities, the post mortem examination of the dead body of the deceased was conducted.
iv) If Investigating Officer of the case has admitted that he has not recorded the statement of the person who had recorded the said video footage then, in absence of that proof, the said video footage cannot be considered as admissible evidence.
v) The cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule. In cases of

heinous offences mentioned in entry No. 4 of the said Schedule, an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism. Such distinction between cases of terrorism and other heinous offences by itself explains and recognizes that all heinous offences, howsoever serious, grave, brutal, gruesome, macabre or shocking, do not ipso facto constitute terrorism which is a species apart.

vi) Only creating of sense of fear or insecurity in the society is not by itself terrorism, unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fallout or an unintended consequence of a crime and mere shock, horror, dread or disgust created or likely to be created in the society, does not transform a crime into terrorism.

Conclusion: i) It is a tradition in Pakistan that after the death, people immediately close the eyes and mouth of the deceased. It proves the presence of the witnesses at the place.

ii) The promptitude in lodging of the F.I.R. establishes the presence of the witnesses at the place of occurrence.

iii) The promptitude in the holding of the post mortem examination of the dead body of the deceased proves that the prosecution witnesses had witnessed the occurrence.

iv) video footage cannot be considered as admissible evidence if investigation officer has not recorded the statement of the person who had recorded the said video footage.

v) The cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-terrorism Act, 1997 , are cases of those heinous offences which do not per se constitute the offence of terrorism.

vi) Only creating of sense of fear or insecurity in the society is not by itself terrorism, unless the motive itself is to create fear or insecurity in the society.

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64. **Lahore High Court**
Abid Hussain v. Province of Punjab through District Collector Bahawalpur and fourteen others.
Intra Court Appeal No. 49 of 2023
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2037.pdf

Facts: This Intra Court Appeal has been filed against the order, passed by the learned Single Judge in Chambers in Writ Petition, whereby the Petition filed by the respondents under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was allowed and the order passed by respondent namely Additional District Collector /Member Divisional Verification Committee, was set aside being illegal and void as having been passed without jurisdiction.

Issues: i) What are the consequences of amendment of section 2 (A) of the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of

2022) and whether all properties allotted after the repeal of the Acts and Regulations are subject to scrutiny at any time?

ii) Whether the proceedings pending before any notified officer immediately before the commencement of the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022, shall stand transferred for final disposal to the Full Board?

iii) What is the definition of "pending cases" under section 2 of the Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975)?

iv) What are powers of Chief Settlement Commissioner or Notified Officer or any other Settlement Authority, by virtue of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 regarding any petition or representation if the matter was finalized?

Analysis:

i) By virtue of 18th Amendment in the Constitution of Islamic Republic of Pakistan, 1973, the Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975) was adapted, with amendments, for the province of the Punjab by the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2012 (XXXVIII of 2012) and though an amendment has been made in section 2 of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 through the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022) and section 2(A) has been added according to which all properties allotted after the repeal of the Acts and Regulations mentioned in subsection (1) shall be subject to scrutiny at any time, and after observing due process of law, if it is found that any land or property was allotted in contravention of any law or through fraud, forgery or misrepresentation, such allotment shall be cancelled.

ii) An amendment has been made in the section 2 (2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 through the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022) and now section 2(2) provides that all proceedings pending before any notified officer immediately before the commencement of the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022, shall stand transferred for final disposal to the Full Board and all cases decided by the Supreme Court or the Lahore High Court after the commencement of the said Act of 2022 which would have been remanded to the notified officer shall be remanded to the Full Board.

iii) The wording of section 2 of the Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975), it clearly provides that all proceedings relating to evacuee property which were pending on the cutoff date, that is, 30.06.1974 or any matter which was pending before a superior court in appeal or revision, or which was pending because of remand by a superior court, at the time of Repeal of Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975) will fall within the definition of pending cases.

iv) Where question of entitlement concerning agricultural property was neither remanded by Supreme Court nor any such directions were made by the High

Court whereby Notified Officer on its strength could commence proceedings, any petition or representation filed with regard to matter which otherwise stood finalized long back or even where aggrieved person might believe to have legitimate claim, could not be entertained by Chief Settlement Commissioner or Notified Officer or any other Settlement Authority by virtue of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975.

Conclusion: i) According to section 2(A) all properties allotted after the repeal of the Acts and Regulations mentioned in subsection (1) shall be subject to scrutiny at any time, and after observing due process of law, if it is found that any land or property was allotted in contravention of any law or through fraud, forgery or misrepresentation, such allotment shall be cancelled .

ii) Yes as per amendments in section 2 (2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 through the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022) all proceedings pending before any notified officer immediately, shall stand transferred for final disposal to the Full Board.

iii) All proceedings relating to evacuee property which were pending on the cutoff date, that is, 30.06.1974 or any matter which was pending before a superior court in appeal or revision, or which was pending because of remand by a superior court, at the time of Repeal of Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975) will fall within the definition of pending cases.

iv) Any Settlement Authority by virtue of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975, could not entertain any petition or representation, if the matter was otherwise finalized long back.

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65. **Lahore High Court**
The State v. Abdul Jabbar.
Murder Reference No.14 of 2022
Abdul Jabbar v. The State.
Criminal Appeal No. 351-J of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1914.pdf

Facts: Convict was tried by the learned Additional Sessions Judge, in case F.I.R registered in respect of offences under sections 302 and 325 P.P.C. for committing the Qatl-i-Amd. The learned trial court convicted and sentenced him. Feeling aggrieved, convict lodged the Criminal appeal through jail, assailing his conviction and sentence. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) What are the parameters to prove the case in case of circumstantial evidence?

ii) Whether the delay in the post mortem examination is reflective of the absence of witnesses?

iii) What are rigor mortis and algor mortis?

iv) Whether the prosecution is bound to prove the alleged motive?
v) Whether accused can be convicted on the sole ground that person has been murdered in his shop/house?
vi) On whom burden to prove in criminal case lies and whether it shifts?
vii) Whether Article 122 of the Qanun-e-Shahadat, 1984 can be used as exception to well-established rule of law that the burden is on the prosecution and never shifts?
viii) When evidence offers two interpretations, one favouring the accused and the other prosecution then which one is to be adopted by the court?
ix) What is the standard of proof in a case completely based upon circumstantial evidence and involves capital sentence?

Analysis: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof. (…) It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.
ii) When the dead body had arrived at the hospital as early as at about 12.00 a.m. (night) then there did not exist any reason for delay in conducting the post mortem examination of the dead body of the deceased except the reason which is apparent that by that time the details of the occurrence were not known and the said time was used to not only to procure the attendance of the witnesses but also to fashion a false narrative of the oral statement. No explanation was offered to justify the said delay in conducting the post mortem examination. This clearly establishes that the prosecution witnesses PW-1 and PW-2 , claiming to have discovered the dead body , were not present at the place of the recovery of the dead body and the delay in the post mortem examination was used to procure their attendance and formulate a false narrative, after consultation and concert…
iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate. Similarly, the reverse process with which rigor mortis disappears is called algor mortis.
iv) The prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged and the fact that the said motive was so

compelling that it could have led the appellant to have committed the Qatl- i-Amd of the deceased. There is a poignant hush with regard to the particulars of the motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise, a tainted piece of evidence cannot corroborate another tainted piece of evidence.

v) The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and the accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in his house, therefore, it must be he and none else who would have committed that murder. (…) The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged.

vi) On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. (…) It has to be kept in mind that Article 122 of the Qanun-e-Shahadat, 1984 comes into play only when the prosecution has proved the guilt of the accused by producing sufficient evidence, except the facts referred in Article 122 Qanun-e- Shahadat, 1984, leading to the inescapable conclusion that the offence was committed by the accused. Then, the burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.

vii) In a criminal case, the burden of proof is on the prosecution and article 122 of the Qanun-e-Shahadat, 1984 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. If the article was to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. Article 122 of the Qanun-e-Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts. Throughout the web of the Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the accused's guilt subject to any statutory exception. No matter what the charge, the

principle that the prosecution must prove the guilt of the accused is the law and no attempt to whittle it down can be entertained.

viii) This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence. It is a cardinal principle of justice and law that only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person.

ix) To carry a conviction on a capital charge it is essential that the courts should deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon and very minute and narrow examination of the same is necessary to secure the ends of justice. It is imperative for the prosecution to provide all links in chain, where one end of the same touches the dead body and the other, the neck of the accused. The present case is of such a nature that many links are missing in the chain. It would not be wrong to observe that in this particular case, it can be said that there is no link, what to talk about a chain.

Conclusion: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached.

ii) Delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and formulate a false narrative, after consultation and concert.

iii) Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate. Similarly, the reverse process with which rigor mortis disappears is called algor mortis.

iv) Prosecution is bound to provide evidence to determine the truthfulness of the motive alleged.

v) Accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in his house, therefore, it must be he and none else who would have committed that murder.

vi) The burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise.

vii) Article 122 of the Qanun-e-Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the

burden is on the prosecution and never shifts.
viii) If two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.
ix) To carry a conviction on a capital charge it is essential that the courts should deeply scrutinize the circumstantial evidence. It is imperative for the prosecution to provide all links in chain, where one end of the same touches the dead body and the other, the neck of the accused.

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66. **Lahore High Court**
The State v. Muhammad Imran alias Aamir.
Murder Reference No.17 of 2022
Muhammad Imran alias Aamir v. The State and another.
Criminal Appeal No. 462 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1815.pdf

Facts: The appellant/convict was tried in a case F.I.R. in respect of offences under sections 302,364 and 34 P.P.C. for committing the *Qatl-i-Amd* wherein the trial court convicted him and sentenced him with death under section 302(b) P.P.C. as *Tazir*. On the other hand the trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death.

Issues: i) How circumstantial evidence is to be appreciated in a criminal trial?
ii) What are the pre-requisites for believing the last seen evidence?
iii) Whether a conviction can be solely based on last seen evidence?
iv) Whether a criminal case can be decided exclusively on the basis of D.N.A analysis?
v) Whether D.N.A. analysis report of the Punjab Forensic Science Agency, Lahore can be relied upon where the samples were sent neither in sealed parcels nor in sealed envelopes?
vi) How the D.N.A analysis works to identify the involvement of an accused in an occurrence?
vii) Whether a conviction can be upheld on the basis of medical evidence alone?
viii) Whether for giving the benefit of the doubt to an accused it is not necessary that there should be so many circumstances creating doubts?

Analysis: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however, grave it may be, can never be treated as a substitute for proof.
ii) Pre-requisites for believing the last seen evidence are the proximity of time and nearness of the place of occurrence. Interpreting these two principles, it is

required that deceased shall be seen in the company of the accused by the witnesses some short time before happening of the incident and the place of murder may not be far away from the place of lastly seeing the deceased in the company of the accused by the prosecution witnesses. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

(iii) It is settled law that the last seen evidence can have legal worth only if the deceased is seen in the company of the accused quite close to the time of his death so as to exclude any possibility of the deceased coming in contact with anybody else before his death. But it is also settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.

(iv) In our legal framework D.N.A. evidence is evaluated on the strength of Articles 59 and 164 of the Qanun-e-Shahadat, 1984 (QSO). The former provision states that expert opinion on matters such as science and art falls within the ambit of 'relevant evidence'. On the other hand, the latter provision provides that the Court may allow the reception of any evidence that may become available because of modern devices and techniques. Under this regime, the technician who conducts experiment to scrutinize D.N.A. evidence is regarded as an expert whose opinion is admissible in Court. Subsection (3)of Section 9 of the Punjab Forensic Science Agency Act, 2007, reaffirms this legal position when it enacts that "a person appointed in the Agency as an expert shall be deemed as an expert appointed under Section 510 of the Code of Criminal Procedure, 1898 and a person specially skilled in a forensic material under Article 59 of the Qanun-e-Shahadat, 1984 (P.O. X of 1984)." A combined reading of all these provisions shows that the report of the Punjab Forensic Science Agency regarding D.N.A. analysis is per se admissible in evidence under Section 510, Cr.P.C. Since D.N.A. analysis report is reckoned as a form of expert evidence in criminal cases, it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration. This implies that no case can be decided exclusively on its basis.

(v) Credibility of the D.N.A. test inter alia depends on the standards employed for the collection and transmission of samples to the laboratory. It is essential that any item being sent to the Punjab Forensic Science Agency, Lahore for D.N.A. analysis is not contaminated or compromised or manipulated or subverted at any stage. Proper standing operating procedures have to be followed for securing and carefully putting into the parcel the suspected materials to co-relate with the samples of the accused. Similarly, cross contamination of the samples must be prevented because if the samples come in contact with each other then, it will give false positive result.

(vi) When an individual touches an object, epithelial cells are left behind. Touch

D.N.A. is also known as epithelial D.N.A. The same traditional D.N.A. analysis procedures are used to analyze and examine these remaining epithelial cells as are used to analyze and examine bodily fluids. The amount left behind is often less than 100 picograms and is also called low copy D.N.A. This is evidence with "no visible staining that would likely contain D.N.A. resulting from the transfer of epithelialcells from the skin to an object. Due to development, lower amounts of human D.N.A. can be detected and, possibly, a full or partial STR profile can be generated. D.N.A. evidence has emerged as a powerful tool to identify perpetrators of unspeakable crimes and to exonerate innocent individuals accused of similarly heinous actions. The technology has advanced to Polymerase Chain Reaction (PCR) based short tandem repeat (STR) testing. This system multiplies a single copy of a D.N.A. segment to allow for the analysis of the genetic makeup of a small sample. Current analysis makes it possible to determine whether a biological tissue matches a suspect with near certainty.

vii) Medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. Where all the other pieces of evidence relied upon by the prosecution in a case have been disbelieved and discarded then a conviction cannot be upheld on the basis of medical evidence alone.

viii) It is a settled principle of law that for giving benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then the such benefit is to be extendedto an accused not as a matter of concession but as of right.

Conclusion: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable evidence forming a complete chain of events leading to no conclusion other than one of guilt of the accused.

ii) The proximity of time and nearness of the place of occurrence are the pre-requisites for believing the last seen evidence.

iii) A conviction cannot be solely based on last seen evidence.

iv) A criminal case cannot be decided exclusively on the basis of D.N.A analysis.

v) D.N.A. analysis report of the Punjab Forensic Science Agency, Lahore cannot be relied upon where the samples were sent neither in sealed parcels nor in sealed envelopes.

vi) D.N.A analysis involves Polymerase Chain Reaction (PCR) based short tandem repeat (STR) testing. This system multiplies a single copy of a D.N.A. segment to allow for the analysis of the genetic makeup of a small sample which makes it possible to determine whether a biological tissue matches a suspect with near certainty.

vii) A conviction cannot be upheld on the basis of medical evidence alone.

viii) For giving the benefit of the doubt to an accused it is not necessary that there should be so many circumstances rather a single circumstance creating reasonable

doubt in the mind of a prudent person is sufficient.

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67. **Lahore High Court**
The State v. Muhammad Bilal alias Mithu, Liaquat Ali alias Liaqu, Aman Ullah.
Murder Reference No.24 of 2018
Muhammad Bilal alias Mithu v. The State.
Criminal Appeal No. 109-J of 2018
Liaquat Ali alias Liaqu Vs. The State.
Criminal Appeal No. 110-J of 2018
Aman Ullah Vs. The State.
Criminal Appeal No. 111-J of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC9116.pdf

Facts: In a case registered in respect of offences under sections 302, 396,460 and 412 P.P.C. the learned trial court convicted the accused persons. Feeling aggrieved they assailed their convictions through jail appeal and the learned trial court submitted murder reference seeking confirmation or otherwise of the sentences of death awarded to the appellants.

Issues: i) Whether the facts which establish the identity of any person whose identity is relevant, are relevant facts?
ii) What does the term Identification means and what is its object with regard to the criminal offence?
iii) Whether the court can accept identification as sufficient to establish the identity of the accused?
iv) What is the effect of absence of light on the prosecution case and whether estimator variables are related to a witness?
v) Whether separate identification parade should be held in respect of each accused person if there are more accused persons than one?
vi) Whether the evidence of identification is enough to prove the identified accused has taken part in crime and is it necessary for a witness to clarify how he came to pick out the particular accused?
vii) Whether the recovery can be relied upon where the IO of case did not join any witness of locality?
viii) What is the evidentiary value of recovery if the ocular account is found unreliable?
ix) Whether the recovery of mobile phones proves any fact relevant against accused in the absence of voice call record?
x) Whether the conviction can be upheld on the basis of medical evidence alone?
xi) Whether a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit to the accused?

Analysis: i) Facts which establish the identity of any person whose identity is relevant are, by virtue of Article 22 of the Qanun-e-Shahadat, 1984, always relevant.

ii) The term 'identification' means proving that a person before the Court is the very same that he is alleged, charged or reputed to be. Identification is almost always a matter of opinion or belief. With regard to a criminal offence, identification has a two-fold object: first, to satisfy the investigating authorities, before sending a case for trial to court, that the person arrested, but not previously known to the witnesses, was the one or those who committed the crime,; second, to satisfy the court that the accused was the real offender concerned with the crime.

iii) The Court can accept identification as sufficient to establish the identity of the accused, it is very necessary that there be reliable corroborative evidence, and the corroborative evidence which the Court is entitled to accept in such cases is that of a test identification parade conducted with due precautions. The august Supreme Court of Pakistan in the case reported as PLJ 2019 SC (Cr.C) 153 has mentioned the requirements and safeguards which are to be meticulously followed and observed in all the test identification parades.

iv) The absence of any light source has put the whole prosecution case in murk. Estimator variables are factors related to the witness, like distance, lighting, or stress during the occurrence which factors are directly related to the capacity of a witness to first observe and then to retain the features of the accused for him to subsequently remember them with such clarity so as to make a correct identification later during the test identification parade proceedings.

v) The august Supreme Court of Pakistan has issued guidelines in conducting the identification parade and has clearly held that if there are more accused persons than one, separate identification parade should ordinarily be held in respect of each accused person. The august Supreme Court of Pakistan in case of Hakeem and other Vs. The State (2017 SCMR 1546) at page 1550 while enunciating the principles of law relating to the identification parade has held as under:- “The proper course is to have separate identification parades for each accused”.

vi) The mere fact that witness is able to pick out an accused person from amongst a crowd does not prove that he has identified that accused person as having taken part in the crime which is being investigated. It merely means that the witness happens to know that accused person. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. Such kind of test identification proceedings where the part played by the accused is not given, have no legal value.

vii) The recovery cannot be relied where the Investigating Officer of the case did not join any witness of the locality during the recovery, his action is clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recoveries cannot be used as incriminating

evidence against the accused persons, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.

viii) It is an admitted rule of appreciation of evidence that recovery is only a supportive piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

ix) In absence of the voice call record or its transcript relating to the calls made and received from the recovered mobile phones, the mere recovery of the same does not prove any fact relevant to prove the charge against the accused. Reliance is placed on the case of "Azeem Khan and another Vs. Mujahid Khan and others" (2016 SCMR 274).

x) Conviction cannot be upheld on the basis of medical evidence alone. The august Supreme Court of Pakistan in its binding judgment titled "Hashim Qasim and another Vs. The State" (2017 SCMR 986) has enunciated the following principle of law: "The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit".

xi) It is a known and settled principle of law that prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court to draw a conclusion whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges, so imputed against the accused, have not been proved beyond a reasonable doubt, then the accused becomes entitled to acquittal. It is settled principle of law that for giving benefit of doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) Facts which establish the identity of any person whose identity is relevant are relevant.

ii) The term 'identification' means proving that a person before the Court is the very same that he is alleged to be and it has a two-fold object with regard to a criminal offence first, to satisfy the investigating authorities, second to satisfy the court.

iii) The Court is entitled to accept identification in the cases where test of identification parade conducted with due precautions.

iv) The absence of any light source has put the whole prosecution case in murk.Estimator variables are directly related to the capacity of a witness to first observe and then to retain the features of the accused.

v) Separate identification parade should be held in respect of each accused person if there are more accused persons than one.

vi) The mere fact that witness is able to pick out an accused person from amongst a crowd does not prove that he has identified that accused person and is it necessary for a witness to clarify how he came to pick out the particular accused.

vii) The recovery cannot be relied upon where the IO of case did not join any witness of locality.
viii) If the ocular account is found to be unreliable then the recovery has no evidentiary value.
ix) Recovery of mobile phones does not prove any fact relevant against accused in the absence of voice call record.
x) The conviction cannot be upheld on the basis of medical evidence alone.
xi) A single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend benefit to the accused.

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68. **Lahore High Court**
Ch. Noman Haseeb v. The learned Special Judge Anti-Corruption Court, Bahawalpur and four others.
Criminal Revision No. 217 of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC1635.pdf

Facts: Through the instant criminal revision petition, the petitioner has assailed the vires of the impugned order, passed by the learned Special judge, Anti-Corruption Court, whereby the application submitted by the petitioner under sections 94 and 540 Cr.P.C. seeking to produce copies of certain documents, as part of prosecution evidence, was rejected.

Issue: What are the prerequisites for a court to exercise its powers embodied under sections 94 and 540 Cr.P.C to summon a witness?

Analysis: A perusal of sections 94 and 540 of the Code of Criminal Procedure, 1898 makes it abundantly clear that the power of the court under sections 94 and 540 of the Code of Criminal Procedure, 1898 is to summon a person having the custody of the said documents or summon any person as a witness whose evidence appears to be essential to the just decision of the case. As mentioned above, the petitioner in the application submitted by him under sections 94 and 540 of the Code of Criminal Procedure, 1898 had not sought the summoning of any person having the custody of the said documents nor sought that any person be examined as a witness who had prepared the said documents. The learned Special judge, Anti-Corruption Court, was right to observe that the powers of the learned trial court provided under sections 94 and 540 of the Code of Criminal Procedure, 1898 did not allow for the production of any documents without the summoning of the person having the custody of the said documents or without the summoning of any witness who had prepared the said documents.

Conclusion: For section 94 Cr.P.C 1898, the witness summoned must have the custody of the document sought to be produced and for section 540 Cr.P.C 1898, the evidence of the witness summoned must appear to be essential for the just decision of the case.

69. **Lahore High Court**
Ghulam Madni v. The State and five others.
Crl. Revision No.203 of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC9322.pdf

Facts: Through this criminal revision petition, the petitioner has challenged the vires of the order passed by the learned Additional Sessions Judge whereby an application filed by the petitioner seeking re-summoning of witness for further re-examination was dismissed.

Issue: What is the basic principle for re-summoning of witnesses for re-examination?

Analysis: Perusal of the record reveals that not a single circumstance has been mentioned necessitating the resummoning of witness for further reexamination. The petitioner also failed to claim in the said application that the failure to further re-examine said witness would result in failure of justice and cause prejudice to the petitioner. Witnesses can only be recalled for further examination in exceptional cases where interest of justice so demands to rectify an obvious mistake. The petitioner has failed to satisfy this Court that further reexamination of above said witness was necessary for the just decision of the case. No prosecution witness can be summoned for further re-examination just to fill in the lacuna by any party. If this is allowed, trials will never come to an end. The learned trial court has certainly been vested with adequate powers under section 540, Cr.P.C. to summon and examine or re-summon and re-examine any witness in the trial before pronouncing the final verdict, but said provisions of the Code do not ingrain any such interpretation whereby it should be allowed to be used by a party to fill-in the lacunae of its case or to unnecessarily protract proceedings of the trial to defeat the ends of justice. This is what the learned trial Court has kept in view while dealing with the application of the petitioner. There was no occasion for the learned trial court to have thought in terms, otherwise. The impugned order has been passed strictly in accordance with the requirement of the law and it did not lack any virtue of a legal order. The witness to be re-called for re-examination has already been examined twice and refusal to re-summon him will not amount to miscarriage of justice in any way. The revisional jurisdiction of this Court can be exercised only when there are exceptional circumstances and the order impugned is perverse or suffering from any type of infirmity…

Conclusion: Witnesses can only be recalled for re-examination in exceptional cases where interest of justice so demands to rectify an obvious mistake as no prosecution witness can be summoned for re-examination just to fill in the lacuna by any party. If this is allowed, trials will never come to an end.

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70. **Lahore High Court**
Weshal Khalil and two others v. The State and another.
Criminal Appeal No. 118 of 2022
Ali Raza v. The State and another.
Criminal Appeal No. 72 of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2022LHC9363.pdf

Facts: Feeling aggrieved, convicts lodged the Criminal Appeals, assailing their conviction and sentences.

Issues: i) Whether prosecution has to establish the source of light if incident occurred at night time?
ii) Whether the delay in the post mortem examination is reflective of the absence of witnesses?
iii) Whether recovery of weapon can be relied upon by the prosecution which was effected in clear violation of section 103 Cr.PC?
iv) What is the evidentiary value of recovery in case the ocular account is found to be unreliable?
v) Whether conviction can be based on the basis of medical evidence alone when other evidence has been disbelieved?
vi) Whether benefit of doubt arising out of a single circumstance can be extended to accused?
vii) Whether the courts can presume the existence of any fact?

Analysis: i) The prosecution witnesses failed to establish the fact of availability of any light source and in absence of their ability to do so, this Court cannot presume the existence of such a light source. The absence of any light source has put the whole prosecution case in the dark. It was admitted by the prosecution witnesses PW-1 and PW-2 themselves that it was a dark night and they had used the light of the torch light, never produced, to identify the assailants during the occurrence and as the prosecution witnesses failed to prove the availability of such light source, their statements with regard to them identifying the assailants cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case…
ii) The reason which is apparent for the delayed conducting of the post mortem examination of the dead body is that by that time the details of the occurrence were not known and the said time was used not only to procure the attendance of the witnesses but also to fashion a false narrative of the occurrence. No explanation was offered to justify the said delay in conducting the post mortem examination and also the delay in submission of the police papers. This clearly establishes that the witnesses claiming to have seen the occurrence or having seen the appellants escaping from the place of occurrence were not present at the time of occurrence and the delay in the post mortem examination was used to procure their attendance and formulate a dishonest account, after consultation and

planning. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

iii) The recoveries of the Sotis from the appellants cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recoveries of the said Sotis, which was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898. The provisions of this section, unfortunately, are honoured more in disuse than compliance. (…) For the above mentioned recovery of weapons the prosecution had failed to associate any independent witness of the locality and, thus, the mandatory provisions of section 103, Cr.P.C. had flagrantly been violated in that regard.

iv) It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

v) As all the other pieces of evidence relied upon by the prosecution, in this case, have been disbelieved and discarded by this Court, therefore, the appellants' conviction cannot be upheld on the basis of medical evidence alone. (…) The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit.

vi) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

vii) Article 129 of the Qanun-e-Shahadat, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

Conclusion: i) The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence has repercussions, entailing the failure of the prosecution case.

ii) Delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

iii) Recovery of weapon cannot be relied upon by the prosecution which was effected in clear violation of section 103 Cr.PC.

iv) If the ocular account is found to be unreliable then the recovery has no evidentiary value.

v) When all the other pieces of evidence relied upon by the prosecution is disbelieved and discarded, conviction cannot be based on the medical evidence alone.

vi) For giving the benefit of the doubt it is not necessary that there should be so

many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

vii) Article 129 of Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it think likely to have happened in the ordinary course of natural events.

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71. **Lahore High Court**
Umair Afzal v. The Additional Sessions Judge/ Justice of Peace, Bahawalpur and three others.
Writ Petition. No.9774 of 2022
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC1865.pdf

Facts: Petitioner moved an application under section 22-A/22-B Code of Criminal Procedure, 1898, complaining of the non-registration of the F.I.R. under section 489-F PPC by the police authorities, the same was dismissed by the learned Ex-Officio Justice of Peace and a direction was issued to the SHO Police to initiate proceedings against the petitioner in respect of offence made punishable under section 182 P.P.C., hence, this petition.

Issues: i) Whether ex officio Justice of Peace can issue directions to the SHO police while deciding the application filed u/s 22-A Cr.P.C?

ii) Who is authorised to exercise his powers when false information is given by a person knowing it to be false?

iii) What are the pre-requisites to initiate action under section 182, P.P.C; whether any direction is necessary by the other authority to proceed u/s 182 P.P.C?

Analysis: i) A perusal of the provision of section 22-A(6), Cr.P.C. reveals that the learned Ex-officio Justice of Peace could only pass an order directing registration of a criminal case if a cognizable offence was made out from the application or decline the same. Any direction given to the S.H.O. by the learned ex-officio Justice of Peace to initiate proceedings against the petitioner under section 182, P.P.C. was beyond the purview of section 22-A, Cr.P.C.

ii) It is the public servant to whom false information is given by a person knowing it to be false, who thereafter, moves the machinery of law against the accused person to his detriment or to the injury or annoyance of the accused person. The framers of law left the question for determination to the public servant, as to how far powers exercised, by him caused detriment, annoyance and injury to the person proceeded against as accused in consequence of the false information given to him by the complainant.

iii) In order to initiate action under section 182, P.P.C., it is essential that the false complaint involving cognizable offence should properly be registered, investigated and found to be false and baseless. In this manner, the prerogative to proceed under section 182, P.P.C. lies only with the Police Officer, who has moved the machinery of law against the accused nominated in the F.I.R. by the

complainant and no other Authority can direct the concerned Police Officer to proceed against the first informant, who has given the false information.

Conclusion: i) Ex officio Justice of Peace cannot issue directions to the SHO police while deciding the application filed u/s 22-A Cr.P.C.
ii) It is the public servant to whom false information is given by a person knowing it to be false, who thereafter, moves the machinery of law against the accused person to his detriment or to the injury or annoyance of the accused person.
iii) In order to initiate action under section 182, P.P.C., it is essential that the false complaint involving cognizable offence should properly be registered, investigated and found to be false and baseless; no other Authority can direct the concerned Police Officer to proceed against the first informant, who has given the false information.

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72. **Lahore High Court**
Kashif Mehmood v. Election Commission of Pakistan & 02 others
Election Appeal No.6 of 2023/BWP.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC2145.pdf

Facts: The appellant filed an Election Appeal under Section 63 of the Election Act, 2017 read with Rule 54 of the Election Rules, 2017 against an order passed by Returning Officer whereby his nomination papers against a seat of MPA were rejected.

Issues: (i) Whether a permanent disqualification under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 requires a definite declaration by any competent Court of law?
(ii) Whether a Returning Officer is possessed with a power to issue any declaration by itself in a summary jurisdiction?

Analysis: (i) The right to contest election is a fundamental right in terms of Article 17 of the Constitution of Islamic Republic of Pakistan, 1973 and it has to be read into the language of Article 17(2). Declaring someone as disqualified for any term to become a member of the parliament is a penalty, depriving him of his constitutional rights. In order to deprive a citizen of his fundamental right to contest election, the requirement of a declaration by a competent Court of law as provided in Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 has to be strictly construed. Without declaration by a competent Court of law, after adopting due process through fair trial, would be against his fundamentalright guaranteed by the Constitution and he cannot be termed to be no longer sagacious, righteous, non-profligate, honest and ameen.
(ii) It is settled law that the Returning Officer has no power to issue any declaration by itself in a summary jurisdiction.

Conclusion: (i) A permanent disqualification under Article 62(1)(f) of the Constitution of

Islamic Republic of Pakistan, 1973 requires a definite declaration by any competent Court of law.
(ii) A Returning Officer has no power to issue any declaration by itself in a summary jurisdiction.

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73. **Lahore High Court**
Muhammad Rasheed (deceased) through his legal heirs, etc. v. Muhammad Ismail, etc.
Civil Revision No.1090 of 2009
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC1403.pdf

Facts: Subject matter of the present Civil Revision is validity of mutation based on an oral gift, which the petitioners claim to have been legally made, by one, in favour of predecessor-in-interest of petitioners. Challenge was laid by the respondents to the above referred impugned mutation on the strength of inquiry report conducted by the Officials concerned for ascertaining the actual date of death of the deceased and an order was passed thereon by the said Officials where after claim of the respondents regarding actual date of death was accepted. The suit instituted by the respondents was decreed by the learned Trial Court vide judgment and the said findings were upheld by the learned Appellate Court below, in appeal preferred by the petitioners. Civil Revision treated as a connected matter inasmuch as the above referred inquiry report and order(s) passed thereon were challenged by the petitioners by instituting a separate/independent declaratory suit that was concurrently dismissed in favour of the respondents and said findings have been assailed by the petitioners through connected Civil Revision referred above. Although after framing of the issues, the suits instituted by the petitioners and the respondents were separately contested and decided through separate judgments in favour of the respondents, yet both the petitions are so interwoven with each other that the decision in one case has direct implications on the decision in other and learned counsel for the parties are in agreement to that effect, therefore, with their consent present petition is treated as the main case and Civil Revision as a connected matter and both are being decided through this single judgment.

Issues: i) Whether the decision on the revenue side operates as res-judicata in the suit instituted before the Civil Court?
ii) Whether Mutation by itself creates any title?
iii) Whether period of limitation would not be an embargo upon a justifiable claim directed against fraud especially in cases of inheritance?

Analysis: i) It is imperative to note that any decision, on the revenue side, does not operate as bar on a subsequent civil suit, more particularly, when question of fraud is involved in respect of which the jurisdiction of the Revenue Authorities is barred, for the reasons that the proceedings before the Revenue Officers and/or the

Revenue Courts are summarily conducted without recording of evidence. Section 11 of the CPC that is based on doctrine of resjudicata clearly stipulates that no subsequent suit shall be entertained in which the matter is directly and substantially the same in a former suit between the same parties and decided by a Court of competent jurisdiction. Therefore, Section 11 of the CPC is applicable only where earlier as well as the subsequent proceedings are before the Courts, which are competent to decide both the matters (…). Therefore, one of the necessary conditions for the applicability of principle of res-judicata that former suit should have been decided by the Court competent to try the subsequent suit is an aspect that is missing in the instant case as the Revenue Court and Civil Court are not vested with the similar jurisdiction rather their jurisdiction is mutually exclusive to each other in certain matters. Jurisdiction of Civil Court is barred in terms of Section 172 of Land Revenue Act, 1967 only with respect to matters exclusively vested in the jurisdiction of Revenue Courts under the said provision and civil suit is always maintainable under Section 53 of the Act to establish right or title in respect of immovable property where the Revenue Court lacks jurisdiction.

ii) It is by now well-settled that a mutation by itself does not create any title unless it can be substantiated to be backed by a valid transaction more particularly if the transaction is in the nature of Hiba depriving legal heirs of the donor.

iii) It is settled principle of law that fraud vitiates the most solemn proceedings and thus period of limitation would not be an embargo upon a justifiable claim directed against fraud, more particularly if same involves right of a person to inheritance of the property.

Conclusion: i) Any decision, on the revenue side, does not operate as bar on a subsequent civil suit, more particularly, when question of fraud is involved in respect of which the jurisdiction of the Revenue Authorities is barred.

ii) The mutation by itself does not create any title unless it can be substantiated to be backed by a valid transaction.

iii) Yes, the period of limitation would not be an embargo upon a justifiable claim directed against fraud, more particularly if same involves right of a person to inheritance of the property.

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74. **Lahore High Court**
Ghulam Nabi v. Kabir Khan.
R.F.A. No.31378 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC2090.pdf

Facts: This regular first appeal is directed against judgment and decree passed in suit instituted by the respondent, for recovery of amount on the basis of Demand Promissory Note.

Issues: i) What is starting point of limitation when the amount is lent on the basis of a Demand Promissory Note?

ii) What presumption is attached to the pro note in terms of provisions of Negotiable Instruments Act, 1881?

Analysis: i) Article 73 of the Act envisages the time to start running from the date of the negotiable instrument, Article 64-A contemplates that time begins to run when the debt becomes payable. The term 'payable' in relation to a debt/loan means how and when an amount of money should be paid by the borrower to the lender. To determine this point, the contents of the Promissory Note are to be looked into. When the amount mentioned in the pro-note is clearly stated to be payable on demand. In case of a Demand Promissory Note, payment would become due when the demand is made and not met. Therefore, such matter is governed by Article 64-A of the Act and starting point is when the debt becomes payable. This Court is of the opinion that after insertion of Article 64-A of the Act, money lend on the basis of a Demand Promissory Note is truly a demand loan and it only becomes payable once demand is made and not met and not from the date when the loan is first made and/or the said Promissory Note is executed.
ii) Presumption of due execution of a negotiable instrument, for consideration, is attached to the pro-note in terms of provisions of Negotiable Instruments Act, 1881 and it is obligatory on part of the appellant to rebut the same by leading evidence.

Conclusion: i) After insertion of Article 64-A of the Act, money lent on the basis of a Demand Promissory Note is truly a demand loan and it only becomes payable once demand is made and not met.
ii) Presumption of due execution of a negotiable instrument is attached to the pro-note in terms of provisions of Negotiable Instruments Act, 1881.

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75. **Lahore High Court**
Amraf Butt v. Imran Bashir, etc.
Writ Petition No.6959 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC1615.pdf

Facts: The respondent filed a guardian petition under Section 25 of the Guardians & Wards Act, 1890 seeking permanent custody of his minor son. During the pendency of the said guardian petition, an interim order was passed for the welfare of minor. Then the respondent withdraws his guardian petition. After that, the respondent moved an application for implementation of that order. The learned Guardian Judge directed the petitioner to comply with that interim order. Feeling aggrieved, the petitioner preferred an appeal, which was dismissed by the learned Appellate Court below, hence, the present constitutional petition has been filed.

Issues: (i) Whether the interim order passed in consolidated proceedings, ceases to effect after the guardian petition filed by the respondent is dismissed as withdrawn?

(ii) Whether welfare of the minor can be sacrificed at the altar of procedural niceties?

Analysis: (i) If interim order is passed in consolidated proceedings and withdrawal of one guardian petition (of the respondent) does not mean that the entire matter came to an end and the order of withdrawal had the attire of the final order when the connected guardian petition of the petitioner is pending. Therefore, this Court is of considered opinion that the interim order does not cease to have effect by mere withdrawal of guardian petition filed by the respondent once the proceedings were consolidated in nature and same benefited the petitioner to keep the permanent custody of the minor as her guardian petition remained pending.

(ii) It is imperative to note that in the matters emanating from the guardianship proceedings welfare of the minor is to be taken as the most important/paramount factor. The welfare of the minor is supposed to be of paramount consideration and is an on-going phenomenon that cannot be circumscribed by some mathematical calculation or hyper technicalities of civil procedure as the welfare of the minor cannot be sacrificed at the altar of procedural niceties.

Conclusion: (i) The interim order does not cease to have effect by mere withdrawal of guardian petition filed by the respondent once the proceedings were consolidated in nature.

(ii) Welfare of the minor cannot be sacrificed at the altar of procedural niceties.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No. SO(CAB-I)2-2/2013, dated 16.03.2023, amendments have been made in the first and second schedule of the Punjab Government Rules of Business 2011
2. Vide Notification No. SOR-III(S&GAD)1-30/2021, dated 10.03.2023, amendments have been made in the schedule of the Punjab Public Service Commission Rules, 2016
3. Vide Notification No. 690/Ad-VII dated 04.02.2022, amendments have been made in the schedule of the Punjab Police Special Branch (Technical Cadre) Service Rules 2016
4. Vide Notification No. 3195/PAMRA/DG/22, dated 29.09.2022, amendments have been made in clause 2 of the Punjab Private Sector Agricultural Marketing Regulations 2021
5. Vide Notification No. 3219/PAMRA/DG/22, dated 30.09.2022, amendments have been made in clause 38 of the Punjab Market Committees Regulations 2021
6. Vide Notification No. 3436-A/PAMRA/DG/22, dated 29.11.2022, amendments have been made in Clause 34 of the Punjab Market Committees Regulations 2021

7. Vide Notification No. SO(SW)5-1/2014 (P-XI), dated 08.03.2023, Secretary, Social Welfare and Bait-ul-Maal Department has been appointed as treasurer of charitable endowments.
8. Vide Notification No. SO(SW)5-1/2014 (P-XI), dated 24.03.2023, the Scheme for Administration of Pakistan Rangers (Punjab) Foundation has been made.

SELECTED ARTICLES

1. HARWARD LAW REVIEW

http://law.howard.edu/sites/default/files/related-downloads/Vol.%2065%2C%20Issue%203%20%28Spring%202022%29.pdf

Interpreting the People's Constitution: Pauli Murray's Intersectionality as a Method of Constitutional Interpretation by Kufere Laing

In Marbury v. Madison, the Supreme Court defined the provincial duty of federal courts: to "say" what the law is. Since this decision, jurists and scholars alike have debated what is the proper method to interpret the Constitution. The most popular, and I argue most disastrous, method is originalism—or simply, the Constitution's meaning is fixed by the Framer's imagination. Like Dred Scott, and other decisions demonstrate, the Framers' limited understanding of humanity results in a constitution that only protects some people, not "the People." To this end, I argue that jurists should learn from Pauli Murray's intersectionalist interpretive method. This framework begins with a straightforward premise: your rights end where another fellow's begin. By employing this interpretive lens, courts are protectors of rights and truly include "the People."

2. HUMAN RIGHTS LAW REVIEW

https://academic.oup.com/hrlr/article/21/2/302/6129940?searchresult=1

Regulatory Responses to 'Fake News' and Freedom of Expression: Normative and Empirical Evaluation by Rebecca K Helm and Hitoshi Nasu

National authorities have responded with different regulatory solutions in attempts to minimise the adverse impact of fake news and associated information disorder. This article reviews three different regulatory approaches that have emerged in recent years—information correction, content removal or blocking, and criminal sanctions—and critically evaluates their normative compliance with the applicable rules of international human rights law and their likely effectiveness based on an evidence-based psychological analysis. It identifies, albeit counter intuitively, criminal sanction as an effective regulatory response that can be justified when it is carefully tailored in a way that addresses legitimate interests to be protected.

3. STATUTE LAW REVIEW
https://academic.oup.com/slr/article/44/1/hmac017/7103234?searchresult=1

The Problem of Interpretive Canons by David Tan

In this paper it is shown that interpretive canons are either constitutionally invalid because of the principles of interpretation it establishes, or a theory of interpretation can be made to be inconsistent: where a theory of interpretation says do p, then a new canon can say do not-p. This is called the Canon Dilemma. Whichever horn of the dilemma is taken as acceptable (accept invalidity or possible inconsistency), this shows that canons cause more problems for theorising about interpretation than currently realised. Some might interpret the Canon Dilemma as a process of theory change (p is replaced with not-p rather than being contradicted by it), but even then problems of incoherence still persist. This paper also shows a connection between debates on the constitutionality of interpretive canons and the descriptive accuracy of linguistic theories of interpretation.

4. SPRINGER
https://link.springer.com/article/10.1007/s40319-023-01321-y

ChatGPT and Generative AI Tools: Theft of Intellectual Labor? By Alain Strowel

Since its release in November 2022, ChatGPT, the Large Language Model trained by OpenAI to interact in a conversational way, has attracted more than 100 million users, as well as the attention of the press. Numerous opinions of "thought leaders" have been published, some heralding "an intellectual revolution" (e.g. Henry Kissinger, Eric Schmidt and Daniel Huttenlocher), others criticizing "the false promise of ChatGPT" (e.g. Noam Chomsky). Many old markets and tech businesses feel exposed. The education sector is also trying to address the new challenges, which include ethics in research and student plagiarism. At the same time, generative AI has prompted the interest of tech companies and investors: Microsoft will inject more than USD 10 billion in OpenAI and Google has invested USD 300 million in Anthropic, etc.

5. THE CANDIAN JOURNAL OF LAW & JURISPRUDENCE
https://www.cambridge.org/core/journals/canadian-journal-of-law-and-jurisprudence/article/theorizing-access-to-civil-justice/DF1543CC98E8D03E9F0D42940A6209A9

Theorizing Access to Civil Justice by Matthew Dylag

Despite more than half a century of reform efforts, access to civil justice is still understood to be in a state of crisis. Part of the reason for this is because there is no consensus among the legal community on the meaning of justice in this context. This paper seeks to provide a much-needed theoretical underpinning to the access-to-civil-justice movement. It advances 'justice as fairness,' as articulated by the American philosopher John Rawls, in conjunction with Lesley Jacobs' model of equal opportunities, as a suitable theory in which to frame the access-to-civil-justice movement. I explain why this framework is appropriate for pluralistic democracies like Canada and

how it can be used to define measures of justice. This exercise is thus not simply a theoretical discussion, but rather is intended to be used as a practical framework to assess current and proposed policy initiatives.

CORRIGENDUM

In the last bulletin, there was an error in the judgment mentioned at Sr. No.38 rendered by the Hon'ble Division Bench in Criminal Appeal No.654 of 2022 and the "Issue" was framed as under:-

"What are the evidential requirements to sustain a conviction in an offence of writing"?

In the above issue, the actual word was to be written as **"rioting"** but due to typographical mistake it was written as **"writing",** so the said mistake is regretted and this corrigendum is issued.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-04-2023 to 30-04-2023)

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

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26.	Lahore High Court	Consideration of pleadings as evidence; Time as essence of contract and contracts of immovable property; Failure to perform part performance of contract as a ground for refusing relief of specific performance; Effect of increase in price of property during pendency of cause on the entitlement of purchaser to seek relief of specific performance; Governing procedure where a statute is silent as to limitation for a proceedings; Application of section 5 of Limitation Act, 1908 when special law itself provides limitation	Civil Law	30
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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Dr. Muhammad Amin v. Zarai Taraqiati Bank Limited through Board of Director, ZTBL, HO, Islamabad and others
Civil Petition No. 2933 of 20 19
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2933_2019.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by the learned Islamabad High Court, whereby the Writ Petition was dismissed with certain observations.

Issues: i) What is the basic object of Rule 1 & 2 of Order II, C.P.C.?
ii) What does the expression "cause of action" means?

Analysis: i) According to Rule 1 of Order II, C.P.C., every suit shall as far as practicable be framed so as to afford ground for a final decision upon the subjects in the dispute and to prevent further litigation concerning them, whereas Rule 2 of Order II, C.P.C. explicates the niceties that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but the plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. It is further provided under Sub -Rule (2) of Rule 2 of Order II CPC, that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
ii) The expression "cause of action" means a bundle of facts which if traversed, a suitor claiming relief is required to prove for obtaining judgment which is always a fundamental element to confer the jurisdiction and enables a party to carry on an action in a court of law being a very significant constituent required to be incorporated in the plaint in terms of Rule 1 of Order VII C.P.C.

Conclusion: i) Basic object of Rule 1 & 2 of Order II, C.P.C is that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Sub-Rule (2) of Rule 2 of Order II CPC, also provides that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
ii) The expression "cause of action" means a bundle of facts which are required to be incorporated in the plaint in terms of Rule 1 of Order VII C.P.C.

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2. **Supreme Court of Pakistan**
Muhammad Taimur v. Chairman, National Accountability Bureau NAB Headquarters, Islamabad & others
Civil Petition No.278 of 2023
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._278_2023.pdf

Facts: The National Accountability Bureau had initiated an inquiry against an unregistered entity (Company). The petitioner was arrested during the inquiry proceedings. He had initially sought bail on merits, which was declined by the High Court. After some time the petitioner filed a petition before the Judge, Accountability Court, seeking bail on the ground of delay in the conclusion of the trial, which was refused, and consequently the petition was dismissed. The High Court, however, allowed the constitutional petition and extended the concession of bail, subject to furnishing bail bonds with two sureties. In addition, the High Court made the release of the petitioner subject to surrendering his passport and the Cryptocurrency code to the Investigating Officer of the Bureau. His name was also ordered to be placed on the exit control list.

Issues: i) Whether bail can be withheld as a punishment?
ii) When the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality whether the grant of bail can be made subject to any rider or condition that would render the concession of bail granted by the court as ineffective or redundant?
iii) What is the primary purpose of granting bail?

Analysis: i) It is settled law that bail cannot be withheld as a punishment. The foundational principles of criminal law are the presumption of innocence of an accused and that bail must not be unjustifiably withheld because it then operates as a punishment before being convicted upon conclusion of the trial. Moreover, the conviction and incarceration of a person who is ultimately found guilty upon conclusion of trial can repair the wrong caused by erroneously extending the relief of interim bail but, no satisfactory reparation can be offered to a person who has been wrongly accused for unjustified incarceration at any stage of the case, if in the end a verdict of acquittal is handed down.
ii) It is equally settled law that when the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality the grant of bail cannot be made subject to any rider or condition that would render the concession of bail granted by the court as ineffective or redundant. When a court is satisfied that a case for grant of bail has been made out then refusal to exercise discretion in favour of releasing the accused, subject to conditions described under section 499 of the Criminal Procedure Code, 1898 ("Cr.P.C.") would not be in conformity with the right to liberty and the fundamental rights guaranteed under the Constitution.

iii) The primary purpose of granting bail is to ensure attendance of an accused before the court. It also enables the accused, who is presumed to be innocent, to pursue normal activities which are essential for life such as earning a livelihood or taking care of the needs of the family.

Conclusion: i) Bail cannot be withheld as a punishment.
ii) When the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality the grant of bail cannot be made subject to any rider or condition that would render the concession of bail granted by the court as ineffective or redundant.
iii) The primary purpose of granting bail is to ensure attendance of an accused before the court. It also enables the accused, who is presumed to be innocent, to pursue normal activities which are essential for life such as earning a livelihood or taking care of the needs of the family.

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3. **Supreme Court of Pakistan**
Akber-ud-Din v. Headmaster Govt. High School Reshun and others.
Civil Appeal No. 1494 of 2017
Mr. Justice Qazi Faez Isa, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1494_2017.pdf

Facts: The appellant filed suit for damages wherein the respondent filed an application under Order VII, rule 11 of CPC seeking rejection of the plaint. The application was dismissed and appeal against the same was also dismissed; the respondent then filed a civil revision which was allowed by accepting the application under Order VII, rule 11 of the Code, and consequently the plaint filed by the appellant was rejected. Hence, this civil appeal.

Issue: Whether suit for damages filed by a student against school for issuance of character certificate upon his expulsion, and which the student later on managed to obtain clean character certificate, is maintainable whereas same is filed after almost two decades?

Analysis: The appellant attended the school for hardly a year and upon his expulsion sought issuance of a character certificate, which was issued recording expulsion. Somehow the appellant managed to procure a clean character certificate. But, still he was not satisfied. After almost two decades he sued for damages. The suit was hopelessly time-barred, yet it was entertained. The appellant initiated litigation, including this appeal, which is entirely frivolous. The appellant was unnecessarily accommodated and the school and its staff were involved in endless litigation. Court time and public resources were squandered…

Conclusion: Suit for damages filed by a student against school for issuance of character certificate upon his expulsion, whereas the student later on managed to obtain clean character certificate and which is also filed after almost two decades is not maintainable.

4. **Supreme Court of Pakistan**
Zakir Mehmood v. Secretary, Ministry of Defence (D.P), Pakistan Secretariat, Rawalpindi, etc.
C.P.2712/ 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2712_2020.pdf

Facts: Briefly, the facts are that the petitioner was proceeded against departmentally for misconduct and awarded major penalty of compulsory retirement. Thereafter, the petitioner embarked upon a long journey of unending litigation. The order dated 28.07.2020 is impugned in the present petition for leave to appeal, whereby the Tribunal dismissed the application under Section 12(2) CPC of the petitioner with costs of Rs.50,000/-. The said application was filed by the petitioner against the order of the Tribunal.

Issues: i) Whether the Service Tribunal can be deemed to be a Civil Court?
ii) Whether Service Tribunal while deciding an appeal, or any application including an application under Section 12(2) of the CPC, can award costs?
iii) What is difference between actual costs, compensatory costs and special costs?
iv) What is the purpose and object of imposing costs?

Analysis: i) A bare reading of the above provision shows that for the purpose of deciding an appeal, the Tribunal is deemed to be a civil court and has the same powers as are vested in a civil court under the CPC. Needless to mention that all courts exercising civil jurisdiction (whether original/ trial, appellate or revisional) under the CPC read with the Civil Courts Ordinance 1962, are referred to as "civil courts." But as the powers of a civil court have been conferred on the Tribunal for the purpose of deciding appeals, the reference in Section 5(2) of the Act to the powers of a civil court under the CPC is to be taken as a reference to the powers of an appellate civil court under the CPC. And since the Tribunal can interfere with the findings of facts recorded by the departmental authorities, in addition to correcting any legal error committed by them, the appeals filed before it are in the nature of first appeals as provided in the CPC. Thus, the principles governing first appeals under the CPC apply to appeals before the Tribunal, and the powers of the first appellate court under the CPC are available to it.
ii) A first appellate court can award the actual costs incurred in appeal as per provision s of rule 35(3) of Order 41, CPC and can also impose special costs in the exercise of its inherent powers under Section 151, CPC if the facts and circumstances of the case necessitate the making of such an order to secure the ends of justice or to prevent the abuse of the process of the court. Therefore, both these powers are also available to the Tribunal while deciding an appeal under the Act. Similarly, a first appellate court can award not only the actual costs incurred on an application under Section 12(2), CPC by virtue of Section 35 read with Section 141, 3 CPC but also compensatory costs under Section 35A, CPC or special costs under Section 151, CPC. Thus, the Tribunal can also exercise these

powers in awarding costs while deciding an application under Section 12(2), CPC or any other application.

iii) It may be elaborated that actual costs are awarded by a civil court under Section 35 of the CPC to reimburse the successful party the expenses incurred by him in the assertion or defence of his rights before the court and compensatory costs are granted under Section 35A to compensate him for undergoing unnecessary litigation due to false or vexatious claim or defence made by his opponent. Whereas special costs are imposed, under Section 151, for deterrent purposes on a party who initiates a proceedings, particularly the appellate proceedings, in complete disregard of the obvious factual or legal position, and thereby wastes the precious court time and abuses the process of the court.

iv) it is high time that courts and tribunals should regularly exercise their powers to impose reasonable costs to curb the practice of instituting frivolous and vexatious cases by unscrupulous litigants , which has unduly burdened their dockets with a heavy pendency of cases, thereby clogging the whole justice system. The possibility of being made liable to pay costs is a sufficient deterrence to make a litigant think twice before putting forth a false or vexatious claim or defence before court. The imposition of these costs plays a crucial role in promoting fairness, deterring frivolous lawsuits, encouraging settlement, and fostering efficient use of resources: (i) promoting fairness: imposing costs in litigation helps to create a level playing field for both plaintiffs and defendants. By requiring both parties to bear the financial burden of litigation, the system encourages parties to consider the merits of their case before initiating legal action. This helps to ensure that only those with legitimate grievances pursue legal recourse, reducing the possibility of abuse; (ii) deterring frivolous lawsuits: imposing costs can discourage parties from filing baseless or frivolous claims, as the risk of incurring significant financial losses may outweigh any potential gains. This helps to protect defendants from having to defend themselves against meritless claims, reducing strain on the court system and preserving judicial resources; (iii) encouraging settlement: when parties are aware of the potential costs associated with litigation, they may be more inclined to engage in settlement negotiations or alternative dispute resolution methods. This can result in more efficient resolution of disputes, lower costs for all involved, and a reduced burden on the court system; (iv) fostering efficient use of resources: imposing costs in litigation incentivizes parties to focus on the most relevant and important aspects of their case, as both parties will want to minimize their expenses. This can lead to more efficient use of legal resources, including court time and the expertise of legal professionals, and may result in more focused and streamlined proceedings. The practice of imposing costs would thus cleanse the court dockets of frivolous and vexatious litigation, encourage expeditious dispensation of justice, and promote a smart legal system that enhances access to justice by taking up and deciding genuine cases in the shortest possible timeframe.

Conclusion: i) Tribunal is deemed to be a civil court and has the same powers as are vested in

a civil court under the CPC.
ii) Service Tribunal can impose special costs while deciding the service appeal or any application including an application under Section 12(2) of the CPC of a civil servant.
iii) Actual costs are awarded by a civil court under Section 35 of the CPC to reimburse the successful party the expenses incurred by him and compensatory costs are granted under Section 35A to compensate him, whereas special costs are imposed, under Section 151, for deterrent purposes.
iv) The practice of imposing costs would cleanse the court dockets of frivolous and vexatious litigation, encourage expeditious dispensation of justice, and promote a smart legal system that enhances access to justice by taking up and deciding genuine cases in the shortest possible timeframe.

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5. **Supreme Court of Pakistan**
Dr. Sayyid A.S. Pirzada v. The Chief Secretary, Services and Administration Department, etc.
Civil Petition No.2009 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2009_2020.pdf

Facts: Through this civil petition, the petitioner has challenged the order of the Punjab Service Tribunal whereby the appeal filed by the petitioner concerning his promotion was held not maintainable on procedural grounds rather on merits.

Issue: Whether the Punjab Service Tribunal has power under the Act to direct the departmental authorities to decide the departmental appeal, review or representation of a civil servant, which remained undecided for 90 days?

Analysis: As per Section 4 of the Act, the right to prefer an appeal to the Tribunal can be invoked subject to the fulfilment of two pre-conditions: (i) in case a departmental appeal, review or representation is provided under the law, no appeal to the Tribunal shall lie unless such a remedy is availed by the aggrieved civil servant; and (ii) a period of 90 days has elapsed since such departmental appeal, review or representation has been preferred. Therefore, if the departmental appeal, review or representation of a civil servant is not decided within a period of 90 days, the aggrieved civil servant need not endlessly wait for the decision of the departmental appeal, review or representation and can straight away approach the Tribunal by filing an appeal for the redressal of his grievance. The Act encourages a civil servant to first avail the remedy of departmental appeal, review or representation so that the matter can best be decided at the departmental level. However, if no progress is made on such departmental remedy within 90 days, the Act provides the civil servant with a higher remedy in the shape of an appeal before the Tribunal to agitate his grievance. When the aggrieved civil servant avails the higher remedy of appeal before the Tribunal after the lapse of the prescribed period of 90 days, the departmental remedy of appeal, review or

representation loses its significance and automatically comes to an end. Once the matter is brought before the Tribunal in accordance with the provisions of Section 4 of the Act, the departmental remedy stands exhausted. Under Section 5 of the Act, the Tribunal on appeal can only confirm, set aside, vary or modify the order appealed against. The Tribunal has no power under the Act to direct the departmental authorities to decide the departmental appeal, application for review or representation of the civil servant, which remained undecided for a period of 90 days.

Conclusion: The Tribunal has no power under the Act to direct the departmental authorities to decide the departmental appeal, review or representation of the civil servant, which remained undecided for 90 days**.**

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6. **Supreme Court of Pakistan**
Bakhti Rahman v. The State and another
Criminal Petition No.207 of 2023
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._207_2023.pdf

Facts: This Criminal Petition for leave to appeal is directed against the judgment passed by the High Court, whereby the petitioner's application for post-arrest bail in FIR lodged under Sections 337-A(ii), 337-A(iii), 337-F(i), and 34 of the Pakistan Penal Code, 1860 was dismissed.

Issues: i) Whether deeper appreciation of the evidence can be gone into by the court at bail stage?
ii) Whether doctrine of parity or rule of consistency in a criminal case can only be applied if the case of the accused is analogous in all respects to that of the co-accused for considering the grant of bail?

Analysis: i) At the bail stage, the Court has to tentatively form an opinion by assessing the evidence available on record without going into merits of the case. The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is prima facie connected with the commission of offence or not. In order to ascertain whether reasonable grounds exist or not the Courts not only have to look at the material placed before them by the prosecution, but see whether some tangible evidence is available against the accused or not to infer guilt. An essential prerequisite for grant of bail by virtue of sub-Section 2 of Section 497 is that the Court must be satisfied on the basis of opinion expressed by the Police or the material placed before it that there are reasonable grounds to believe that the accused is not guilty of an offence punishable with death or imprisonment for life or imprisonment of 10 years. The mere possibility of further inquiry exists almost in every criminal case. The Court is required to consider overwhelming evidence on record to connect the accused with the commission of the offence and if the answer is in the affirmative he is not entitled to grant of bail.
ii) The doctrine of parity or rule of consistency in a criminal case elucidates that if

the case of the accused is analogous in all respects to that of the co-accused then the benefit or advantage extended to one accused should also be extended to the co-accused on the philosophy that the "like cases should be treated alike". The concept of equal justice requires the appropriate comparability of roles and overt act attributed to the co-offenders, but in case of difference or disparity in the roles due allowance cannot be extended to the co-offenders on the perspicacity that different sentences may reflect different degrees of culpability and or different circumstances.

Conclusion: i) The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is prima facie connected with the commission of offence or not.
ii) The doctrine of parity or rule of consistency in a criminal case can only be applied if the case of the accused is analogous in all respects to that of the co-accused then the benefit or advantage extended to one accused should also be extended to the co-accused on the philosophy that the "like cases should be treated alike".

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7. **Lahore High Court**
United Bank Ltd. etc. v. Chairman, PLAT, Lahore etc.
W.P. No. 25212 of 2012.
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2179.pdf

Facts: While serving as Assistant in the United Bank Limited, respondent No.3 filed a grievance petition, before Labour Court praying for grant of two increments on account of improving qualification, in terms of the United Bank Limited (Staff) Service Rules, 1999. The Grievance Petition filed by respondent No.3 was accepted by the Labour Court and the Bank authorities filed an appeal but the same was dismissed by the Punjab Labour Appellate Tribunal (PLAT); hence this petition.

Issues: i) Whether promulgation of PLAT, IRO, 2011 or IRA, 2012 during pendency of appeal can affect the jurisdiction of PLAT?
ii) Whether despite the repeal of relevant law, regarding grant of increments on account of improving qualifications, prior to issuance of result of concerned examination, the employee can be granted such increments?
iii) Whether High Court can grant a relief in Constitutional Jurisdiction which is not covered under any policy/law?
iv) Whether forum of appeal should take into consideration the findings given by a forum against whose decision appeal has been filed?
v) Whether a petition becomes non-maintainable on retirement of incumbent of post who on behalf of bank filed the petition?
vi) Whether person holding power of attorney, empowering him to institute/defend proceedings before different forums, can file writ petition before

High Court?

Analysis: i) IRO, 2011 having been enacted to the extent of Islamabad Capital Territory (ICT), same could not unnecessarily be stretched to the rest of the country. As far as IRA, 2012 is concerned; suffice it to note that the same came into existence during pendency of appeal of the petitioner-bank. According to section 57(2)(b) of IRA, 2012, NIRC may, on the application of a party, or of its own motion, withdraw from a Labour Court of Province any application, proceedings or appeal relating to unfair labour practice. Since the Bank itself allowed PLAT to decide the appeal as neither it filed any application for transfer of appeal to NIRC nor the same was withdrawn by NIRC on its own, the objection raised by its counsel in these proceedings carries no weight, thus, the same is accordingly spurned.

ii) It is of common knowledge that prior to issuance of formal result card, no person can be given any benefit merely on the basis of just participation in the examination. If the relevant law regarding grant of increments on account of improving qualifications is no more alive on the date when result card was issued, the employee cannot be held entitled to grant of such increment…

iii) If relief is not covered under any policy/law same cannot be granted by High Court in exercise of its constitutional jurisdiction.

iv) It is well entrenched by now that appeal is considered continuation of the original proceedings and the forum of appeal is bound to decide the matter without being influenced by the findings given by a forum against whose decision appeal has been filed.

v) A bank falls within the definition of a juristic person, thus, instant petition cannot be held non-maintainable just on account of retirement of its President. Further an incumbent of a post retires but the designation still subsists.

vi) If a person is empowered through power of attorney to institute/defend proceedings before different forums, such person can file writ petition before High Court…

Conclusion: i) IRO, 2011 have been extended to the extent of Islamabad Capital Territory, same could not unnecessarily be stretched to the rest of the country. According to section 57(2)(b) of IRA, 2012, NIRC may, on the application of a party, or of its own motion, withdraw from a Labour Court of Province any application, proceedings or appeal relating to unfair labour practice. However, if appeal is not transferred then later on objection cannot be entertained regarding jurisdiction.

ii) After repeal of relevant law, regarding grant of increments on account of improving qualifications, and that repeal is prior to issuance of result of concerned examination then the employee cannot be granted such increments.

iii) If relief is not covered under any policy/law same cannot be granted by High Court in exercise of its constitutional jurisdiction.

iv) The forum of appeal is bound to decide the matter without being influenced by the findings given by a forum against whose decision appeal has been filed.

v) The fact of retirement of incumbent of post who on behalf of bank filed the

petition does not render the petition non-maintainable because bank falls within the definition of a juristic person, further an incumbent of a post retires but the designation still subsists.

vi) If a person is empowered through power of attorney to institute/defend proceedings before different forums, such person can file writ petition before High Court.

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8. **Lahore High Court**
Asadullah Khan v. Province of Punjab and others
Civil Revision No. 42701 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2234.pdf

Facts: Petitioner through the instant revision petition has challenged the concurrent judgments and decrees of the two Courts below whereby his suit for declaration with consequential relief challenging the alleged gift deed and the subsequent mutation in favour of respondents was dismissed.

Issues: i) Whether the onus to prove those facts lies on a party who takes a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserts?

ii) Whether the court is duty bound to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party?

Analysis: i) In the case of Khalid Hussain v. Nazir Ahmad (2021 SCMR 1986), the Apex Court of the country has held that when a party took a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserted, then the onus to prove those facts laid on him. Moreover, mere assertion of fraud and misrepresentation is not sufficient rather the same has to be proved by leading confidence inspiring evidence.

ii) It is bounden duty of the learned trial Court to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party, as per section 3 of the Limitation Act, 1908.

Conclusion: i) The onus to prove those facts lies on a party who takes a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserts.

ii) The court is duty bound to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party.

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9. **Lahore High Court**
Mehboob and others v. Fateh Bibi and another
Civil Revision No.11751 of 2023.
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2242.pdf

Facts: Through this civil revision, the petitioners have assailed the impugned judgment

and decree passed by the Appellate Court wherein appeal of the respondent No.1 was accepted, consequently the suit filed by the respondent No.1 was decreed.

Issues: i) Whether an illiterate, rustic and village household lady is entitled to the same protection which is available to the Parda observing lady under the law?
ii) Whether adverse presumption would arise if the revenue officer has not been produced?
iii) Under what circumstances constructive possession can be considered and the party is entitled to consequential relief of possession?

Analysis: i) An illiterate, rustic and village household lady is entitled to the same protection which is available to the Parda observing lady under the law.
ii) If the revenue officer has not been produced, who is necessary to be produced and no evidence showing his incapability to appear in the Court has been adduced, then adverse presumption under Article 129(g) of Qanun-e-Shahadat Order, 1984 would arise that the best evidence has been withheld that if the revenue officer had appeared in the witness box, he would not have supported the stance.
iii) If the party has claimed to be owner in possession of the property and alleges it in the plaint and the property in dispute is an inherited property then possession of the party would be considered as constructive, because the same was under his cultivation prior to the impugned mutations. Therefore, the party is entitled to consequential relief of possession.

Conclusion: i) An illiterate, rustic and village household lady is entitled to the same protection which is available to the Parda observing lady under the law.
ii) If the revenue officer has not been produced, then adverse presumption under Article 129(g) of Qanun-e-Shahadat Order, 1984 would arise that the best evidence has been withheld.
iii) If the party has claimed to be owner in possession of the property and the same was under his cultivation prior to the impugned mutations then possession of the party would be considered as constructive.

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10. **Lahore High Court**
Ghulam Muhammad v. Muhammad Hayat (Late) through Legal Heirs and others
Civil Revision No. 265 of 2012
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2222.pdf

Facts: After consolidated proceedings, suit of respondents claiming decree for specific performance of agreement to sell was decreed and suit of petitioner seeking decree for recovery of possession of suit property was dismissed, which judgment & decree of learned trial court was maintained by the learned appellate Court whilst dismissing relevant appeal. Hence, the instant revision petition.

Issues: i) What is significance of pleading time, place and names of witnesses to oral agreement to sell in a suit seeking decree for specific performance of such agreement?

ii) Whether a witness of an oral agreement to sell may be produced in evidence even if he is not mentioned in pleadings?

iii) What is effect of introducing improvements in evidence as beyond pleadings by party seeking decree for specific performance of an oral agreement to sell?

iv) What would be fate of subsequent agreement to sell if basic & initial oral agreement to sell is not proved?

v) If one has purchased suit property through a sale mutation acceded by the vendor, what would be status of possession at spot of rival claimant seeking decree for specific performance of oral agreement to sell?

Analysis: i) In case of an oral agreement to sell, not only unimpeachable evidence is required to be produced to prove each and every incident of such a transaction, but said details are necessary to be pleaded as well.

ii) No party to a judicial proceeding can be allowed to adduce evidence in support of a contention not pleaded earlier and the decision of a case cannot rest on such evidence.

iii) When no date, time, place or names of witnesses of the oral agreement to sell had been mentioned in the pleadings whilst instituting suit seeking decree for specific performance of oral agreement to sell, then improvements in evidence in relation thereto are considered as beyond the pleadings and are believed to constitute an afterthought attempt to improve the case, which course of action is not permitted by law.

iv) It is imperative that only bona fide oral agreement leads to grant of decree of specific performance. Courts must insist for fulfillment at the earliest of all requirements so as to ensure that an oral agreement is fully proved. Pleading and proving of each and every link and chain of oral transaction is necessary and sine qua non. In view of the above, when the basic and initial oral agreement has not been proved, which was necessary to be pleaded and proved independently, the subsequent events in the shape of purported agreement to sell has no value in the eye of law.

v) It is a settled principle of law that mere an agreement to sell does not create a title, but the same can only be used in order to sue and the same cannot be considered a title document until & unless the same is proved before a Court of competent jurisdiction.

Conclusion: i) Pleading the time, place and names of witnesses present at the time of reaching at the oral agreement to sell is sine qua non requisite to prove such agreement in a suit seeking decree for specific performance of such agreement.

ii) The witnesses of oral agreement, produced beyond pleadings, cannot be considered.

iii) If a fact is not pleaded in the plaint, the evidence in this regard will also be considered as an improvement beyond pleadings and same cannot be relied upon while rendering judgment.
iv) When the basic and initial oral agreement is not proved, which was necessary to be pleaded and proved independently, then the subsequent purported agreement to sell has no value in the eye of law.
v) When one has purchased suit property through a sale mutation acceded by the vendor, possession at spot of rival claimant seeking decree for specific performance of oral sale agreement is nothing but an illegal occupation.

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11. **Lahore High Court**
Sheikh Muhammad Akram etc. v. Returning Officer PP-126 Jhang-III etc.
Election Appeal No. 24497 of 2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2156.pdf

Facts: The nomination papers of the respondent were accepted and the objections filed by the appellants on the nomination papers of the respondent were dismissed. The appellants, being aggrieved, have filed these three separate Election appeals under Section 63 of the Elections Act, 2017 (Act).

Issues: i) Whether the nomination papers of the candidate may be rejected on the basis of omission in the statement of assets and liabilities of his spouse/wife?
ii) What does the term default of "Government dues" under Article 62(1)(o) of the Constitution means?

Analysis: i) Indeed under section 62(9)(c) of the Act, the Returning Officer may reject the nomination papers if he is satisfied that statement is false or incorrect in any material particular. However, omission in the statement of assets and liabilities of candidate himself or his dependent children cannot be equated or treated at par with the omission of assets and liabilities of his spouse/wife. There is no law under which the wife is obliged to disclose all her assets and liabilities to husband and similarly there is no enactment under which husband can compel/force the wife to inform him about all her assets and liabilities. The spouse (in this case wife) is an independent person with all fundamental rights granted under the Constitution, including right of privacy and she may not want to disclose all her assets and liabilities to husband, specifically those not acquired through him or not directly related to her husband. Even if the assets were originally acquired by wife through husband, she is not obliged under law to inform him before further transferring/alienating of those assets. Therefore, any omission of assets/liabilities in the statement regarding assets/liabilities of spouse/wife may not be alike or of same gravity as of omission in respect of assets and liabilities of the candidate himself or the one acquired by him for his dependent children. In case of incorrect and false statement of candidate's own or his dependent children's assets/liabilities the same may be fatal but in case of statement regarding assets/liabilities of wife/spouse, the omission may not be fatal unless same is not

bonafide and some undue benefit/purpose was achieved or likely to be achieved by candidate for making such incorrect and false statement.

ii) The Hon'ble Supreme Court of Pakistan in "Khawaja Muhammad Asif Versus Muhammad Usman Dar and others" (2018 SCMR 2128) held that default for purpose of disqualification of candidate can only be established, if it is shown that a demand notice was issued by the authority who is competent to recover the "Government dues" and yet the same remained unpaid. It is also held that unless the said demand is raised, the amount does not constitute the "Government dues" to disqualify the candidate.

Conclusion: i) In case of incorrect and false statement of candidate's own or his dependent children's assets/liabilities the same may be fatal but in case of statement regarding assets/liabilities of wife/spouse, the omission may not be fatal unless same is not bonafide and some undue benefit/purpose was achieved or likely to be achieved by candidate for making such incorrect and false statement.

ii) Default for purpose of disqualification of candidate can only be established, if it is shown that a demand notice was issued by the authority who is competent to recover the "Government dues" and yet the same remained unpaid.

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12. **Lahore High Court**
Naveed Ahmed etc. v Sheikh Amjad Saeed deceased through his legal heirs etc
Civil Revision No.3093 of 2012
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2023LHC2201.pdf

Facts: Through this civil revision, the petitioners have filed the instant civil revision and challenged the validity of the impugned judgments and decrees passed by the Courts below while the plaintiffs also filed a Regular Second appeal against the defendant No.3 & defendant No.4.

Issue: Whether time does not remain as an essence of the contract if the parties agree to extend it in agreement to sell?

Analysis: Time does not remain as an essence of the contract if the parties mutually agree with free consent to extend it in agreement to sell.

Conclusion: Time does not remain as an essence of the contract if the parties agree to extend it.

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13. **Lahore High Court**
M/S Independent Newspapers Corporation (Pvt.) Limited through its authorized attorney, a private limited company and publisher of Urdu newspaper 'Daily Jang' v. Province of Punjab through Director General-Directorate General of Labour Welfare, Labour & Human Resource Department, Government of Punjab and 2 others
Writ Petition No. 3383 of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC2257.pdf

Facts: The grievance of the petitioner company canvassed in this constitutional petition is that respondent i.e. a trade union in the establishment of the petitioner company, has been got registered by its members with Registrar Trade Unions under the Punjab Industrial Relations Act, 2010 deviating from provisions of Industrial Relations Act, 2012, whereafter; petitioner's application seeking revocation of certificate of registration of respondent trade union was rejected summarily by said Registrar. Hence, instant petition.

Issues: i) What would be status of provisions of the Industrial Relations Act, 2012 being a Federal enactment as against Provincial Law enacted in shape of the Punjab Industrial Relations Act, 2010, in case any clash or repugnancy arises between them?
ii) What is the law and the relevant forum for registration of trade union in case of trans-provincial establishment?

Analysis: i) Under Article 143 of the Constitution of Pakistan, 1973, laws enacted by the Parliament are given overriding and superimposing effects over the laws enacted by a Provincial Assembly of any of the Province and the laws enacted by the Parliament shall prevail in case of any clash or repugnancy between the two. On the touchstone of Article 143 of the Constitution of Pakistan, 1973, the Act of Parliament has been placed on the higher pedestal and any Provincial Law enacted by the Provincial Assembly shall give way to the Federal Law enacted by the Parliament, if the former is inconsistent or repugnant to the latter.
ii) The Industrial Relations Act, 2012 was promulgated to consolidate and rationalize the law in Islamabad Capital Territory and at trans-provincial level, relating to formation of trade unions and federations or trade unions, determining the collective bargaining agents, regulation of relations between employers and workers, the avoidance and settlement of any differences or disputes arising between them or matters connected therewith and ancillary thereto. The formation of trade unions of the workers of a trans-provincial Establishment and the matters incidental thereto are regulated by the Act ibid. Under Act ibid, Jurisdiction with regard to a trans-provincial Establishment is vested with National Industrial Relations Commission being sole authority with the power to register trade unions and industry-wise trade unions pertaining to the trans-provincial Establishments.

Conclusion: i) The provision of the Industrial Relations Act, 2012 being Federal enactment would have overriding effect on Provincial Labour Law enacted as the Punjab Industrial Relations Act, 2010.
ii) A trans-provincial Establishment is governed by the Industrial Relations Act, 2012 and the unions operating in its various factories, offices and departments shall have to be registered with National Industrial Relations Commission.

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14. **Lahore High Court**
Muhammad Usman Faroooq v. Rawalpindi Medical University, Rawalpindi & one other
W.P. No. 1132of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC2338.pdf

Facts: The petitioner was denied the admission solely because he failed to produce all the original documents personally on the target date as per requirement. Now, through instant petition, the petitioner is seeking a direction to the respondents to allow his admission in the first year of MBBS against open merit list.

Issue: Whether it is a rule of universal application that interference with the internal governance and affairs of the educational institutions as well as dislodging decision of the university authorities should be avoided?

Analysis: Courts ordinarily exercise restraint in interfering with the internal governance and affairs of the educational institutions and keep their hands-off the educational matters as well as avoid dislodging decision of the university authorities, however, such rule may be followed generally not compulsorily in all matters.

Conclusion: This is not a rule of universal application that interference with the internal governance and affairs of the educational institutions as well as dislodging decision of the university authorities should always be avoided.

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15. **Lahore High Court**
Madeeha Munir v. Government of the Punjab and 06 Others
ICA No. 56780 of 2020
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC2359.pdf

Facts: Government of Punjab invited applications for filling various vacant posts of educators. The names of private respondents were reflected in the list of successful candidates. But their agreements were suspended on account of error in software and private appellants were appointed. The private respondents filed constitutional petitions which were allowed, hence, titled ICA as well as connected appeals have been instituted.

Issues: i) Whether principle of locus poenitentiae is applicable if an act is wrongly done due to some misunderstanding, error or illegality?

ii) Whether interference in the process of recruitment can be made on ground of favoritism or political interference etc.?

Analysis: i) If an act is wrongly done due to some misunderstanding, error or illegality, the principle of locus poenitentiae does not come into operation to protect such wrong. If foundation of an action is based on an illegality or error, the protection of locus poenitentiae cannot be provided to beneficiary of said action at cost of others.
ii) It is settled that in the absence of any specific evidence or material showing favoritism, political interference or departure from merits or malafide established through clear evidence, the interference in the process of requirements is not warranted by law.

Conclusion: i) Principle of locus poenitentiae is not applicable if an act is wrongly done due to some misunderstanding, error or illegality.
ii) In the absence of any specific evidence or material showing favoritism, political interference or departure from merits or malafide established through clear evidence, the interference in the process of requirements is not warranted by law.

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16. **Lahore High Court**
Commissioner Inland Revenue, Zone-III, Large Taxpayers, Karachi v. M/s Adam Sugar Mills Ltd., Karachi
STR No.97 of 2013
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2252.pdf

Facts: The applicant filed a Reference Application under Section 47 of the Sales Tax Act, 1990 regarding questions of law, asserted to have arisen out of an order passed by Appellate Tribunal Inland Revenue, Lahore.

Issues: (i) Whether a record seized in an illegal manner can be used against a taxpayer?
(ii) What is the effect of non-preparation of the statement in writing of the grounds of belief as envisaged under section 40-A (Since omitted) of the Sales Tax Act, 1990?

Analysis: (i) While taking cognizance under section 38 of the Sales Tax Act, 1990, inter-alia, the authorized officer must restrict himself to the record / documents that are in plain sight or voluntarily made available by the person present at the premises, for the purposes of inspection and taking into custody. This provision does not envisage any authority to compel the production of any record or document that is not presented voluntarily. Any record or document forcibly taken into custody must not be used adversely against the person from whose custody it was taken. The powers under this provision, by no stretch of imagination, can compromise the fundamental rights and constitutional guarantees embedded in the Constitution of the Islamic Republic of Pakistan, 1973.
(ii) The failure to place any material before the Court to establish that there were

sufficient reasons and grounds for by-passing normal course of action specified in section 40 and non-satisfaction of pre-requisites mentioned in section 40A renders the action taken under section 38 unsustainable and consequently the search and seizure was illegal, without lawful authority and of no legal effect. Apparently, sections 40 & 40A are aimed at to curtail and monitor the unlimited and unbridled powers of the Sales Tax Authorities to avoid undue harassment to the taxpayers.

Conclusion: (i) A record seized in an illegal manner cannot be used against a taxpayer.
(ii) Non-preparation of the statement in writing of the grounds of belief as envisaged under section 40-A (Since omitted) of the Sales Tax Act, 1990 renders the action taken under section 38 unsustainable and of no legal effect.

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17. **Lahore High Court**
Federation of Pakistan through Secretary Establishment Division Islamabad v. Khalid Mahmood and another
ICA No.431 of 2016
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2344.pdf

Facts: The Appellant challenged a judgment passed by a learned Single Judge-in-Chamber whereby the writ petition of Respondent No.1 for allotting him an additional plot was allowed.

Issues: (i) In what circumstances a differential treatment of persons can be sustained under Article 25 of the Constitution?
(ii) Whether an artificial grouping can be created under the garb of reasonable classification?

Analysis: (i) 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, yet 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 to be achieved. This means that anydistinct treatment meted out to a class of persons can only be sustained under Article 25 if the aforesaid test is satisfied.
(ii) It is also well settled that in order to establish a reasonable classification based on intelligible differentia, the differentiation must have been understood logically and there should not be any artificial grouping for specific purpose causing injustice to other similarly placed individuals…carving out any criteria to exclude certain officers and accommodate others of the same rank would tantamount to creation of artificial grouping causing injustice to the first mentioned officers hence any such classification cannot be excluded from the mischief of Article 25 of the Constitution.

Conclusion: (i) A differential treatment of persons can be sustained under Article 25 of the

Constitution in case of reasonable classification based on intelligible differentia that has a rational nexus with the object being sought to be achieved.
(ii) An artificial grouping cannot be created under the garb of reasonable classification.

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18. **Lahore High Court**
Salman Mushtaq v. Ex-officio Justice of Peace etc.
Writ Petition No. 58123/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2316.pdf

Facts: Through this constitutional petition, the petitioner challenges the order of learned Ex-officio Justice of Peace whereby the application for registration of FIR filed against the petitioner under section 22-A of Cr.P.C 1898 was accepted.

Issues: i) Whether a bribe-giver can be criminally prosecuted along with the bribe- taker?
ii) Whether a bribe-giver can reclaim the bribe money from the bribe-taker?

Analysis: i) Section 161 PPC makes it an offence for a public servant to take gratification other than legal remuneration in respect of an official act. Section 162 seeks to punish anyone who accepts or obtains or attempts to take illegal gratification to influence any public servant in performing his functions. Section 163 criminalizes obtaining and attempting to obtain gratification for exercising personal influence with a public servant. Section 165 prohibits and punishes a public servant who accepts, or attempts to get a valuable thing, without consideration, from a person concerned in a proceeding or business transacted by such public servant. Sections 164 and 165-A criminalize abetment of the offences under sections 162, 163, and 165. Section 165-B PPC excludes certain abettors. It states that a person shall be deemed not to have committed an offence under section 161 or 165 PPC if he is induced, compelled, coerced or intimidated to offer or give graft, or any valuable thing without consideration, or for inadequate consideration, to a public servant.
In Pakistan Penal Code, Chapter V deals with abetment. It expressly recognizes that the bribe-giver is an abettor in the bribery offence. The Explanation to section 109 PPC states that "an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment." Illustration (a) to section 109 reads as follows: "(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161." The upshot of the above discussion is that subject to section 165-B PPC, both the bribe-giver and the bribe-taker can be prosecuted.
ii) A nine-member bench of the Supreme Court of England in Patel v. Mirza, [2016] UKSC 42, [2016] 1 W.L.R. 399, after thoroughly surveying the entire case-law, concluded that "bribes of all kinds are odious and corrupting, but it does not follow that it is in the public interest to prevent their repayment. There are two

sides to the equation. If today it transpired that a bribe had been paid to a political party, a charity or a holder of public office, it might be regarded as more repugnant to the public interest that the recipient should keep it than that it should be returned."

Insofar as the restitution claims are concerned, the courts in India and Pakistan decide them on the basis of the Contract Act of 1872, the law they have commonly inherited from the British. The statutory provisions in both countries are the same except for a few amendments. Section 23 of the Act describes what considerations and objects are lawful. Section 24 provides that the agreement is void if any part of a single one or any part of several considerations for a single object is unlawful. Section 65 states, "when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it." However, section 165 of Contract Act 1882 is inapplicable to a situation where both parties knew that the agreement was unlawful (and, therefore, void) when they entered it, there was no contract but merely an agreement. It is not a situation where it is discovered to be void subsequently or where the contract becomes void due to future events. Most of the case-law in India and Pakistan adhere to the principle of *in pari delicto* (in equal fault) to disallow the claim of restitution of money paid in relation to an illegal agreement. However, there are a few judgements both in India and Pakistan which support the idea of restitution of money delivered in relation to an illegal agreement subject to certain conditions. After an in-depth analysis of those judgements of India and Pakistan, the court concludes that any agreement falling within the scope of sections 23 and 24 of the Contract Act is illegal and consequently void. If the agreement is indivisible, illegality impacts the whole of it. On the other hand, if it is divisible, it affects only the illegal part. If the object of the agreement is unlawful, it is void regardless of whether the parties are aware of the illegality.

Conclusion: i) Subject to section 165-B PPC, a bribe-giver can be criminally prosecuted along with bribe-taker.

ii) A bribe-giver can reclaim the bribe money from the bribe-taker subject to certain conditions as enumerated in the judgement.

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19. **Lahore High Court**
M/s Tradhol International SA Sociedad Unipersonal v. M/s Shakarganj Limited
Civil Original Suit No.80492 of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2392.pdf

Facts: Through this application, the applicant sought recognition and enforcement of a foreign arbitral award in Pakistan under the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (the "Act") and

its Schedule, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the "NY Convention") and a guide on UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the " NY Convention Guide"). The Court while enforcing the foreign arbitral award passed by the London Court of International Arbitration (the "LCIA") has discussed in detail the provisions regarding recognition and enforcement of a foreign arbitral award in Pakistan under the "Act" and its Schedule, the "NY Convention"

Issues: i) Whether High Court has jurisdiction to enforce a foreign arbitral award?
ii) Whether the recognition and enforcement of a foreign arbitral award can be refused in Pakistan on the basis of "incapacity" of the parties or the said agreement is "not valid"?
iii) Whether communications exchanged between the parties and sent through an automated information system i.e. email comes within the meaning of term "agreement in writing"?
iv) Whether any law applicable to a contract/agreement will also apply to an arbitration agreement contained within it, in jurisdictions of Pakistani and English law?
v) Whether the recognition and enforcement of a foreign arbitral award can be refused in Pakistan when award is contrary to the "public policy" of Pakistan?
vi) What is vision behind the enactment of the "Act", i.e. the NY Convention?
vii) What is role of preamble of a statute for the purposes of interpretation in order to dissect the true purpose and intent of the law?
viii) Whether pro-enforcement policy under the "NY Convention favors the recognition and enforcement of foreign arbitral awards?

Analysis: i) Accordingly, it follows from the above sections that the "High Courts" have exclusive jurisdiction to adjudicate and settle the matters relating to or arising out from the "Act". The notified Courts in Pakistan, in order to protect the sanctity of foreign arbitral awards as defined under Section 2(d) of the "Act" are the High Court and such other superior Courts as may be notified by the Federal Government. If the parties have any issue with the foreign agreements or the awards, they can only refer the matter to the Court as defined under Section 2(d) of the "Act" and not any other Court which is not notified. To protect the confidence of investors, the Courts (the High Court under Section 2(d) of the "Act") can then, if need be, deal the matter of pre-arbitration, pro arbitration and post arbitration. If we examine the jurisdiction of this Court as defined under Section 3 of the "Act" which states that the Court shall exercise exclusive jurisdiction to adjudicate and settle matter relating to or arising out from this "Act", the Court has to enforce (i) foreign arbitral award and (ii) foreign agreements; although foreign agreements are not defined under the "Act" but the agreements are defined under Article II of the "NY Convention" therefore, any issue with regard to enforcement of foreign arbitral award or foreign agreement, as defined under the "Act" and the Article II, is arisen, then this can further be

examined under Section 3(2) of the "Act" where again in proceeding regarding the stay application may be filed in the Court. The word "Court" is defined in capital which means the High Court and has been referred in various sections of the "Act" which again means the High Court but under Section 4, the word "court" is not in capital but it still means it is in capital and would be the High Court notified by the Federal Government. Section 3 of the "Act" gives exclusive jurisdiction to this Court in terms of Section 2(d) of the "Act" and the section ibid starts with 'notwithstanding anything contained in any other law for the time being in force' the Court shall exercise exclusive jurisdiction to adjudicate and settle matters related to or arising from the "Act". If Section 3 of the "Act" be read with Section 4 of the "Act" it makes it clear that jurisdiction is only confined to the High Court because Section 4(1) of the "Act" do mentions the word "court" and it is intertwined with Section 3 of the "Act" under the doctrine of intertwined as developed by this Court in the case of "TARIQ IQBAL MALIK Versus M/s MLTIPLIERZ GROUP PVT. LTD. and 04 others" (2022 CLD 468) by holding that "It may even be said that both Sections 256 and 257 of the Act are in pari materia and thus must be construed together. The ultimate outcome of the said provisions being intertwined with one another leads to the conclusion that in order to invoke Section 257 of the Act, it is mandated that any complainant must have some form of link or nexus to the affairs of a Company. Section 256 of the Act categorically clarifies that the link or nexus required to have the affairs of any company investigated is the holding of membership in such company in the manner as is categorically mentioned in Section 256 of the Act".

ii) Bare perusal of Section 7 of the "Act" read with Article V 1(a) of the "NY Convention" reveals that the recognition and enforcement of a foreign arbitral award may be refused in Pakistan if the party (…) furnishes proof to the competent authority of Pakistan (this Court) that the parties to the agreement were under some "incapacity", or the said agreement is "not valid" under the law to which the parties have subjected it (or failing any indication thereon, under the law of the country where the award was made).

iii) The above communications were exchanged between the parties and were sent through an automated information system which squarely comes within the meaning of terms defined in the Electronic Transactions Ordinance, 2002, as well as within the meaning of "agreement in writing" defined in Article II Clause 2 of the "NY Convention".

iv) In both the jurisdictions i.e. Pakistani and English law, it is presumed that the law applicable to a contract/agreement will also apply to an arbitration agreement contained within it, in the absence of any indication to the contrary. The said situation has already been dealt with by the Hon'ble Supreme Court of Pakistan in the case of "Hitachi Limited Versus Rupali Polyester" (1998 SCMR 1618) by holding that "if there is no express agreement between the parties as to the law governing arbitration agreement, the law which governs the main agreement will also govern arbitration agreement if the arbitration clause is embedded as a part of the main agreement". The English Court in the case of Enka Insaat Ve Sanayi AS

v Insurance Company Chubb [2020] UKSC 38, held that "where the law applicable to the arbitration agreement is not specified, a choice of governing law for the contract will generally apply to an arbitration agreement which forms part of the contract.

v) Bare perusal of Section 7 of the "Act" read with Article V 2(b) of the "NY Convention" reveals that the recognition and enforcement of an arbitral award may also be refused if the competent authority in Pakistan finds that the recognition or enforcement of the award would be contrary to the "public policy" of Pakistan.

vi) It is to be noted that the "NY Convention" was passed in New York in 1958 to provide a uniform and effective legal framework for the recognition and enforcement of international arbitration agreements and foreign arbitral awards. The aims of the "NY Convention", generally, are to promote international trade and commerce by ensuring that parties to an arbitration agreement could enforce their rights and obligations under that agreement in any of the countries that have ratified the "NY Convention"; to establish a comprehensive legal framework for the recognition and enforcement of foreign arbitral awards by national courts around the world; and to reduce uncertainty and risk in international commerce for the growth of international trade and investment.

vii) Here, it would also be advantageous to highlight the purpose and policy of the "Act", which is mentioned in its Preamble. The preamble means an introductory statement in a constitution, statute or act, and it explains the basis and objective of such a document. Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.

viii) Accordingly, in view of the above, it remains clear that a pro-enforcement policy under the "NY Convention" refers to a legal approach that favors the recognition and enforcement of foreign arbitral awards. This approach is based on the principle of comity, which requires countries to show respect and deference to the legal systems and decisions of other countries and arbitral tribunals. Pro enforcement policy under the "NY Convention" is important because it promotes the finality and enforceability of arbitration awards. When parties agree to resolve their disputes through arbitration, they expect that the resulting award will be final and binding. A pro enforcement policy helps to ensure that parties can rely on the arbitration process to resolve their disputes and that the resulting awards will be enforced in other countries. In practice, a pro enforcement policy means that courts should apply a narrow standard of review when considering applications for recognition and enforcement of foreign arbitral awards. This standard requires courts to limit their review to procedural matters and to refrain from reexamining the substance of the dispute. This approach ensures that the recognition and enforcement process is swift and efficient, which benefits both parties and

promotes international trade and commerce. Overall, a pro-enforcement policy under the "NY Convention" is essential to promote the recognition and enforcement of foreign arbitral awards. This approach reflects the importance of promoting finality and enforceability in the arbitration process, which in turn contributes to the stability and predictability of international commerce. Therefore, this Court is bound to implement it as such.

Conclusion: i) High Court has jurisdiction to enforce a foreign arbitral award.
ii) The recognition and enforcement of a foreign arbitral award can be refused in Pakistan on the basis of "incapacity" of the parties or the said agreement is "not valid".
iii) Communications exchanged between the parties and sent through an automated information system i.e. email which squarely comes within the meaning of terms defined in the Electronic Transactions Ordinance, 2002, as well as within the meaning of "agreement in writing" defined in Article II Clause 2 of the "NY Convention".
iv) Any law applicable to a contract/agreement will also apply to an arbitration agreement contained within it, in jurisdictions of Pakistani and English law.
v) The recognition and enforcement of a foreign arbitral award may be refused in Pakistan when award is contrary to the "public policy" of Pakistan.
vi) Vision behind the enactment of the "Act", i.e. the NY Convention to provide a uniform and effective legal framework for the recognition and enforcement of international arbitration agreements and foreign arbitral awards.
vii) The preamble of a statute holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.
viii) A pro-enforcement policy under the "NY Convention" refers to a legal approach that favors the recognition and enforcement of foreign arbitral awards.

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20. **Lahore High Court, Lahore**
Syed Faisal G.Meeran, Advocate v. Province of Punjab, etc.
W.P. No. 19723 of 2023
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC2208.pdf

Facts: Through this writ petition, it is prayed that the release price of wheat at the rate fixed by the Respondents be declared illegal, unconstitutional, and unlawful being a misuse & abuse of authority and based upon undue enrichment done in violation of the Election Act, 2017. It is further prayed that, in the best and larger Public interest, said act of Respondents may be struck down by directing the Respondents to restore the earlier release price along with the subsidy forthwith as provided in the past.

Issues: i) Whether fixation of prices of commodities is included in the policy matters of the executive, if yes, then what is the scope of the court's jurisdiction to interfere in such policy decisions?

ii) Whether the act of the Caretaker Government fixing the prices of wheat by enhancing the previous prices is against its mandate as provided by Section 230(a) of Election Act, 2017?

iii) Whether the public at large can get enforced through court, as their vested right, the providence of wheat and flour at subsidized rates?

iv) Whether the act of Government like supply of flour free of cost to the underprivileged can be called in question before the constitutional Court?

Analysis: i) Under the Price Control and Prevention of Profiteering and Hoarding Act, 1977, fixation of prices is to be dealt with by the Federal Government and Provincial Governments are duty-bound to control all the prices of foodstuffs without any discrimination. So, fixation of prices of commodities such like purchase and sale of wheat by Government, provision of wheat to flour mills, subsidized value, framing of policy to provide flour to public at a particular rate or free of cost to deserving people of society are within policy making domain of Government.Thereafter, price is to be fixed by the executive on the basis of data available with it and the same cannot be fixed at the whims and desires of the authorities and said power of the executive cannot be ordinarily interfered with by the Court in its constitutional jurisdiction.

ii) The Caretaker Government by its mandate provided by Section 230(a) of Election Act, 2017 was empowered to manage and take necessary steps to cater to the situation of wheat as the same related to the day to day matters necessary to run the affairs of the Government and the fixing of wheat price was within the jurisdiction and powers of the said Government.

iii) It is not the vested right of individuals or public at large i.e. consumers to claim that subsidy should be mandatorily provided to them in purchase of wheat or flour, hence, this Court in the absence of any law or policy justifying the same cannot issue direction to respondents to provide the same to the consumers at subsidized rates.

iv) The supply of flour free of cost to the underprivileged cannot be called in question before this Court as it is for the Government to provide the people living below poverty line with sources for providing them with food and for that purpose if the situation so demands.The Government can provide flour free of cost to the people who cannot purchase the same from their own sources, because Government is authorized to make such classifications if the situation so requires.

Conclusion: i) The pricing of a commodity involves several factors. It thus falls within the exclusive domain of the executive branch of the State. The jurisdiction of the Court is not to interfere in policy decisions based on factual issues, unless it is manifest that such policy decisions were patently illegal or manifestly unreasonable being the outcome of arbitrary exercise of power and mala fides.

ii) The Caretaker Government had got jurisdiction and could have fixed the prices of wheat by enhancing the previous prices as per its mandate as provided by Section 230(a) of Election Act, 2017.

iii) It is not the vested right of individuals or public at large i.e. consumers to claim that subsidy should be mandatorily provided to them in purchase of wheat or flour.

iv) Supply of flour free of cost under Ramadan package being a policy decision of the Government and not shown to be suffering from any discrimination did not merit to be interfered with by the Constitutional Court.

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21. **Lahore High Court**
Laeeq Ahmad v. Addl. District Judge, Kasur, etc.
W.P. No. 27318 of 2023
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC2301.pdf

Facts: Through this constitutional petition, the petitioner has called in question order passed by learned trial court, whereby application under Order XIV Rule 5, 1 & 2 of the C.P.C filed by the petitioner, was dismissed and has also called in question judgment passed by learned Addl. District Judge, whereby revision petition filed by the petitioner against the afore-referred order was also dismissed.

Issues: i) Whether failure to frame any issue or framing of an omnibus issue at trial stage nullifies the trial?
ii) Whether a party can stress for framing of a particular issue?
iii) Whether court can take into consideration the effect of changed circumstances while finally deciding the case?

Analysis: i) Failure to frame one or other issue at trial stage, in circumstances of case would not have the effect of nullifying the trial, and the Parties were required to lead evidence keeping in view the precise grounds pressed by them and no prejudice would be caused to parties due to framing of an omnibus issue by trial court. Moreover, it was also held that it was the duty of parties to get proper issues framed, if they had any objection or suggestion regarding framing of issues.
ii) It is not the vested right of a party to stress for framing of a particular issue if such a plea is not raised through its pleadings and where the court is convinced that the same does not arise from the pleadings or any other material available on the record, the said court can refuse to frame the issue requested to be framed by a party.
iii) The court can always take into consideration the effect of the said statement while finally deciding the matter as court is competent to determine all the matters pending adjudication before it while also taking into consideration the effect of changed circumstances in order to meet the ends of justice.

Conclusion: i) Failure to frame one or other issue at trial stage would not have the effect of nullifying the trial and no prejudice would be caused to parties due to framing of an omnibus issue.
ii) It is not the vested right of a party to stress for framing of a particular issue if such a plea is not raised through its pleadings.
iii) Court is competent to determine all the matters pending adjudication before it while also taking into consideration the effect of changed circumstances in order to meet the ends of justice while finally deciding the matter.

22. **Lahore High Court**
Ahmad Ali v. Addl. Sessions Judge, etc.
Cr. Misc. No.60827-M of 2022
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2353.pdf

Facts: Through this petition filed u/s 561-A Cr.P.C. the petitioner has impugned the dismissal orders of his superdari application regarding vehicle in question, passed by learned Magistrate 1st Class and learned Addl. Sessions Judge.

Issues: i) Whether vehicle of tampered chassis and engine number can be allowed to be given on superdari even the claimant is owner?
ii) Whether any person who has purchased the vehicle without taking due care in accordance with law, can claim to be bona fide purchaser?

Analysis: i) The owner was not entitled to retain or get superdari of the vehicle which has been declared as having been with tampered chassis number.
ii) If the petitioner has purchased the vehicle in question without taking due care and in compliance with the requirements of law, he cannot be claimed to be a bona fide purchaser and at the maximum, he can claim damages from the person from whom he had purchased the same.

Conclusion: i) Vehicle of tampered chassis and engine number cannot be allowed to be given on superdari even the claimant is owner.
ii) Any person who has purchased the vehicle without taking due care in accordance with law, cannot claim to be bona fide purchaser.

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23. **Lahore High Court**
Dr. Ummara Munir v. Federation of Pakistan through Secretary Ministry of National Health Services, Regulation & Coordination (NHRSR&C), Government of Pakistan, Islamabad & others.
W.P. No. 82061/2022
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC2439.pdf

Facts: Petitioners had requested for grant of exemption from the requirements of FCPS Part-I but declined, by CPSP in wake of change in the exemption rules, notified through impugned Notification. Petitioners seek judicial review of the decision(s) of CPSP under the doctrine(s) of 'legitimate expectation / promissory estoppel'.

Issues: i) What are the requisite conditions / requirements for determining the applicability of doctrine of legitimate expectation, under judicial review jurisdiction?
ii) Whether before seeking benefit of doctrine of legitimate expectation, petitioners have to prove their entitlement?

iii) Whether unwarranted intrusion in the policy domain, in exercise of judicial review jurisdiction, would be construed as fetter on the exercise of discretion?

Analysis: i) Applicability of doctrine of legitimate expectation is subject to the fulfillment of certain conditions, exceptions and relevant qualifications. Requisite conditions / requirements for determining the applicability of doctrine of legitimate expectation, under judicial review jurisdiction, are summed up as; making of specific representation, likely recipient of the representation made, either an individual or group of persons, detriment caused in wake of reliance on the representation, circumstances / factors for change / withdrawal of representation, if so made and acted upon, overriding public interest in case promise is reneged, case of apparent unfairness, unreasonableness and misuse of power.

ii) I find specific representation, promise or assurance conspicuous by its absence. Exemption rules were changed, and such change was not directed towards the petitioners specifically, but the policy was revised in general, applicable to a class / category of persons – aspirants for achieving FCPS Part-I. No individual prejudice is caused or convincingly pleaded. It is for the petitioners to prove entitlement before seeking benefit of doctrine of legitimate expectation. Petitioners failed to establish such entitlement.

iii) The scope of judicial review jurisdiction can certainly be extended to adjudge factum of allegations of unreasonableness – comparatively in the context of principles of Wednesbury reasonableness test or abuse of authority and unfairness in the purported exercise of authority by the public body, affecting alleged private rights, but not otherwise. And unwarranted intrusion in the policy domain, in exercise of judicial review jurisdiction, would be construed as fetter on the exercise of discretion, which encroachment is deprecated.

Conclusion: i) Requisite conditions / requirements for determining the applicability of doctrine of legitimate expectation, under judicial review jurisdiction, are summed up as; making of specific representation, likely recipient of the representation made, either an individual or group of persons, detriment caused in wake of reliance on the representation, circumstances / factors for change / withdrawal of representation, if so made and acted upon, overriding public interest in case promise is reneged, case of apparent unfairness, unreasonableness and misuse of power.

ii) Before seeking benefit of doctrine of legitimate expectation, petitioners have to prove their entitlement.

iii) Unwarranted intrusion in the policy domain, in exercise of judicial review jurisdiction, would be construed as fetter on the exercise of discretion, which encroachment is deprecated.

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24. **Lahore High Court**
Mian Zohaib Aslam Advocate v. Returning Officer and another
Election Appeal. No.01 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC2170.pdf

Facts: This election appeal has been filed by the Appellant under Section 63 of the Elections Act, 2017 read with Rule 54 of the Election Rules, 2017 for setting aside the order dated passed by the Respondent /Returning Officer, who rejected the objections filed by the Appellant by accepting the nomination papers of the Respondent.

Issues: i) What is the concept of the Expression "a court of law"?
ii) Whether a permanent disqualification under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 requires a definite declaration by any competent Court of law?

Analysis: i) The expression "a court of law" has not been defined in Article 62 or any other provision of the Constitution but it essentially means a court of plenary jurisdiction, which has the power to record evidence and give a declaration on the basis of the evidence so recorded. Such a court would include a court exercising original, appellate or revisional jurisdiction in civil and criminal cases.
ii) A plain reading of the Article makes it abundantly clear that the Constitution requires a declaration by a court of law for the candidate to be termed as being not sagacious, righteous, non-profligate, honest and ameen.

Conclusion: i) The expression "a court of law" means a court of plenary jurisdiction, which has the power to record evidence and give a declaration on the basis of the evidence so recorded.
ii) The Constitution requires a declaration by a court of law for the candidate to be termed as being not sagacious, righteous, non-profligate, honest and ameen.

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25. **Lahore High Court**
Saif Ullah v. Muhammad Shafique Chief Officer (DC,R.Y.Khan) Returning Officer PP-261 Rahim Yar Khan-VII.
Election Appeal No.03 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC2165.pdf

Facts: This election appeal has been filed by the Appellant under Section 63 of the Elections Act, 2017 read with Rule 54 of the Election Rules, 2017 for setting aside the order passed by the Respondent Returning Officer, who rejected the nomination papers of the appellant.

Issues: i) What is qualification of proposer and/or seconder to subscribe to the nomination paper?
ii) Whether a proposer with expired C.N.I.C is disqualified to subscribe to the

nomination paper?
iii) Whether Election Tribunal could make determination as to signatures without having referred the matter to an expert?

Analysis: i) Proposer and/or seconder are not defined anywhere in the Act ibid or the 2013 Rules, therefore, it would appear that the only qualification of a proposer and/or seconder are that he/she be a voter of the constituency. (…) The requirement of being qualified to subscribe to the nomination paper as a proposer, therefore, is that the proposer must be a voter of that constituency for which the candidate aspires to be elected as a member.
ii) When an expired Computerized National Identity Card (C.N.I.C) of a person is deemed to be valid for the purpose of his registration as a voter, then a proposer whose Computerized National Identity Card (C.N.I.C) is expired at the time of subscribing to the nomination paper or at the time of scrutiny of the nomination paper of a candidate, the proposer or the seconder cannot be termed as not qualified to subscribe to the nomination paper for that reason.
iii) With regard to the observation of the Returning Officer, Constituency PP-261, Rahim Yar Khan -VII that the signatures on the Computerized National Identity Card (C.N.I.C) of Ghulam Fareed were different from the signatures of Ghulam Fareed available on FORM A, it is observed that such determination could not have been made by the Returning Officer, Constituency PP-261, Rahim Yar Khan -VII without having referred the matter to an expert. (…) Insofar as Article 84 is concerned, we are of the view that keeping in mind the requisite standard of proof it is unsafe for the Court (which would here include an election tribunal) to itself carry out a visual examination and comparison of the record. In election matters, if at all such an exercise has to be carried out, it must be referred to expert opinion (which would here include the opinion of any relevant regulatory body or authority such as NADRA). The totality of the evidence must be considered only while taking such report into account and applying the requisite standard.

Conclusion: i) Proposer and/or seconder are not defined anywhere in the Elections Act, 2017 or the Election Rules, 2017. Only qualification of a proposer and/or seconder is that he/she must be a voter of that constituency for which the candidate aspires to be elected as a member.
ii) A proposer whose Computerized National Identity Card is expired at the time of subscribing to the nomination paper, cannot be termed as not qualified to subscribe to the nomination paper for that reason.
iii) Determination as to signatures could not be made by the Returning Officer, without having referred the matter to an expert.

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26. **Lahore High Court**
Ishtiaq Saleem v. Syed Zulfiqar Ali Shah (deceased) through L.Rs & others.
Civil Revision No.618-D of 2009/BWP
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC2369.pdf

Facts: Through this civil revision, the petitioner has challenged the validity of the judgment & decree passed by the learned appellate court, whereby while accepting the appeal of respondents decreed their suit for specific performance of an agreement to sell.

Issues: i) Whether pleadings are evidence themselves?
ii) Whether in contracts relating to immovable property time is essence of contract?
iii) Whether failure to perform part of contract by the date fixed in the agreement to sell i.e., for payment of remaining consideration amount is a ground for refusing relief of specific performance?
iv) Whether intention to make time the essence of the contract must be expressed in unmistakable language?
v) Whether it is incumbent upon the Court to decree every suit for specific performance?
vi) Whether discretionary relief can be denied to a bona fide and vigilant litigant, merely because of his pending lis for many years?
vii) Whether Increase of price of the property during pendency of cause in courts, ipso facto disentitles the purchaser to seek discretionary relief of specific performance?
viii) What procedure would be governed, when statute governing proceedings does not prescribe period of limitation?
ix) Whether benefit of section 5 of limitation act can be availed when governing statutes itself provide limitation?
x) Whether limitation is a mere technicality?

Analysis: i) There is no cavil with the proposition that pleadings are not evidence themselves and the facts pleaded in the pleadings should be proved through evidence.
ii) It is well-settled principle of law that in contracts relating to immovable property time is not essence of contract. Merely an express provision in agreement specifying certain time limit for performance of contractual undertaking on part of promisee/vendee in case of sale of immovable property, would not make specified time as essence of contract in absence of any such specified intendment from construction of document of contract. In the absence of a provision in the agreement to sell an immovable property that the time fixed for performance of the contract is to be treated as the essence of contract, the time fixed for performance of the contract is not treated as the essence of contract.
iii) The failure to perform part of contract by the date fixed in the agreement to sell i.e., for payment of remaining consideration amount is not a ground for refusing relief of specific performance unless the circumstances must be highlighted and proved by the owner-vendor of the land that time is essence of the contract. There is no cavil with the proposition that where defendant found to have committed breach of contract, it is not obligatory on the part of plaintiff to

prove his willingness to perform it. Section 55 of the Contract Act, 1872 deals with the effects of the failure of a party to perform its part of the contract where time is essence of the contract and the contracts where the time is not the essence of the contract.

iv) Intention to make time of the essence of the contract must be expressed in unmistakable language and it can be inferred from what passed between the parties before but not after the contract is made. A mere mention of a specified period in an agreement for completion of sale and payment of balance consideration amount would not make the time as essence of the contract unless it is expressly intended by the parties and the terms of the contract do not permit any other interpretation.

v) There is no cavil with the proposition that it is not incumbent upon the Court to decree every suit for specific performance if the circumstances of the case require otherwise.

vi) Section 22 of the Specific Relief Act, 1877 deals with discretion to grant of decree for specific performance. A perusal of above-quoted provision shows that grant of decree for specific performance is discretionary in nature and such discretion should be justly exercised. It is relevant to note over here that discretionary relief cannot be denied to a litigant, who otherwise is vigilant always ready and willing to perform his part of obligation, merely because his lis remained pending for many years in the court.

vii) Increase of price of the property during the time when causes remain pending in courts, not ipso facto disentitles the purchaser to seek discretionary relief of specific performance. Rise in the price of the property may be relevant factor in denying the relief of specific performance, keeping in view the conduct of the vendee, date of agreement of sale, time agreed to performance and time of filing of the suit before trial court.

viii) If Statute governing proceedings does not prescribe period of limitation then proceedings instituted there under would be governed by Limitation Act, 1908.

ix) Where law under which proceedings have been instituted prescribes period of limitation then benefit of section 5 of the said Act cannot be availed unless the same had been made applicable as per section 29(2) of the Limitation At, 1908. As Section 115 of C.P.C. itself prescribes 90 days for filing a revision petition, therefore, provision of section 5 of the Limitation Act was not available for condonation of delay or extension of time.

x) The limitation is not a mere technicality and once it expires, the right accrued in favour of the other side by operation of law cannot lightly be taken away. It is well entrenched by now that delay defeats equity and the favors the vigilant and not the indolent.

Conclusion: i) Pleadings are not evidence themselves.

ii) In contracts relating to immovable property time is not essence of contract.

iii) Failure to perform part of contract by the date fixed in the agreement to sell i.e., for payment of remaining consideration amount is not a ground for refusing relief of specific performance subject to certain extra ordinary circumstances.

iv) Yes, intention to make time the essence of the contract must be expressed in unmistakable language.
v) It is not incumbent upon the Court to decree every suit for specific performance.
vi) The discretionary relief cannot be denied to a bona fide and vigilant litigant, merely because of his pending lis for many years in the courts.
vii) Increase of price of the property during pendency of cause in courts, not ipso facto disentitles the purchaser to seek discretionary relief of specific performance keeping in view the conduct of the vendee.
viii)The procedure of Limitation Act, 1908 will be governed when statute governing proceedings does not prescribe period of limitation.
ix) The benefit of section 5 of the Limitation Act, 1908 cannot be availed when governing statutes itself provide limitation.
x) The limitation is not a mere technicality.

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27. **Lahore High Court**
Muhammad Azam v. Muhammad Anwar Khan and 6 others
Civil Revision No. 50670 of 2020
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC2309.pdf

Facts: The petitioner filed this civil revision u/s 115 of CPC against order passed by trial court vide which application of petitioner for grant of permission to file list of witnesses was dismissed.

Issues: i) In what circumstances court can excuse the omission to provide list of witnesses within seven (07) days of settlement of issues and allow a party to file a list of witnesses?
ii) What would be status of affidavit of litigant (annexed with application) having no possibility of having knowledge of facts stated in application?

Analysis: i) Order XVI Rule 1 of the Code requires the parties to provide list of witnesses within seven (07) days of settlement of issues. If omission in this regard has taken place, it is imperative to obtain permission of the Court. The concerned Court is required to see availability of 'good cause' for excuse from such omission, keeping in view fact of each case and the attending circumstances. If the Court is satisfied as to availability of good cause then the permission can be granted for which reasons are required to be recorded. The parties cannot be granted such permissions, at belated stage, as a matter of right or as a matter of course, without assigning or establishing 'good cause'.
ii) To make out a prima facie case as stated in application that an official of the Court neglected his duty or misplaced a document, an affidavit of a person who could not even depose as to those facts, is certainly based on hearsay and the same is not sufficient to justify the cause stated in application…

Conclusion: i) If the Court is satisfied as to availability of good cause for excuse from

omission to provide list of witnesses within seven (07) days of settlement of issues then the permission can be granted for which reasons are required to be recorded.

ii) An affidavit of a person (annexed with application) who cannot even depose as to facts stated in application is certainly based on hearsay and the same is not sufficient to justify the cause stated in application.

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28. **Lahore High Court**
Muhammad Aslam v. The State etc.
Criminal Appeal No. 255528/2018
Muhammad Yousaf v. Muhammad Aslam, etc.
Criminal Revision No. 255777/2018
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2276.pdf

Facts: The appellant was convicted for offences under Sections 302/34 PPC, at the conclusion of trial by Additional Sessions Judge and sentenced to Rigorous Imprisonment for life and to pay the compensation to the legal heirs of deceased under Section 544-A Cr.P.C. and in default thereof to further undergo simple imprisonment for six months along with benefit of Section 382-B Cr.P.C. The appellant filed criminal appeal against his conviction while the complainant filed separate criminal revision and sought enhancement of sentence of convict.

Issues: i) Whether presence of blackening shows that fire shot from close-range?
ii) Whether maxilla bone is one of the hardest bones of the body and can cause a ricocheting effect to the bullet?
iii) What will be the effect upon case of prosecution when the weapon of offence does not match with the recovered bullet from dead body?
iv) Whether FIR is a substantive piece of evidence, and it can be relied upon to the level that mere on the basis of averments in FIR one could be convicted?
v)Whether in the absence of any evidence in support of motive, mere stating it in FIR can cater to the requirement of due evidence?
vi) What is polygraph test?
vii) Whether polygraph test is an intrusion to personal liberty?
viii) Whether in polygraph test there is scope for error on account of several factors?
ix) Whether findings of polygraph test can be equated with admission of guilt?
x) Whether provisions of law support the evidentiary value of polygraph test as a modern device?
xi) Whether level of skill and experience of the examiner plays an important part in the accuracy of the polygraph test examination?

Analysis: i) If it was a distant fire with inter se distance of 11 feet with no exit wound then in that case, there must be no blackening and burning because it is not possible beyond 3 or 4 feet. The presence of blackening shows that it was a close-range fire…

ii) It is true that maxilla bone is one of the hardest bones of the body and can cause a ricocheting effect to the bullet.

iii) Even it was possible due to ricocheting effect couple with the fact that velocity of a pistol shot is usually up to '145 miles per hour' whereas of rifle is '120 miles per second to 370 miles per second' in black powder muskets. So, this difference is not only of digits but of hours and seconds as well. This anomaly as to whether fire hit with a rifle or pistol was easy to settle if checked as to whether lead bullet recovered from the body of deceased stood matched with which weapon of offence...This fact has left the prosecution barren of evidence on this score.

iv) It is trite that FIR is not a substantive piece of evidence, and it cannot be relied upon to the level that mere on the basis of averments in FIR one could be convicted, therefore, unless an independent corroboration is available, FIR would remain only an evidence of relevant fact. This principle of law is embodied in Article 49 of Qanun-e-Shahadat Order, 1984. Though entry in any public or other official book or register about fact in issue or relevant fact is admissible evidence as a relevant fact but conviction cannot be based on FIR.

v) In the absence of any evidence in support of motive, mere stating it in FIR does not cater to the requirement of due evidence. It is trite that though the prosecution is not required to prove motive in every case, yet the same, if set up, should be proved through independent source of evidence other than the words of mouth and in case of failure to do so, the prosecution should have faced the consequences and not the defence.

vi) A polygraph, often incorrectly referred to as a lie detector test, is a device or procedure that measures and records several physiological indicators such as blood pressure, pulse, respiration, and skin conductivity while a person is asked and answers a series of questions. The belief underpinning the use of the polygraph is that deceptive answers will produce physiological responses that can be differentiated from those associated with non-deceptive answers. In the method, the examiner typically begins polygraph test sessions with a pre-test interview to gain some preliminary information which will later be used to develop diagnostic questions. Then the tester will explain how the polygraph is supposed to work, emphasizing that it can detect lies and that it is important to answer truthfully.

vii) All over the world in the past there was serious criticism over polygraph test as being inconclusive while an intrusion to personal liberty and was suggested that it should not be conducted without the consent because otherwise it opposes to fundamental right of protection against self- incrimination. A significant criticism of polygraphy is that sometimes the physiological responses triggered by feelings such as anxiety and fear could be misread as those triggered by deception but it can be a best investigative tool to take a lead for collection of directed evidence.

viii) Though there are some studies showing improvements in the accuracy of results with advancement in technology, there is always scope for error on account of several factors. Objections can be raised about the qualifications of the

examiner, the physical conditions under which the test was conducted, the manner in which questions were framed and the possible use of `countermeasures' by the test subject. An objection can be raised that through polygraph test, a truth is extracted technically and some time by asking misleading questions, or through promise or without warning etc., therefore, it would be not relevant as being involuntary.

ix) True, findings of polygraph test cannot be equated with admission of guilt and does not provide a ground for conviction solely on such findings but more or less it being confession can be considered a relevant fact in conjunction with other evidence on the record. Admissibility of polygraph test being opinion of an expert has been tracked in the light of provisions of QSO, 1984 in the sense that truth extracted through polygraph test is like listening an extra judicial confession, burden to prove such confession is always on prosecution as per Article 119 of QSO, 1984.

x) In our regime, certain provisions of law support the evidentiary value of polygraph test and give it a legal cover as a modern device. Like an opinion of investigating officer in the form of report u/s 173 Cr.P.C., Polygraph test is also an investigative technique conducted by an expert and opinion of an expert on any subject is a relevant fact as explained under Article 59 of Qanun-e-Shahadat Order, 1984. Opinion of such experts are always subject to judicial scrutiny, therefore, in Article 65 of QSO, 1984, it has been explained that grounds of opinion shall also be relevant. Therefore, report of polygraph test should not be thrown away from consideration and best course can be the summoning of expert if any confusion arises while drawing inferences from such report.

xi) Based on the studies now available, experts assess the accuracy of polygraph examinations administered by a competent examiner to be about 90%. Level of skill and experience of the examiner plays an important part in the accuracy of the examination. Comparative studies have shown that polygraph tests yield an accuracy that equals or exceeds that of many other forms of evidence.

Conclusion: i) Yes, presence of blackening shows that fire shot from close-range.

ii) Yes, maxilla bone is one of the hardest bones of the body and can cause a ricocheting effect to the bullet.

iii) When the weapon of offence does not match with the recovered bullet from dead body than this fact will leave the prosecution barren of evidence on this score.

iv) FIR is not a substantive piece of evidence, and it cannot be relied upon to the level that mere on the basis of averments in FIR one could be convicted.

v) In the absence of any evidence in support of motive, mere stating it in FIR does not cater to the requirement of due evidence.

vi) A polygraph, often incorrectly referred to as a lie detector test, is a device or procedure that measures and records several physiological indicators and a useful investigative technique.

vii) Yes, polygraph test is an intrusion to personal liberty except in the cases

where examinee gives his/her consent before its conducting.
viii) Yes, in polygraph test there is always scope for error on account of several factors even though there are some studies showing improvements in the accuracy of results with advancement in technology.
ix) Findings of polygraph test cannot be equated with admission of guilt.
x)Yes, certain provisions of law support the evidentiary value of polygraph test and give it a legal cover as a modern device.
xi) Yes, level of skill and experience of the examiner plays an important part in the accuracy of the polygraph test examination.

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29. **Lahore High Court**
Mst. Kaneez Batool v. Allah Bukhsh and another
Civil Revision No.40110/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC2290.pdf

Facts: The respondents/judgment debtors filed objection petition primarily on the ground that the decree has become inexecutable as the respondents/judgment debtors have become co-sharers in the khata/khewat in which the disputed property falls. The objection petition was dismissed, by the Executing Court against which appeal was preferred by the respondents/judgment debtors that was allowed. The present Civil Revision was filed by the petitioner against order passed by the appellate court.

Issues: i) Whether a decree for possession against an illegal occupant becomes inexecutable for the reason that the said occupant has purchased the share from a co-sharer of the decree holder, in a joint khata/khewat, during the pendency of the execution proceedings?
ii) Whether questions relating to the executability of an order or decree can be raised in execution proceedings?

Analysis: i) In case reported as "Ramdas v. Sitabai and others" [(2009) 7 SCC 444], it has been held that without there being any formal partition of a property, a co-sharer cannot put a vendee in possession even though such cosharer may have a right to transfer his individual share. Thus, the right of the vendee from a co-sharer in a joint khata/khewat is always subject to the partition whereby the share of the co-sharers is divided by metes and bounds for which the respondents/judgment debtors, and not the petitioner, will have to approach the learned Civil Court concerned by instituting an independent suit as the learned Executing Court is only vested with the power and jurisdiction in terms of Section 47 of the Code of Civil Procedure, 1908 to determine and decide those questions between the parties to the suit or their representatives which are germane to execution, discharge or satisfaction of the decree and purchase of share from a purported cosharer in a joint khata/khewat is not such question as the said purchase of the share from a co-sharer does not nibble away the decree passed in favour of the petitioner that

has attained finality. Needless to mention that the learned Executing Court cannot travel beyond decree and this Court is well aware of the fact that this rule is not absolute or invariable rule of law rather the same is subject to certain exceptions as expounded by the Courts. (…) Had the share and/or possession of the suit property sought by the decree holder been indeterminate and/or undefined and the decree holder as a co-sharer sought possession in the joint khata/khewat, the decree could have been considered to have become inexecutable on account of indeterminate share.

ii) Even in the execution proceedings questions relating to the executability of an order or decree can be raised and it is open to the party against whom it is sought to be executed to show that it is null and void or had been made without jurisdiction or that it is incapable of execution.

Conclusion: i) If the share and/or possession of the suit property sought by the decree holder is indeterminate and/or undefined and the decree holder as a co-sharer sought possession in the joint khata/khewat, the decree could have been considered to have become inexecutable on account of indeterminate share. Share, in the joint khata/khewat, cannot be taken as a tool to defeat the decree of the decree holder with respect to already determinate share.

ii) Yes, questions relating to the executability of an order or decree can be raised in execution proceedings.

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30. **Lahore High Court**
Mst. Sadaf Rasheed v. Senior Civil Judge, etc.
Writ Petition No. 81201 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC2265.pdf

Facts: The petitioner has assailed the order passed by the Senior Civil Judge (Family Division), whereby application of the petitioner for setting aside ex-parte judgment and decree was dismissed.

Issue: i) Whether the determination of welfare of the minor can be made in the absence of proper service and adequate opportunity of hearing granted to the parties?

ii) Whether the factual controversy qua residential address of the party and his / her service can be decided without framing issues and recording evidence?

Analysis: i) In the absence of proper service and adequate opportunity of hearing granted to both sides, any determination of welfare of the minor cannot be termed as lawful and satisfying the requirement of fundamental right to fair trial as guaranteed under Article 10A of the Constitution of Islamic Republic of Pakistan, 1973.

ii) Without framing issues and recording evidence, the Court below has decided the factual controversy qua residential address of the petitioner while relying on photocopy of the petitioner's alleged second marriage in Khanewal district, produced by the counsel for respondent No.2. The Court below has also presumed

petitioner's knowledge of proceedings and service of summons on the basis that notice along with registered envelope AD were sent on her Khanewal address and that notice was also published in the newspaper daily "Dunya", Multan. Undeniably, neither the process server was produced as a witness in the instant case to establish personal service of summons under Section 8 of the Family Courts Act, 1964 upon the petitioner in accordance with law nor any reference to his report to the said effect has been made in the impugned order as well as the judgment and decree sought to be reviewed. Furthermore, in the absence of any acknowledgment due available on record, service of the notice has been presumed by the Court below merely on the basis of postal receipt available on record. Without establishing on record that the petitioner could not be served personally, reliance on publication of the notice could not be considered safe to presume service of the petitioner.

Conclusion: i) The determination of welfare of the minor cannot be made in the absence of proper service and adequate opportunity of hearing granted to the parties.

ii) The factual controversy qua residential address of the party and his / her service cannot be decided without framing issues and recording evidence.

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31. **Lahore High Court**
Asim Jamshaid. v Shahzad Iqbal Malik, etc.
R.S.A. No.64508 of 2022.
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC2269.pdf

Facts: Through this regular second appeal, the appellant/ plaintiff has assailed the judgments and decrees passed by the Civil Judge 1st Class, and Additional District Judge, whereby specific performance of agreement to sell was refused, however, defendant No.1 was directed to pay double the earnest money to the plaintiff alongwith profit at bank rate from the date when the earnest money was paid alongwith return of the remaining amount of consideration deposited in the Court by the appellant.

Issues: i) Whether compensation can be claimed by the person suing for specific performance of contract?
ii) How the discretion for grant of relief of specific performance of contract can be exercised?
iii) In case of non-performance, who is duty bound to prove readiness and willingness to perform his part of contract?

Analysis: i) Section 19 of the Specific Relief Act, 1877 gives right to claim compensation to the person suing for specific performance of contract in addition to or in substitution for its breach.
ii) It is well settled that the grant of relief of specific performance of contract is discretionary in nature which cannot be exercised arbitrarily. The Courts are not

bound to grant relief of specific performance of contract merely because it is lawful to do so. It is essentially an equitable relief and can be declined if the Court reaches the conclusion that it is unjust and inequitable to do so. This principle has been provided in section 22 of the Specific Relief Act, 1877.

iii) In case of non-performance of the contract, the primary responsibility to show readiness and willingness to perform his part of the obligation is that of the person who is seeking the relief of specific performance of the contract.

Conclusion: i) Section 19 of the Specific Relief Act, 1877 gives right to claim compensation to the person suing for specific performance of contract.

ii) It is well settled that the grant of relief of specific performance of contract is discretionary in nature which cannot be exercised arbitrarily.

iii) The primary responsibility to show readiness and willingness to perform his part is that of the person who is seeking the relief.

LATEST LEGISLATION/AMENDMENTS

1. The Punjab Place of Provision of Service Rules, 2023, have been prescribed for determination of place of provision of taxable services specified in these Rules.
2. The Punjab Home Department (Management Information System Employees) Service Rules 2023 have been made to provide for method of recruitment.
3. Vide Notification No. 690/Ad-VII, dated 04.02.2022, amendments have been made in the schedule of the Punjab Police Special Branch (Technical Cadre) Service Rules 2016
4. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, rate of water (Abiana) for various perennial and non-perennial canals has be revised.
5. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the drainage charges on all lands benefitting from a drainage and Reclamation Scheme have been revised
6. Vide Notification No. 63 of 2023 issued by Government of Punjab Law and Parliamentary Affairs Department dated 11-04-2023, Notification No.SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023 has been published
7. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for canal water for non-irrigation uses has been revised
8. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for canal water supplied for drinking and ordinary domestic use has been revised
9. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for water supplied to any cooling system of an industrial unit has been revised

10. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for water supplied from a canal for industrial purposes, cement plant has been revised
11. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for water supplied from a canal for industrial purposes, other than cement plant has been revised
12. Vide Notification No. DREP(A-I) 1-1/AA/2019/279 dated 04.04.2023, amendment in the first schedule of Madaaris and Schools Management Board Employees (Appointment and Conditions of Service) Regulations, 2020, has been made.
13. Vide Notification No. SO(CAB-I)2-7/2011 dated 12.04.2023, amendments have been made in first and second schedule of the Punjab Government Rules of Business 2011
14. Vide Punjab Undesirable Cooperative Societies (Dissolution) (Amendment) Ordinance, 2023, amendments have been made in sections 2,7,12 and 26 of the Act I of 1993 while new sections 17A and 17B are inserted along with addition of second schedule.
15. Vide Punjab Criminal Prosecution Service (Constitution, functions and powers) (Amendment) Ordinance, 2023, amendment has been made in section 6 of Act III of 2006
16. Vide Sugar Factories (Control) (Amendment) Ordinance, 2023, amendment has been made in section 13-A of the Act XXII of 1950
17. The Lawyers Welfare and Protection Act, 2023, has been promulgated to make provision and make laws in respect of welfare and protection of advocates

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SELECTED ARTICLES

1. HARWARD LAW REVIEW

https://harvardlawreview.org/print/vol-135/blasphemy-and-the-original-meaning-of-the-first-amendment/

Blasphemy and the Original Meaning of the First Amendment

Until well into the twentieth century, American law recognized blasphemy as proscribable speech. The blackletter rule was clear. Constitutional liberty entailed a right to articulate views on religion, but not a right to commit blasphemy — the offense of "maliciously reviling God," which encompassed "profane ridicule of Christ." The English common law had punished blasphemy as a crime, while excluding "disputes between learned men upon particular controverted points" from the scope of criminal blasphemy. Looking to this precedent, nineteenth-century American appellate courts consistently upheld proscriptions on blasphemy, drawing a line between punishable blasphemy and protected religious speech. At the close of the nineteenth century, the U.S. Supreme Court still assumed that the First Amendment did not "permit the publication

of . . . blasphemous . . . articles." And in 1921 the Maine Supreme Judicial Court affirmed a blasphemy conviction under the state's First Amendment analogue. Even on the eve of American entry into World War II, the Tenth Circuit upheld an anti-blasphemy ordinance against a facial First Amendment challenge. This Note argues that none of the constitutional clauses currently thought to make anti-blasphemy laws unconstitutional — Free Exercise, Free Speech, Establishment — originally prohibited blasphemy prosecutions. In other words, the original public meaning of the First Amendment, whether in 1791 or in 1868, allowed for criminalizing blasphemy.

2. HARWARD LAW REVIEW
https://harvardlawreview.org/print/vol-136/constitutional-remedies-in-one-era-and-out-the-other/

Constitutional Remedies: In One Era and Out the Other by Richard H. Fallon

Despite the ringing dictum of Marbury v. Madison that "every right, when withheld, must have a remedy," rights to remedies have always had a precarious constitutional status. For over one hundred years, the norm was that victims of ongoing constitutional violations had rights to injunctive relief. But the Constitution nowhere expressly prescribes that norm, and recent Supreme Court decisions, involving suits for injunctions and damages alike, have left the constitutional connection between rights and remedies more attenuated than ever before. The Article's central thesis combines empirical and normative aspects: Although the modern Supreme Court has wielded separation of powers arguments to truncate constitutional remedies, the Court's premises are mistaken. The Constitution frequently, though not invariably, requires effective remedies for constitutional rights violations. When Congress fails to authorize such remedies, nothing in the Constitution's history or tradition precludes a role for the Supreme Court in devising remedies that are necessary to enforce substantive rights. If we have entered an era in which a majority of the Justices believe otherwise, the situation is a deeply regrettable one in which the concept of a constitutional right will be cheapened.

3. HUMAN RIGHTS LAW REVIEW
https://academic.oup.com/hrlr/article/23/2/ngad006/7083774

Prisoner Lives Cut Short: The Need to Address Structural, Societal and Environmental Factors to Reduce Preventable Prisoner Deaths by Róisín Mulgrew

The State duty to prevent preventable prisoner deaths is easy to state and substantiate. Yet prisoner death rates are increasing around the world and are often much higher than those in the community. To understand why this is happening, the findings and recommendations of the country reports of international oversight bodies and thematic reports from international rapporteurs are synthesised with contemporary rights-informed penal standards, multi-disciplinary scholarship, non-governmental organization reports and media extracts. On the basis of this knowledge, this reform-

oriented article explores the impact of structural, societal and environmental factors on natural and violent prisoner deaths and how these factors operate cumulatively to create dangerous and life-threatening custodial environments. The paper makes recommendations to reaffirm and enumerate the positive obligation to protect prisoners' lives, develop specialist standards, adopt a broader approach to prison oversight and create a specific United Nations mandate on prisoner rights.

4. STATUTE LAW REVIEW

https://academic.oup.com/slr/article-abstract/40/1/40/5238966?redirectedFrom=fulltext

The Principle of Legality and Legislative Intention by Robert French

Contests about statutory interpretation frequently present courts with constructional choices. The process of choice is primarily volitional. An important principle directing constructional choice to the protection of common law rights and freedoms is the principle of legality. Historically, it is linked to a presumption about legislative intention. The presumption is at odds with contemporary legislative agendas and purports to link choice to a numinous concept of intention which plays no real part in interpretation, save as an after the event declaration of the legitimacy of the choice made. Text informed by context and statutory purpose remains central. The principle of legality properly stands alone without the aid of a presumed legislative intention.

5. ARTIFICIAL INTELLIGENCE AND LAW

https://link.springer.com/article/10.1007/s10506-022-09310-1

Smart Criminal Justice: Exploring the Use of Algorithms in the Swiss Criminal Justice System by Monika Simmler, Simone Brunner, Giulia Canova & Kuno Schedler

In the digital age, the use of advanced technology is becoming a new paradigm in police work, criminal justice, and the penal system. Algorithms promise to predict delinquent behaviour, identify potentially dangerous persons, and support crime investigation. Algorithm-based applications are often deployed in this context, laying the groundwork for a 'smart criminal justice'. In this qualitative study based on 32 interviews with criminal justice and police officials, we explore the reasons why and extent to which such a smart criminal justice system has already been established in Switzerland, and the benefits perceived by users. Drawing upon this research, we address the spread, application, technical background, institutional implementation, and psychological aspects of the use of algorithms in the criminal justice system. We find that the Swiss criminal justice system is already significantly shaped by algorithms, a change motivated by political expectations and demands for efficiency. Until now, algorithms have only been used at a low level of automation and technical complexity and the levels of benefit perceived vary. This study also identifies the need for critical evaluation and research-based optimization of the implementation of advanced technology. Societal implications,

as well as the legal foundations of the use of algorithms, are often insufficiently taken into account. By discussing the main challenges to and issues with algorithm use in this field, this work lays the foundation for further research and debate regarding how to guarantee that 'smart' criminal justice is actually carried out smartly.

LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(01-05-2023 to 15-05-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Snamprogetti Engineering B.V. thr. its special attorney v. Commissioner of Inland Revenue Zone-II, L.T.U, Islamabad, etc.
Civil Petitions No.3286 to 3289 of 2017
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3286_2017.pdf

Facts: The petitioner a company incorporated in the Netherlands, entered into an engineering contract with a company incorporated in Pakistan, to provide "engineering services" and filed tax returns for tax years 2007, 2008 and 2009, declaring that the income arising from such engineering services was exempt from being taxed under the domestic tax regime of Pakistan. The tax returns were treated as assessment orders deemed to have been issued in terms of Section 120(1) of the Ordinance. The department took exception to the exemption claimed by the petitioner. Show cause notices were issued to the petitioner. The Assessing Officer amended the assessment orders. Tax was consequently ordered to be charged on the income which had been declared exempt by the petitioner. The decision of the Assessing Officer was set aside by the Commissioner (Appeals) which was reversed by the Tribunal and it was then maintained by the High Court. Hence, the petitioner seeks leave of Court to appeal against the decision of the High Court.

Issues: i) What is aim of international taxation treaties and how their provisions can be interpreted?
ii) When the business profits of an enterprise of one of the states can be taxable in the other state?
iii) How the term 'permanent establishment' can be defined under Convention signed and enforced by Pakistan and the Netherlands in 1982?
iv) How time period can be calculated to constitute permanent establishment as per clause 4 of article 5 of the Convention, 1982?

Analysis: i) International taxation treaties aim to avoid and relieve double taxation through equitable (and acceptable) distribution of tax claims between the countries. The purpose of these treaties has significant relevance as to how their provisions are to be interpreted. The reason is that the efficacy of such treaties depends on common and workable interpretation of the treaty terms. Such an interpretation requires taking into consideration the international tax language and terminology and placing reliance on legal decisions and practices in other countries, where appropriate, because these materials form part of the legal context. Model treaties developed by the Organisation for Economic Co-operation and Development ("OECD") and the United Nations ("UN") to provide standard frameworks of guidance for treaty negotiation, and official commentaries thereon, are of high persuasive value in terms of defining the parameters of double taxation treaties and have world-wide recognition as basic documents of reference in the

negotiation, application and interpretation of multilateral or bilateral tax conventions. Most countries accept the common interpretation principles of the Vienna Convention on the Law of Treaties of 23rd May 1969 ("VCLT") under customary international law, and thus the VCLT and not the domestic law of the contracting states, usually governs the interpretation of such treaties.

ii) The Convention involved in the present case was signed and enforced by Pakistan and the Netherlands in 1982. Its Article 7 provides that the business profits of an enterprise of one of the states shall be taxable in the other state only if the enterprise maintains a permanent establishment in the latter state and only to the extent that the profits are attributable to the permanent establishment.

iii) The term 'permanent establishment' is dealt with under Article 5 of the Convention. The structure of this Article as per the OECD and UN Model Conventions has been explained in Klaus Vogel's treatise, which is regarded as the international gold standard on the law of tax treaties, as a multi-level structure and can be read from more than one starting point. Clause 1 of Article 5 of the Convention gives a general or classic definition of the term permanent establishment as a fixed place of business through which the business of an enterprise is wholly or partly carried on. Clause 2 contains a non-exhaustive list of examples which could be regarded as permanent establishments. Clause 3 expressly provides that a building site, construction, installation, assembly project or supervisory activities constitute a permanent establishment only if they last more than six months. Clause 4 relates to services and provides that the furnishing of services would fall in the ambit of permanent establishment if activities of that nature continue for a period or periods aggregating more than four months within any twelve-month period. Clause 5 lists a number of business activities which are treated as exceptions to the general definition. Clauses 6 and 7 are deeming provisions referring to situations where an enterprise is deemed to have a permanent establishment in one of the states. And, clause 8 provides an instance that a company which is a resident of one of the states and controls or is controlled by a company which is a resident of the other state or which carries on business in the other state shall not of itself constitute either company a permanent establishment of the other.

iv) The language used in Clause 4 of Article 5 of the Convention with respect to time period shows that there may be a number of periods, interspersed with breaks, during which services are furnished by an enterprise. If the aggregate of these periods crosses the threshold of four months within any twelve-month period, a permanent establishment will stand constituted.

Conclusion: i) The aim of international taxation treaties is to avoid and relieve double taxation and interpretation of their provisions require taking into consideration the international tax language and terminology and placing reliance on legal decisions and practices in other countries.

ii) The business profits of an enterprise of one of the states shall be taxable in the other state only if the enterprise maintains a permanent establishment in the latter

state and the profits are attributable to the permanent establishment.
iii) Permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on as per clause 1 of article 5 of the Convention and other clauses give list and instances of permanent establishment.
iv) As per clause 4 of article 5 of the Convention, 1982 if the aggregate of these periods crosses the threshold of four months within any twelve-month period a permanent establishment will stand constituted.

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2. **Supreme Court of Pakistan**
Syed Zahid Hussain Shah v. Mumtaz Ali and others
Civil Appeal No. 2015 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2015_2022.pdf

Facts: Petitioner purchased land regarding which a suit for declaration was filed claiming therein the owners of land (subject matter of suit) being Benami owners but petitioner was not made party to said suit. The petitioner filed an application u/s 12(2) of CPC which was allowed and petitioner was made party to suit. Against this decree the petitioner filed an appeal but he did not affix the applicable court fee on the appeal, as according to him he was suffering from Covid-19, and upon recovery moved an application to condone the delay, which was declined by the learned Judge of the Appellate Court, whose order was assailed before the High Court in Civil Revision and the learned Single Judge of the High Court sustained the order of the Appellate Court.

Issues: i) Whether non-payment of court fees infringes the rights or undermines interest of opposite party in suit etc.?
ii) Whether the cases in which money is due to the opposite-party, such as sale consideration in a suit seeking specific performance of contract, can be equated with cases in which court-fees is not paid or belatedly paid?
iii) Whether judgment should be given without applicable court fee having been paid and time given for payment of court fee in judgment?

Analysis: i) Supreme Court in *Provincial Government v Abdullah Jan* and in *Abdul Khaliq v Haq Nawaz* held that the Court-Fees Act, 1870 is a taxing statute which collects revenue for the State, and that it does not create any right in a party nor extinguishes any party's right. If the court-fees was a right vesting in a party then a court could not waive its payment. However, if a person is financially incapable of paying court-fees the CPC permits filing of a suit without payment of court-fees and the plaintiff therein is enabled to submit an application under Order XXXIII of the CPC to sue as a pauper, that is, without paying court-fees; there is no reason not to apply the same principle to appeals too. If payment of court-fees had created a right in the opposite-party the law would not have permitted entertaining an application (under Order XXXIII CPC) seeking permission to sue

as a pauper and file a suit without court-fees nor empowered the court to grant such application.

ii) The cases in which money is due to the opposite-party, such as sale consideration in a suit seeking specific performance of contract or a statutory provision requiring deposit of the amount in a preemption suit to secure the interest of the purchaser, cannot be equated with cases in which court-fees is not paid or belatedly paid; payment of court-fees is not received by the opposite-party. Non-payment or belated payment of court-fees does not adversely affect the interest of the opposite party.

iii) Legal complications arise if a judgment is given without applicable court-fees having been paid, and parties alter their positions pursuant thereto, for instance the appellant may have proceeded to sell the land which he had purchased and thus create third-party interest therein, which may give rise to additional litigation. Such litigation can be avoided if the matter of court-fees is first settled. Moreover, when courts are inundated with cases, and of those who are keen to proceed with them, it does not stand to reason to waste court-time by deciding a case in which court-fees has not been paid.

Conclusion: i) Non-payment of court fees does not create any right in a party nor extinguishes any party's right.

ii) The cases in which money is due to the opposite-party, such as sale consideration in a suit seeking specific performance of contract, cannot be equated with cases in which court-fees is not paid or belatedly paid.

iii) Judgment should not be given without applicable court fee having been paid and time given for payment of court fee in judgment.

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3. **Supreme Court of Pakistan**
Pakistan Electronic Media Regulatory Authority (PEMRA), Islamabad v. Pakistan Broadcasters Association and another
Civil Appeal No.11 of 2022
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._11_2022.pdf

Facts: This civil appeal is filed against the judgment of High Court of Sindh, whereby the constitutional petition moved by the respondents was accepted and the authority to delegate power of suspension of Broadcast Media licences to the chairman PEMRA was strike down.

Issue: What is the legal requirement to delegate power of suspension of a Broadcast Media licence under section 13 read with section 30 of the PEMRA Ordinance 2002 to the chairman PEMRA?

Analysis: The first proviso had expressly disallowed delegation of four kinds of powers: the grant, suspension, revocation or cancellation of a broadcast licence. The amendments of 2007 reduced the disallowed powers to three, the power of

suspension being excluded. In other words, the power to suspend the licence can now be delegated. The power of suspension, especially in the context of the provision of subsection (3) of s. 30 whereby such power can be exercised without prior notice or hearing "for reason of necessity in the public interest" is simply too powerful and broad an instrument to be entrusted to anyone other than where the statute places it (i.e., in the hands of the Authority itself) on a ground so flimsy as the desire to take "prompt action". In the context of a power to suspend a licence without prior notice or hearing, both "public interest" and "necessity" can be rather malleable terms either of which can be bent hither or thither. The need or desire to take "prompt action", even if legally sustainable, is not to be confused or equated with the "necessity" to take action, especially when such necessity can only exist in the context of public interest. A strong case must be made out and there must be very serious application of mind by the Authority for it to be satisfied that the power of suspension ought to be delegated. Even if the power of suspension is delegated to the Chairman for legally valid and sustainable reasons, the "threshold" for not exercising its "discretion" in relation to the imposition of conditions in relation to such delegation is so high that, as explained, it effectively vanishes. Conditions had to be imposed, and that had to be done by rules.

Conclusion: The delegation could only be in terms of, and subject to, legally relevant and sustainable conditions imposed by rules.

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4. **Supreme Court of Pakistan**
Federation of Pakistan through Secretary, Ministry of Defence Rawalpindi & another v. M/s Farrukh International (Pvt) Ltd through its Proprietor Mrs. Firdous Munawar
Civil Petition No. 3185 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3185_2020.pdf

Facts: The Petitioners filed a suit for recovery of an amount of Rs.912,801.60/- against the Respondent. The Respondent did not contest the suit, therefore, was proceeded against ex parte and the petitioners were asked to produce evidence. Subsequently, the trial court vide judgment and decree dismissed the suit. The appeal filed against the judgment and decree of the trial court was dismissed by the Additional District Judge. Thereafter, the petitioners filed a Civil Revision before the Lahore High Court, which too was dismissed through the impugned judgment, hence, this petition for leave to appeal.

Issues: i) When defendant is proceeded against ex parte, whether court is bound to record evidence or can pass decree without recording evidence?
ii) Whether the term "decree" includes rejection of plaint as well?
iii) Whether requirement to produce two marginal witnesses to prove the documents as required under Article 79 of the Order, 1984 is applicable in cases where the defendant is proceeded against ex parte as well?

iv) If the procedure for production of the document is not followed in the manner prescribed by law, whether the same can be taken into consideration?

Analysis: i) Where on the date of hearing, only the plaintiff appears and the defendant despite being duly served does not appear, the Court by exercising powers under Order IX, Rule 6 of the Code of Civil Procedure ("CPC") may proceed against the defendant ex parte and pass a decree without recording evidence. (…) The Court after proceeding with the defendant ex parte, may determine the rights of the parties either without recording evidence or may call the plaintiff to produce evidence, in order to satisfy itself on arriving at a proper conclusion of the matter presented before it, for the safe administration of justice. Thus, despite non–appearance of the defendant, the Court should not act mechanically, rather ought to consider the legal and factual aspects of the case, on the basis of the material available before it.

ii) As per section 2(2) of the CPC, a "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint as well.

iii) A document which pertains to financial and future obligations is required to be attested by at least two witnesses, as provided by Article 17(2)(a) of the Qanun -e-Shahadat Order, 1984 ("Order , 1984 "). Article 79 of the Order, 1984 mandates that any such document required by law to be attested by two witnesses shall not be used as evidence, save for two attesting witnesses appear before the Court to prove its execution, unless the same is admitted by the contesting parties, as stipulated by Article 81 of the Order, 1984. If the question of execution and attestation of any such document is put in issue by the Court, the party relying upon such document is required to produce its two marginal witnesses in order to prove its execution in accordance with the law. This principle is applicable to all such documents executed between private and/or public parties as well as in cases where the defendant is proceeded against ex parte.

iv) The law has provided a procedure for production of documents through the person concerned along with its original record. If the procedure for production of the document is not followed in the manner prescribed by law, the same cannot be taken into consideration.

Conclusion: i) The Court after proceeding with the defendant ex parte, may determine the rights of the parties either without recording evidence or may call the plaintiff to produce evidence.

ii) "Decree" deems to include the rejection of a plaint as well.

iii) Requirement to produce two marginal witnesses to prove the documents as required under Article 79 of the Order, 1984 is applicable in cases as well where the defendant is proceeded against ex parte.

iv) If the procedure for production of the document is not followed in the manner

prescribed by law, the same cannot be taken into consideration.

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5. **Supreme Court of Pakistan**
Higher Education Commission H/9, Islamabad through its Project Director v. Allah Bakhsh, etc.
Civil Petition No.5877 of 2021
Mr. Justice Syed Mansoor Ali Shah Mrs. Justice Ayesha A. Malik Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5877_2021.pdf

Facts: This civil petition for leave to appeal was filed against the judgement of Islamabad High Court whereby the regular first appeal of the petitioner was dismissed on account of being time-barred.

Issue: Whether the Higher Education Commission has the attributes of a Government and would be governed by Art. 149 of the Limitation Act 1908?

Analysis: A careful reading of Article 149 of the Limitation Act, 1908 clearly reveals that in any suit by or on behalf of the Federal Government or any Provincial Government except a suit before the Supreme Court in the exercise of its original jurisdiction, the period of limitation would be sixty years. The period of limitation time from which the period begins to run is mentioned under Column 3 of the above Article, which reads as follows. "When the period of limitation would begin to run under this Act against a like suit by a private person." This brings us to consider whether the Higher Education Commission, has the attributes of a Government? The Higher Education Commission Ordinance, 2002 brings into being the Higher Education Commission, which is a statutory corporation. It has many qualities, for instance, defined powers that it cannot exceed, and it is directed by a group of persons, collectively known as the Commission, whose function it is to see that those powers are properly used. It may acquire, hold and dispose of property, both movable and immovable, and may sue or be sued. The day-to-day control of the administration is vested in the Chairperson assisted by other officers. It makes its own appointments and has its own recruitment rules. It has an independent account. Its Chairperson, members and officers, servants, consultants and advisers are public servants. All these attributes make it clear that although the Higher Education Commission is owned and funded by the Government, and its Chairperson and members are appointed by the Prime Minister, it is, in the eye of the law, still a separate legal entity and has a separate legal existence. It is its own master and is answerable as fully as any other person or corporation of the State. It is not the Government, nor does it act on behalf of the Government, and as such, does not enjoy any immunity or privileges of the Government.

Conclusion: The Higher Education Commission is an independent legal entity and has an independent legal existence, and thus, would not be governed by Art. 149 of the Limitation Act, 1908.

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6. **Supreme Court of Pakistan**
Salman Zahid v. The State through P.G. Sindh
Criminal Petition No. 263 of 2023
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._263_2023.pdf

Facts: The petitioner through the instant petition has assailed the order passed by the learned Single Judge of the learned High Court, with a prayer to grant post-arrest bail in case FIR registered under Sections 302/337-J/109/34 PPC, in the interest of safe administration of criminal justice.

Issues: i) Whether the statement of the prosecution witnesses recorded at a belated stage has any sanctity?
ii) What is the fundamental principle of universal application in cases dependent on circumstantial evidence?
iii) Whether the benefit of doubt can be extended to the accused at bail stage?

Analysis: i) This is now a well settled proposition of law that any statement of the prosecution witnesses if recorded at a belated stage, it loses its sanctity. Reliance is placed on the judgments reported as Abdul Khaliq Vs. The State (1996 SCMR 1553) and Noor Muhammad Vs. The State (2020 SCMR 1049).
ii) The fundamental principle of universal application in cases dependent on circumstantial evidence is that in order to justify the inference of guilt of an accused, the incriminating fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.
iii) It is settled principle of law that benefit of doubt can be extended even at bail stage. Reliance is placed on Muhammad Ejaz Vs. The State (2022 SCMR 1271), Muhammad Arshad Vs. The State (2022 SCMR 1555) & Fahad Hussain Vs. The State (2023 SCMR 364).

Conclusion: i) The statement of the prosecution witnesses recorded at a belated stage loses its sanctity.
ii) In cases dependent on circumstantial evidence, the incriminating fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.
iii) It is settled principle of law that benefit of doubt can be extended even at bail stage.

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7. **Supreme Court of Pakistan**
Sardar Muhammad (deceased) through LRs v. Taj Muhammad (deceased) through LRs and others
Civil Appeal No. 840 of 2017
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._840_2017.pdf

Facts: The predecessor-in-interest of the appellants filed a suit for possession through pre-emption. The learned trial court dismissed the suit. Then he filed an appeal before the learned Additional Sessions Judge who accepted the appeal and set aside the judgment and decree of the learned Trial Court. Being aggrieved, the respondents/defendants filed Regular Second Appeal before the learned Lahore High Court, who vide impugned judgment accepted the same, set aside the judgment and decree of the learned Appellate Court and restored that of the learned Trial Court. Hence, this appeal.

Issues: i) Whether the right of pre-emption is a very weak right and what are the pre-requisites to file the suit for pre-emption?
ii) Who is to prove that the notice of Talb-e-Ishhad has been delivered to all the defendants and what will be the effect, if not proved?

Analysis: i) There is no denial to this fact that the right of pre-emption is a very weak right. To succeed in a suit for pre-emption the first and the foremost condition is that the plaintiff has to plead that before filing of suit he had fulfilled the requirements of Talabs and thereafter he has to prove the performance of Talb-e-Muwathibat and Talb-e-Ishhad. For proving Talb-e-Muwathibat there must be specific time, date and place of knowledge pleaded in the plaint. Thereafter, the same shall be followed by sending of notice through registered post, which shall be served on the defendants.
ii) In view of the law laid down by this Court, it is the plaintiff/pre-emptor who has to prove that the notice has been delivered to all the defendants. The service of Talb-e-Ishhad is a prerequisite and if the performance of the same is not proved beyond any shadow as well as in the prescribed form, then the whole structure falls on the ground.

Conclusion: i) The right of pre-emption is a very weak right, the pre-emptor has to fulfil the requirements of Talabs and thereafter he has to prove the performance of Talb-e-Muwathibat and Talb-e-Ishhad.
ii) It is the plaintiff/pre-emptor who has to prove that the notice has been delivered to all the defendants and if the performance of the same is not proved then the whole structure falls on the ground.

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8. **Supreme Court of Pakistan**
Muhammad Usman v. The State
Jail Petition No. 148 of 2022
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._148_2022.pdf

Facts: The Petitioner along with co-accused was tried by Judicial Magistrate, Section 30, pursuant to a case registered under Sections 324/337-F(v)/34 PPC for attempting to take life of the complainant and his wife. The Trial Court convicted the petitioner and co-accused and sentenced on various charges. In appeal the Additional District Judge, while acquitting the co-accused, maintained the

conviction of the petitioner and the same was upheld by the High Court. Hence, this petition has been filed by the petitioner against the judgment of High Court.

Issues: i) Whether promptness of FIR excludes possibility of deliberation and consultation?
ii) Whether testimony of an injured eye witness carries more evidentiary value?
iii) What is evidentiary value of a recovered weapon when same is not sent to the Forensic Science Laboratory?

Analysis: i) Promptness of FIR shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation.
ii) The testimony of an injured eye witness carries more evidentiary value.
iii) Although, the weapon of offence i.e. a pistol was recovered from the petitioner but as the same was not sent to the Forensic Science Laboratory, therefore, the recovery is inconsequential.

Conclusion: i) Promptness of FIR excludes possibility of deliberation and consultation.
ii) Testimony of an injured eye witness carries more evidentiary value.
iii) There is no evidentiary value of a recovered weapon when same is not sent to the Forensic Science Laboratory.

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9. **Supreme Court of Pakistan**
Muhammad Ali v. The State and Another
Criminal Petition No. 328 of 2023
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._328_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the learned Single Judge of the Lahore High Court with a prayer to grant post-arrest bail on the statutory ground in a case registered under sections 324/148/149/337-L(i)/337-D/337- F(v)/337-F(iii)/336 PPC.

Issue: What is the first point of consideration for the courts deciding post-arrest bail filed on the statutory ground?

Analysis: The perusal of the record reflects that the complainant party is producing the witnesses before the learned Trial Court on each and every date but the petitioner is avoiding getting their evidence recorded. While deciding bail petition on statutory grounds, the courts must examine the available material to first form an opinion that such delay is not occasioned due to any act of the accused himself or any other person acting on his behalf. If that be so, the bail even on the ground of statutory delay can be declined. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the petitioner has not been able to point out any legal or factual error in the impugned

order, which could be made basis to take a different view from that of the learned High Court.

Conclusion: While deciding bail petition on statutory grounds, the courts must examine the available material to first form an opinion that such delay is not occasioned due to any act of the accused himself or any other person acting on his behalf.

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10. **Supreme Court of Pakistan**
Zaffar Afzal & others v. Ashiq Hussain
Civil Appeal No. 415 of 2018
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._415_2018.pdf

Facts: Through this Civil Appeal, appellants have challenged the judgments and decrees of learned first Appellate Court and the High Court whereby their suit for declaration and cancellation of the disputed mutation on the pretext that it was a result of fraud, was dismissed which was originally decreed by the learned Trial Court.

Issues: i) Whether any person who appears to be of unsound mind, mentally infirm, or intellectually disabled, can protect and safeguard his rights and interests?
ii) How the transaction in respect of rights and interests of a person who is hard of hearing and non-verbal, communicates through signs and expressions and is not intellectually disabled, should be made?

Analysis: i) Any person adjudged or if not so adjudged, appear to be of unsound mind, mentally infirm, or intellectually disabled, is incapable of protecting and safeguarding their rights and interests themselves. Under such circumstances, transaction in respect of rights and interests of such persons must be through next friend or guardian as the case may be, as provided by Order XXXII, Rule 15 of the Code of Civil Procedure ("CPC").
ii) Any transaction in respect of rights and interests of a person(s) who is hard of hearing and non-verbal, communicates through signs and expressions and is not intellectually disabled, must be in the presence of witnesses who can understand, interpret, and express their views. The witnesses to the transaction should preferably be close relatives or anyone who is fully acquainted with such persons. The witnesses to the transaction should be apprised of the consideration of such transaction. It must be ensured that the persons who deal, assist and witness the transaction have no conflict of interest in the matter.

Conclusion: i) Any person adjudged or if not so adjudged, appears to be of unsound mind, mentally infirm, or intellectually disabled, is incapable of protecting and safeguarding his rights and interests himself.
ii) The transaction in respect of rights and interests of a person who is hard of hearing and non-verbal, communicates through signs and expressions and is not intellectually disabled, must be in the presence of witnesses who can understand,

interpret, and express their views.

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11. **Lahore High Court**
Muhammad Abdul Rehman v. Punjab Public Service Commission etc.
Writ Petition No.64123/2022
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2463.pdf

Facts: The petitioners in all these petitions applied for the posts of Assistant Director and posts of Deputy Director of Agriculture and also passed the written test, however, the petitioners' interview calls were cancelled on the ground that the petitioners do not have the required experience for the posts. The petitioners filed Writ Petitions in which as an interim relief, the petitioners were provisionally allowed to appear for interview subject to final outcome of writ petitions. However, in the meanwhile, the Agricultural Department, requested the PPSC to withdraw the requisition of the aforesaid posts through a letter. Some of the petitioners being aggrieved have filed separate writ petitions challenging the letter for withdrawal of requisition.

Issues: i) Whether requisition of any post can be withdrawn by the department which advertised the said post?
ii) Whether any vested right accrues in favour of any applicant against the withdrawal of post before issuance of recommendation?

Analysis: i) Plain reading of aforesaid Regulation shows that department can withdraw the requisitioned vacancies altogether for valid reasons, however, approval of Additional Chief Secretary (S&GAD) shall be required and said withdrawal must be before sending recommendations by the PPSC to the concerned department.
ii) Regarding the vested right in favour of the petitioners, suffice it to note that though the petitioners have applied for the post of Assistant Director & Deputy Director and also appeared in the written test and interview but thereafter, neither they have been recommended for the post nor any merit list was issued or any appointment letter was issued in favour of the petitioners. In absence of any of the aforesaid incidents, no vested right accrued in favour of the petitioners. This legal position also coincide with the Regulation 12 (a) of the Regulation under which the department could withdraw the requisition altogether for valid reasons before any recommendations made by the PPSC.

Conclusion: i) Requisition of any post can be withdrawn by the department which advertised the said post for valid reasons, however, approval of Additional Chief Secretary (S&GAD) shall be required and said withdrawal must be before sending recommendations by the PPSC to the concerned department.
ii) No vested right accrues in favour of any applicant against the withdrawal of post before issuance of final recommendation by the PPSC.

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12. **Lahore High Court**
Mazhar Hussain Asif v. Province of Punjab etc.
Writ Petition No.26698/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2504.pdf

Facts: The petitioner has challenged two impugned transfer orders through this petition issued by respondent No.4 on behalf of Director General (DG), Lahore Development Authority (LDA), whereby the petitioner has been transferred and posted as Chief Engineer, TEPA, LDA and through the second impugned transfer order, respondent No.6, has been given the additional charge of the post of Chief Engineer II. The petitioner has also challenged the order passed by respondent No.2, whereby his representation has been dismissed.

Issues: i) Whether the LDA Regulations are statutory or non-statutory?
ii) Whether Notification of Election Commission of Pakistan regarding ban on transfer and posting in the Punjab Province where schedule for General Election to the Provincial Assembly has been issued is not applicable to LDA?

Analysis: i) One of the tests to determine that whether the Rules or Regulations under any enactment are statutory or otherwise, laid down by the hon‟ble Supreme Court from time to time, is that when the Rules or Regulations are framed or approved by the Government then the same have force of law and are statutory in nature, however, where the Rules or Regulations are made by the Authority or concerned department for internal control or management without approval of the Government, the same are non-statutory and does not have statutory force behind it… The Regulations in-question when examined in the light of the law settled in afore-noted judgments, no doubt the same have been framed under Section 45 of the Act by the Authority and no approval of the Government is required under said provision, however, the perusal of LDA Regulations shows that vide letter dated 30.04.1978 by government of Punjab (Local Government Social Welfare and Rural Development Department), the same were approved by the Martial Law Administrator, Punjab (MLA) on 16.04.1978. Under Article 270A(1) of the Constitution, all Proclamations, President's orders, Ordinances, Martial Law Regulations, Martial Law Orders and all other laws made between 05.07.1977 and the date when Article 270A of the Constitution came into force, were affirmed, adopted and declared to have been validly made by the competent authority. Further, under Article 270A(2) & (3) of the Constitution, all orders made, proceedings taken and act done by any authority or any person which was made, taken or done between 05.07.1977 and the date on which Article 270A of the Constitution came into force (30.01.1985), in exercise of powers derived from Proclamation, President's Orders, Ordinance, Martial Law Regulations, Martial Law Orders, enactments Notifications, Rules, Orders or Byelaws be deemed to be and always to have been validly made, taken or done and remain in force unless altered, repealed or amended by the competent authority… Though the LDA

Regulations framed under Section 45 of the Act were neither required nor approved by the Government, however, these Regulations were approved by the MLA on 16.04.1978, who was exercising the powers of the Provincial Government for all intent and purposes under Proclamations, including the Martial Law Regulations and Martial Law Orders, which were subsequently validated under Article 270A of the Constitution, therefore, the approval of MLA has the same status as approval of the Government. The necessary corollary and conclusion of the above discussion is that LDA Regulations are statutory in nature and it will be a fallacy to hold it otherwise.

ii) Regarding applicability, the perusal of the ECP‟s Notification manifests that same was issued under Article 218(3) of the Constitution read with Section 230(2)(f) of the Elections Act, 2017 (Elections Act) and was made applicable not only to the Government but also to the Authorities. The LDA admittedly being an Authority under the Act, the ECP‟s Notification is also applicable to the LDA.

Conclusion: i) The LDA Regulations are statutory in nature.

ii) Notification of Election Commission of Pakistan regarding ban on transfer and posting in the Punjab Province where schedule for General Election to the Provincial Assembly has been issued is applicable to LDA.

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13. **Lahore High Court**
Dr. Asghar Ali v. Muhammad Ali
Civil Revision No.42583 of 2022
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2023LHC2586.pdf

Facts: The petitioner/plaintiff filed the instant civil revision to challenge the validity of the judgments and decree passed by the learned courts below whereby his suit for specific performance of an agreement to sell was dismissed due to non-deposit of balance sale consideration.

Issue: What court must ensure before dismissing the suit for non-deposit of balance sale consideration in a suit for specific performance of an agreement to sell?

Analysis: Perusal of the record reveals that the plaintiff/petitioner filed a suit for specific performance of an agreement to sell against defendants No.1 and 2 and learned trial court directed the plaintiff/petitioner to deposit the balance sale consideration amount on the next date of hearing but the plaintiff/ petitioner failed to deposit the same. However, on the said date the learned counsel for the plaintiff/petitioner withdrew the suit to the extent of defendant No.1 but the learned trial court passed the impugned judgment and decree on the same date and dismissed the plaintiff's suit for non-deposit of balance total sale consideration amount. The High Court observed that instead of passing any order to clarify the specific balance sale consideration amount by deducting the amount to the extent of the share of defendant No.1, the learned trial court passed the judgment for not depositing the

balance total consideration. It is also important to mention here that the learned trial court failed to pass an order for the deposit of the specific remaining amount along with the consequences of non-compliance of the order with clarity in advance before passing the impugned judgment and decree and learned appellate court has also failed to appreciate the above-mentioned facts while dismissing the plaintiff/petitioner's appeal.

Conclusion: Before dismissing the suit for non-deposit of balance sale consideration, the court must specify the exact amount of balance sale consideration required to be deposited along with consequences for non-deposit in clear terms.

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14. **Lahore High Court**
Dr. Asma Nighat Zaidi & others v. Syeda Safoora Begum & others
Writ Petition No.7073 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC2591.pdf

Facts: The petitioners called into question vires of order and judgment, passed by Civil Judge and Additional District Judge, Lahore, respectively, whereby petitioner No.1's application under Section 476 Cr.P.C. for initiation of criminal proceedings against respondent No.1 regarding concealment of facts while obtaining succession certificate was allowed with certain directions concurrently.

Issues: (i) What is meant by the term *Tarka*?
(ii) Whether in the event of death of either of the account holders of a joint bank account, the survivor shall be entitled to have sole ownership of the full amount available in the joint account?
(iii) Whether in nomination cases, a nominee is entitled to receive the entire amount of a deceased?

Analysis: (i) All moveable and immoveable properties owned and possessed by the deceased at the time of death including a property which is due to the deceased from any other person (though not received by the deceased during his life time, but the deceased was legally entitled to raise a claim in respect of the same in his life time) and distributable among his legal heirs as per their respective shares is called *Tarka*.
(ii) The fact that account opening application / form is bearing characteristic of "either or survivor" neither gives any authority to the Bank to disburse the available amount to the survivor of the joint account holder nor makes the survivor sole owner of the amount available in joint account…Even otherwise, under the law with the death of one of the account holders of a joint account any authorization/authority given by the deceased co-account holder stood automatically revoked and even a validly authorized person is denuded of such power after death of the principal as all assets of the deceased by operation of law stood vested in the ownership of legal heirs of the deceased and the Bank or the joint account holder are not empowered to unilaterally operate the account or

withdraw any amount until and unless as per law a declaration regarding succession or letter of administration or probate is issued by the Court of competent jurisdiction.
(iii) Even in nomination cases, nominee is not entitled to receive the entire amount of deceased. Such nomination would neither be a will nor a gift nor a trust. It would merely be a mandate, the validity of which would expire with death and the amount available in the account would be undisposed estate of the deceased. Such nomination cannot override the provisions of Islamic Law of Inheritance, therefore, no legal heir could be deprived from receiving their respective share.

Conclusion: (i) All moveable and immoveable properties owned and possessed by the deceased at the time of death including a property which is due to the deceased from any other person is called *Tarka*.
(ii) In the event of death of either of the account holders of a joint bank account, the survivor shall not be entitled to have sole ownership of the full amount available in the joint account.
(iii) In nomination cases, a nominee is not entitled to receive the entire amount of a deceased.

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15. **Lahore High Court**
Sarfraz Ali v. The State, etc.
Crl. Misc. No. 82227-B of 2022
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC2497.pdf

Facts: The petitioner, through this petition, seeks pre-arrest bail after his first bail petition was dismissed as having been withdrawn following arguments at some length in the same court.

Issues: i) What ground would make a second pre-arrest bail petition of an accused maintainable before the same court subsequent to the dismissal as withdrawn of his first pre-arrest bail petition after arguing it at some length?
ii) Whilst dealing with pre-arrest bail of an accused ascribed role identical to the role of co-accused, what would be effect of the earlier order of the court granting post-arrest bail to said co-accused?
iii) If accused had withdrawn earlier pre-arrest bail petition after he was opined as innocent in earlier investigation, whether apprehension of his arrest based upon new finding of his involvement in occurrence in subsequent investigation constitutes a fresh ground for his second pre-arrest bail petition in the same court?

Analysis: i) Second bail petition cannot be filed before the same court on the basis of a ground having been available at the time of withdrawal of earlier bail petition, but such ground was abandoned or not pressed. Dismissal of a bail petition of an accused following arguments at some length amounted to rejection of all the

grounds available or in existence at the time of such dismissal, notwithstanding situations that such grounds were actually taken, argued and expressly dealt in the order of dismissal or not.

ii) The role ascribed to accused and co-accused is identical i.e. abetment. Role of accused cannot be distinguished from that of his co-accused having already been granted post-arrest bail.

iii) First pre-arrest bail petition of accused was withdrawn on score that he was opined as innocent in earlier investigation and his arrest was deferred by the then investigating officer. However, he was found involved in the case as abettor of the occurrence in subsequently conducted investigation. Apprehension of the arrest on the basis of said new finding was based by accused for his second pre-arrest bail petition in the same court.

Conclusion: i) If earlier pre-arrest bail petition was dismissed after arguing it at some length, the subsequent petition for the same relief could be filed before or entertained by the same court only if it was based upon a fresh ground, i.e. a ground which was not available or in existence at the time of decision of the earlier bail application.

ii) If co-accused attributed role identical to accused have already been granted post-arrest bail, then an order passed making basis upon technical ground, that the considerations for pre-arrest bail and post-arrest bail are different, would be limited only up to the arrest of the accused as he would be entitled for the concession of post-arrest bail on the plea of rule of consistency soon after his arrest.

iii) Apprehension of arrest based upon new finding in subsequently conducted investigation constitutes a fresh ground for filing of second bail petition in the same court, as said new finding was neither available nor was in existence at the time of withdrawal of earlier bail petition.

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16. **Lahore High Court**
Mohmad v. S.H.O. etc.
Writ Petition No.70407/2021
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC2489.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has questioned the legality and validity of impugned orders passed by the learned courts below. Through the former, Area Magistrate dismissed his application U/S 176 Cr.P.C. for disinterment of corpse and through the latter Revisional Court dismissed revision against the said order on account of maintainability.

Issue: Whether disinterment proceedings before a Magistrate falls within a meaning of 'judicial proceedings'?

Analysis: Wisdom behind conferring such powers upon a Magistrate is apparently to have a check upon the inquiry held by the police or to dispel doubt in the mind of public against a particular person. In order to achieve this purpose, the Magistrate holding an inquiry as a part of "inquest" is empowered with all the powers which he possessed while doing an inquiry into an offence. He is supposed to record the evidence taken by him in connection with the inquest in any of the manners hereinafter prescribed according to the circumstances of the case. This fact leads me to the conclusion that disinterment proceedings before a Magistrate falls within a meaning of 'judicial proceedings' provided in Section 4(1)(m) of the Cr.P.C.

Conclusion: Yes, the disinterment proceedings before a Magistrate fall within a meaning of 'judicial proceedings'.

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17. **Lahore High Court**
Mian Tariq Aziz v. The State etc.
Crl. Misc. No. 60825/M/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2572.pdf

Facts: This petition under section 561-A Cr.P.C. challenges the judgment of the Additional Sessions Judge, affirming the order of the Judicial Magistrate which dismissed the plea of the petitioner to stop the proceedings under section 249 Cr.P.C. on account of the pendency of civil suits regarding the disputed property.

Issue: What is the guiding principle to stop/stay the criminal proceedings under section 249 Cr.P.C 1898 when civil litigation on the same subject is also pending?

Analysis: Civil law deals with the rights, duties, and obligations that individuals, governments, and organizations have to one another. Civil cases usually involve private disputes between them regarding those rights and obligations. On the other hand, criminal law is the foundation of the criminal justice system. It concerns crimes and their punishment. It seeks to preserve society's values, morality, and norms by checking inappropriate behaviour. It is trite that a single act can simultaneously trigger both civil and criminal legal action. "Proceedings for a civil wrong or a public wrong (offence) are independent and not mutually exclusive. Each set of proceedings has its own procedures, standards, and consequences." The standard of evidence to determine civil liability is the preponderance of evidence. In contrast, a criminal conviction is predicated on a higher standard of guilt, i.e., beyond a reasonable doubt, because it results in the loss of liberty. People in our country frequently try to have recourse to civil and criminal law contemporaneously to settle their disputes. It is settled law that both proceedings may run concurrently and in appropriate cases, the criminal proceedings may be stayed till the decision of civil suit. The decision to stay the criminal proceedings is entirely at the court's discretion. The guiding principle,

however, is whether the accused would be prejudiced if the proceedings continue. If his criminal liability is dependent on the outcome of civil litigation or is so inextricably linked with it that there is a danger of grave injustice if there is a conflict of decisions, criminal proceedings must be held in abeyance.

Conclusion: The guiding principle for the stay of criminal proceedings under section 249 Cr.P.C 1898 is to consider the element of prejudice caused to the accused if the proceedings continue, in particular, when his criminal liability is dependent on the outcome of civil litigation or is so inextricably linked with it that there is a danger of grave injustice if there is a conflict of decisions.

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18. **Lahore High Court**
Imran Ahmad Khan Niazi v. Syed Asim Ghaffar etc.
Crl. Misc. No.19997/B/2023
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC2608.pdf

Facts: The petitioner has filed the application for the extension of time period in his protective bail granted by the Court on previous date. The institution branch of the High Court raised the office objection on its maintainability on the ground that protective bail is a one-time grace and no rule or practice allows for filing a second application or an extension of time granted in the first.

Issue: Whether the protective bail is a one-time grace, therefore, neither a second application may be filed nor time granted in the first may be extended?

Analysis: There is no provision in the Cr.P.C. 1898 for protective/transitory bail. Still, the High Courts in our country have invoked section 561-A Cr.P.C. and Article 199 of the Constitution to accommodate the accused and allow them to approach the court concerned for a remedy. The High Courts do not touch the merits of the case while considering such requests. Thus, protective bail serves a specific purpose and is granted for a fixed time. It is not the same as anticipatory or pre-arrest bail granted under section 498 Cr.P.C. When the accused appears before the court concerned, it deals with him independently, and protective bail does not automatically entitle him to pre-arrest bail. It merely restrains the police from arresting the accused for a certain period. So, technically it is not bail. The concept of protective/transitory bail is rooted in fundamental rights. Therefore, the High Court cannot short shrift an accused's second request. It must judicially assess and determine if he has legitimate grounds to justify it. The High Court should ensure that the accused does not obstruct the investigation by playing hide and seek with the criminal justice system.

Conclusion: Protective bail is not a one-time grace, hence a second application may be filed and time granted in the first may also be extended.

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19. **Lahore High Court**
M/s. Shamim & Company (Pvt) Ltd v. Malik Ghulam Mustafa Tahir, etc.
Civil Revision No.1792 of 2016
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5688.pdf

Facts: This civil revision was directed against the order passed by the learned Addl. District Judge, whereby the application for leave to appear and defend filed by the respondents No.1 and 2 was allowed subject to furnishing of surety bond and unconditional leave to appear and defend was allowed to respondents No.3 to 5 and the application for temporary injunction filed by the petitioner was dismissed as not maintainable.

Issue: Whether court while granting leave to defend can attach any condition?

Analysis: As per law, it is for the court having cognizance of the matter to see under what condition it is inclined to grant leave to defend to the defendants. For this purpose order 37 Rule 3(2) of the C.P.C is relevant, wherein leave to defend may be given unconditionally or subject to such terms as to payment into court, giving security or otherwise as the court thinks fit. It is for the court having cognizance of the matter to decide the term on which leave to defend is to be given.

Conclusion: Leave to defend could be given unconditionally or subject to such terms as to payment into Court, giving security or otherwise as the Court deems fit.

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20. **Lahore High Court**
Muhammad Iqbal v. District Judge, Vehari etc.
W.P.No.15299/2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5089.pdf

Facts: Through this petition, the petitioner has called in question order passed by the learned Civil Judge, whereby his application for submission of list of witnesses has been dismissed and has also called in question judgment passed by learned Additional District Judge, dismissing his civil revision against the said order.

Issues: i) Whether the petitioner through record has to support his version that the list of witnesses filed by him earlier immediately after framing of issues has been misplaced?
ii) Whether the reason for non-submission of list of witnesses mentioned in the application for submission of list of witnesses has to be sufficient?

Analysis: i) Both the Courts below have observed that although the petitioner stated that he had filed application for submission of list of witnesses earlier immediately after framing of issues which has been misplaced due to change of different courts to

which case was successively transferred but there is nothing available on the record to support such version of the petitioner. Even today although the petitioner has vehemently argued the case but could not dislodge the said findings of facts recorded by the learned Courts below. Even the assertion of the petitioner that list of witnesses was earlier available on the record, has not been established from the record.

ii) The petitioner filed the application for placing on record the list of witnesses after more than two years of framing of issues and the reason mentioned in the said application has not found to be sufficient by the courts below and the said findings of facts are not found to be erroneous by this court also.

Conclusion: i) The petitioner through record has to support his version that the list of witnesses filed by him earlier immediately after framing of issues has been misplaced?

ii) The reason for non-submission of list of witnesses mentioned in the application for submission of list of witnesses has to be sufficient.

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21. **Lahore High Court**
Muhammad Mujtaba Khan v. Rahat Siddiq, etc.
RSA No.83/2015
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5703.pdf

Facts: This Regular-Second appeal under Section 100 of Code of Civil Procedure, 1908 is directed against judgment and decree passed by Additional District Judge, whereby the appeal filed by respondent No.1 was allowed and the judgment and decree, passed in favour of the appellant by Civil Judge 1st Class, was set aside with the result that the suit for declaration and Specific Performance filed by the appellant was dismissed.

Issues: i) Whether Memorandum of understanding is a valid contract between the parties?

ii) Whether the agreement meaning of which is not certain, is enforceable at law?

iii) Whether the solitary statement of a single marginal witness is sufficient to prove valid execution of an agreement?

iv) Whether for the purpose of proof of a document attesting witnesses had to be compulsorily examined as per requirement of Article 79 of the Qanun-e-Shahadat, 1984?

v) Whether the scribe of a document could be a competent witness in terms of Articles 17 and 79 of Qanun-e-Shahadat, 1984?

vi) Whether the presumption of regularity is attached to official acts and same can be annulled on vague allegations?

vii) Whether an agreement to marry in future is enforceable as an ordinary agreement under the Law of Contract?

viii) Whether in case of gift by grandparents or parents in favour of grandchild or child physical delivery of possession is necessary?

Analysis: i) It is by now settled that a Memorandum of understanding is not a valid contract unless a final contract is concluded between the parties.

ii) Section 29 of the Contract Act, 1872 provides that agreements the meaning of which is not certain or capable of being made certain are void.

iii) It is by now settled that the solitary statement of a single marginal witness is not sufficient to prove valid execution of an agreement and both the marginal witnesses have to be produced in evidence to prove the same.

iv) In Hafiz Tassaduq Hussain v. Muhammad Din through legal heirs and others (PLD 2011 SC 241) it has been held that for validity of instruments falling within Article 17 of the Qanun-e-Shahadat, 1984, the attestation as required therein was absolute and imperative. For the purpose of proof of a document attesting witnesses had to be compulsorily examined as per requirement of Article 79 of the Qanun-e-Shahadat, 1984, otherwise it cannot be considered and taken as proved and used in evidence.

v) Scribe of a document could only be a competent witness in terms of Articles 17 and 79 of Qanun-e-Shahadat, 1984 if he had fixed his signature as an attesting witness of the document and not otherwise. Signing of document in the capacity of writer did not fulfil and meet mandatory requirement of attesting by him separately. Scribe of document could be examined by concerned party for corroboration of evidence of marginal witnesses or in the eventuality those were conceived by Article 79 of Qanun-e-Shahadat, 1984, itself not as a substitute.

vi) Besides under the Article 129 Illustration (e) of the Qanun-e-Shahadat, 1984, presumption is that official acts have been regularly performed. Reliance is placed on Mrs. Kausar A. Ghaffar v. Government of Punjab and others (2013 SCMR 99) wherein it has been observed that Presumption of regularity was attached to official acts and the same could not be annulled on vague allegations.

vii) Although the marriage is a civil contract between the parties but an agreement to marry in future is not enforceable as an ordinary agreement under the Law of Contract and marriage can only take place by consent of parties given at the time of marriage.

viii) The parent or grandparent may transfer the property in favour of a child or grandchild without actually transferring the physical possession of the property to the minor and the possession may be retained as constructive possession on behalf of the minor. Gift or Tamleek would not be incomplete in favour of a minor if physical possession has not been given and constructive possession has been transferred.

Conclusion: i) Memorandum of understanding is not a valid contract unless a final contract is concluded between the parties.

ii) The agreement of which meanings and terms are not certain; is not enforceable at law.

iii) The solitary statement of a single marginal witness is not sufficient to prove valid execution of an agreement.

iv) For the purpose of proof of a document attesting witnesses had to be compulsorily examined as per requirement of Article 79 of the Qanun-e-Shahadat, 1984, otherwise it was not to be considered and taken as proved and used in evidence.
v) Scribe of a document could only be a competent witness in terms of Articles 17 and 79 of Qanun-e-Shahadat, 1984 if he had fixed his signature as an attesting witness of the document and not otherwise.
vi) The presumption of regularity is attached to official acts and the same cannot be annulled on vague allegations.
vii) An agreement to marry in future is not enforceable as an ordinary agreement under the Law of Contract.
viii) In case of gift by grandparents or parents in favour of grandchild or child physical delivery of possession is not necessary.

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22. **Lahore High Court**
Salman Ahmad Khan. v. Judge Family Court, Multan, etc.
Writ Petition No.17899 of 2016
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2016LHC4827.pdf

Facts: The respondent no. 02 filed a suit for dissolution of marriage through special attorney against petitioner. The petitioner raised objection regarding genuineness of signatures of respondent no. 02 on special power of attorney. The court, after recording the statement of attorney, passed an order for recording statement of respondent no. 02 through video link/skype which order has been challenged by petitioner through this Writ Petition.

Issues: i) Who can raise objection regarding genuineness of signatures on special power of attorney when special power has been attested by consulate general of Pakistan in country of residence of such person and whether statement of such person can be recorded for resolving such objection?
ii) Whether a woman living overseas can get her statement recorded in suit of dissolution of marriage if that woman in suit for custody of minor had removed the minor from jurisdiction of court?
iii) What is requirement for invocation of Constitutional Jurisdiction against order passed by court below?

Analysis: i) When the power of attorney has been attested by the Consulate General of Pakistan in country of residence of person executing attorney, only person executing attorney can contest the genuineness of power of attorney. This objection can be resolved by the Family Court after the statement of person executing attorney is recorded… The Family Court in order to satisfy itself that the attorney was authorized to file the suit and proceed with the same can inquire about genuineness of Power of Attorney and if for that purpose court has decided to clarify the situation by recording the statement of witness through video

link/skype, the evidence received through modern devices is admissible under Article 164 of the Qanoon-e-Shahadat Order, 1984… It is settled proposition of law that a family court can adopt its own procedure and is not bound by the rigors of C.P.C. A family court could proceed on the premise that every procedure is permissible unless prohibited. Although Qanoon-e-Shahadat Order is not strictly applicable to family courts but the family court is not barred from receiving such evidence under any provision of law. Moreover, the technicalities should not stand in the way of justice…

ii) As regards the ground that respondent No.2 is not entitled to get her statement recorded because she has removed the minor from the jurisdiction of the court and should appear in person if she wants to get her statement recorded, suffice to say that the Family Court may regulate its own procedure and violation of the undertaking cannot deprive court of its own jurisdiction. Besides the undertaking not to remove the minor from the jurisdiction of court was not given in the case of dissolution of marriage rather it was given in the case for custody of minor which is pending adjudication before the Family Court and the court can determine vires of the same in the case for custody of minor.

iii) For invoking constitutional jurisdiction of vested in High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the aggrieved person is bound to show that the court below has exercised the jurisdiction not vested in it by law or there is jurisdictional defect in the order impugned or that the order is illegal or perverse.

Conclusion: i) When the power of attorney has been attested by the Consulate General of Pakistan in country of residence of person executing attorney, only person executing attorney can contest the genuineness of power of attorney. This objection also can be resolved by the Family Court after the statement of person executing attorney is recorded.

ii) Family Court may regulate its own procedure and violation of the undertaking cannot deprive court of its own jurisdiction. The woman living overseas can get her statement recorded in suit of dissolution of marriage as the undertaking not to remove the minor from the jurisdiction of court was not given in the case of dissolution of marriage.

iii) For invoking constitutional jurisdiction vested under Article 199 of the Constitution, the aggrieved person is bound to show that the court below has exercised the jurisdiction not vested in it by law or there is jurisdictional defect in the order impugned or that the order is illegal or perverse.

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23. **Lahore High Court**
Munir Ahmed. V. The State, etc.
Writ Petition No.8217/2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC2484.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of

Islamic Republic of Pakistan, 1973, petitioner has challenged the vires of impugned order and has prayed that the application of the petitioner for the constitution of Provincial Standing Medical Board to re-examine the petitioner-injured may kindly be accepted in the interest of justice.

Issue: Whether District Standing Medical Board can observe possibility of fabrication as "Yes" merely on the basis that small bone was fractured?

Analysis: District Standing Medical Board cannot observe possibility of fabrication as "Yes" merely on the basis that small bone was fractured because if such opinion of District Standing Medical Board is accepted, then in future if some small bone will be fractured or if any bone will be fractured which is easy to fracture, then it will be straightway observed that there is possibility of fabrication, which would be against the spirit of medical jurisprudence.

Conclusion: District Standing Medical Board cannot observe possibility of fabrication as "Yes" merely on the basis that small bone was fractured.

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24. **Lahore High Court**
Shoukat Hussain v. Addl. District Judge, etc.
W. P. No.1077 of 2020
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2518.pdf

Facts: Through instant writ petition, the petitioner has called in question the validity of judgment and decree passed by learned Judge Family Court as well as judgment and decree passed by learned Addl. District Judge.

Issue: When the plaintiff/lady cannot prove the location/ description of area or alternate price of plot mentioned in column No. 16 of the Nikah Nama, whether in such situation it is the Court to thrash out the grain from the chaff?

Analysis: Perusal of record reveals that in the headnote and prayer clause of the plaint, the lady has claimed alternate price of the said plot as Rs.1,000,000/- without mentioning the detail thereof in the plaint. In order to resolve controversy between the parties, Nikah Nama is the basic document which Column No.16 only disclosed 'Three Marla Plot' but no location/description/detail of area/alternate price or anything else about plot has been mentioned. The onus to prove the alternate price of the said plot as claimed was on the shoulder of the lady. Despite the fact that respondent No.3 had claimed alternate price of the plot as Rs.10,00,000/- in headnote and prayer clause of plaint only and petitioner had also admitted fixation of said dower i.e. 3-Marla plot but she could not prove its location or alternate price by producing cogent and convincing evidence. In such situation it was the Court to thrash out the grain from the chaff.

Conclusion: When the plaintiff cannot prove the location/ description of area or alternate price

of plot mentioned in column No. 16 of the Nikah Nama, in such situation it is the Court to thrash out the grain from the chaff.

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25. **Lahore High Court**
Zahid Hussain v. Senior Civil Judge etc.
Writ Petition No.6437 of 2020
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2547.pdf

Facts: Through this petition the petitioner has assailed the order and the judgment, whereby application seeking dismissal of the execution petition as well as the appeal filed by him were dismissed by the learned Senior Civil Judge and learned Additional District Judge.

Issues: i) Whether the new owner of the rented property has a right to prosecute the pending matter in the court?
ii) Whether second execution petition should plausibly be treated as continuation of the earlier one?

Analysis: i) When the title of property stands transferred, new owner has a right to prosecute the matter and since the ejectment order is to be executed like a decree, the powers contained in the Code of Civil Procedure can be invoked by an executing Court.
ii) Second execution petition should plausibly be treated as continuation of the earlier one or ancillary thereto in view of the principle laid down by the Hon'ble Supreme Court in the case of United Bank Limited vs. Fateh Hayat Khan Tawana and others (2015 SCMR 1335).

Conclusion: i) The new owner of the rented property has a right to prosecute the pending matter in the court.
ii) Second execution petition should plausibly be treated as continuation of the earlier one.

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26. **Lahore High Court**
Muhammad Tahir v. Muhammad Sharif etc.
W.P. No.4949 of 2014
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9517.pdf

Facts: The petitioner has filed instant constitutional petition against the civil revision which was accepted and case was remanded for decision of the application under section 12(2) CPC after framing the issues and recording evidence of the parties.

Issue: Whether constitutional petition is an appropriate remedy against remand order or otherwise?

Analysis: It is settled law that it would not be appropriate to exercise constitutional jurisdiction to interfere with an order of remand as writ lies against final adjudication and remand order is not a final order.

Conclusion: Constitutional petition is not an appropriate remedy against remand order or otherwise.

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27. **Lahore High Court**
Abdul Rehman Amjad v. University of Health Sciences etc.
Writ Petition No.493 of 2023
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2529.pdf

Facts: The petitioner, through instant writ petition has challenged the validity and legality of the order passed by Vice-Chancellor, University of Health Sciences, Punjab,/respondent No.2 and seeks issuance of direction to the said respondent to allow him admission in MBBS course on open merit seat.

Issues: i) What is the definition of "Domicile"?
ii) How many stages of Domicile?
iii) What is the purpose for submission of domicile along with admission form in the University and whether the time could be relaxed even if the said documents are not submitted within the prescribed period?

Analysis: i) The issuance of Domicile certificate is governed by the provisions of Section 17 of the Pakistan Citizenship Act, 1951 and Rule 23 of the Pakistan Citizenship Rules, 1952. The afore-quoted provisions of statutes do not prescribe the definition of the term 'Domicile'. The Black‟s Law Dictionary (Seventh Edition), defines the word „Domicile‟ as a person‟s true, fixed, principal and permanent home, to which that person intends to return and remain even though currently residing elsewhere. Plain reading of the definition gives the meaning of a domicile as proof of a permanent residence of a person. The concept of a permanent residence as defined in the terms of a domicile is of two types, one by birth and the other by choice. A person, who desires to select his permanent residence by choice means that he intends to relinquish his original place of abode and to choose another place for the purpose of his permanent residence. Once the facts of relinquishment and acquisition are established, a domicile undergoes a change and the person acquires a new domicile and has a permanent home, at least in the notional sense at the new place. The domicile has to be considered a synonym for home. Thus, the domicile certificate is, prima facie, a proof of the place of permanent residence of a person, who intends to permanently reside at a particular place.
ii) There are two stages of a domicile certificate, one is, that when the person intended to permanently reside at a particular place, as such, applies for a domicile certificate. Secondly, after obtaining a domicile certificate, the holder of a

certificate continues to permanently reside at a particular place. Thus, in the first circumstance, when a person applies for a domicile certificate, the authority has to consider as to whether the applicant relinquished his earlier permanent place of residence before selecting his new place of domicile. As far as the second circumstance is concerned, the authority on its own or on the objection of any person concerned can conduct an inquiry with regard to a permanent residence of a holder of a certificate for a particular place.

iii) The submission of a domicile certificate along with the application form is for the purpose of supporting evidence of the status and eligibility of the candidate, and therefore, it does not relate to the inherent qualification of the candidate to be admitted to the course applied for. In appropriate cases therefore, even if the documents are not submitted within the prescribed period, the time could be relaxed.

Conclusion: i) The domicile certificate is, prima facie, a proof of the place of permanent residence of a person, who intends to permanently reside at a particular place.

ii) There are two stages of a domicile certificate, one is, that when the person intended to permanently reside at a particular place, as such, applies for a domicile certificate. Secondly, after obtaining a domicile certificate, the holder of a certificate continues to permanently reside at a particular place.

iii) The purpose for submission of domicile along with admission form in the University is supporting evidence of the status and eligibility of the candidate and the time can be relaxed even if the said documents are not submitted within the prescribed period.

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28. **Lahore High Court**
Muhammad Asghar v. Sikandar Mehmood Dai
R.F.A No. 207 of 2018
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2550.pdf

Facts: Instant appeal is preferred against the judgment and decree passed by learned Addl. District Judge whereby a suit filed by respondent/plaintiff for recovery on the basis of cheque U/O 37 Rule 1,2 CPC was decreed.

Issues: i) Who is to discharge the initial burden of proof where the Negotiable Instrument is executed against consideration?

ii) Whether the presumption attached with Negotiable Instrument is always rebuttable?

Analysis: i) Where a claim is propounded on the basis of a negotiable instrument, it is necessary and imperative in all such cases that the defendant should prove in negative, that he has not drawn the instrument and that it is without consideration or it is for the plaintiff to discharge the initial burden of proving his case especially when he has undertaken to prove that the negotiable instrument has been duly executed for the consideration. As per the judgment reported as Salar

Abdul Rauf vs. Mst. Barkat Bibi (1973 SCMR 332), the respondent/plaintiff is precluded in law to urge in this case that it was for the respondent to prove to the contrary.

ii) The presumption attached with negotiable instrument is always rebuttable and the Hon'ble Supreme Court of Pakistan has held that if a plaintiff fails to produce creditworthy evidence then he cannot be allowed to turn around and invoke the presumption contained under section118 of the Negotiable Instrument, 1881.

Conclusion: i) Initially burden of proving that Negotiable Instrument is executed against consideration is on the plaintiff.

ii) The presumption attached with negotiable instrument is always rebuttable.

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29. **Lahore High Court**
Abdul Mateen v. Govt. of Punjab through Secretary etc.
W.P. No.6528 of 2022/BWP
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2559.pdf

Facts: Through this constitutional petition, the petitioner has challenged the validity of order passed by the respondent No. 2 whereby a fresh Inquiry Officer was appointed to conduct inquiry proceedings against the petitioner and other officials on the charges of inefficiency and misconduct as set forth in earlier order under Punjab Employees Efficiency, Discipline & Accountability Act, 2006.

Issue: Whether a matter finally adjudicated by a competent authority can be re-opened?

Analysis: It is an admitted fact that after final adjudication of the matter by the competent authority the same cannot be permitted to re-open. This fundamental principle of law which has been embodied in our constitution that once a person was prosecuted and acquitted from charges, he cannot be subsequently prosecuted repeatedly for same allegation. Article 13 of the Constitution sanctifies the well settled principle of law that no person will be tried for the charges on the same set of facts on which he has already been exonerated or convicted.

Conclusion: After final adjudication of the matter by the competent authority the same cannot be permitted to re-open.

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30. **Lahore High Court**
Dr. Shahid Mehmood v. Chairman PPSC etc.
Writ Petition No.4397 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2538.pdf

Facts: Through this petition, the petitioner has challenged the vires of formation of interview panel constituted for the post of assistant professor orthopedic surgery.

Issue: Whether formation of an interview panel constituted by the public service commission can be challenged on the score that any member of it is either near relative, close associate or immediate subordinate of a candidate?

Analysis: Through Regulation No.52 of the Punjab Public Service Commission Regulations, 2016 dealing with the constitution of a panel/commission for conducting interviews of the candidates, if any candidate is a "near relative", "close associate" or "immediate subordinate" of any Presiding Member/Member(s), the said member(s) shall not be allowed to participate in the proceedings of interview of that candidate and the said member(s) shall inform the Chairman to nominate some other member(s) to interview such candidate…

Conclusion: Yes, formation of an interview panel constituted by the public service commission can be challenged on the score that any member of it is either near relative, close associate or immediate subordinate of a candidate.

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31. **Lahore High Court**
Jamshaid Maqbool v. The Province of Punjab etc.
Writ Petition No.9046 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9586.pdf

Facts: Through this constitutional petition, petitioner has challenged the validity of order whereby respondent No.3/Tehsildar Khanpur District Rahim Yar Khan sine die adjourned the application of the petitioner for partition of land.

Issue: Whether mere institution of a suit by any parties on their own option can restrict the Revenue Officer to proceed in the matter of partition of a jointly held land?

Analysis: Section 141 of the Punjab Land Revenue Act 1967 clearly depicts that if the ownership of the party seeking partition is disputed and the Revenue Officer concerned could not decide the dispute, being intricate question of right, then Revenue Officer shall direct the parties to approach the competent Court for resolution of the dispute but mere institution of a suit by any parties on their own option could not restrict the Revenue Officer to proceed in the matter of partition of a jointly held land. The Revenue Officer without perusing the relevant record sine die adjourned the proceeding of partition which is against the spirit of law. The respondent No.3 was required to inquire into the substance before passing an appropriate order. The basic principles of natural justice and equity including Easement Rights of the parties (co-sharers) attached with their respective owned properties/business was not considered in view of the articles 4,8,9,18, 23, 24 & 38 of the Constitution.

Conclusion: Mere institution of a suit by any parties on their own option cannot restrict

the Revenue Officer to proceed in the matter of partition of a jointly held land.

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32. **Lahore High Court**
Mst. Samina Bibi v. Govt. of Punjab through Secretary etc.
W. P. No.5231 of 2022/BWP
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2566.pdf

Facts: Through this constitutional petition, Mst. Samina Bibi petitioner has challenged the validity of order passed by District accounts Officer, Bahawalpur, whereby representation of the petitioner for release of financial benefits of her deceased husband (civil servant) in her favour was dismissed.

Issues: i) When the sentences of fine awarded to the deceased civil servant have already been set aside and his appeal to the extent of corporal punishment has also been abated and no departmental inquiry is pending against him, whether the widow of the deceased civil servant is entitled for grant of any financial benefits?
ii) Whether abatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will deprive the decedent civil servant, as well as, his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial?

Analysis: i) Admittedly no departmental inquiry/ proceedings were pending against the deceased civil servant whereas fine awarded to him was set aside and the appeal of the deceased civil servant was abated to the extent of corporal punishment. The competent authority (respondent No.4) has already sanctioned the various financial claims in favour of the family of the deceased official. The respondent No.4 in his report has categorically stated that pension and gratuity is the asset of the deceased widow and children. The Department also issued the retirement notification in favour of the petitioner being the widow of the deceased employee for drawing pecuniary benefits as admissible under the rules. In the instant case the sentences of fine awarded to the deceased civil servant have already been set aside by this Court in the appeal where his appeal to the extent of corporal punishment has also been abated and no departmental inquiry is pending against him, therefore the question of affecting the property/assets of deceased official on account of sentence of fine does not arise. If no adverse final action at the Department level has been taken so far against tie deceased official, the abatement of criminal appeal to the extent of a portion of sentence of an imprisonment cannot provide a ground to initiate it now because the death even stops the pending department inquiry.
ii) Under our constitutional scheme, abatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will unduly deprive the decedent civil servant, as well as, his legal heirs

of their constitutional rights to livelihood, property, dignity and fair trial.

Conclusion: i) When the sentences of fine awarded to the deceased civil servant have already been set aside and his appeal to the extent of corporal punishment has also been abated and no departmental inquiry is pending against him the widow of the deceased civil servant is entitled for grant of financial benefits.
ii) Aabatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will unduly deprive the decedent civil servant, as well as, his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial.

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33. **Lahore High Court**
Muhammad Saleem etc. v. Muhammad Akram etc.
Civil Revision No. 48-D of 2011
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9547.pdf

Facts: Through instant civil revision the petitioners/defendants have challenged the findings of the learned appellate court whereby the judgment and decree passed by learned Civil Judge was set aside and the suit of the plaintiff/respondent for Declaration alongwith Possession was decreed in his favour.

Issues: i) Whether general power of attorney which creates any interest in immoveable property is required to be attested by two witnesses as required under Article 17 of Qanune Shahadat Order 1984?
ii) Whether registration of a document will provide its valid execution?
iii) Whether power of attorney is title document?
iv) If an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, whether he has to consult with principle before exercising his that right?
v) Whether merely by tendering a document in evidence gets evidentiary value?

Analysis: i) General power of attorney which purports to create interest in any immovable property is not only required to be registered under the Registration Act but is also required to be attested by two witnesses as required under Article 17 of the order.
ii) It is settled principle of law that mere registration of a document will not prove its valid execution as the contents of same are to be established through manner and mode as provided by the order.
iii) Power of attorney is not a title document even if it is coupled with interest. It is a just a document of convenience. The protection under section 202 of the Act of 1872 read alone or with section 53-A of the Act of 1882, does not render any ownership or title to his holder in any manner whatsoever but only grants limited protection as provided in section 202 of the Act of 1872 for possession or specific performance as envisaged under section 53 only against the transferor.

iv) It is settled law by now that if an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, he/she had to consult the principal before exercising that right. The consistent view of Hon'ble Supreme Court is that if any attorney on the basis of power of attorney, even if 'general' purchases the property for himself or for his own benefit, he should firstly obtain the consent and approval of principal after acquainting him with all the material circumstances.

v) It is also to be noted that merely by tendering a document in evidence gets no evidentiary value unless its contents are proved according to law.

Conclusion: i) Yes, General power of attorney which purports to create interest in any immovable property is also required to be attested by two witnesses.

ii) Mere registration of a document will not prove its valid execution as the contents of same are to be established through manner and mode as provided by Qanune Shahdat order 1984.

iii) Power of attorney is not a title document even if it is coupled with interest.

iv) If an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, he/she had to consult the principal before exercising that right.

v) Merely by tendering a document in evidence gets no evidentiary value unless its contents are proved according to law.

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34. **Lahore High Court**
Abdul Majeed etc. v. Member (Colonies) etc.
Writ Petition No.53 of 2022
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2523.pdf

Facts: Through the instant writ petition petitioners have assailed the legality and validity of orders passed by the Member (Colonies), Board of Revenue and Member (Judicial-IV), Board of Revenue Punjab, respectively.

Issues: i) Whether the order which is non-speaking and unreasoned is sustainable?

ii) Whether Review Petition can be dismissed on the ground of limited scope of review and non-raising new ground, where the earlier order is passed without discussing any ground taken in the petition and going through the record produced therein?

Analysis: i) It appears that respondent No.1 made efforts to collect the record for and against the petitioners by constituting a scrutiny committee in order to comply with the direction of the Hon'ble Supreme Court, which was also produced in the shape of reports of different officers, but unfortunately failed to consider the same while passing the order dated 02.10.2010. Respondent No.1 did not discuss any document produced by the petitioners or any of the reports attached with the report of the scrutiny committee and passed the impugned order in a slipshod manner only with the observation "the self cultivation of land is not proved".

Furthermore, the petitioners‟ case also falls within the criteria evolved by the Board of Revenue with the consultation of functionaries of Cholistan Development Authority, but respondent No.1 did not even discuss or consider the said criteria while passing the impugned order. In the circumstances, the order is non-speaking and unreasoned and as such is not sustainable.

ii) Since the order dated 02.10.2010 was passed without going through the record and discussing the same and the petition filed by the petitioners was dismissed through a single sentence "the self-cultivation of the land is not proved", the observations made in the order dated 18.11.2021 regarding limited scope and non-raising new ground are against the facts for the reason that the earlier order was passed without discussing any ground taken in the petition and going through the record produced therein.

Conclusion: i) The order which is non-speaking and unreasoned is not sustainable.

ii) Review Petition cannot be dismissed on the ground of limited scope of review and non-raising new ground, where the earlier order is passed without discussing any ground taken in the petition and going through the record produced therein.

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35. **Lahore High Court**
Danish Saleem v. Province of Punjab etc.
Writ Petition No.7881 of 2021/BWP
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9558.pdf

Facts: Through instant petition, petitioner challenged the validity of order passed by Director General Social Welfare & Bait- ul-Maal Punjab, Lahore, whereby representation of the petitioner for afresh appointment as "Junior Clerk" or against any of the posts for BS-12 to BS-16 under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 was dismissed.

Issue: Whether benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules 1974 provide any exception or relaxation for afresh appointment when once the benefit is availed for?

Analysis: Perusal aforesaid Rule clearly depicts that in case of death of a civil servant while in service or who has been declared incapacitated for further service, one of his unemployed children or his widow/wife may be employed by appointing authority against a post to be filled under rules 16 & 17 for which he/she possesses the prescribed qualification and experience. In the instant case the petitioner has already availed the benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules 1974 at his own request and Rule ibid does not provide any exception or relaxation for afresh appointment. (…) Keeping in view the facts and circumstances of the case, this Court has reason to believe that after accepting the post of 'Chowkidar' and serving against the said post for a considerable period, the petitioner has claimed re-availing facility of

Rule 17-A of the Rules 1974 through his fresh appointment as 'Junior Clerk' or against any of the post of BS-12 to BS-16 which Rule ibid does not provide any exception or relaxation for afresh appointment in case where the benefit of the same rule has already been availed. During the course of arguments a specific query was put to learned counsel for the petitioner that whether the word used 'employed' in Rule 17-A ibid can be used for re-employment twice, learned counsel remained unable to assist this court on this point.

Conclusion: When once the benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules 1974 is availed, claim for afresh appointment is foreign to the rule, as Rule ibid does not provide any exception or relaxation for afresh appointment.

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36. **Lahore High Court,**
Raees Muhammad Javed v. Muhammad Kashif etc.,
Civil Revision No. 894 of 2018/BWP
Mr. Justice Safdar Saleem Shahid.
https://sys.lhc.gov.pk/appjudgments/2022LHC9527.pdf

Facts: Through this Civil Revision the petitioner assailed the order the Additional District & Sessions judge whereby he directed the return of the relevant plaint for being filed before the civil court.

Issue: Whether the event of death of the plaintiff/defendant, after institution/filing and during proceeding of a suit under Order XXXVII, Rule 2 of CPC, would abate it or the trial court would seize to have jurisdiction to further try said suit?

Analysis: The procedure for the suit filed under Order XXXVII of CPC is given in Rule 7 thereof as that the procedure in relevant suits shall be the same as of suits instituted in the ordinary manner. As per Order XXII Rule 1 and 2 CPC, the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue otherwise survives and the legal heirs of defendant are bound to be impleaded in case of the death of the defendant. Order VII Rule 10 CPC requires that the plaint shall be returned to be presented to the court in which suit should have been instituted, which word “instituted” means that if the court at the time of institution is not competent to entertain the matter, then the plaint should be returned to be presented before the proper court. Moreover, even if the jurisdiction is ousted during the proceedings because of some legal provision, then the plaint could be returned as well but the jurisdiction of the court will not be changed only because of death of the plaintiff or the defendant. The word **“**proceedings” is a comprehensive expression which includes every step taken towards further progress of a cause in a court or tribunal from its commencement till its disposal.

Conclusion: The death of the plaintiff/defendant, after institution/filing and during proceeding of a suit under Order XXXVII, Rule 2 of CPC, will neither abate the proceedings thereof nor will it make any change in the jurisdiction of the court.

37. **Lahore High Court**
Mst. Shahida Perveen etc. v. Muhammad Akram Baig
Civil Revision No.2335 of 2016
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2603.pdf

Facts: This revision petition has been directed against the judgment and decree, whereby the learned Additional District Judge, accepted the application for additional evidence as well as appeal filed by the respondent and remanded the case to the trial Court for recording additional evidence and its rebuttal (if any) and decide the same afresh after considering the additional evidence.

Issues: i) Whether the application for additional evidence can be allowed where the required document is to be helpful for just decision of the case?
ii) Whether the factum of reversal of a decree in appeal along with necessity of its re-trial is one of the pre-condition for remand of case?
iii) Whether the appellate Court can set aside the judgment and decree of the trial Court while remanding the case to the Court whose decree was under appeal for having the additional evidence recorded?

Analysis: i) A perusal of record depicts that legal notices sought to be brought on record through additional evidence were duly mentioned in the list of reliance filed under Order VII rule14 CPC and the said notices had a specific reference to the agreement to sell arrived at between him and the predecessor-in-interest of the petitioners, as such the same were helpful for the Court to reach at a fair and just decision. As such the learned appellate Court feeling the required documents to be helpful for just decision of the case rightly allowed the application moved by the respondent.
ii) As regards remand of the case by the first appellate Court under Rule 23 of Order XLI, C.P.C., it appears to be the result of some misconception in relation to the very applicability of Rule 23 as also of the Lahore High Court Amendment therein adding Rule 23-A. When the afore-referred Rules are read in conjunction with Rule 1 of Order XLII, CPC, which provides for application of the rules of Order XLI, CPC to appeals from appellate decrees, it becomes abundantly clear that one of the preconditions for remand is that "the decree is reversed in appeal and a re-trial is considered necessary".
iii) Provision of Order XLI, Rule 28, CPC prescribes the mode of taking additional evidence and lays down that where the additional evidence is allowed to be produced, the appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred or any other subordinate court, to take such evidence and to send it when taken to the appellate Court, meaning thereby, that the effect of the additional evidence is to be considered by the appellate court and not by the Court whose decree is under appeal. It leaves no doubt that the appellate Court is required to decide the application for adducing

additional evidence itself and has to give the reasons for allowing such application and that too within the parameters of Rule 27. In case the application is allowed then the appellate court may record the additional evidence itself or direct the trial court to record such evidence and to remit the same to the appellate Court. However, under no circumstances the appellate Court could set aside the judgment and decree of the trial Court while remanding the case to the Court whose decree was under appeal for having the additional evidence recorded.

Conclusion: i) The application for additional evidence can be allowed where the required document is to be helpful for just decision of the case.
ii) Yes the factum of reversal of a decree in appeal along with necessity of its re-trial is one of the pre-condition for remand of case.
iii) Under no circumstances the appellate Court can set aside the judgment and decree of the trial Court while remanding the case to the Court whose decree was under appeal for having the additional evidence recorded.

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38. **Lahore High Court**
Moeen Akhtar v. District Education Authority etc.
Writ Petition No. 7583 of 2022
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9522.pdf

Facts: Through this constitutional petition, petitioner has assailed the order of the respondent whereby his application for appointment in place of her deceased wife under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 was turned down.

Issue: Whether widower of a deceased female civil servant can be appointed under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974?

Analysis: The main object of the Rule 17-A ibid of the Act ibid is to provide bread and butter to the deserving then how such benefit cannot be extended to an unemployed previously dependent widower of a female civil servant. The widower deserves such relief as like a widow or child for providing help to the bereaved family without any regard of gender. The distinction drawn in the Rule ibid between a widow and widower seems unconstitutional and discriminatory on gender based. The self-assumed presumption that a widower can never be dependent upon a deceased wife and facility of benefit of the Rule 17-A ibid of the Act ibid should not be extended to him is unwarranted in the prevailing circumstances of the society. … The Rule may allow for compassionate employment for a widower who is unemployed or employed to inferior rank to the deceased female civil servant.

Conclusion: Widower of a deceased female civil servant can be appointed under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974.

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39. **Lahore High Court**
Riffat Sultana etc. v. Addl. District Judge etc.
Writ Petition No.1828 of 2019
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9535.pdf

Facts: Through instant petition, petitioner has called into question concurrent findings of trial court and lower appellate court whereby suit filed by the respondent no.3/ plaintiff for declaration has been decreed whereas application u/s 12(2) CPC instituted by the petitioners/defendants for setting aside the decree passed by learned civil judge has been dismissed.

Issue: Whether an adverse presumption can be drawn if secondary evidence on behalf of the deceased witness has not been produced?

Analysis: i) Under the law, a document can be proved through adducing primary or secondary evidence in terms of Article 75 and 76 of Qanoon-e- Shahadat Order 1984. If the marginal witness has been died, then secondary evidence can be led to prove the document. In case of non producing secondary evidence, an adverse presumption can be drawn that if secondary evidence is summoned on behalf of the deceased marginal witness, they might not support the version.

Conclusion: An adverse presumption can be drawn if secondary evidence on behalf of the deceased witness has not been produced.

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40. **Lahore High Court**
Muhammad Shabbir v. Nazir Ahmed etc.
Civil Revision No. 262-D of 2013
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9566.pdf

Facts: Through instant civil revision the petitioners have challenged the validity and legality of the concurrent findings of the courts below whereby the suit of the plaintiff /respondent No.1 for Specific Performance of Contract was decreed in his favour.

Issues: i) What is the definition of "Agreement"?
ii) Whether it is necessary for a power of attorney to be without any uncertainty or vagueness?
iii) Whether an agreement is a binding contract if it lacks certainty due to vagueness or because its terms cannot be ascertained?
iv)Whether the plaintiff can seek specific performance of a contract where the requisites of a contract are found to be deficient?

v) Whether a photocopy can be admitted as secondary evidence unless under the law conditions provided under Article 78 of Qanun-e-Shahdat are fulfilled?
vi) Whether a document in evidence gets evidentiary value merely by tendering it?
vii)Whether an admission made by a co-defendant is binding on the other even if made in the written statement?
viii) Whether grant of decree for specific performance comes within the sole discretionary power of the Court?

Analysis: i) Under the contract Act under section 2(e): "Agreement defined as every promise and every set of promises, forming the consideration for each other is an agreement" It means that no more than concord a transaction between two parties, that may lead to a contract. It consists of mutual expressions, though not of harmonious intentions or state of mind. It is by the conduct of the parties by their bodily manifestations, that the court determines the existence of the agreement. Indeed, an agreement is nothing more than a manifestation of mutual assent by two or more legally competent persons to one another. According to clause (e) of section 2 of the Contract Act,1872 every promise and every set of promises, forming the consideration for each other in order to constitute an agreement. There must be proposal from the, second party and response of the other party constitute an agreement.
ii) it is settled principle of law that there must not be any uncertainty or vagueness in the power of attorney but when the same is lacking and non-mentioning of complete particulars with specifications of the properties in the alleged power of attorney than makes it doubtful and it can be said that it is the result of fraud and fabrication just usurp the property…
iii) It is settled that an agreement is not a binding contract if it lacks certainty due to vagueness or because its terms cannot be ascertained. Section 29 of the Contract Act also provides that 'Agreements' the meaning of which is not certain or capable of being made certain, are void…
iv) In order to succeed in a suit for specific performance of a contract, the plaintiff has to assert that a valid and enforceable contract existed between him and the other side besides specifically and clearly pleading the terms and conditions on the basis of which the contract was executed which he desired to be specifically performed. Where the requisites of a contract are found to be deficient, the plaintiff cannot seek specific performance of a contract. Even otherwise, the decree for specific performance is a discretionary relief which can be refused in case the Court is not satisfied either on the merits or on equities of the case.
v) Being photocopy cannot be admitted as secondary evidence admissible unless under the law conditions provided under Article 78 of Qanun-e-Shahdat are fulfilled.
vi) It is also to be noted that merely by tendering a document in evidence gets no evidentiary value unless its contents are proved according to law.

vii) The plaintiff cannot rely upon and take advantage of any admission made by the vendor, because according to the law an admission made by a co-defendant is not binding on the other even if made in the written statement.
viii) The grant of decree for specific performance comes within the sole discretionary power of the Court which can refuse to grant the relief on the principle of equities even if the suitor has proved the case

Conclusion: i) An agreement is nothing more than a manifestation of mutual assent by two or more legally competent persons to one another.
ii) Yes, it is necessary for a power of attorney to be without any uncertainty or vagueness.
iii) An agreement is not a binding contract if it lacks certainty due to vagueness or because its terms cannot be ascertained.
iv) The plaintiff cannot seek specific performance of a contract where the requisites of a contract are found to be deficient.
v) A photocopy cannot be admitted as secondary evidence unless under the law conditions provided under Article 78 of Qanun-e-Shahdat are fulfilled.
vi) A document in evidence gets no evidentiary value merely by tendering it unless its contents are proved according to law.
vii) An admission made by a co-defendant is not binding on the other even if made in the written statement.
viii) Yes, grant of decree for specific performance comes within the sole discretionary power of the Court.

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41. **Lahore High Court**
Nadeem Akhtar v. Prosecutor General, Punjab etc.
W.P. No. 2812 of 2022
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9578.pdf

Facts: The petitioner, through instant writ petition has sought direction to respondents for considering the petitioner against the vacant posts of junior clerk in BPS-11 being qualified eligible and fit to hold the said post in all respect.

Issues: i) What is meant by "Disability" and who is called disabled?
ii) Whether a disable person can be made subject to any discrimination while considering him for promotion?
iii) Whether the Constitution of Pakistan applies equally to persons with disabilities, while guaranteeing them full enjoyment of their fundamental rights without discrimination?

Analysis: i) Disability means lacking one or more physical powers, such as the ability to walk or to coordinate one's movements, as from the effects of a disease or accident or through mental impairment. A disabled person is defined as a person who on account of injury, disease or congenital deformity, is handicapped for

undertaking any gainful profession or employment in order to earn his livelihood and includes a person who is blind, deaf, physical handicapped or mentally retarded. Disabilities is an umbrella term, covering impairments, activity, limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations.

ii) A disable person shall not be made subject to any discrimination while considering him for promotion rather every possible effort needs to be taken so as to accommodate him. In short, it shall be at discretion of the disable person to apply for his promotion on disability ground. Such choice of the disabled persons however would not relive the department of its obligation to consider all possible means to accommodate such disable persons.

iii) Our Constitution, as a whole, does not distinguish between a person with or without disabilities. It recognizes inherent dignity of a human being; equal and inalienable rights of all the people as the foundation of freedom, justice and peace. Every person is entitled to all the rights and freedoms set forth therein, without distinction of any kind. It, therefore, applies equally to persons with disabilities, guaranteeing them full enjoyment of their fundamental rights without discrimination. The triangular construct of the right to life, dignity and equality under the Constitution provides a robust platform for mainstreaming.

Conclusion: i) Disability means lacking one or more physical powers and a disabled person is defined as a person who on account of injury, disease or congenital deformity, is handicapped for undertaking any gainful profession or employment in order to earn his livelihood and includes a person who is blind, deaf, physical handicapped or mentally retarded.

ii) A disable person shall not be made subject to any discrimination while considering him for promotion rather every possible effort needs to be taken so as to accommodate him.

iii) Yes, the Constitution of Pakistan applies equally to persons with disabilities, with guaranteeing them full enjoyment of their fundamental rights without discrimination.

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42. **Lahore High Court**
Asma Abbasi etc. v. Bilqees Bibi etc.
Civil Revision No. 432 of 2016
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9592.pdf

Facts: Through instant civil revision petitioners have challenged the validity of judgment passed by Addl. District Judge, whereby the application under section 12(2) C.P.C filed by the petitioners was dismissed.

Issue: Whether High Court can interfere in order passed by the court below, if the petitioners fail to convince this Court regarding any illegality, material irregularity or jurisdictional defect?

Analysis: If the petitioners fail to convince this Court regarding any illegality, material irregularity or jurisdictional defect, requiring interference through civil revision then this Court will not interfere in the order passed by the learned court below.

Conclusion: If the petitioners fail to convince High Court regarding any illegality then High Court will not interfere in the order passed by the court below.

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43. **Lahore High Court**
Sirat Naeem v. Province of Punjab, etc.
Writ Petition No.53882/2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2473.pdf

Facts: Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has questioned the vires of order, whereby his application for setting-aside the report of medical board and re-examination through provincial medical board was dismissed by Judicial Magistrate.

Issues: i) What is medico-legal case (MLC) and what is the difference between fixation of responsibility and falling ill?
ii) Whether the responsibility assigned to a medical officer and jail superintendent is amenable to check?
iii) What is the effect of managerial scheme of prisoners' health maintenance and double check of concerned officers?
iv)Whether the medical board can be constituted in the cases other than mentioned in rule 146 of the Pakistan Prison Rules, 1978?

Analysis: i) The medico-legal case (MLC) applies to any case of injury or medical condition in which law enforcement agencies seek to investigate and fix the responsibility regarding the said injury or medical condition. Fixation of responsibility connotes that injury or medical condition should be result of any criminal activity whereas falling ill being misfortune could be result of any epidemic, or system failure due to any internal disease wherein if no criminal act is involved is hardly a subject of medicolegal work.
ii) The responsibility assigned to the medical officer and jail superintendent though amenable to a check by Inspector General of Prison who can be approached upon in case of any flagrant violations of duty by them, yet an oversight mechanism is also in place whereby District Coordination Officers and Sessions Judges are authorized to ensure that the law and rules applicable on the subject be followed in letter and spirit.

iii) The managerial scheme of prisoners' health maintenance is obvious from the rules cited above; the double check of Medical Staff and Jail Superintendent within the jail premises and an oversight mechanism by Inspector General of Prison, Sessions Judge and District Coordination officer (now Deputy Commissioner) ensures that no prisoner should be deprived of his right to treatment.
iv) Though constitution of board figures only in Rule 146 above, yet there is no specific prohibition for constitution of medical board in other cases as well.

Conclusion: i) The medico-legal case (MLC) applies to any case of injury in which law enforcement agencies fix the responsibility and fixation of responsibility connotes that injury is a result of any criminal activity whereas falling ill being misfortune could be result of any epidemic, or system failure due to any internal disease.
ii) The responsibility assigned to a medical officer and jail superintendent is amenable to check.
iii) The effect of managerial scheme of prisoners' health maintenance and double check of concerned officers ensures that no prisoner should be deprived of his right to treatment.
iv) The medical board can be constituted in the cases other than mentioned in rule 146 of the Pakistan Prison Rules, 1978.

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44. **Lahore High Court**
Province of Punjab and 05 others v. Jaffar Ahmed and 02 others
W. P. No. 15270 / 2023
Province of Punjab and 04 others v. Mubashar Ali Shahzad and 02 others
W. P. No. 15295 / 2023
Mr. Justice Abid Hussain Chatha
https://sys.lhc.gov.pk/appjudgments/2023LHC2596.pdf

Facts: The constitutional petitions are directed against the impugned judgments passed by Labour Court and the Labour Appellate Tribunal, respectively, whereby, the grievance petitions filed by the respondents under Section 33 of the Punjab Industrial Relations Act, 2010 were accepted and the respondents were regularized in the service as "permanent employees" against the posts for which they were already serving on work charge basis under the Petitioner Department from the date of appointment.

Issues: i) Whether the PIRA Act and the Standing Order are applicable to the case of daily wagers?
ii) Whether seeking of regularization based on length of service is the vested right of the government employee?

Analysis: i) The first proviso of Section 1(4) (c) of the Standing Order provides that it shall not apply to industrial and commercial establishments carried on by or under the Federal or any Provincial Government, where statutory rules of service, conduct or discipline are applicable to the workmen employed therein. There is no denial

on the part of the Respondents that the temporary employment was governed by statutory rules. Similarly, Section 1(3) (b) of the PIRA Act specifically provides that it shall not apply to any person employed in the administration of the state other than those employed as workmen by the Railway and Pakistan Post.

ii) A government employee must advance his claim of regularization under the Regularization Act and if the claim of the employee was prior to its enforcement, then on the strength of the policy and the notification that addresses the issue of regularization in contrast to merely seeking regularization based on the length of service under the PIRA Act or the Standing Order for the reason that regularization prerequisites existence of a sanctioned post with budget.Similarly, in case titled, "Parks and Horticulture Authority and others v. Ejaz Ahmad Sial" (2020 PLC (C.S.) 214), it was held that there is no vested right to be regularized in the service and regularization in the first instance is an executive function requiring sanctioned post as it involves financial considerations upon Government exchequer.

Conclusion: i) A daily wager employed in Government Department is excluded from the application of the PIRA Act.

ii) Regularization is not a vested right of any employee but is dependent on a right based on law or policy. Moreover, mere length of service is not the sole basis to seek regularization.

LATEST LEGISLATION/AMENDMENTS

1. The Environmental Protection Council, in exercise of powers conferred under clause (b) of sub-section (1) of section 4 of Punjab Environmental Protection Act, 1997 approved the Plastic Management Strategy, Punjab.
2. The Punjab Environmental Protection Council approved Punjab clean Air policy (with phased action plan)
3. Punjab place of Provision of Service Rules, 2023 prescribed by the Punjab Revenue Authority with approval of Government in relation to determination of place of provision of the taxable services.
4. In exercise of powers conferred under section 48 of Punjab Public Financial Management Act, 2022, Punjab Medium-term Fiscal Framework and budget strategy Rules, 2023 are made.
5. Inter-Boards Coordination Commission Act, 2023 has been enacted to re-constitute the Inter-Board Committee of Chairman as Inter-Boards Coordination Committee.
6. Section 16 of Pakistan Council of Research in Water Resources has been substituted vide Pakistan Council of Research in Water Resources (Amendment) Act, 2023.
7. The National University of Pakistan Act, 2023 has been enacted to establish National University of Pakistan.

8. Vide the Tax Laws (Amendment) Act, 2023 amendments have been made in certain laws relating to taxes and duties.
    a. Amendments have been made in section 2 & 3 and new serial number has been added after serial number 54 in column (1) of Table-2 in Sixth Schedule of Amendments of the Sales Tax Act, 1990.
    b. In Income Tax Ordinance, 2001, section 99A has been substituted, sub-section (1A) in section 235 has been omitted, First Schedule is amended (in Part IV, in division III in clause 2 and in Division IV, clause 3 omitted), in Second Schedule clauses (5A), (105C) are inserted and in Tenth Schedule, in Rule 10 clause (ha) has been inserted.
    c. In the Federal Excise Act, 2005 amendments made in First Schedule in Table-1, in column (1).
    d. Amendments have been made in section 8 of the Finance Act, 2022.

SELECTED ARTICLES

1. CAMBRIDGE INTERNATIONAL LAW JOURNAL

https://www.researchgate.net/profile/Agustin-Ruiz-Robledo/publication/329460150_The_construction_of_the_right_to_free_elections_by_the_European_Court_of_Human_Rights/links/5e838c56a6fdcca789e57b18/The-construction-of-the-right-to-free-elections-by-the-European-Court-of-Human-Rights.pdf

The Construction of the Right to Free Elections by the European Court of Human Rights by Agustín Ruiz Robledo

As Rousseau observed, citizens would lose their right to vote if the elections in which that right was exercised were not genuinely free but manipulated by power. In the words of the European Court of Human Rights (ECtHR): the right to free elections, guaranteed by Article 3 of Protocol No 1, is 'crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law'. The aim of this article is to study this fundamental right by analysing the jurisprudence of the ECtHR which, in my view, has succeeded in converting what in the Additional Protocol was only a mandate for states (to hold free elections) into a genuine subjective right of citizens, which the states have ended up accepting. This eventually resulted in the change of the title of Article 3 in 1994.

2. ACADEMIA

https://www.academia.edu/40688080/Expanding_the_Debate_over_Internet_Access_as_a_Human_Right

Expanding the Debate over Internet Access as a Human Right by Will Wojcik Shook

Should access to the internet be considered a human right? The debate has continued since the 2011 report to the United Nations Human Rights Council (UNHRC) recommending access to the internet be ensured on the basis of enabling free speech and its unique status as a platform to exercise numerous other human rights (United Nations Human Rights Council, 2011). A particularly interesting position on the debate comes from Brian Skepys, who believes the best case for internet access as a human right can be made through the right to assembly, though this argument is one he ultimately rejects. This essay has three aims. First, it will address critics in their denial of the right to access the internet. Second, it will argue that due to its function as a community, access to the internet should be considered a human right via the right to assembly. Finally, it will outline some of the additional duties and obligations governments have regarding the internet.

3. HUMAN RIGHTS LAW REVIEW
https://academic.oup.com/hrlr/article/22/2/ngac009/6562805

Tinker, Tailor, Twitter, Lie: Government Disinformation and Freedom of Expression in a Post-Truth Era by Katie Pentney

The spread of disinformation has received significant attention in recent years, yet little has been paid to government disinformation, and whether governments may violate freedom of expression not only in how they regulate disinformation, but also in how they facilitate, sow and spread it. This article analyses whether and to what extent Article 10 of the ECHR is engaged by government disinformation. It extends the analysis from well-established violations of freedom of expression—overt censorship and withholding information—into novel forms of government interference in the 'post-truth' age: false claims of 'fake news' levelled at the press and intentional lies about matters of public importance. These latter categories warrant further attention, as governments can cause just as much harm to public discourse and debate by intentionally injecting falsehoods as by censoring truth. A purposive approach to freedom of expression is needed to protect not only the means of expression, but also the ends—vibrant democratic discourse and meaningful public debate.

4. STATUTE LAW REVIEW
https://academic.oup.com/slr/article-abstract/41/1/89/5203269?redirectedFrom=fulltext

'May' and 'Shall' and 'Must': Power or Duty? by Alec Samuels

The words 'may' and 'shall' and 'must' appear in many statutes. Not surprisingly, over the years, a myriad of particular instances has appeared in the law reports. From all this body of law can any principles be deduced? Are there any authoritative texts?

5. HUMAN RIGHTS LAW REVIEW

https://academic.oup.com/hrlr/article/21/3/696/6206835

Human Rights Protections in Drawing Inferences from Criminal Suspects' Silence by Yvonne Daly, Anna Pivaty, Diletta Marchesi and Peggy ter Vrugt

This article sheds comparative and contextual light on European and international human rights debates around the privilege against self-incrimination and the right to silence. It does so through an examination of adverse inferences from criminal suspect's silence in three European jurisdictions with differing procedural traditions: Ireland, Italy and the Netherlands. The article highlights the manner in which adverse inferences have come to be drawn at trial in the three jurisdictions, despite the existence of both European and domestic legal protections for the right to silence. It also explores differing approaches to the practical operation of inference-drawing procedures, including threshold requirements, varying evidential uses of silence and procedural safeguards. The authors argue that human rights' standard-setting institutions ought to provide clarity on the conditions under which adverse inferences may be tolerated, including the purpose(s) for which inferences may be used, and the necessary surrounding safeguards.

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FORTNIGHTLY CASE LAW BULLETIN

(16-05-2023 to 31-05-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Fida Hussain v. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, and others.
Civil Petition No.1777 of 2020
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1777_2020.pdf

Facts: The petitioner filed Civil Petition for leave to appeal directed against the judgment passed by the Peshawar High Court whereby the writ petition filed by the respondent No.7 was allowed which was regarding the eligibility of the respondent No.7 to be appointed as a Patwari.

Issue: Whether a *de novo* inquiry is justified where a competent authority decided to file an inquiry report without taking any action thereon, with proper reasoning?

Analysis: In our view also, the holding of inquiry under Civil Servant Laws on the allegation of misconduct is a routine affair and a common phenomenon which is triggered after the issuance of a show cause notice and statement of allegations, and when Inquiry Report is submitted to the competent authority then it is their domain, with proper sense of duty, to impose the penalty keeping in mind the gravity of charges, if proved, during the inquiry. It is not mandatory that, in all circumstances, the competent authority should agree with the recommendations of the Inquiry Officer or Inquiry Committee, but in case the competent authority decides to impose a penalty greater than that recommended by the Inquiry Officer, then obviously some reasons are to be assigned with proper application of mind, after providing a right of personal hearing to the accused, and in case the competent authority decides to file the Inquiry Report without taking any action thereon, with proper reasoning, then obviously in this second limb there would be no justification to expect a *de novo* inquiry to start from scratch in each and every case without any lawful justification.

Conclusion: A *de novo* inquiry is not justified without any lawful justification where a competent authority decided to file an inquiry report without taking any action thereon, with proper reasoning.

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2. **Supreme Court of Pakistan**
Muhammad Aqil v. Muhammad Amir & others.
Civil Appeal No. 32-K of 2018
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a.32_k_2018.pdf

Facts: Through this Civil Appeal, the petitioner has challenged the judgment of the High Court whereby his Second Appeal against the judgment of the Learned First Appellate Court by which his suit for specific performance of agreement to sell

was dismissed by reversing the judgment and decree passed in favour of appellant and against the respondents by the Learned Trial Court, was partially allowed.

Issues: i) Whether a *de facto* guardian without having express permission from the Court, can alienate the immovable property of minor?
ii) Whether it is necessary for the minor to challenge the agreement to sell executed by a *de facto* guardian, after attaining majority?

Analysis: i) Section 361 of Mohammadan Law deals with *de facto* guardians and Section 364 deals with alienation of immovable property by *de facto* guardians which reads as, "A *de facto* guardian (section 361) has no power to transfer any right or interest in the immovable property of the minor. Such a transfer is not merely voidable, but void." The only power that a *de facto* guardian can exercise relates to disposal of movable property in terms of Section 368. Prior to Independence, the Allahabad High Court in Mt. Auto vs. Mt. Reoti Kaur (AIR 1936 All 837) dealt with the matter of ratification of an agreement made by a person during the age of minority. This principle has been reaffirmed by this Court in various cases.
ii) We would like to note since we are in agreement with the impugned judgment that the agreement to the extent of Mst. Maria Siddique was *void ab initio,* we find that there was no need for Mst. Maria to challenge the said sale agreement since the same did not infringe or alter any of her legal rights in the suit house whatsoever.

Conclusion: i) A *de facto* guardian without having express permission from the Court, cannot alienate the immovable property of minor.
ii) It is not necessary for the minor to challenge the agreement to sell executed by a *de facto* guardian, after attaining majority because the same does not infringe or alter any of his/her legal rights being void.

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3. **Supreme Court of Pakistan**
Shujat Hussain v. Provincial Election Commissioner, Balochistan & others.
C.M.A.No.3652 of 2023 In/ and C.A.No.364 of 2023
Mr. Justice Iijaz Ul Ahsan, Mr. Justice Munib Akhtar,Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._364_2023.pdf

Facts: Through the instant appeal in terms of the order of the learned High Court the appellant has assailed under section 9(5) of the Election Act 2017, the order of Election Commission of Pakistan in which the re- poll of the election sought under section 37 of the Balochistan Local Government Act, 2010 read with sections 8 and 9 of the 2017 Act was allowed.

Issues: i) Whether the election for the office of the Chairman of the Union Council is exclusive subject of Balochistan Local Government Act, 2010 therefore for the hearing of the election petition the Election Commission have to appoint an Election Tribunal?
ii) Whether an appeal before Supreme Court is general right under section 9(5) of

Election Act 2017?
iii) Whether determination of election dispute by the Election commission beyond its jurisdiction can be challenged by way of a writ petition before the High Court?

Analysis: i) It is common ground that the election in question, i.e., to the office of the Chairman of the Union Council is an election under the 2010 Act. The contesting private respondent sought to call in question the election to this office. That could only have been done by an election petition and not otherwise. Section 38 of the 2010 Act provides, in its sub-section (1), that for the hearing of the election petition the Election Commission shall appoint an Election Tribunal in terms as therein stated by a notification. Therefore, the proper remedy for the contesting private respondent was to file an election petition under section 37 of the 2010 Act and not by taking recourse to sections 8 and/ or 9 of the 2017 Act...when the Election Commission failed to constitute an Election Tribunal and instead chose itself to decide the matter, the same is not sustainable in the eyes of law. The proper course for it was to constitute an Election Tribunal under section 38 of the 2010 Act and for the election dispute to be then resolved in terms as provided in that statute, and to the extent not expressly provided for therein then, as provided in section 229(1), also by reference and regard to, and application of, Chapter IX of the 2017 Act (which relates to election disputes).
ii) The election dispute and its resolution lay essentially within the four corners of the 2010 Act. Now, an appeal to this Court under section 9(5) is not a general right; it lies only against an order made "under this section".
iii) When the determination of the election dispute by the Election Commission in the facts and circumstances was beyond jurisdiction and without lawful authority, as it acted in terms of an inapplicable provision of the wrong statute. Then its purported decision could therefore be challenged by way of a writ petition to the High Court…

Conclusion: i) Yes, the election for the office of the Chairman of the Union Council is exclusive subject of Balochistan Local Government Act, 2010 therefore for the hearing of the election petition the Election Commission have to appoint an Election Tribunal.
ii) An appeal before Supreme Court is not a general right under section 9(5) of Election Act 2017.
iii) Yes, the determination of election dispute by the Election commission beyond its jurisdiction can be challenged by way of a writ petition before the High Court.

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4. **Supreme Court of Pakistan**
Allied Bank Limited v. The Commissioner of Income Tax, Lahore etc.
Civil Petition No.6-L of 2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._6_l_2023.pdf

Facts: The Income Tax Reference was decided against the petitioner vide the impugned judgment, hence, the instant petition for leave to appeal.

Issues: i) Whether the powers exercised by the Commissioner under Section 122(5A) of the Ordinance can be delegated to the Additional Commissioner under Section 210 of the Ordinance 2001?
ii) What is the obligation of the court while interpreting fiscal or taxing statutes?

Analysis: i) Section 122(5A) of the Ordinance stipulates that subject to sub-section (9), which requires that the taxpayer must be provided with an opportunity to be heard, the Commissioner may amend, or further amend, an assessment order if he considers the assessment order as erroneous is so far as it is prejudicial to the interest of revenue. Section 210(1) of the Ordinance specifically empowers the Commissioner to delegate all or any of the powers or functions conferred upon or assigned to the Commissioner under the Ordinance to any officer of Inland Revenue subordinate to the Commissioner, except the power of delegation. Importantly, Section 210(1A) removes any ambiguity as to the power of the Commissioner to delegate his powers provided under Section 122(5A) by stipulating that the Commissioner shall not delegate the powers of the amendment of assessment contained in Section 122(5A) to an officer of Inland Revenue below the rank of Additional Commissioner Inland Revenue. Section 211(1) of the Ordinance then further fortifies that where by virtue of an order under Section 210 of the Ordinance, an officer of the Inland Revenue exercises a power or performs a function of the Commissioner, such power or function shall be treated as having been exercised or performed by the Commissioner.
ii) It is well settled that a literal approach is to be adopted while interpreting fiscal or taxing statutes and the Court cannot read into or impute something when the provisions of a taxing statute are clear. While interpreting a taxing statute, the Court must look to the words of the statute and interpret it in light of what is clearly expressed therein, and it cannot imply something which is not expressed or import provisions in the statute so as to support any assumed deficiency.

Conclusion: i) The powers exercised by the Commissioner under Section 122(5A) of the Ordinance can be delegated to the Additional Commissioner under Section 210 of the Ordinance.
ii) While interpreting a taxing statute, the Court must look to the words of the statute and interpret it in light of what is clearly expressed therein, and it cannot imply something which is not expressed.

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5. **Supreme Court of Pakistan**
Mehtab Publication (Pvt.) Ltd v. Pakistan Electronic Media Regulatory Authority (PEMRA), etc.
C.M.A No.9009/ 2022 in Civil Petition No. 361 of 2020.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._9009_2022.pdf

Facts: The petitioner filed an application for restoration of his petition, which was dismissed for non-prosecution, on the sole ground that the petitioner, as well as, the learned counselfor the petitioner did not receive any information regarding the fixation of his case.

Issue: What is the formal procedure for informing the advocates regarding fixation of a case before the Supreme Court of Pakistan?

Analysis: It is clarified that the process of informing the Advocates regarding fixation of case is through the supply of the cause list to the respective Advocate-on-Records (AORs) under Order IV, Rule 19 of the Supreme Court Rules, 1980. Otherwise, informally as a matter of tradition and by way of standing practice, the cause lists are also put up in the Bar Rooms and SMS messages are also sent to the learned Advocates by the Court. However, the procedure covered by the Rules is the supply of cause list to the AORs. In case of a petitioner in person, notices are served to the petitioner under Order III, Rule 9 of the Rules.

Conclusion: The formal procedure for informing the Advocates regarding fixation of a case before the Supreme Court of Pakistan is through the supply of the cause list to the respective Advocate-on-Records (AORs) under Order IV, Rule 19 of the Supreme Court Rules, 1980.

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6. **Supreme Court of Pakistan**
Hilal Khattak v. The State & another.
Criminal Petition No.461 of 2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._461_2023.pdf

Facts: The petitioner seeks leave to appeal against an order of the High Court, whereby the High Court has dismissed his application for post-arrest bail in case FIR registered for the offences punishable under Sections 302, 311, 324, 452, 365, 337- A(ii), 148 and 149 of the Pakistan Penal Code 1860.

Issues: i) Whether question of vicarious liability of an accused can be looked into at the bail stage?
ii) What are the exceptions to rule of granting bail in non-prohibitory clause offences?
iii) Whether offence of housebreaking by night is a grave offence and also violates the fundamental right guaranteed by Article 14 of the Constitution of Pakistan?

Analysis: i) Although the question of vicarious liability of an accused can also be looked into at the bail stage and it is not an absolute rule that it must always be left to be determined in trial.
ii) The argument of the learned counsel for the petitioner, we find, is based on a mistaken understanding of the legal position regarding grant of bail in offences

that do not fall within the prohibitory clause of Section 497(1), CrPC. It is true that in such offences, bail is to be granted as a rule, but not as of right. Bail can be refused in such offences when the case of the accused falls within any of the three well established exceptions: (i) likelihood to abscond to escape trial; (ii) likelihood to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) likelihood to repeat the offence.

iii) We may observe here that it is the sanctity and privacy of home, as guaranteed by Article 14 of the Constitution of Pakistan, that the offences of house-breaking committed after having made preparation for causing hurt or fear of hurt have been categorised by the legislature as grave offences under Section 455 (when committed at daytime) and Section 458 (when committed at night), punishable with imprisonment upto ten years and fourteen years respectively. It is said that 'the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose'. It would be the worst position of a society if its people do not feel safe and secure even within their houses. Failure to provide protection to its citizens in their houses would amount to the failure of the State. All the organs of the State, including the judiciary, should therefore enforce the laws protecting the privacy of home strictly in letter and spirit.

Conclusion: i) The question of vicarious liability of an accused can also be looked into at the bail stage and it is not an absolute rule that it must always be left to be determined in trial.

ii) The exceptions to rule of granting bail in non-prohibitory clause offences are (i) likelihood to abscond to escape trial; (ii) likelihood to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) likelihood to repeat the offence.

iii) The offence of housebreaking by night is a grave offence and also violates the fundamental right guaranteed by Article 14 of the Constitution of Pakistan.

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7. **Supreme Court of Pakistan**
M/s Pak Suzuki Motors Company Limited through its Manager v. Faisal Jameel Butt and another.
Civil Appeal No.797 of 2017
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._797_2017.pdf

Facts: Respondent No.1 purchased a motor vehicle from the appellant, through respondent No.2 who is a car dealer. On discovering certain defects in the vehicle, respondent No. 1 issued legal notices to the appellant and respondent No.2 and thereafter filed a claim under Section 25 of the Punjab Consumer Protection Act, 2005 before the District Consumer Protection Court which was allowed. The appellant filed an appeal under Section 33 of the Act before the High Court,

which was subsequently dismissed through the impugned judgment. Hence, this civil appeal.

Issues: i) Whether evidence can be led or looked into in support of a fact or a plea that has not been taken in the pleadings?

ii) Whether as per the provisions of the Consumer Protection Act 2005, expert evidence is necessary to ascertain the technical manufacturing defects in the vehicle?

iii) Whether the admission of a co-defendant is binding on the other defendant?

iv) When the 30-day limitation period stipulated under Section 28(4) of the Consumer Protection Act 2005 commence?

v) Where the limitation period has expired, whether a right accrues in favour of the other side which cannot be lightly brushed aside?

Analysis: i) It is settled law that a litigant is required to plead all material facts that are necessary to seek the relief claimed and then to prove the same through evidence. Parties are required to lead evidence in consonance with their pleadings and no evidence can be led or looked into in support of a fact or a plea that has not been taken in the pleadings.

ii) Where the defects alleged are of such a nature that require expert inspection or probe, the onus to provide such expert evidence falls on the consumer who is alleging that the product is defective or faulty. Where such defects are alleged by the consumer, a Consumer Court, before deciding that a certain product is defective or faulty, must satisfy itself that sufficient expert evidence is available and can be relied upon to ascertain the defects so alleged instead of merely placing reliance on the statement of a consumer who may not be from the related field of expertise and therefore, not competent to address the technicalities forming part of the alleged defects, especially where the claim of the consumer is denied by the manufacturer. To this effect, Section 30(1)(c) of the Act allows the Consumer Court to invite expert evidence, if required, where the claim alleges that the products are defective and do not conform to the accepted industry standards. No expert evidence was produced by respondent No.1 or invited by the Consumer Court to ascertain whether the alleged defects existed in the vehicle. Therefore, respondent No.1 failed to prove that the vehicle was defective in construction or composition as required under Section 5 or that it was otherwise defective for the purposes of any other provision of the Act.

iii) It is settled law that the admission of a co-defendant is not binding on the other defendant.

iv) When the consumer obtains knowledge of the defect or fault in the product or the service, the 30-day limitation period stipulated under Section 28(4) of the Act commences. It is during this period that the consumer has to first put his grievance before the manufacturer or service provider, seeking rectification of the defect or fault in the product or service, or damages, and provide 15 days to the manufacturer or service provider to remedy the same, as required under Section 28(2). It is only after the manufacturer or the service provider responds to the

written notice, or where he fails to respond within the stipulated 15-day period, that the consumer can file a claim before the Consumer Court if the cause of action still subsists.

v) It is settled law that that limitation is not a mere technicality, and where the limitation period has expired, a right accrues in favour of the other side which cannot be lightly brushed aside.

Conclusion: i) Evidence cannot be led or looked into in support of a fact or a plea that has not been taken in the pleadings.

ii) As per the provisions of the Consumer Protection Act 2005, expert evidence is necessary to ascertain the technical manufacturing defects in the vehicle.

iii) The admission of a co-defendant is not binding on the other defendant.

iv) The 30-day limitation period stipulated under Section 28(4) of the Consumer Protection Act 2005 commences when the consumer obtains knowledge of the defect or fault in the product or the service.

v) Where the limitation period has expired, a right accrues in favour of the other side which cannot be lightly brushed aside.

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8. **Supreme Court of Pakistan**
Raja Muhammad Shahid v. The Inspector General of Police & others.
Civil Petition No.545 -K of 2021
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._545_k_2021.pdf

Facts: The petitioner has filed this Civil Petition for leave to appeal against the judgment only to the extent of the fate of Appeal filed by him before the Service Tribunal which was dismissed by the common judgment.

Issues: i) What is the procedure to conduct regular inquiry?

ii) What are the requirements of competent authority to conduct the departmental inquiry and what is the duty of Service Tribunal under law?

iii) What is the object of departmental inquiry?

iv) What is the purpose of cross-examination?

v) Whether depriving the accused officer from right of cross-examination to departmental representative will infringe his right of fair trial?

Analysis: i) A regular inquiry is triggered after issuing show cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow an even-handed and fair opportunity to the accused to place his defence and if any witness is examined against him, then a fair opportunity should also be afforded to cross-examine the witnesses.

ii) The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and the delinquent civil servant should be provided a fair opportunity of being heard and

if the order of the competent authority based on inquiry report is challenged before the Service Tribunal then it is the legal duty of the Service Tribunal to give some reasons and there should be some discussion of evidence on record which is necessary to deliberate the merits of the case in order to reach a just conclusion before confirming, reducing or setting aside the penalty.

iii) It was held in the case of Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others Vs. Zahid Malik (2023 SCMR 603), that the primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence can only be thrashed out from the outcome of inquiry.

iv) The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the statement of a witness is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross- examination, which is not a mere formality, but is a valuable right to bring the truth out. The possibility cannot be ruled out in the inquiry that the witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. The whys and wherefores of cross-examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies.

v) Depriving the accused officer from right of cross-examination to departmental representative who lead evidence and produced documents against the accused is against Article 10-A of the Constitution in which the right to a fair trial is a fundamental right. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned.

Conclusion: i) A show cause notice is issued with statement of allegations and if the reply is not found suitable then inquiry officer is appointed for the commencement of regular inquiry.

ii) Authority conducting the departmental inquiry should be impartial and if the order of the authority is challenged then it is the legal duty of the Service Tribunal to give some reasons to deliberate the merits of the case.

iii) The object of conducting departmental inquiry is to grasp whether a case of misconduct is made out or not.

iv) The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood.

v) Depriving the accused officer from right of cross-examination to departmental representative will infringe his right of fair trial.

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9. **Supreme Court of Pakistan**
Commissioner Inland Revenue Z-III, Corporate Regional Tax Office, Tax House, Karachi etc v. M/s MSC Switzerland Geneva & others etc.
Civil Review Petitions No.432-K to 459-K of 2022 in Civil Petitions No.672-K to 692- K of 2021 & 694-K, 724-K to 729-K of 2021.
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._432_k_2022.pdf

Facts: These Review Petitions have been brought to implore the review of the order passed by this Court whereby the Civil Petitions filed by the petitioner were dismissed and leave was refused.

Issues: i) Whether the Federal Government has power to enter into tax treaty?
ii) Whether the agreement made under law with the other countries shall have any effect?
iii) If any Pakistan-source income which Pakistan is not permitted to tax under a tax treaty whether it would be exempted from tax under this Ordinance?
iv) How the treaties are interpreted under Article 31 of the Vienna Convention on the Law of Treaties, 1969?
v) What is the doctrine of merger?
vi) Whether the Supreme Court has the power to review its judgment?
vii) What are the pre-requisites for filing a review petition?
viii) What if the review petition is found frivolous or vexatious?
ix) What grounds are available in CPC for filing review application?
x) Whether irregularities having no significant effect or impact on the judgment will be sufficient to warrant the review of a judgment or order?
xi) On what grounds review application can be filed before the court?

Analysis: i) Pursuant to the powers conferred under Section 107 of the 2001 Ordinance, the Federal Government may enter into a tax treaty, including tax information exchange agreement, multilateral convention, inter-governmental agreement or a similar agreement with a mechanism and ways and means for the avoidance of double taxation or the exchange of information for the prevention of fiscal evasion or avoidance of taxes including automatic and spontaneous exchange of information with respect to taxes on income imposed under the 2001 Ordinance, or any other law for the time being in force.
ii) Subject to Section 109, where any agreement is made shall have effect in so far as it provides the purposes for at least one of the following: (a) relief from the tax payable under the 2001 Ordinance; (b) the determination of the Pakistan-source income of non-resident persons; (c) where all the operations of a business are not carried on within Pakistan, the determination of the income attributable to operations carried on within and outside Pakistan, or the income chargeable to tax in Pakistan in the hands of non-resident persons, including their agents, branches, and permanent establishments in Pakistan; (d) the determination of the income to be attributed to any resident person having a special relationship with a non-resident person; and (e) the exchange of information for the prevention of fiscal

evasion or avoidance of taxes on income chargeable under the 2001 Ordinance and under the corresponding laws in force in that other country.

iii) Whereas the exactitudes of sub-Section (1) of Section 44 of the 2001 Ordinance, accentuates that any Pakistan-source income which Pakistan is not permitted to tax under a tax treaty shall be exempt from tax under this Ordinance.

iv) The interpretation of treaties as envisaged under Article 31 of the Vienna Convention on the Law of Treaties, 1969 is a process of progressive encirclement where the interpreter starts under the general rules whereunder (1) A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose; (2) The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

v) The doctrine of merger presupposes the existence of two independent things, the greater of which would swallow up or may extinct the lesser one by the process of absorption. It is defined generally as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased, an absorption or swallowing up so as to involve a loss of identity and individuality.

vi) The Supreme Court has the power to review its judgment under Article 188 of the Constitution, subject to the provisions of any Act of Parliament and of any rules made by this Court. In the same parlance, Order XXVI of the Supreme Court Rules, 1980 is germane to the "Review Jurisdiction" wherein, subject to the law and the practice of the Court, this Court may review its judgment or order on grounds similar to those mentioned in Order XLVII, Rule 1, CPC and in a criminal proceeding, on the ground of an error apparent on the face of the record.

vii) The prerequisite of filing a review application is that the Advocate signing the application shall specify, in brief, the points upon which the prayer for review is based and shall add a certificate in the form of a reasoned opinion that review would be justifiable in that particular case.

viii) It is clearly provided in the Order XXVI of the Supreme Court Rules, 1980 that, in case the Court comes to the conclusion that the Review Application was vexatious or frivolous, the Advocate or the Advocate-On-Record drawing the application shall render himself liable to disciplinary action.

ix) Under Order XLVII, Rule 1, CPC, an aggrieved person may file an application for review of the judgment and order on the ground of discovery of new and important information or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

x) Every judgment articulated by the Courts of law is presumed to be a solemn and conclusive determination on all points arising out of the lis. Mere irregularities having no significant effect or impact on the outcome would not be sufficient to warrant the review of a judgment or order, however, if the anomaly or ambiguity is of such a nature so as to transform the course of action from being one in the aid of justice to a process of injustice, then obviously a review petition may be instituted for redressal to demonstrate the error, if found floating conspicuously on the surface of the record, but a desire of re-hearing of the matter cannot constitute a sufficient ground for the grant of review which, by its very nature, cannot be equated with the right or remedy of appeal.

xi) The clemency by dint of review is accorded to nip in the bud an irreversible injustice, if any, done by a Court such as misconstruction of law, misreading of the evidence and non-consideration of pleas raised before a Court that would amount to an error floating on the surface of the record, but where the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. Review by its nature is neither commensurate to a right of appeal or opportunity of rehearing merely on the ground that one party or the other conceived himself to be dissatisfied with the decision of the court, nor can a judgment or order be reviewed merely because a different view could have been taken.

Conclusion: i) The Federal Government has power to enter into tax treaty.

ii) Agreement shall have effect in so far as it provides the purposes for at least one of the following: (a) relief from the tax payable under the 2001 Ordinance; (b) the determination of the Pakistan-source income of non-resident persons; (c) where all the operations of a business are not carried on within Pakistan (d) the determination of the income to be attributed to any resident person having a special relationship with a non-resident person; and (e) the exchange of information for the prevention of fiscal evasion or avoidance of taxes on income chargeable under the 2001 Ordinance and under the corresponding laws in force in that other country.

iii) Any Pakistan-source income which Pakistan is not permitted to tax under a tax treaty shall be exempt from tax under this Ordinance.

iv) The interpretation of treaties as envisaged under Article 31 of the Vienna Convention on the Law of Treaties, 1969 is a process of progressive encirclement where the interpreter starts under the general rules.

v) The doctrine of merger presupposes the existence of two independent things, the greater of which would swallow up or may extinct the lesser one by the process of absorption.

vi) The Supreme Court has the power to review its judgment under Article 188 of the Constitution, subject to the provisions of any Act of Parliament and of any rules made by this Court.

vii) The prerequisite of filing a review application is that the Advocate signing the application shall specify, in brief, the points upon which the prayer for review is based and shall add a certificate in the form of a reasoned opinion.
viii) If Review Application was vexatious or frivolous, the Advocate or the Advocate-On-Record drawing the application shall render himself liable to disciplinary action.
ix) Under Order XLVII, Rule 1, CPC, an aggrieved person may file an application for review of the judgment and order on the ground of discovery of new and important information.
x) Mere irregularities having no significant effect or impact on the outcome would not be sufficient to warrant the review of a judgment or order.
xi) The clemency by dint of review is accorded to nip in the bud an irreversible injustice, if any, done by a Court such as misconstruction of law, misreading of the evidence and non-consideration of pleas raised before a Court that would amount to an error floating on the surface of the record.

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10. **Lahore High Court**
Nauman Anjum v. Area Magistrate, etc.
Intra Court Appeal No.28717/2023
Mr. Justice Ali Baqar Najafi, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC2625.pdf

Facts: Appellant has directed this Intra Court Appeal under Section 3 of Law Reforms Ordinance, 1972 against the order of Single Judge in Chamber, whereby his Writ Petition seeking annulment of order of Area Magistrate, Daska was dismissed.

Issue: Whether Intra Court Appeal is maintainable against the order of Single Judge of High Court where Writ Petition seeking annulment of order of Area Magistrate for constitution of District Standing Medical Board, was dismissed?

Analysis: An appeal under Section 3 is not competent before the Division Bench of this Court, against the order of learned Single Judge passed in a writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, arises out of the proceedings, which at least provided one appeal, one revision or review to any Court, Tribunal or authority against the "original order". (…) From the above notification, it is manifestly clear that opinion of First Medical Examiner, can be challenged in appeal by an aggrieved person before the District Standing Medical Board and second appeal lies before the Provincial Standing Medical Board in Appellate/Supervisory capacity. This "Three Tier Structure" for conduction of medico legal work has been recognized by the apex Court in case reported as "Mst. Lubna Bibi ..Vs.. Azhar Javed Abbas and another (2022 SCMR 946)". (…) For what has been discussed above, we have no doubt in our mind that against the "original order" i.e. opinion of Initial Medical Examiner, two tier remedy of appeal i.e. before District Standing Medical Board and Provincial Standing Medical Board was available to the appellant, therefore, irrespective of the fact

that what was impugned/challenged in the writ petition, instant Intra Court Appeal is not maintainable.

Conclusion: Intra Court Appeal is not maintainable against the order of Single Judge of High Court, where Writ Petition seeking annulment of order of Area Magistrate for constitution of District Standing Medical Board is dismissed, as the opinion of First Medical Examiner, can be challenged in appeal by an aggrieved person before the District Standing Medical Board and second appeal lies before the Provincial Standing Medical Board in Appellate/Supervisory capacity.

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11. **Lahore High Court**
Ashfaq Ahmad v. Govt. of Punjab etc.
Writ Petition No.27705/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2668.pdf

Facts: The petitioners are employees of the LG&CDD, Punjab and posted as Chief Officers & District Officers at Municipal Corporation and District Councils. Employees/officers of the local government, including the petitioners, have been transferred through the impugned transfer orders. In this Petition alongwith connected petitions, the petitioners have challenged two transfer orders to their extent, passed by the Secretary, Local Government & Community Development Department. The petitioners have also challenged three separate impugned orders passed by the Chief Secretary, whereby their respective representations were declined.

Issues: i) Whether security of tenure for the employees/officers of local government was not specifically available under previous local government laws?
ii) Whether section 186 of the Act XXXIII of 2022 is only applicable to chief officers and no other officers?
iii) Whether Act XXXIII of 2022 shall remain in abeyance till holding of the local government elections under the Act and the Act of 2013 will remain in field?
iv) Whether employees/officers can be transferred prior to period specified in the law or rules made thereunder?
v) Whether employees of the LG&CDD, Government of Punjab, can be transferred before expiry of their ordinary tenure of two years', prescribed under Section 186 of the Act XXXIII of 2022?

Analysis: i) Cursory glance of above mentioned local government laws manifests that though the security of tenure for the employees/officers of local government was not specifically available under the Ordinance of 1979 and the Act of 2013, however, the Transfer Policy was in field and subsequently the Act of 2019, the Ordinance of 2021, the Act XIII of 2022 and the Act XXXIII of 2022 provided statutory security of ordinary tenure of two years to the officers of the local government.
ii) The aforesaid Section 186 must be read in conjunction with Section 185 of the

Act ibid, which provides that every local government shall have such number of Chief Officer from prescribed service and such number and description of other officers and servants as the Secretary may from time to time determine. Sub-section (2) of Section 185 of the Act XXXIII of 2022 further provides that all officers of a local government shall be appointed by the Secretary in the prescribed manner. The words "such other officers of the local government that may be specified by the Secretary", mentioned in Section 186 of the Act ibid, are actually referring to those other officers who are to be "determined" and "appointed" by the Secretary under Section 185 of the Act XXXIII of 2022, and there is no requirement under Section 186 ibid for specifying other officers for security of tenure to said officers. It is neither the case of the respondents that any such separate list of other officers has ever been specified by the Secretary under any of the laws, referred above, for security of tenure nor any rules or parameters have been framed for the Secretary to specify the other officers, only to whom the security of tenure shall be available under Section 186 of the Act XXXIII of 2022. If the above argument of the respondents is accepted then the discretion of the Secretary under Section 186 of the Act XXXIII of 2022 will not only be arbitrary being without any parameters but same will also be discriminatory and violative of the Article 25 of the Constitution. Merely because the word "specified" used in Section 186 and the words "determined" and "appointed" used in Section 185 of the Act XXXIII of 2022, do not mean that the other officers determined and appointed by the Secretary under Section 185 ibid will be different from "other officers" specified by the Secretary under Section 186 of the Act ibid. The word "specified", as defined in Black's Law Dictionary, means to mention specifically; to state in full and explicit terms; to point out; to tell or state precisely or in detail. The word "appoint" mean to designate, ordain, prescribe, nominate, whereas the word "determine" means to bring to conclusion, to decide, to settle. When the number and description of the other officers is "determined" by the Secretary under Section 185(1) of the Act XXXIII of 2022 and the officers of local government are appointed by him under Section 185(2) ibid, this means that the officers have been specified for the purpose of Section 186 of the Act ibid. The terms "determined" and "appointed" require application of mind to determine and appoint officers, whereas the word "specified", is only a ministerial job to mention or specify those officers determined and appointed, hence, these terms are to be read holistically and not in isolation.

iii) Plain reading of repeal and savings clause (under Section 204) and interim authorities and continuation of public service (under Section 205) of the Act XXXIII of 2022, shows that the Act XIII of 2022 was repealed, however, the repeal shall not affect previous operation of the laws, demarcated and notified areas, rights of privileges, penalties, investigations or anything done or action taken under the repealed local government laws. Section 205 of the Act XXXIII of 2022 also provides that all offices, agencies and authorities, established under the Act XIII of 2022, shall continue providing public services and all officers and servants of the defunct local government shall continue to discharge their

respective duties till they are assigned or transferred to any other local government. However, nowhere in Sections 204 & 205 of the Act XXXIII of 2022, it is provided that till such time the new local governments are established, the provisions of the Act XXXIII of 2022, including Section 186, shall not apply for the security of tenure to the officers of local government. The above legal position is also supported by the fact that various instructions/orders (appended with CM No.1 of 2023) were issued under the Act XXXIII of 2022 and not under the Act of 2013… Therefore, it cannot be said that the Act XXXIII of 2022 shall remain in abeyance till holding of the local government elections under the Act ibid.

iv) The Hon'ble Supreme Court in the case of "Syed Mahmood Akhtar Naqvi" supra held that when the ordinary tenure for posting and transfer has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied except for compelling reasons, which should be recorded in writing and are judicially reviewable.

v) In all afore-noted judgments, the law settled by the august Supreme Court of Pakistan as well as by various High Courts is that postings and transfers exclusively fall under the domain of competent authority and in the exigencies of service, transfer and posting can be made but such discretion must not be exercised in arbitrary or fanciful manner rather same should be exercised judiciously, with equity and fair play. Therefore, when ordinary tenure for posting has been specified in law then such tenure cannot be varied except for compelling reasons, which should be recorded in writing and must be justiciable. Ordinary tenure of two years for employees of local government in above mentioned laws apparently is in line with Article 140A of the Constitution, which envisages establishment of local government system to promote good governance, effective delivery of services through institutionalized participation of the people at low level through local governments and its employees.

Conclusion: i) The security of tenure for the employees/officers of local government was not specifically available under the Ordinance of 1979 and the Act of 2013, however, the Transfer Policy was in field and subsequently the Act of 2019, the Ordinance of 2021, the Act XIII of 2022 and the Act XXXIII of 2022 provided statutory security of ordinary tenure of two years.

ii) Section 186 of the Act XXXIII of 2022 is applicable to chief officers and other officers who are to be "determined" and "appointed" by the Secretary under Section 185 of the Act.

iii) It cannot be said that the Act XXXIII of 2022 shall remain in abeyance till holding of the local government elections under the Act and the Act of 2013 will remain in field.

iv) Employees/officers cannot be transferred prior to period specified in the law or rules made thereunder except for compelling reasons, which should be recorded in writing and are judicially reviewable.

v) Employees of the LG&CDD, Government of Punjab, cannot be transferred

before expiry of their ordinary tenure of two years', prescribed under Section 186 of the Act XXXIII of 2022.

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12. **Lahore High Court**
Samina v. Additional District Judge etc.
Writ Petition No.5278/2021
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2773.pdf

Facts: The petitioner filed a suit for recovery of maintenance allowance and dower against the respondent No.3 during subsistence of marriage. The suit was decreed. The respondent filed Appeal and the appellate court, dismissed the appeal against entitlement of maintenance allowance, however, accepted the appeal against dower and declined the same on the ground that the dower being deferred cannot be claimed during subsistence of marriage. The respondent did not challenge the said judgment and decree, however, the petitioner being aggrieved has filed this constitutional petition.

Issues: i) How the word "Ind-at-Talab" mentioned in Nikahnama can be defined?
ii) Whether dower payable on demand is prompt or deferred dower?
iii) Whether dower will be presumed as payable on demand, when no details about mode of payment are specified in the Nikahnama?

Analysis: i) The word "Ind-at-Talab" is the word of Urdu language and its English translation is "on demand" as per "OXFORD Urdu—English Dictionary" of Oxford University Press as well as "FEROZSONS Urdu—English Dictionary" of Ferozsons (Pvt.) Ltd. The Urdu to Urdu Dictionary i.e. defines the word "Ind-at-Talab" in following terms:-…The above dictionary meanings/translations of "Ind-at-Talab" make it abundantly clearly that the dower in-question is payable on demand.
ii) In this regard, Para-290 of the Muhammadan Law defines "Prompt" & "Deferred" dower… In terms of Para-290 of Muhammadan Law and the law settled by Hon'ble Supreme Court in Saadia Usman's case supra, the "prompt dower" is payable on demand, whereas "deferred dower" is payable on dissolution of marriage either by death or divorce unless time is stipulated between the parties for payment of deferred dower.
iii) The above interpretation is also supported by Section 10 of the Muslim Family Laws Ordinance, 1961 (Ordinance), according to said provision where no detail about the mode of payment of dower is spelled out by the parties in Nikahnamma or marriage contract, the entire amount of dower shall be presumed to be payable on demand and not necessarily means payable on dissolution of marriage by death or divorce.

Conclusion: i) The word "Ind-at-Talab" mentioned in Nikahnama means payable on demand.
ii) Dower payable on demand is a prompt dower.
iii) Where no detail about the mode of payment of dower is spelled out by the

parties in Nikahnamma or marriage contract, the entire amount of dower shall be presumed to be payable on demand and not necessarily means payable on dissolution of marriage by death or divorce.

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13. **Lahore High Court**
Muhammad Shahbaz Najam v. Federation of Pakistan etc.
Writ Petition No.26318/2017
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2829.pdf

Facts: The petitioner was employee of National Database Registration Authority. He was charge sheeted for misconduct and after inquiry and show cause notice, he was removed from service. The departmental appeal of the petitioner was also dismissed. Hence this constitutional petition has been filed.

Issues: i) Whether Regulations of NADRA under section 45 of the Ordinance are non-statutory?
ii) Whether Rules of 1973 being adopted by NADRA, under regulation 23 of the Regulations, have the status of non-statutory?
iii) Whether employees of NADRA are civil servants therefore, Rules of 1973 are applicable to them?

Analysis: i) The honourable Supreme Court in "Maj. (Retd.) Syed Muhammad Tanveer Abbas vs. Federation of Pakistan through Secretary Ministry of Interior and others" (2019 SCMR 984) already held that the Regulations of NADRA under section 45 of the Ordinance are non-statutory. In said case, constitutional petitions were filed before learned Sindh High Court by various employees of NADRA against their orders of termination. The Division Bench of learned Sindh High Court dismissed the Constitutional Petitions on the ground that Regulations are framed by the Authority under Section 45 of the Ordinance, hence, they are non-statutory. The said judgment was challenged before the Hon'ble Supreme Court of Pakistan, where the appeals were dismissed and the August Supreme Court of Pakistan held that Regulations of NADRA are non-statutory in nature…In view of above discussion, there is no doubt that the Regulations framed by NADRA under section 45 of the Ordinance are non-statutory.
ii) Under section 44 of the Ordinance, the Federal Government may by notification in official gazette make rules for carrying out the purpose of this Ordinance, whereas under section 45 of the Ordinance, the authority may by notification in the official gazette make regulations not inconsistent with the provisions of this Ordinance or rules. Under section 45(2) of the Ordinance, the regulations may also provide for appointment of Registration Officers, Members of staff, Experts, Consultants, Advisors, other Officers and employees, and terms and conditions of their service. In pursuance to section 45 of the Ordinance, the authority framed regulations termed as "The National Database and Registration Authority (Application for National Identity Card) Regulations, 2002" (Regulations). Under regulation 23 of the Regulations, the laws which are

applicable to civil servants including Rules of 1973 were adopted by NADRA for applying the same to employees of NADRA… The honourable Supreme Court in "M.H. Mirza vs. Federation of Pakistan through Secretary, Cabinet Division, Government of Pakistan, Islamabad and 2 others" (1994 SCMR 1024) held that mere adoption of statutory rules of the Government or their application by reference will not automatically lend a statutory cover or content to those rules… The same view was also expressed by this Court in "Kamran Ahmad vs. Water and Power Development Authority through Chairman and 3 others (2014 PLC (C.S.) 332). Learned Sindh High Court in "Muhammad Mateen Khan vs. Federation of Pakistan through Secretary, Ministry of Interior Islamabad and 3 others" (2020 PLC (C.S.) 1), specifically dealt with the proposition in hand and held that by adoption under regulation 23 to the Rules of 1973 by NADRA, the same will not attain the status of statutory enactment/regulations but are basically instructions for the internal control or management of Respondent Authority.

iii) The perusal of provisions of Rules of 1973 shows that under Rule 1(2) thereof, same are only applicable to civil servants and not to employees of Authority who are not civil servants. The petitioner being employee of NADRA is not a civil servant but an employee of an authority, therefore, Rules of 1973 on its own are not applicable to petitioner and have been made applicable only by way of adoption and reference under Regulation 23 of the non-statutory regulations. The legal position would have been totally different and constitutional petition would be maintainable due to statutory intervention, if Rules of 1973 were applicable to NADRA employees by virtue of provisions of the Rules of 1973 itself without same being adopted under Regulation 23 of the Regulations. In such eventuality, merely because Rules of 1973 were also adopted under Regulation 23 by NADRA besides being otherwise applicable to its employees, the same would amount to statutory intervention and writ petition be maintainable in view of law settled by august Supreme Court in Pakistan Defence Officers Housing Authority supra. The Rules of 1973 being only applicable to civil servants and have been applied to employees of Authority i.e. NADRA only by virtue of adoption under Regulation 23 of the non-statutory Regulations, therefore, for all intent and purpose, the Rules of 1973 cannot have superior status to non-statutory Regulations under which they were adopted.

Conclusion: i) The Regulations framed by NADRA under section 45 of the Ordinance are non-statutory.

ii) Rules of 1973 being adopted by NADRA, under regulation 23 of the Regulations, have the status of non-statutory.

iii) Employees of NADRA are not civil servants but employees of an authority, therefore, Rules of 1973 on its own are not applicable to them.

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14. **Lahore High Court**
Muhammad Ali Khalid v. Muhammad Talha.
RFA No. 6825 of 2020
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2619.pdf

Facts: Through this Regular First Appeal, order and decree passed by the Additional District Judge, has been assailed, by virtue of which while rejecting an application for leave to appear and defend the suit filed by the appellant, a suit for recovery of Rs.2,000,000/- under Order XXXVII CPC filed by the respondent against the appellant has been decreed.

Issues: (i) Which procedure will be followed by the court after granting leave to appear and defend the suit under order XXXVII CPC?
(ii) Which is prescribed Format of summons for service of the defendant in suit under Order XXXVII CPC?
(iii) What is the legal effect, where the summons is not issued to a defendant in Form No. 4, Appendix-B CPC and in such eventuality when the limitation to file leave to defend starts?
(iv) What is difference in service of summons in regular suit and the suit filed under Order XXXVII CPC?

Analysis: (i) Order XXXVII CPC is a special dispensation. Under this Order and unlike in a regular civil suit, procedure has been provided to file and proceed with the suit filed on the basis of negotiable instruments, as contemplated in the Negotiable Instruments Act 1881. In a suit filed under this Order, which is summary in nature, under Rule 3 of the said Order, a defendant who has been served, within stipulated time has to seek leave to appear and defend the suit and once the leave is granted, the suit shall be converted into a regular civil suit and will be decided in accordance with the general procedure prescribed in CPC.
(ii) Unlike the regular civil suit where summons for service of the defendant are issued under Order V Rules 1 & 5 CPC, the format of which is given in Form No. II Appendix-B CPC in a suit filed under Order XXXVII CPC, under Rule 2 of the said Order, a defendant has to be issued summons in the specific format as given in Form No. 4 Appendix-B CPC.
(iii) Where the summons is not issued to a defendant in Form No. 4, Appendix-B CPC, it will be presumed that he has not been served and his limitation for filing the application for leave to appear and defend the suit would start from the date when he appeared before the court and filed such application. (…) Be that as it may, since the appellant was never served through the prescribed summons as contemplated in Order XXXVII Rule 2 and Form 4, Appendix-B CPC thus the publication in the newspaper could not be issued, hence, this cannot be said that he was ever served, therefore, as and when he appeared before the trial court with his application for leave to appear and defend the suit, his limitation for filing such an application would start from the day he enters appearance therefore the

trial court erred in law in dismissing the application for leave to appear and defend the suit being barred by time and decreed the suit.
(iv) Unlike a regular civil suit, where defendant is called to appear in the court, either himself or through a representative, in a suit filed under Order XXXVII CPC defendant can only contest the suit subject to grant of leave to appear and defend the suit, that too on an application filed by him within 10 days of his service of summons (see Order XXXVII Rule 3 CPC), issued in the format given in Form 4, Appendix-B CPC (see Order XXXVII Rule 2 CPC). The text of the said summons would show that unlike summons issued in Form 2, Appendix-B CPC, the defendant is cautioned about the time line in which he has to file such an application and it is a sine qua non that the summons is to be accompanied by a copy of plaint.

Conclusion: (i) Once the leave to appear and defend the suit is granted in suit under Order XXXVII CPC, the suit shall be converted into a regular civil suit and will be decided in accordance with the general procedure prescribed in CPC.
(ii) Under Order XXXVII CPC, the defendant has to be issued summons in the specific prescribed format as given in Form No. 4 Appendix-B.
(iii) Where the summons is not issued to a defendant in Form No. 4, Appendix-B CPC, it will be presumed that he has not been served and his limitation for filing such an application would start from the day, when he enters his appearance.
(iv) In regular civil suit defendant is called to appear in the court, either himself or through a representative through summons issued in Form 2, Appendix-B CPC whereas in a suit filed under Order XXXVII CPC he can only contest the suit subject to grant of leave to appear and defend the suit, that too on an application filed by him within 10 days of his service of summons, issued in the format given in Form 4, Appendix-B CPC.

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15. **Lahore High Court**
Mst. Gul Baha v. G.M. Pakistan Railways, etc.
W.P.No.15570 of 2022
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2839.pdf

Facts: Real brother of the petitioner was employee of respondent-department as Head Clerk, who has expired, where after, petitioner applied for a succession certificate for seeking family pension of the deceased brother, which was allowed. Subsequently, time and again petitioner has been approaching the respondents for seeking family pension, however, the needful has not been done, therefore, this petition.

Issue: Whether unmarried sister of deceased employee is entitled to family pension if the deceased employee is succeeded by two sons?

Analysis: Where a civil servant, who was entitled to receive or has been receiving pensionary benefits, expires, after his demise, his pension will be

received/transferred to his family members, a complete chart/resume according to their preferential right has been given in under Rule 4.10 of the West Pakistan Civil Services Pension Rules, 1963. If the sons of deceased are above the age of 24 years and no other legal heir of the deceased, who is entitled to receive the family pension, is available then in view of Rule 4.10(2)(B)(iv) of the Rules, unmarried sister of deceased is entitled to receive the family pension.

Conclusion: If the sons of deceased are above the age of 24 years and no other legal heir of the deceased, who is entitled to receive the family pension, is available then in view of Rule 4.10(2)(B)(iv) of West Pakistan Civil Services Pension Rules, 1963, unmarried sister of deceased is entitled to receive the family pension.

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16. **Lahore High Court,**
Ghulam Ahmad Shah alias Munir Ahmad Shah v. Chairman Federal Land Commission, Islamabad and others,
W.P. No. 15863 of 2014,
Mr. Justice Shahid Karim, Mr. Justice Muzamil Akhtar Shabir.
https://sys.lhc.gov.pk/appjudgments/2017LHC5712.pdf

Facts: This constitutional petition is filed by petitioner with prayer to set aside the orders passed by respondent authorities resuming his land whilst holding it being in excess of prescribed limit under the MLR 115 of 1972, to undo consequently attested mutation and to set aside the direction of the respondent authorities requiring him to surrender the area of his choice.

Issue: What would be fate of subsequently filed writ petition if, after its filing, the earlier filed writ petition agitating same claim on basis of same cause of action is withdrawn without seeking permission to file another writ petition?

Analysis: The relief claimed by petitioner in earlier petition was similar to the relief claimed in subsequently filed petition based on same cause of action. Subsequent petition was filed and came up for hearing on the same date of withdrawal of the earlier petition and the petitioner did not seek permission to file petition afresh whilst withdrawing earlier filed writ petition. The principle of Order XXIII, Rule 1 of the Code of Civil Procedure, 1908 has been made applicable also to the writ petition for that purpose.

Conclusion: If a party withdraws earlier filed writ petition without seeking permission to file fresh one, then subsequently filed writ petition is hit by provision of the Order XXIII, Rule 1 of the Code of Civil Procedure, 1908 and the party is precluded from re-agitating the same by filing another writ petition.

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17. **Lahore High Court**
Commissioner Inland Revenue v. Muhammad Afzal Cheema.
Income Tax Reference No.64481 of 2022
Mr. Justice Shahid Karim, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC2750.pdf

Facts: Through the instant income tax reference under Section 133(1) of the Income Tax Ordinance, 2001 the petitioner has assailed the order passed by the Appellate Tribunal Inland Revenue.

Issues: i) Whether Commissioner In Land Revenue has vested with authority to amend an assessment order by making alterations or additions?
ii) What is the purpose of Section 214A of the Income Tax Ordinance, 2001?
iii) Whether the exercise of any discretionary power must be rational and have a nexus with the object of the underlying legislation?
iv) What is the definition of the words "finalize" and "finalization"?

Analysis: i) The Commissioner has been vested with authority under Section 122, subject to the provisions of that section, to amend an assessment order under Section 120 by making such alterations or additions as the Commissioner considers necessary. For the purpose of amendment of assessment, not only sub-section (2) of Section 122 of the Ordinance specifies a period of limitation of five years from the end of the financial year in which the Commissioner has issued or treated to have issued the assessment order to the taxpayer but a prohibition has been stipulated on passing such order after expiry of the period of limitation prescribed.
ii) The purpose of Section 214A ibid apparently is to give a separate overriding power to the Board to permit any act or thing to be done under the statute within such time period as it may deem appropriate, which is independent of any other provision of the Ordinance that provides a time frame. Thus, while applying the principle of harmonious construction, it is found that the Board apparently has the power under Section 214A of the Ordinance to permit passing of an order under the aforesaid section within such time as it may consider appropriate. This, however, does not mean that in exercise of its discretionary power under Section 214A of the Ordinance, the Board can run riot to extend time whenever and for however long it feels expedient to do so. In exercise of such discretionary power, the Board cannot destroy vested rights or reopen past and closed transactions.
iii) It is trite law that the exercise of any discretionary power must be rational and have a nexus with the object of the underlying legislation. Arbitrariness is the antithesis of the rule of law. Whenever the legislature confers a wide ranging power, it must be deemed to have assumed that the power will be: firstly, exercised in good faith; secondly, for the advancement of the objects of the legislation; and thirdly in a reasonable manner. Section 24A of the General Clauses Act, 1897 reiterates the principle that statutory power is to be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment and further clarifies that an executive authority must give reasons for

its decision.

iv) The words "finalize" and "finalization" have not been defined in the Ordinance or the Notification, therefore, the same are to be construed in terms of ordinary grammatical meanings thereof as contained in the English Dictionary. It is abundantly clear that "finalization" is synonym for closing, completion, culmination of something which is already in progress or has already been commenced.

Conclusion: i) Yes, Commissioner In Land Revenue has vested with authority to amend an assessment order by making alterations or additions but subject to the provisions of section 122 the Income Tax Ordinance, 2001.

ii) The purpose of Section 214A ibid apparently is to give a separate overriding power to the Board to permit any act or thing to be done under the statute within such time period as it may deem appropriate.

iii) Yes, the exercise of any discretionary power must be rational and have a nexus with the object of the underlying legislation.

iv) The words "finalize" and "finalization" have not been defined in the Ordinance or the Notification but in English Dictionary it is synonym for closing, completion, culmination of something which is already in progress or has already been commenced.

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18. **Lahore High Court**
Muhammad Riaz Khan Fatyana & 29 others v. Speaker National Assembly & others.
W.P No.8360 of 2023
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC2719.pdf

Facts: Through this writ petition, the petitioners have challenged the notification of the Election of Pakistan (ECP) de-notifying them as Members of the National Assembly on account of their impugned resignations.

Issue: Whether an inquiry is essential for the Speaker as to the genuineness and validity of a resignation not tendered personally by the member of the National Assembly before accepting it?

Analysis: The first principle is that the resignation has to be submitted by the member himself and if that is not the case then the acceptance of the resignation by the Speaker in the absence of expressed authorization by the member concerned is not valid. The Speaker is under a duty to inquire into the matter before he allows the resignation to take effect to gauge and determine the genuineness or validity of the resignation. An inquiry is an essential part of the acceptance or rejection of the resignation and the magnitude of the inquiry is at the discretion of the Speaker and will depend on the facts of each case. In case the member had himself appeared and presented his resignation, perhaps the Speaker is not required to

draw an inference that the resignation was not voluntary and so there was hardly any need for an inquiry. In case the resignation is not presented personally and is sent through a messenger, the Speaker is required to satisfy himself that the transmission is by an authorized person. The resignation could not take effect unless it is voluntary and intended to reach the Speaker in a manner chosen by the member of the Parliament himself. In the present case, the Speaker National Assembly himself harboured doubts regarding the genuineness and validity of the resignation and did call upon the individual members to appear before him for verification. Moreover, the resignations were not submitted by the members personally and it can be inferred that those members did not choose the manner in which the resignations were submitted to the Speaker National Assembly. The Speaker National Assembly must ascertain personally whether it was signed by the member who had resigned his seat, whether it was voluntary and whether it was intended to act as a resignation. Unless three requirements of the resignation were satisfied, it was dangerous to set down a general rule that the resignation must be accepted once it is received by Speaker National Assembly without more. Moreover, the National Assembly has itself laid stress upon the need for verification and for a proper inquiry to be conducted in the Rules of Procedure and Conduct of Business in the National Assembly, 2007.

Conclusion: An inquiry is essential for the Speaker as to the genuineness and validity of a resignation not tendered personally by the member of the National Assembly before accepting it.

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19. **Lahore High Court**
Muhammad Siddique v. Amna Bibi etc.
W.P.No.52429 of 2020
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC2702.pdf

Facts: The petitioner is grandfather of respondent No.2, who instituted a suit for recovery of maintenance and dowry articles along with her mother (respondent No.1) against respondent No.5, who is son of the petitioner. Suit was decreed exparte against which respondents No.1 and 2 preferred an appeal, which was partly accepted by way of judgment and decree. In order to get the fruits of the decree, the "respondents" filed an execution petition before the learned Judge Family Court, who by way of its order proceeded to attach the property measuring 26-Kanal 7-Marla owned by the petitioner for the purpose of auction to get the decree satisfied. The petitioner objected the order, however, his objections were turned down. Feeling aggrieved, the petitioner challenged the said order through an appeal before the learned Additional District Judge, but of no avail and the appeal was dismissed, hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: (i) Under what circumstance the grandfather is liable to maintain his grand children?
(ii) Whether decree can be executed against person who was not party to the suit and is there any exception in this facet?
(iii) What are the modes provided under section 13 of Family Court Act 1964 for the enforcement of decree?
(iv)Whether family can court adopt the procedure contained in CPC for execution of decree?

Analysis: (i) The liability of grandfather though starts when the father is poor and infirm and the mother is also not in a position to provide maintenance to her children but such liability of grandfather is dependent upon the fact that he should be in easy circumstances. In order to saddle the grandfather with the liability to pay maintenance to the grandchildren, it is thus imperative to first determine that father of the children is poor and infirm and mother is also having no source of income coupled with the fact that grandfather is in easy circumstances. The determination of such question cannot be made unless grandfather is a party to the suit having a fair opportunity to explain his status and position.
(ii) Law to this effect is well-settled that a decree cannot be executed against a person, who is alien to the proceedings with only one exception as ordained in section 145 of the Code of Civil Procedure (V of 1908) where a decree can be enforced in certain conditions against a surety/guarantor. It is an oft repeated principle of law that executing Court cannot go beyond the decree.
(iii) Needless to observe that section 13 of the Family Courts Act, 1964 prescribes the modes for the enforcement of decree. (…) The Family Court is vested with the power to execute its own decree for payment of money by adopting modes provided for recovery of arrears of land revenue including selling the property of judgment debtor.
(iv) Family Court can never be helpless to get its decree executed. The process of execution cannot shift towards the grandfather merely on the ground that decree could not be satisfied against the father (judgment debtor). The Family Court cannot assume the role of spectator rather it can adopt the procedure contained in "CPC" for the execution of the decree.

Conclusion: (i) The liability of grandfather though starts when the father is poor and infirm but such liability is subject to if he is in easy circumstances and also he was party to the suit having a fair opportunity to explain his status and position.
(ii) Decree cannot be executed against a person, who is alien to the proceedings with only one exception as ordained in section 145 of CPC which is against a surety/guarantor.
(iii) The Family court is vested with power under section 13 of Family Court Act 1964 to adopt any mode provided for recovery of arrears of land revenue including selling the property of judgment debtor.

(iv) Family court can adopt the procedure contained in "CPC" for the execution of the decree and it can never be helpless to get its decree executed.

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20. **Lahore High Court,**
The Collector of Customs, Dry Port, Lahore v. Bilal Akbar etc.
ICA No.1197 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2653.pdf

Facts: This Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972 set in challenge order passed by the learned Single Judge allowing relevant writ petition directing appellant department to release imported vehicle, which respondent No.1 claimed to have purchased as a "Vintage Car" being exempted from Customs, Regulatory Excise duties, Sales Tax and Withholding Income tax.

Issues: i) What is the impediment in importing the vintage car of 1967 model in Pakistan?
ii) Whether a writ can be issued to the Customs Department for the release of an imported vintage car?

Analysis: i) The Gazette of Pakistan, Extra, April 18, 2016 [Part-II], on subject of "Eligibility and Condition" for Pakistan Nationals to import/gift a vehicle, prescribes that cars older than three years shall not be allowed to be imported under gift, personal baggage and transfer of residence schemes.
ii) The question of domain/jurisdiction of the Ministry of Commerce & Trade and Ministry of Finance, Economic Affairs, Statistics and Revenue Division, Government of Pakistan regarding the import of vintage vehicle is the most important issue. Ministry of Commerce has to sanction importability or relaxation in Import Policy 2016.

Conclusion: i) The Import Policy Order issued under Section 3(I) of the Imports and Exports (Control) Act, 1950 does not expressly permit import of vintage cars.
ii) No writ can be issued to the Customs Department for the release of imported vintage car.

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21. **Lahore High Court**
Atta Muhammad v. Addl. District Judge, etc.
W.P. No.25275 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC2639.pdf

Facts: The petitioner assailed the vires of order and judgment passed by Civil Court and District Court respectively, whereby petitioner's request to cross-examine one of the defendant's witnesses was turned down by the said Courts.

Issues: (i) Whether a defendant has right to cross-examine a co-defendant? If so, in what circumstances?
(ii) Whether the right to allow a party to cross-examine a witness of his own is discretionary with the court?

(iii) Whether there is any exception to the exercise of discretionary power of a court to allow a party to cross-examine a witness of his own?

Analysis: (i) The procedure of examination of witnesses is synchronized by Articles 130 to 161 of the Qanun-e-Shahadat Order, 1984. Article 130 aims to regulate procedure as to production and examination of witnesses in the Court, while Article 132 elaborates three stages that might come while recording statement of a witness. First stage is examination-in-chief by the party who has produced a witness, second stage is cross-examination by the opposite party and third stage is re-examination, optional with the party calling the witness. It may be observed that there is no specific provision in the Qanun-e-Shahadat Order, 1984, providing opportunity to a defendant to cross-examine a co-defendant; however having regard to the object and scope of cross-examination, it is settled principle of law that when a statement is made against the interest of a party to the proceedings, before that evidence could be acted upon, the party should have an ample opportunity to cross-examine the witness, who had given the evidence against him. It is only after such an opportunity is given and the witness is cross-examined then evidence becomes admissible.…evidence becomes admissible after only it passes through the process of cross-examination by the adverse party regardless of the fact that the adverse party is a plaintiff or co-defendant. However, the condition precedent is the conflict of interest. There is another eventuality where a witness can be declared hostile when he resiles from earlier statement or material part thereof which may also be in the form of joint pleadings or examination-in- chief. Permission to cross-examine the witness would also be granted where the statement is contrary to the evidence which the witness was expected to give.

(ii) Needless to say that the right to allow a party to cross-examine a witness of his own is discretionary with the Court and this discretion is to be exercised judiciously. Article 150 of the Qanun-e-Shahadat, Order, 1984, confers on the Court a wide discretion in allowing a party calling a witness to put such questions to him as might be put in cross-examination by the adverse party, where the evidence given by the witness is unfavourable to the party calling him, or is contrary to the evidence which the witness was expected to give. In such a case, the Judge should permit such statements to be tested by cross-examination if the evidence is to be relied upon.

(iii) Undeniably, a party is bound by the evidence it produces i.e. party producing a witness is bound by whatever statement the witness makes however when an adverse statement is made by a witness the party producing the witness may get the witness declared hostile and seek permission from the Court to cross-examine her for getting rid of her adverse testimony. However, there is one exception that such permission should not be allowed by the Court if it reaches to the conclusion that the object of such cross-examination is to cover up the lacuna in the evidence.

Conclusion: (i) Yes, a defendant has right to cross-examine a co-defendant in case of conflict

of interest between them or when he resiles from earlier statement or material part thereof which may also be in the form of joint pleadings or examination-in-chief.
(ii) Yes, the right to allow a party to cross-examine a witness of his own is discretionary with the court.
(iii) Yes, such permission should not be allowed by a Court if it reaches to the conclusion that the object of such cross-examination is to cover up the lacuna in the evidence.

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22. **Lahore High Court**
Tahir Jameel v. Lahore Development Authority through its Director General, Lahore & others.
Writ Petition No.12812 of 2019
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC2633.pdf

Facts: The petitioner assailed correspondence issued by respondent No.2 / Director Land Development-I, Lahore Development Authority, Lahore, whereby petitioner was advised to contact his vendors in order to recover the claimed compensation. Petitioner also sought direction from High Court for respondent-LDA to grant exemption in his favour for the land acquired for development of Muhammad Ali Johar Town Scheme, Lahore.

Issues: (i) Whether Public functionaries are obliged to follow principles of natural justice while deciding a matter adversely against a person?
(ii) Whether amendment in Section 25-B(7) of the LDA Act, 1975, brought in the year 2013, can be applied retrospectively?

Analysis: (i) Any order passed against an aggrieved person, without providing him / her proper hearing or giving any reasons, is unsustainable in the eye of law as the public functionaries are obliged to follow the principles of natural justice while deciding rights of the parties.
(ii) It is by now a well settled law that an amendment in a section or its substitution which curtails substantive right or accrued right cannot itself have a retrospective operation unless the legislature elected to give it retrospective effect. Therefore, substituted or amended section of a statute cannot obliterate accrued or vested rights. In the instant case, as the section 25-B was added through an amendment in the year 2013 whereby substantive rights of the awardees were curtailed without giving it retrospective effect therefore this amendment cannot affect the accrued rights before the said amendment.

Conclusion: (i) Yes, public functionaries are obliged to follow principles of natural justice while deciding a matter adversely against a person.
(ii) No, amendment in Section 25-B(7) of the LDA Act, 1975, brought in the year 2013, cannot be applied retrospectively.

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23. **Lahore High Court**
Sarfraz Ali v. Chief Secretary etc.
Writ Petition No.32094/2023
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC2645.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has questioned the legality and validity of impugned order passed by respondent No.3/Deputy Commissioner whereby his son detainee was ordered to be arrested and detained for a period of thirty days with immediate effect.

Issue: i) Whether a person detained without any just cause can directly invoke the constitutional jurisdiction?
ii) Whether fundamental rights of the citizens can be curtailed by the executive?

Analysis: i) When a person is detained without any just cause, it amounts to violation of his fundamental rights; he may invoke the jurisdiction of this Court directly under Article 199 of the Constitution, without having course to alternate remedy.
ii) Right of liberty, peaceful assembly and freedom of speech and expression has been enshrined in the Constitution as fundamental rights of every citizen and the same cannot be curtailed merely at the whims of the executive.

Conclusion: i) Yes, a person detained without any just cause can directly invoke the constitutional jurisdiction.
ii) Fundamental rights of the citizens cannot be curtailed by the executive.

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24. **Lahore High Court**
Muhammad Ali v. Dr. Ali Raza Anwar, Chairman PAEC, Pakistan Secretariat, Islamabad.
I.C.A.No.118 of 2023
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC2854.pdf

Facts: Through this Intra Court Appeal filed under Section 19 of the Contempt of Court Ordinance, 2003, the appellant has called in question order passed by learned Single Judge of this Court, whereby petition under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, filed by the appellant for proceeding against the respondent for committing contempt of court for non-compliance of order, has been dismissed.

Issues: i) Whether the appellate court does ordinarily interfere in the order where the court itself refused to proceed with the contempt on the ground that there was no reason to proceed with the same?
ii) Is there any situation when appellate court can interfere in an order passed in contempt of court petition refusing to initiate proceedings against the contemnor?

Analysis: i) Where a court itself passed an order and refused to proceed with the contempt of court matter on the ground that there was no reason to proceed with the same, the appellate court does not ordinarily interfere in the order passed by the said court.

ii) The principle laid down by the superior court is that the appellate court can interfere in an order passed in contempt of court petition refusing to initiate proceedings against the contemnor where some serious question of law is prima facie made out or some case of grave miscarriage of justice is established either by reason of the fact that the findings sought to be impugned could not have been arrived at by any reasonable person or that the findings are so ridiculous, shocking or improbable that to uphold such finding would amount to a travesty of justice. Therefore, only when the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, can the same be interfered with by the appellate court.

Conclusion: i) The appellate court does not ordinarily interfere in the order where the court itself refused to proceed with the contempt on the ground that there was no reason to proceed with the same.

ii) When the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, can be interfered with by the appellate court.

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25. **Lahore High Court**
Dr. Sajid Iqbal v. University of Sargodha and Others.
Writ Petition No. 7682/2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2796.pdf

Facts: The petitioner, head of the mathematics department, was removed from service by the syndicate of the University of the Sargodha on the complaint of harassment by a female student. The petitioner filed an appeal with the Ombudsperson Punjab which was dismissed. He unsuccessfully challenged the Ombudsperson's order through representation to the Governor of Punjab. His review petition before the Governor was also met with the same fate. Finally, he filed this constitutional petition.

Issue: Whether the denial of the right to cross-examination vitiates the proceedings of a departmental enquiry?

Analysis: Cross-examination is vital to test the credibility of a witness. Taylor writes: "Cross-examination is justly regarded as one of the most efficacious tests by means of which the law has devised for the discovery of truth and by means of which the situation of the witness with respect to the parties and to the subject of litigation, his interest, his motives, his inclination and prejudices, his character, his means of obtaining correct and certain knowledge of the facts to which he

bears testimony, the manner in which he has used the means, his power of discernment, memory and description are fully investigated and ascertained." In Ghulam Rasool Shah and another (2011 SCMR 735), the Supreme Court of Pakistan ruled that cross-examination is the most reliable method for judging the credibility of a witness. Statements admitted without cross-examination result in injustice. Hence, a reasonable opportunity for cross-examination must be provided. Even in a domestic inquiry, the person charged with misconduct has a right to cross-examine the witnesses brought against him. In Meenglas Tea Estate v. Its Workmen (AIR 1963 SC 1719), the inquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. Article 10 of the Constitution, which guarantees the right to a fair trial, also applies to departmental inquiries. While the right to cross-examination is vital to the inquiry process, it is an essential component of a right to a fair trial as well. In the present case, the Inquiry Committee has violated the petitioner's constitutional and statutory rights by denying him an opportunity to cross-examine the witnesses testifying against him.

Conclusion: Yes, the denial of the right to cross-examination vitiates the proceedings of a departmental enquiry.

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26. **Lahore High Court**
Muhammad Ayyaz Akhtar v Chairman, State Life Insurance Corporation of Pakistan & another.
Writ Petition No. 1338 of 2017
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5719.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 of authority while praying that the petitioner be reinstated with all back benefits and arrears under the law.

Issue: Whether an employee can seek reinstatement in service after exercising right of voluntary retirement?

Analysis: Once right of voluntary retirement under the scheme is exercised and availed the benefits thereunder then he is now estopped by his conduct to challenge the same for seeking reinstatement in service at this stage. No one can be allowed to approbate and reprobate in the matter.

Conclusion: An employee cannot seek reinstatement in service after exercising right of voluntary retirement.

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27. **Lahore High Court,**
Abdul Rauf v. Govt. of Punjab, etc.,
Writ Petition. No. 32503of 2023,
Mr. Justice Farooq Haider.
https://sys.lhc.gov.pk/appjudgments/2023LHC2697.pdf

Facts: This writ petition seeks to quash detention orders of Deputy Commissioner passed under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960 as well as to direct release of petitioner's brothers detained under said orders.

Issues: i) Whether a person detained under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960, is barred to invoke constitutional jurisdiction for his release without first filing a representation before Government of Punjab?
ii) What reasons should be available with competent authority to pass a detention order under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960?
iii) Whether mere registration of an FIR can be basis to issue a detention order under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960?

Analysis: i) Right to file petition for issuance of writ namely habeas corpus is one of fundamental rights provided by the constitution of Islamic Republic of Pakistan, 1973, in all matters of illegal confinement.
ii) There must be material available against the detenus to establish that they were acting or were about to act in any manner, which was prejudicial to the public safety or maintenance of the public order. There should be referred or produced some material to prove that detenus are members of any banned group, proscribed organization or involved in any anti-State activities. Mere apprehensions cannot be basis for curtailing right/liberty or freedom of any citizen otherwise guaranteed by the constitution of Islamic Republic of Pakistan, 1973.
iii) Allegations levelled against detenus in FIR case are first to be established during investigation, then to be proved during trial and detenus will face proceedings of said FIR separately as per law, but such FIR cannot be *per se* made basis for issuance of detention orders and in this regard Article 13 (a) of the constitution of Islamic Republic of Pakistan, 1973 can be advantageously referred. When law requires a thing to be done in a particular manner, it should have been done in that manner otherwise same would be deemed as illegal in the light of maxim "*A communi observantia non est recedendum*".

Conclusion: i) If arrest of a person for the purpose of "Preventive Detention" cannot be legally justified, then he cannot be barred from invoking constitutional jurisdiction for his immediate release.
ii) Before passing detention order of a person under Section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960, the competent authority

should have reasons based on solid material to believe that said person has acted, is acting or is about to act in a manner which is prejudicial to public safety or maintenance of public order.

iii) Mere registration of an FIR cannot be *per se* made basis for issuance of detention order under section 3 (1) of the West Pakistan Maintenance of Public Order Ordinance, 1960.

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28. **Lahore High Court,**
Muhammad Aslam v. Regional Directorate ACE Lahore, etc.
Writ Petition No.670 of 2023,
Mr. Justice Farooq Haider.
https://sys.lhc.gov.pk/appjudgments/2023LHC2687.pdf

Facts: Consequent upon petitioner's application, inquiry was conducted and concluded on note that allegations leveled against respondent Patwari were found correct. Resultantly, F.I.R. under Section: 5 2(47) of the Prevention of Corruption Act & Section 161 PPC was registered followed by first cancellation report prepared on score that complainant was neither joining investigation himself nor was he producing his witnesses, which cancellation report was disagreed. However, the second cancellation report was agreed with by Special Judge, Anti-Corruption, Lahore vide order impugned in this constitutional petition with further prayer of petitioner for re-investigation of the case.

Issues: i) What is the role of fair investigation in conclusion of a fair trial?
ii) At what stage of investigation, a case can be dropped as per the Punjab Anti-Corruption Establishment Rules, 2014?

Analysis: i) Fair investigation is mandatory for the fair trial as is guaranteed by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. The basic purpose of fair investigation is to conclude that allegation stands established or not. Investigation has to be carried out in the manner as provided in Punjab Police Rules as well as Code of Criminal Procedure, 1898. Rule 25.2(3) of the Police Rules, 1934 requires an investigating officer to dig out the truth and bring it before the court of justice, which necessitates him to firstly issue notice under Section 160 of Code ibid for summoning complainant/witnesses for joining investigation and if same remains ineffective, then to get issued warrants for their arrest in the shape of Form No.VII as provided in Schedule-V and under Section 90 of the Code ibid. If such warrants also remain unsuccessful, then he is required to get issued proclamation, as per Form No.V provided in Schedule-V and under Section 87 of the Code ibid and in case of failure, he is obliged to get issued the order of attachment to compel the attendance of complainant/witnesses through Form No.VI provided in Schedule-V and under Section 88 of the Code ibid. Aforementioned are the mandatory provisions of law to be complied with and to adopt each & every mode for procuring presence of persons concerned for the purpose of investigation and ultimately thrashing out the veracity of allegations leveled in the crime report i.e. first information report, through collecting relevant evidence during the process.

ii) If cancellation report is prepared without concluding that allegation leveled in the case has been established or not, rather it is based on ground that

complainant/witnesses did not join investigation, that too,without mentioning that all modes of process for compelling their attendance through warrants, Writ, proclamation and attachment were adopted as well as without annexing any proof in this regard, then it means that rules for procedure regarding summoning of witnesses, documents and penalty for disobeying the same, in addition to or substitution of the provisions of the Code ibid has not been followed. Law does not favour dropping any case on technicality for want of joining investigation by complainant/ witnesses, without applying all modes for their summoning to ensure conclusion of investigation on merits.

Conclusion: i) The purpose of investigation is to dig out the truth through all means and to bring it before the court of justice otherwise ultimately it causes harm to fair trial.
ii) As per rule No. 10 (1) (a) of the Punjab Anti-Corruption Establishment Rules, 2014, a case can be dropped if the allegations are not found established on completion of investigation.

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29. **Lahore High Court**
Kamran Khan v. Govt. of Punjab, etc.
Writ Petition No.34019/2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC2759.pdf

Facts: Through this petition under article 199 of the Constitution, the petitioner assailed the detention order of his brother passed under section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960.

Issues: i) Whether prior to filing the writ petition against the order of detention, it is necessary to assail the same before the Secretary, Home Department through representation?
ii) Whether before passing detention order of a person under Section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960, the competent authority must have reasons to believe that said person within his territorial jurisdiction has acted, is acting or is about to act in a manner which is prejudicial to public safety or maintenance of public order?

Analysis: i) As far as objection raised by learned Assistant Advocate General, Punjab with respect to maintainability of instant petition due to non-filing of representation by the detenu before Government of Punjab, is concerned, suffice it to say that right to file petition of the nature of habeas corpus is remedy provided by the constitution of Islamic Republic of Pakistan, 1973 in all matters of illegal confinement as one of fundamental rights; it goes without saying that if arrest of a person for the purpose of "Preventive Detention" cannot be justified in the eyes of law, then there is no reason that why said person should not invoke jurisdiction of this Court for his immediate release.
ii) It is trite law that before passing detention order of a person under Section 3 of the Ordinance, the competent authority must have reasons to believe that said person within his territorial jurisdiction has acted, is acting or is about to act in a manner which is prejudicial to public safety or maintenance of public order. Mere

apprehension without any valid reason and also not supported by any cogent material, cannot be allowed to be made basis for curtailing right/liberty or freedom of any citizen which is even otherwise guaranteed by the constitution of Islamic Republic of Pakistan, 1973.

Conclusion: i) Prior to filing the writ petition against the order of detention, it is not necessary to assail the same before the Secretary, Home Department through representation.

ii) Before passing detention order of a person under Section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960, the competent authority must have reasons to believe that said person within his territorial jurisdiction has acted, is acting or is about to act in a manner which is prejudicial to public safety or maintenance of public order.

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30. **Lahore High Court**
Abdul Sattar Shah etc. v. Syed Mubarak Shah etc.
Civil Revision No. 522 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9603.pdf

Facts: Through this Civil Revision the petitioners have assailed the order by which the learned Additional District Judge during the pendency of appeal against the judgment and decree passed in favour of respondent in a suit for declaration regarding inheritance share by the learned Civil Judge, dismissed two applications of the petitioners filed under Order 1 Rule 10 CPC and the application for the settlement of the proposed issue.

Issues: i) Whether the revenue officer is necessarily to be impleaded in every civil suit challenging the validity of a mutation?

ii) Whether the court is bound to frame the issue upon the application of a party at a belated stage regarding a fact when the same is not mentioned in his / her pleadings?

Analysis: i) The revenue officer by name can be impleaded in the suit if the court feels it necessary and when there is a specific allegation against him for being the part of some illegal act otherwise the matters which are required to be decided on the basis of documents and the other related/relevant oral evidence, the Officials/Officers of Revenue Department are not necessary to be impleaded in such proposition, as the relevant record can be requisitioned and analyzed by the court.

ii) This is settled principle that nobody can be allowed to fill in the lacunas after the 07 years of decision passed by the learned Civil Court, this application has been tendered without mentioning any reason that why document was not mentioned in the written statement and was not tendered in the evidence. This is a private document which cannot be allowed to be placed on record at this stage and when the same was not mentioned in the written statement the court is not bound to frame the issue regarding the same.

Conclusion: i) The revenue officer by name can only be impleaded in the suit if there is a specific allegation against him for being part of some illegal act.

ii) The court is not bound to frame the issue upon the application of a party at a belated stage regarding a fact when the same is not mentioned in his / her pleadings.

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31. **Lahore High Court**
Imran Abbas Bhatti v. Govt. of Punjab etc.
Writ Petition No.31899 of 2023
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2764.pdf

Facts: All petitions have challenged the vires of the orders passed by the Deputy Commissioners of different districts, whereby different persons have been put under preventive detention on the reports of District Police Officers of the concerned districts to the effect that conduct of the said individuals was prejudicial to the public peace, mainly on the grounds that the said orders have been passed only on the basis of source reports of District Police Officers concerned but without showing any valid or clear reason and that too without adopting legal procedure and applying independent mind to the question whether Section 3 of the Punjab Maintenance of Public Order Ordinance, 1960 should be invoked against the detenues.

Issues: i) What is the nature of detention order and under what circumstances the same is issued?
ii) How the laws regarding preventive detention are regulated under the Constitution?
iii) What does the expression "adequate remedy" in Article 199 of the Constitution connotes?
iv) Whether a party is always debarred from invoking the constitutional jurisdiction of High Court that some other remedy is available?
v) When an order for preventive detention could be passed by the Authority under the Law?
vi) Whether High Court in its constitutional jurisdiction has power to set aside detention order?

Analysis: i) Preventive detention is "a form of administrative detention, ordered by the executive authorities, usually on the assumption that the detainee poses future threat to national security or public peace."
ii) Article 10 of the Constitution empowers the legislature to enact preventive detention laws to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan, or any part thereof, or external affairs of the country, or public order, or the maintenance of supplies or services subject to the safeguards and protections provided by clauses (4) to

(9) of the said Article.

iii) The expression "adequate remedy" in Article 199 of the Constitution connotes an efficacious, convenient, beneficial, effective and speedy remedy which should also be inexpensive and expeditious.

iv) if the procedure for obtaining relief through some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of relief meaningless, this Court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course to obtain the relief which is due.

v) For the purpose of passing an order for protective detention there should be sound material showing that the said individual/detenu was busy in any activity prejudicial to public safety or the maintenance of public order, in any of the documentary forms like SMS/Voice messages, WhatsApp Messages, social media accounts, Pamphlets/handouts, Posters, play cards, Photographs, Paintings, Caricatures, Books/Literature, Newspapers, Audio/Video CDs, Electronic and Digital material, Wall chalking, Banners/Pena flex, recording of demonstrations in Rallies, Material on Facebook, twitter or any other social media account, call records, geo-fencing through CDR, Speeches in Public Meetings, Radio & T.V. shows, Surveillance report in any form, reports from international agencies, suspicious transaction report from any financial institution, membership record of affiliated association or political party etc., but in the instant case no such record could be brought on record or even referred during the course of arguments.

vi) It cannot be said that detention order passed on the basis of material placed before the Court could not be set aside as this Court is not empowered to substitute its findings with that of the detaining authority, for the reasons that it is not a question of substitution of finding as this Court is not only within its Constitutional jurisdiction to examine the grounds for detention but to see as to whether detention order could be justified on such grounds and if some view, after having taken into consideration the material placed before it contrary to that of detaining authority is formed it does not amount to substitution.

Conclusion: i) Preventive detention is "a form of administrative detention, ordered by the executive authorities, usually on the assumption that the detainee poses future threat to national security or public peace.

ii) Article 10 of the Constitution empowers the legislature to enact preventive detention laws.

iii) The expression "adequate remedy" in Article 199 of the Constitution connotes an efficacious, convenient, beneficial, effective and speedy remedy which should also be inexpensive and expeditious.

iv) High Court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course

to obtain the relief which is due.

v) For passing an order for protective detention there should be sound material showing that the said individual/detenu was busy in any activity prejudicial to public safety or the maintenance of public order.

vi) High Court in its Constitutional jurisdiction could examine the grounds for detention and to see as to whether detention order could be justified on such grounds.

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32. **Lahore High Court**
Muhammad Imran alias Amanat Ali alias Maani v. The State.
Criminal Appeal No.95-J of 2016
Abdul Waheed v. Muhammad Imran alias Amanat Ali alias Maani etc.
Criminal Revision No.172 of 2016
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC2807.pdf

Facts: The appellant was convicted and sentenced by the trial court. Through this criminal appeal, the appellant assailed his conviction and sentences, whereas a criminal revision has also been filed by complainant for enhancement of sentences of the appellant.

Issues: i) What will be effect of significant delay in lodging the FIR?

ii) Whether identification test parade is of any value when description/ features of accused are not given during investigation before the police as well as before the learned trial court?

iii) If features of the dummies are not mentioned in the report of identification parade, whether it makes the whole process of identification parade null and void?

iv) Whether disclosure of co-accused regarding nomination of an accused can be used as evidence under article 38 of Qanun-e-Shahadat Order, 1984?

v) Whether noticeable delay in conducting the identification parade makes it doubtful in nature?

vi) If the objection of the accused taken at the time of identification parade was not decided whether it would be a serious lapse in identification test parade?

vii) Whether the witnesses who made dishonest improvements in their statements on material aspects of the case in order to fill the lacunas of the prosecution case or to bring their statements in line with other prosecution evidence are worthy of reliance?

viii) Whether medical evidence connects the accused with the commission of offence?

ix) Whether non-associating any witness of vicinity while effecting the recovery from the possession of an accused makes the recovery highly doubtful?

x) Whether a conviction can be recorded on the basis of corroborative piece of evidence?

xi) Whether in criminal cases the finding of guilt against an accused person can be based merely on the high probabilities that may be inferred from evidence?

Analysis: i) The significant delay in lodging the FIR convinces that the matter was reported to the police after due deliberation and consultation and the intervening time was consumed in calling the relatives of the deceased.

ii) A critical analysis of the statements of witnesses made it crystal clear that they could not mention any features of the assailants during investigation before the police as well as before the learned trial court except that their ages were between 20 to 30 years. The above noted material discrepancy, alone, is sufficient to diminish the evidentiary value of identification parade.

iii) No features of the dummies have been mentioned in the report of identification parade and this fact has also been endorsed by, learned Magistrate, who supervised the proceeding of identification parade. The above-mentioned shortcoming during identification test parade makes the whole process null and void.

iv) The appellant was nominated in this case on the basis of disclosure of co-accused as evident from the contents of application for holding identification parade of appellant and application for transfer of appellant but such type of evidence is hit by the provision of Article 38 of Qanun-e-Shahadat Order, 1984, and cannot be used as evidence against the appellant.

v) It is noteworthy that the appellant was arrested in this case after eight months and twenty three days of the occurrence and identification parade was conducted with the delay of six days after his arrest. Such noticeable delay in conducting the identification parade makes it doubtful in nature.

vi) Another important aspect of this case which has also shattered the authenticity of identification parade is that the appellant made objection before learned Judicial Magistrate at the time of proceeding of identification parade that when he was arrested, complainant and PWs were accompanying the local police and they also knew him previously. He filed petitions against the complainant as well as local police in the court of learned Sessions Judge, Sahiwal and Lahore High Court Lahore wherein SHO concerned was summoned by the court and due to this grudge, complainant and local police entangled him in this case. It is noteworthy that learned Judicial Magistrate has not decided the supra-mentioned objection of the appellant. In this way, there is serious lapse on his part.

vii) There is no cavil to the proposition that when the witnesses improve their statements to strengthen the prosecution case and the moment it is concluded that improvements were made deliberately and with mala fide intention, the testimonies of such witnesses become unreliable. The Hon'ble Supreme Court of Pakistan has observed in a plethora of judgments that the witnesses who made dishonest improvements in their statements on material aspects of the case in order to fill the lacunas of the prosecution case or to bring their statements in line with other prosecution evidence are not worthy of reliance.

viii) Medical evidence may confirm the ocular evidence with regard to the seat of injury, nature of the injury, kind of weapon used in the occurrence but it would not connect the accused with the commission of offence.

ix) So far as recovery of pistol at the pointation of the appellant from his residential house taken into possession through seizure memo and positive report of Punjab Forensic Science Agency, Lahore are concerned, it is noted that the investigating officer while effecting the recovery from the possession of appellant has not associated any witness of vicinity, which makes the recovery of pistol at the instance of the appellant highly doubtful.

x) It is settled proposition of law that unless direct or substantive evidence is brought on record, a conviction cannot be recorded on the basis of such evidence, howsoever convincing it may be.

xi) It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt 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.

Conclusion: i) The significant delay in lodging the FIR convinces that the matter was reported to the police after due deliberation and consultation.

ii) Identification test parade is of no value when description/ features of accused are not given during investigation before the police as well as before the learned trial court.

iii) If features of the dummies are not mentioned in the report of identification parade, it makes the whole process of identification parade null and void.

iv) Disclosure of co-accused regarding nomination of an accused cannot be used as evidence under article 38 of Qanun-e-Shahadat Order, 1984.

v) Noticeable delay in conducting the identification parade makes it doubtful in nature.

vi) If the objection of the accused taken at the time of identification parade was not decided it would be a serious lapse in identification test parade.

vii) The witnesses who made dishonest improvements in their statements on material aspects of the case in order to fill the lacunas of the prosecution case or to bring their statements in line with other prosecution evidence are not worthy of reliance.

viii) Medical evidence does not connect the accused with the commission of offence.

ix) Non-associating any witness of vicinity while effecting the recovery from the possession of an accused makes the recovery highly doubtful.

x) Unless direct or substantive evidence is brought on record, a conviction cannot be recorded on the basis of corroborative piece of evidence.

xi) In criminal cases the finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence.

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33. **Lahore High Court**
Abu Bakar Siddiq Bhutta. v Govt of Punjab, etc.
Writ Petition No. 32441/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2661.pdf

Facts: Through this constitution petition the petitioner has challenged the vires of order passed by Deputy Commissioner, by which father of the petitioner has been put under preventive detention.

Issues: i) How is life reflected when dignity as a fundamental right has been denied?
ii) Why word "inviolable" has been used in the Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973?

Analysis: i) It is observed that the Constitution framers have rated the dignity a bit at lower level comparing to right to life and liberty, that was the reason it is seriated as Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973, five steps down from 'right to life and liberty' (Article-9 of the Constitution of the Islamic Republic of Pakistan, 1973) but experience tells that if an individual has all the fundamental rights except right to dignity, he cannot enjoy other rights with pleasure. Life without dignity means, a clutched and wish less creature living on borrowed crumbs.
ii) The word "inviolable" has been used in the Constitution only in Article 5 of the Constitution of the Islamic Republic of Pakistan, 1973 (Loyalty to State) and Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973 (Dignity of man etc.) which has a strong connotation showing importance and value in the context as to why only for Loyalty to State, Dignity of man and Privacy of home this term has been used.

Conclusion: i) Life without dignity means, a clutched and wish less creature living on borrowed crumbs.
ii) The word "inviolable" has a strong connotation showing importance and value.

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34. **Lahore High Court**
Mst. Aniza and another v. Additional District Judge and 02 others.
W. P. No. 38446 of 2016
Nasir Mehmood v. Aniza and 03 others
W. P. No. 35820 of 2016
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC2744.pdf

Facts: The petitioner (wife) and the minor instituted a suit for recovery of maintenance allowance and dower, whereas, the respondent (husband) filed a suit for restitution of conjugal rights. The suit of the petitioner and the minor was decreed

but claim of dower was declined. The suit of the respondent for restitution of conjugal rights was conditionally decreed subject to payment of maintenance allowance to the petitioner. Both parties filed writ petitions since they are directed against the same impugned judgments and decrees passed by Judge Family Court and Additional District Judge.

Issues: i) Whether dower will be considered as payable on demand, when no details about mode of payment are specified in the Nikahnama?
ii) Whether Nikahnama in the shape of documentary proof can be given due weight over the oral depositions with respect to the relevant columns of Nikahnama?

Analysis: i) Section 10 of the Muslim Family Laws Ordinance, 1961 stipulates that where no details about the mode of payment of the dower are specified in the Nikahnama, the entire amount of dower shall be payable on demand.
ii) There was no reason as to why the admitted Nikahnama in the shape of documentary proof was not given due weight over the oral depositions with respect to the relevant columns of Nikahnama especially when the Respondent could not bring on record any other Pert of the Nikahnama which was contradictory to Nikahnama produced.

Conclusion: i) Where no details about the mode of payment of the dower are specified in the Nikahnama, the amount of dower shall be payable on demand.
ii) Nikahnama in the shape of documentary proof can be given due weight over the oral depositions with respect to the relevant columns of Nikahnama.

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35. **Lahore High Court**
Abdur Rehman and 3 others v. Manzoor Ahmed and 6 others.
C. R. No. 1933 / 2012
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC2786.pdf

Facts: This Civil Revision brings a challenge to Judgments & Decrees passed by Civil Judge, and Additional District Judge, respectively, whereby, the suit for declaration filed by the Petitioners was dismissed and the suit for declaration instituted by the Respondents was decreed. The Petitioners filed two separate Appeals against the decision of the Trial Court which were dismissed and the findings of the Trial Court were maintained.

Issues: i) Whether prior to promulgation of Qanoon-e- Shahadat Order, 1984 one marginal witness was sufficient to prove the sale transaction?
ii) What is the limitation for cancellation of document?
iii) Whether decree of court would be valid and binding upon minor even he/she was not sued through guardian-ad-litem?
iv)Whether revisional Court while exercising jurisdiction can upset the concurrent findings recorded by the Courts below?

Analysis: i) Qanoon-e- Shahadat Order, 1984 was promulgated on 26.10.1984, whereas, if the Sale Deed was executed on 26.04.1984 and as such, it was required to be proved in terms of Section 68 of the Evidence Act which required that one marginal witness was sufficient to prove the sale transaction…

ii) Needless to mention that Article 91 to the First Schedule of the Limitation Act prescribes a period of 03 years for filing the suit for cancellation of document from the date of knowledge.

iii) It is importantly noted that in case titled, "Tanveer Mahboob and another v. Haroon and others" (2003 SCMR 480), it was observed that in a case in which a minor defendant in the suit was represented by his father or brother or sister as co-defendant without any conflict of interest with sincerity and they effectively defended the rights and interest of the minor in the property, it would be deemed that such rights were sufficiently safeguarded and mere fact that minor was not sued through guardian-ad-litem would not make the decree invalid and the same would be binding on the minor. It was also observed based upon the Judgment of Indian jurisdiction that non-fulfillment of formal requirement of appointment of guardian ad-litem of a minor defendant under Order XXXII, Rule 3, C.P.C. would not affect the proceedings in the suit and decree, if ultimately passed, unless it is shown that due to omission of appointment of guardian-at-litem of a minor, who was being represented by his natural guardian, the minor was caused prejudice and the objection would be of technical nature.

iv) It is a general rule that the Revisional Court while exercising jurisdiction vested under Section 115 of the C.P.C. does not upset the concurrent findings recorded by the Courts below. This principle is based on the premise that the Appellate Court is the final Court of fact but it is equally established that where there is gross misreading and non-reading of evidence or the Courts below have acted in exercise of their jurisdiction illegally or with material irregularity, the concurrent findings of facts are liable to be set aside in exercise of revisional jurisdiction.

Conclusion: i) Yes, prior to promulgation of Qanoon-e- Shahadat Order, 1984 one marginal witness was sufficient to prove the sale transaction.

ii) Article 91 to the First Schedule of the Limitation Act prescribes a period of 03 years for filing the suit for cancellation of document from the date of knowledge.

iii) Yes, decree of court would be valid and binding upon minor when represented by his father or brother or sister as co-defendant without any conflict of interest with sincerity even if he/she was not sued through guardian-ad-litem.

iv) Revisional Court while exercising jurisdiction vested under Section 115 of the C.P.C. does not upset the concurrent findings recorded by the Courts below.

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36. **Lahore High Court**
Muhammad Afzal v. Addl. District Judge, etc.
Writ Petition No.57778/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC2845.pdf

Facts: These petitions have laid challenge to the findings of the Appellate Court, rendered in proceedings emanating from the suits; for recovery of maintenance allowance and delivery expenses; for recovery of dowry articles or in alternate prevailing market price thereof; and for dissolution of marriage on the ground of cruelty along with recovery of the dower instituted by respondents.

Issues: i) What is the rationale underlying the application of principle of depreciation?
ii) Whether the principle of appreciation should be kept in mind inasmuch as if the principle of depreciation is to be considered in case of dowry articles?

Analysis: i) The rationale underlying the application of principle of depreciation is that the dowry articles are to be returned in their current position and if the same is not done, their price is to be paid as an alternate and since most of the value of dowry articles put to use during the subsistence of marriage do undergo depreciation on account of said daily use, therefore, while determining the alternate price, it is justifiable that the depreciation in value of such articles is to be taken into account.
ii) In case of articles such as the car, while determining/ascertaining amount of money as an alternate price, the principle of appreciation should be kept in mind inasmuch as if the principle of depreciation is to be considered with respect to one set of the dowry articles such as furniture, etc., which involves depreciation of articles on account of wear and tear, the principle of appreciation must also be taken into account with respect to such other articles that involves increase in value.

Conclusion: i) The rationale underlying the application of principle of depreciation is that the dowry articles are to be returned in their current position.
ii) The principle of appreciation should be kept in mind inasmuch as if the principle of depreciation is to be considered in case of dowry articles such as the car.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No. Legis: 13-27/2004(P-II), the Punjab Criminal Prosecution Service (Constitution, Function and Powers) (Amendment) Ordinance (Ordinance II of 2023) has been withdrawn.
2. Section 20 of Provincial Assembly of the Punjab Secretariat Services Act, 2019 has been amended vide The Provincial Assembly of the Punjab Secretariat Services (Amendment) Ordinance 2023 (Ordinance IV of 2023).

3. Section 144 of Criminal Procedure Code, 1898 has been substituted vide Code of Criminal Procedure (Amendment) Ordinance 2023 (Ordinance VI of 2023).
4. In Punjab Agricultural Marketing Regulatory Authority Act, 2018, Amendments in section 4 & 15B have been made whereas section 5 has been omitted vide Punjab Agricultural Marketing Regulatory Authority (Amendment) Ordinance 2023 (Ordinance VI of 2023).
5. Vide Notification No. SOR-III(S & GAD) 1-3/2023, the schedule in the Punjab Fisheries Department Service Rules, 2011 has been amended.
6. Vide Notification No.118/PHC Punjab Healthcare Commission Human Resource Regulations 2023 has been made.
7. Vide Notification No. Estt.I-4/2023-PPSC/226 PPSC Regulation No. 12(b) has been amended.
8. Vide Notification No. SO (CAB-I) 2-18/2018, amendment has been made in the Punjab Government Rules of Business, 2011, in the second schedule under the heading "Primary and secondary healthcare department".
9. In exercise of powers conferred under sub-section (2) of section 10 of the colonization of Government Lands (Punjab) Act, 1912, Statement of the conditions for grant of leases of specified state lands for establishment of Gymkhana Clubs in Punjab has been issued.
10. The Supreme Court (Review of Judgments and Orders) Act, 2023 has been enacted to facilitate and strengthen the Supreme Court of Pakistan in the exercise of its powers to review its judgment and orders.
11. The Pakistan Maritime Zones Act, 2023 has been enacted to consolidate and amend the law relating to territorial sea and maritime zones of Pakistan.
12. Vide The Code of Civil Procedure (Amendment) Act, 2023, Code of Civil Procedure, 1908 (in its application to Islamabad Capital Territory) has been further amended whereby sections 6, 96, 100 to 103, 106, 114, 115 & 141 have been substituted, section 26, 27, 33, 111& 159 have been amended and sections 26A to 26 D, 27A & 75A have been omitted.
13. The Members of Majlis e Shoora (Parliament) Immunities and Privileges Act, 2023 has been enacted to provide for the members of Majlis-e-Shoora (Parliament) immunities and privileges.
14. Vide Notification No. Notification No. 2648/Ad-II, amendment in the Punjab Police Department (Ministerial Posts) Rules, 2017, has been made in the Schedule-I, at serial No. 05.

SELECTED ARTICLES

1. SPRINGER LINK

https://link.springer.com/article/10.1007/s11572-023-09662-y

The Right to Do Wrong: Morality and the Limits of Law, by Mark Osiel (Cambridge: Harvard University Press), 2019 by Daniel Muñoz

Can our rights protect us even as we do terrible things, like blowing all our money on champagne and voting for disastrous candidates? Jeremy Waldron says yes, on the grounds that rights would not truly protect our autonomy if they applied only to anodyne choices from permissible options, such as the choice between chocolate and vanilla ice cream. Waldron's critics push back, contending that "rights to do wrong" are incoherent or inessential to autonomy.

2. NATIONAL LAW REVIEW

https://www.natlawreview.com/article/how-law-firms-can-build-stronger-internal-culture

How Law Firms Can Build a Stronger Internal Culture by Stefanie M. Marrone

It's been an unprecedented few years for law firms. A global pandemic. Shifting to a hybrid remote environment. The Great Resignation. Quiet quitting. Five generations in the workforce. The rise of AI tools. A focus on mental health. Law firms have been forced to adapt and innovate, and quickly. It hasn't been easy for some firms. Others are thriving. It's never been more important for law firms to focus on improving and innovating its values, communication norms, time and output expectations of lawyers and professional staff, career development opportunities, social connections between colleagues and approach to decision making. This is all part of your firm's culture and can greatly impact your reputation and ability to recruit and retain people in such a competitive landscape.

3. YALE LAW JOURNAL

https://www.yalelawjournal.org/article/the-modern-state-and-the-rise-of-the-business-corporation

The Modern State and the Rise of the Business Corporation by Taisu Zhang & John D. Morley

This Article argues that the rise of the modern state was a necessary condition for the rise of the business corporation. A typical business corporation pools together a large number of strangers to share ownership of residual claims in a single enterprise with guarantees of asset partitioning. We show that this arrangement requires the support of a powerful state with the geographical reach, coercive force, administrative power, and legal capacity necessary to enforce the law uniformly among the corporation's various owners. Strangers cannot cooperate on the scale and with the legal complexity of a typical business corporation without a modern state and the legal apparatus it supplies to enforce the terms of their bargain. Other historical forms of rule enforcement, such as customary law among closely knit communities and commercial networks like the Law Merchant, are theoretically able to support many forms of property rights and contractual relations but not the business corporation.

4. YALE LAW JOURNAL

https://www.yalelawjournal.org/article/the-weaponization-of-attorneys-fees

The Weaponization of Attorney's Fees in an Age of Constitutional Warfare by Rebecca Aviel & Wiley Kersh

If you want to win battles in the culture war, you enact legislation that regulates firearms, prohibits abortions, restricts discussion of critical race theory, or advances whatever other substantive policy preferences represent a victory for your side. But to win the war decisively with an incapacitating strike, you make it as difficult as possible for your adversaries to challenge those laws in court. Clever deployment of justiciability doctrines will help to insulate constitutionally questionable laws from judicial review, but some of the challenges you have sought to evade will manage to squeak through.

5. HAVARD LAW REVIEW

https://harvardlawreview.org/print/vol-136/the-executive-power-of-removal/

The Executive Power of Removal by Aditya Bamzai & Saikrishna Bangalore Prakash

Whether the Constitution grants the President a removal power is a longstanding, far-reaching, and hotly contested question. Based on new materials from the Founding and early practice, we defend the Madisonian view that the "executive power" encompassed authority to remove executive officials at pleasure. This conception prevailed in Congress and described executive branch practice, with Presidents issuing commissions during pleasure and removing executive officers at will. While some Justices and scholars assert that Congress has broad legislative power to curb executive removals, their reading leads to a host of troubles. If, as some argue, Congress can limit the grounds for a presidential removal, what prevents Congress from likewise limiting the grounds for executive pardons, judicial judgments, and impeachment removals? The far-reaching legislative power that some scholars advance cannot be cabined to presidential removals. We also respond to a number of judicial and scholarly critiques, many grounded in claims about early statutes and practices. Though valuable, these critiques misunderstand or ignore certain practices, sources, and key episodes, like the events surrounding Marbury v. Madison. There was a widespread consensus that the President had constitutional power to remove, and early laws did not limit, much less bar, presidential removal of executive officers.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-06-2023 to 15-06-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Islamabad High Court Bar Association Islamabad through its President Muhammad Shoaib Shaheen, ASC Islamabad etc. v. Election Commission of Pakistan through the Chief Election Commissioner, Islamabad and others
Suo Motu Case No. 1 of 2023 etc.
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/s.m.c._1_2023_12062023.pdf

Facts: After dissolution of assemblies of two provinces i.e. Punjab and KPK, the dates of elections to theses provincial assemblies were not announced, therefore, petitioners filed constitutional petitions whereas Supreme Court also took suo motu notice.

Issues: i) Whether General Elections means collective Elections to National and all Provincial Assemblies?
ii) Which is the authority in whom is reposed the constitutional power and responsibility to appoint the date for the holding of a general election?
iii) Whether the President, in exercising his power under s. 57(1), can act on his own or is bound to act on the advice of the Prime Minister?
iv) Is there is any difference between "announcing" the date for the general election, and fixing or appointing said date?
v) Whether Supreme Court should have never taken up matter of holding of general election which was pending before High Court in ICA, as jurisdiction of the Court under Article 184(3) was co-extensive or concurrent with that of the High Courts under Article 199 for the enforcement of fundamental rights?

Analysis: i) Given the federal nature of the Constitution each Assembly is for this purpose a separate "unit" which must, even though the substantive and procedural constitutional and statutory requirements are essentially the same, be treated in its own right and in and of itself. Thus, e.g., if in relation of a given election cycle elections to the National Assembly and all the Provincial Assemblies are held on the same day, it must always be kept in mind that, constitutionally speaking, there are in law and fact five separate general elections that are being so held.
ii) Keeping in mind the constitutional provisions and also Parliament's legislative expression in the shape of s. 57(1), in principle three possibilities offer themselves: the President, the Governor or the Commission. Now, the Constitution does not expressly refer to any power of the Commission with regard to the appointment of the date. Both the President and the Governor find express mention in the Constitution in the present context, in terms of Articles 48(5) and 105(3) respectively. However, that power is conditional: "Where the [President/Governor] dissolves the [National/ Provincial] Assembly…." Finally, the President is expressly the repository of the power in terms of s. 57(1) of the 2017 Act. The Governor finds no mention in the Act, and the role of the

Commission in this context is consultative. Where the Constitution is silent as to which is the authority for appointing the date for the general election, it is Parliament's identification that must prevail and be applied. It will be seen that as originally enacted the power in terms of s. 11 to appoint the date for a general election lay with the Commission. However, it was an oblique grant in the sense that it was but the last step of the election schedule which had to be issued by the Commission. Section 11 was then substituted/amended such that the power to announce the date lay with the President. This position was maintained in s. 57. Focusing on s. 11 as originally enacted, there were two possibilities. One was that the power to appoint the date for the general election lay only with the Commission in terms of Articles 218 and 219. On this view, all that Parliament could do was to give statutory expression to the constitutional grant, and therefore any statute (here the 1976 Act) was limited only to conferring the power on the Commission. No other authority could be identified as the repository of the power. The second view was that since the Constitution was silent as to which authority could be empowered to appoint the date for the holding of the general election, it lay within the legislative competence of Parliament to identify the same and, by statute, make it the repository of the power. It is important to keep in mind that even here the power itself sounded on the constitutional plane. It was simply that Parliament had more leeway in identifying the specific authority that was to exercise it. On this view, when Parliament first acted it chose to identify the Commission as the repository of the power, which was then shifted to the President by successive statutory alterations to s. 11. That position was maintained when Parliament enacted fresh legislation on the subject, i.e., the 2017 Act… It follows from the foregoing that in those situations of dissolution where the Constitution is silent as to which is the authority for appointing the date for the general election, it is Parliament's identification that must prevail and be applied. Those are the situations identified in para 10(b) of the short order. Therefore, in the case of the Punjab Assembly the power to appoint the date for the general election lay with the President in terms of s. 57(1) and not the Governor. It follows that the Commission fell into error when it sought, and continued to seek, the date for the general election from the Governor of Punjab, and the latter was correct in refusing to give such date. Furthermore, the refusal of the Commission to consult with the President was also legally incorrect. In particular, its refusal to do so by means of its letter of 19.02.2023 when called upon by the President with express reference to s. 57(1) was an error that is only excusable (and was excused in the short error) on account of the lack of legal clarity. It also follows that the order of 20.02.2023 made by the President appointing the date for the Punjab Assembly was correct and well within his power and constitutional responsibility…

iii) Had the grant of power being entirely statutory in nature then the answer may well have been that the President would be bound to act on advice. However, as has been seen, s. 57(1) merely identifies the authority that is to exercise the power, the locus of which remains on the constitutional plane. Thus, the President

is discharging a constitutional obligation and responsibility. Having considered the point, we are of the view that the President, in appointing the date for the general election under s. 57(1), does not act on advice but rather on his own. In order to understand why this is so, we begin by looking at Article 48. Clause (1) provides that the President, in exercise of his functions, is to act on and in accordance with the advice of the Cabinet or the Prime Minister, as the case may be. The proviso to this clause allows for the President to require reconsideration of any advice tendered within fifteen days thereof and goes on to provide that when the advice is tendered again, he is to act on it within ten days thereof. Thus, if the proviso is applicable to a given situation, it could be up to almost a month before the advice is acted upon. Clause (2) of Article 48 provides that notwithstanding anything contained in clause (1) the President shall act in his discretion in respect of any matter "in respect of which he is empowered by the Constitution to do so". It is to be noted that the application of Article 48(2) is not necessarily limited only to those constitutional provisions where the word "discretion" is expressly used. There are provisions where the term is not used and yet the application thereof, on any sensible approach, is meaningful only if the President is to act on his own and not on advice. For example, consider Article 91(7). The term "discretion" is not used therein. It empowers the President to ask the Prime Minister to take a vote of confidence from the National Assembly. But the power can only be exercised if the President is satisfied that the "Prime Minister does not command the confidence of the majority of the members of the National Assembly". Is the President to act on advice here? A moment's reflection will show that that cannot be so. No Prime Minister (who can in any case take a vote of confidence from the Assembly at any time) would sensibly advice the President to take recourse to Article 91(7). To require that this provision can only be invoked on advice would be reduce it to a dead letter. This is therefore a provision where, even though the term "discretion" is not used, the President is empowered to act on his own.

iv) A distinction between "announcing" the date for the general election, and fixing or appointing said date, is without any merit. The President is not a mere mouthpiece for anyone else. He is acting on his own, and discharging a constitutional responsibility. The "announcement" is not a mere formality but a substantive act. In the context of the general elections required by the Constitution, it must have, and be given, real meaning, content and effect. In our view, it can mean nothing less than the appointment of the date for the general election.

v) The matter of holding a general election to an Assembly is constitutionally time bound and moves within a narrow locus in this regard. The holding of the general election is subject to strict temporal constraints. The record of the proceedings of the High Courts was placed before the Court. It became clear that while the learned Single Judge in the Lahore High Court had acted with admirable promptitude the same could not, unfortunately and with all due respect, be said of the learned Division Bench nor of the Peshawar High Court. Dates of hearing

were being given repeatedly and matters were proceeding at what, in the present context, can only be described as a rather relaxed pace. Several weeks had already elapsed. Furthermore, it was almost certain that whatever be the decisions in the High Courts they would be appealed to this Court. So, the matter would essentially be back where it already was, the only difference being that out of the constitutional time limit several more days (at the very least) if not weeks would be consumed. Furthermore, the possibility of a difference of opinion between the two High Courts could not be ruled out, with further attendant confusion and delay. All of these factors satisfied us that these were fit matters to be proceeded with here directly under Article 184(3) notwithstanding the proceedings pending in the High Court. For this Court to hold its hand and allow for the routine litigation process to play out would, in the facts and circumstances before us, detract from rather than serve the public interest. In the present matters, there are no such issues or questions. None of the learned counsel disputed any of the facts and the entire record was read several times without any objection of a factual nature being taken in relation thereto. The whole case has turned entirely on matters of law and high constitutional importance. It is now well settled that proceedings under Article 184(3) are also to be regarded as inquisitorial where, if so warranted, the Court may itself examine disputed factual questions and issues as well. To insist on these matters being, in effect, returned to the High Courts would be tantamount in the present circumstances to a denial of justice of a matter of high constitutional importance, involving the fundamental rights of the electorate at large and relatable to one of the salient features of the Constitution. Therefore, for essentially the same reason, in principle, why the objection of maintainability was not accommodated in the Benazir Bhutto case, we also declined to accept the objection for the matters at hand.

Conclusion:

i) If elections to the National Assembly and all the Provincial Assemblies are held on the same day, it must always be kept in mind that, constitutionally speaking, there are in law and fact five separate general elections that are being so held.

ii) Both the President and the Governor find express mention in the Constitution in the present context, in terms of Articles 48(5) and 105(3) respectively. However, that power is conditional: "Where the [President/Governor] dissolves the [National/ Provincial] Assembly…." Finally, the President is expressly the repository of the power in terms of s. 57(1) of the 2017 Act. The Governor finds no mention in the Act, and the role of the Commission in this context is consultative.

iii) In appointing the date for the general election under s. 57(1), the President does not act on advice but rather on his own.

iv) A distinction between "announcing" the date for the general election, and fixing or appointing said date, is without any merit.

v) The matter of holding a general election to an Assembly is constitutionally time bound and moves within a narrow locus in this regard. A considerable time has been consumed by the High Courts and the possibility of a difference of

opinion between the two High Courts could not be ruled out, with further attendant confusion and delay. All of these factors satisfied the Supreme Court that these were fit matters to be proceeded with here directly under Article 184(3) notwithstanding the proceedings pending in the High Court. For this Court to hold its hand and allow for the routine litigation process to play out would, in the facts and circumstances before us, detract from rather than serve the public interest. Facts are not disputed and the entire record was read several times without any objection of a factual nature being taken in relation thereto. The whole case has turned entirely on matters of law and high constitutional importance. Furthermore, it is now well settled that proceedings under Article 184(3) are also to be regarded as inquisitorial where, if so warranted, the Court may itself examine disputed factual questions and issues as well.

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2. **Supreme Court of Pakistan**
Chairman, National Accountability Bureau, Islamabad v.
Yar Muhammad Solangi and others etc.
Civil Petitions No.101 to 110 of 2020
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._101_2020.pdf

Facts: The instant Civil Petitions have arisen from a consolidated judgment of the High Court of Balochistan, wherein ad-interim pre-arrest bail granted to the respondents was confirmed.

Issue: Where NAB did not seek the arrest of an accused during the course of initial inquiry or during the investigation and the accused is no longer required for investigation, whether it can seek the arrest of such accused when the reference has been filed and the matter is before the trial court?

Analysis: NAB did not seek the arrest of any of the respondents during the course of initial inquiry or during the investigation. The learned DPG, NAB does not deny this fact and is unable to explain why NAB seeks their arrest now, at this stage, given that the Reference has been filed and the matter is now before the trial court. Furthermore, the respondents have fully cooperated during the course of the investigation, as they have been attending all proceedings and according to the prosecution the respondents are no longer required for investigation. Further, NAB has taken into possession all the relevant record and no recovery is to be effected from the respondents.

Conclusion: Where NAB did not seek the arrest of an accused during the course of initial inquiry or during the investigation and the accused is no longer required for investigation, it cannot seek the arrest of such accused when the reference has been filed and the matter is before the trial court.

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3. **Supreme Court of Pakistan**
Mian Azam Waheed, etc. v. The Collector of Customs through Additional Collector of Customs, Karachi.
Civil Petitions No. 3215/2021 etc.
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3215_2021.pdf

Facts: The petitioners through these Civil Petitions have challenged the judgment passed by the learned High Court whereby the questions of law framed in the Reference Applications were answered in favour of present respondent (Collector of Customs) and consequently thereof, the impugned judgment passed by the Customs Appellate Tribunal, was set aside and the orders passed by the lower fora were restored.

Issues: i) Whether the Constitutional Jurisdiction of the High Court can directly be availed by bypassing the equally efficacious, alternate, and adequate remedy provided under the law?
ii) Whether an interim order survives after the final adjudication, or it merges into the final order?

Analysis: i) The writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses, and plights regardless of having equally efficacious, alternate, and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The profound rationale accentuated in this doctrine is that the litigant should not be encouraged to circumvent or bypass the provisions assimilated in the relevant statute paving the way for availing remedies with precise procedure to challenge the impugned action.
ii) It is a well settled exposition of law that no interlocutory order survives after the original proceeding comes to an end. … The interim orders are made in the aid of the final order that the court may pass and which merges into final order and does not survive after the final adjudication. The issue and effect of an interlocutory order, final order and merger was considered in detail in paragraph 25 of the judgment in the case of Gen. (Retd.) Pervez Musharraf through Attorney Vs. Pakistan through Secretary Interior and others, (PLD 2014 Sindh 389) which was affirmed by this Court vide judgment reported as PLD 2016 Supreme Court 570.

Conclusion: i) The Constitutional Jurisdiction of the High Court cannot directly be availed by bypassing the equally efficacious, alternate, and adequate remedy provided under the law.

ii) An interim order does not survive after the final adjudication as it merges into

the final order.

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4. **Supreme Court of Pakistan**
Habib Bank Ltd thr its Attorney v. Mehboob Rabbani
Civil Appeal No. 371/2020
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali nAkbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._371_2020.pdf

Facts: Through this instant Appeal by leave of the Court, the Appellant has challenged a judgment of the High Court of Sindh at Karachi whereby the appeal of the Appellant was dismissed, and the judgment of the Single Judge of the High Court was upheld.

Issues: (i) Whether High Court is barred from adjudicating on the matter in exercise of its original civil jurisdiction where service rules are non statutory?
(ii) What is the concept and scope of "Damages"?
(iii) On whom burden to prove lies in a suit for damages on breach of contract?
(iv) What are the general principles for ascertaining the quantum of general and special damages?
(v) Whether right of an opportunity to defend under Rule 39 of Habib Bank Limited (Staff) Service Rules of 1981 can be dispensed with?

Analysis: (i) The High Court of Sindh was exercising its original civil jurisdiction in terms of notifications in this regard issued from time to time. Therefore, the argument of the learned ASC for the Appellant that the service rules were non-statutory and internal in nature and therefore no Court had jurisdiction in the matter is repelled as misconceived. Admittedly, the Respondent alleged a wrong committed against him and it would be absurd to suggest that he could be left remediless. Whenever a Court is adjudicating a civil suit, it is regulated by the requisite laws and civil procedure applicable to it at the time the suit is filed and adjudicated upon. At no point has the Appellant taken the stance that the Civil Courts set up under the 1908 CPC were barred from adjudicating a suit for damages arising out of a breach of contract or taken the ground that the High Court exercising its original civil jurisdiction was not the appropriate forum for adjudicating the matter. In the absence of any such plea relating to lack of jurisdiction, the Appellant could not have sought preliminary dismissal of the suit on the ground that the service rules of the Appellant were non-statutory in nature and therefore, the High Court was barred from adjudicating on the matter in exercise of its original civil jurisdiction.
(ii) The etymology of the word "damages" reveals that the word damages stems from the words "dommage" in French and "damnum" in Latin, signifying that a thing is being taken away or that a thing is being lost which a party is entitled to have restored to him so that they may be made whole again.(…) Damages therefore are costs that are imposed not as a deterrent or as a means to punish person(s) or party(s) who has/have breached a contract but instead to bring the

person(s) or party(s) who has/have suffered from the breach of contract into a position which they would have been had the breach of contract not accrued. This principle is now legally known known as the principle of restitutio in integrum (restoration to original condition). It therefore stands to reason that damages are in fact the compensation that the law awards when a breach of contract occurs as compensation for the loss that a person or party has suffered from a breach of contract. (…) The concept of awarding damages is, by its very nature, inclusive of awarding both general as well as special damages. However, the nature of general and special damages and proving the two are different compared to each other.

(iii) Onus would lie on a plaintiff or claimant to prove that there had been a contract entered into between the parties; that there had been a breach of contract; and the extent of the damages claimed thereof.

(iv) General damages naturally arising according to the usual course of things from the breach of contract are recoverable in the ordinary circumstances. Special damages are awarded in cases, as may reasonably, be supposed to have been in contemplation of both parties at the time of contract. The law does not record consequential damages arising of delay in respect of money.(…) The rationale behind Section 73 of the 1872 Contract Act is to award damages for breach of contract which include damages that would "naturally arise in the usual course of things" or "which the parties knew, when they made the contract, to be likely to result from the breach of it". However by reason of the breach" It would go without saying that one aspect of a breach of contract would be the direct damages a party would be entitled to if a contract were to be broken. However, often, a breach of contract results, in other consequences which may be harmful or detrimental to the party who suffers from the breach of a contract.

(v) The Enquiry Committee dispensed with the requirements under Rule 39 of the 1981 Regulations but in doing so has infringed on the right of the Respondent to present oral evidence and cross examine anyone who might have testified against him. By dispensing with the requirements of Rule 39, the Respondent was denied a fundamentally important right of an opportunity to defend himself. The Enquiry Committee could only have dispensed with Rule 39 by assigning cogent reasons for doing so, which it failed to do, and in doing so the Enquiry Committee had breached a tenet of natural justice which enshrines that a person must not be condemned unheard and must be given a fair opportunity to defend himself before any adverse order is to be passed against them.

Conclusion:

(i) High Court is not barred from adjudicating on the matter in exercise of its original civil jurisdiction even where service rules are non statutory.

(ii) Damages are in fact the compensation that the law awards when a breach of contract occurs as compensation for the loss that a person or party has suffered from a breach of contract.

(iii) The onus to prove lies on the plaintiff in a suit for damages on breach of contract.

(iv) Ordinary damages arising out of breach of contract are normally recoverable

under normal circumstances. In such cases special damages are awarded as are reasonably believed to have been contemplated by both the parties at the time of the contract.

(v) The Enquiry Committee could only dispensed with under Rule 39 of Habib Bank Limited (Staff) Service Rules of 1981 by assigning cogent reasons for doing so because person must not be condemned unheard and must be given a fair opportunity to defend himself before any adverse order is to be passed.

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5. **Supreme Court of Pakistan**
Allied Bank Limited v. Federation of Pakistan thr. Collectorate of Customs, Peshawar & others.
Civil Appeal No.196-P of 2014
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._196_p_2014_13062023.pdf

Facts: Through the instant Appeal by leave of this Court, the Appellant has challenged the judgment of the Peshawar High Court whereby the constitutional petition of the Respondent No.5 was dismissed.

Issues: i) Whether the parties between whom a guarantee is executed would be bound by the terms and conditions of the guarantee irrespective of any independent obligation of the principal debtor towards the creditor including its date of expiry?
ii) Whether a contract of guarantee is a standalone and independent contract between the guarantor and the beneficiary for a limited period?

Analysis: i) Since a guarantee is, for the purposes of the Contract Act, a contract under the law, the parties to the guarantee are deemed to be regulated by the terms of the guarantee which they have mutually agreed upon keeping in view the legal principle of consensus ad idem (meeting of the minds) when it comes to construction of contracts. Once a guarantee is executed between the parties (i.e. between a guarantor/surety and a creditor), they would be bound by the terms and conditions of the guarantee irrespective of any independent obligation of the principal debtor towards the creditor. That rule is firmly entrenched in our as well as common law jurisprudence… The parties to the guarantee contract are bound by the terms and conditions of the guarantee including its date of expiry. Unless a valid call is received by the Guarantor within the time specified in the guarantee, the Guarantor is released of any and all obligations under the contract and the contract itself expires.

ii) It may be emphasized that a contract of guarantee is a standalone and independent contract between the guarantor (in this case, the Appellant) and the beneficiary (in this case, Respondents 1-4/Federation) for a limited period (unless the guarantee contract specifically states that it is a continuing guarantee or language to that effect and no date or event of expiry thereof is specified) and for a limited purpose (that is, to pay the amount mentioned therein on a call being

made within the time specified) without reference to any third party or the underlying transaction that constituted the basis for issuance of the guarantee.

Conclusion: i) Yes, the parties between whom a guarantee is executed would be bound by the terms and conditions of the guarantee irrespective of any independent obligation of the principal debtor towards the creditor including its date of expiry.
ii) Yes, a contract of guarantee is a standalone and independent contract between the guarantor and the beneficiary for a limited period (unless the guarantee contract specifically states that it is a continuing guarantee or language to that effect and no date or event of expiry thereof is specified).

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6. **Supreme Court of Pakistan**
Kashmali Khan & others v. Mst. Malala
Civil Appeal No.795 of 2017
Mr. Justice Ijaz ul Ahsan, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._795_2017.pdf

Facts: The suit out of which this appeal arises is one for pre-emption. The Court of first instance and, on appeal, the lower Appellate Court had held the plaintiffs, who are now appellants, to be entitled to the right of pre-emption claimed, but on an application for revision by the defendant, respondent herein, the High Court dismissed the claim, and reversed the decree drawn by the subordinate Courts.

Issues: i) Whether in order to strengthen the claim for pre-emption, it is mandatory for the plaintiff to first state the names of the witnesses for Talb-iIshhad in his plaint and then prove their attestation by producing them in Court?
ii) Whether mere signing and sending a notice of Talb-iIshhad to the vendee is sufficient without confirming the intention to exercise the right of pre-emption?
iii) Whether as per Section 14 of the Khyber Pakhtunkhwa Pre-emption Act, 1987, Talb-i-Ishhad can be done by an agent?
iv) Whether the right of pre-emption is strictissimi juris (strict rule of law) and the slightest deviation from the formalities required by law will prevent its accrual?

Analysis: i) As such, it was mandatory for the plaintiffs to first state the names of the witnesses for Talb-iIshhad in their plaint and then prove their attestation by producing them in Court. Keeping this legal obligation in mind, we examined the contents of the plaint to ascertain whether the names of the witnesses of Talb-i-Ishhad had been disclosed therein. On perusal, it was found that the plaintiffs had omitted to mention the names of such witnesses in the plaint. The right of pre-emption is but a feeble right. As it disseizes another who has acquired a property in bona fide manner for good value, it entails that the ritual of the Talbs must be observed to the letters, and any departure, howsoever slight it may be, defeats the right of pre-emption.
ii) Section 13(3) of the Khyber Pakhtunkhwa Pre-emption Act, 1987 makes it mandatory that pre-emptor while making Talb-i-Ishhad by sending a notice in

writing attested by two truthful witnesses, under registered cover acknowledgment due to the vendee, shall confirm his intention to exercise the right of pre-emption. It is for this reason that this Court in Muhammad Zahid vs. Muhammad Ali has held that mere signing and sending a notice to the vendee without confirming the intention to exercise the right of pre-emption is not sufficient to found Talb-i-Ishhad.

iii) It is true that Talb-i-Ishhad can be done by an agent, as provided in Section 14 of the Khyber Pakhtunkhwa Pre-emption Act, 1987. But the context shows that this is only an exception in the case of person who is unable to make the demand personally. The exception cannot supersede the general rule.

iv) It is now well recognized that the right of preemption is strictissimi juris (strict rule of law) and the slightest deviation from the formalities required by law will prevent its accrual.

Conclusion:

i) In order to strengthen the claim for pre-emption, it is mandatory for the plaintiff to first state the names of the witnesses for Talb-iIshhad in his plaint and then prove their attestation by producing them in Court.

ii) Mere signing and sending a notice of Talb-iIshhad to the vendee is not sufficient without confirming the intention to exercise the right of pre-emption.

iii) As per Section 14 of the Khyber Pakhtunkhwa Pre-emption Act, 1987, Talb-i-Ishhad can be done by an agent when the pre-emptor is unable to make the demand personally.

iv) The right of pre-emption is strictissimi juris (strict rule of law) and the slightest deviation from the formalities required by law will prevent its accrual.

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7. **Supreme Court of Pakistan**

A. Rahim Foods (Pvt) Limited v. K&N's Foods (Pvt) Limited and others
Competition Commission of Pakistan v. A. Rahim Foods (Pvt) Limited and another
Civil Appeals No. 444 & 445 of 2017
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._444_2017.pdf

Facts:

The K&N's Foods (Pvt) Limited filed a complaint against A. Rahim Foods (Pvt) Limited with the Competition Commission of Pakistan asserting involvement of Rahim Foods in deceptive marketing practices on which the Commission after enquiry and notice, imposed the penalties on Rahim Foods for contravention of the provisions of Section 10, under Section 38 of the Competition Act 2010. Rahim Foods appealed the order of the Commission before the Competition Appellate Tribunal which allowed the appeal partially. Hence, Rahim Foods and the Commission filed these appeals against the judgment of the Competition Appellate Tribunal under Section 44 of the Act.

Issues:

i) Whether Supreme Court can interfere with the concurrent findings of the courts below on the issues of facts?

ii) What is the legislative policy in promulgating the Competition Act 2010?

iii) What is concept of Free and Fair competition?
iv) Whether the Competition Act 2010 prohibits deceptive marketing practices?
v) Whether distributing false or misleading information is a wrongful act under the Competition Act 2010 or before the promulgation of the Act?
vi) Whether intention of the defendant is relevant for holding him liable under the expression 'fraudulent use' as mentioned Section 10(2)(d) of the Act?
vii) Whether the word 'use' in the phrase of Section 10(2)(d) of Act restricted to use of same trademark or it also include similar trademark?
viii) What is the criterion to determine the confusing similarity in trademark?
ix) Whether registration of trademark is necessary for the applicability of the provisions of Section 10(2)(d) of the Act?
x) What is difference between misrepresentation in a passing-off action and misrepresentation in an injurious falsehood action?
xi) Whether an adjudicatory body has locus standi to contest for upholding its quasi-judicial decision?

Analysis:

i) In the exercise of its appellate jurisdiction in civil cases, this Court as a third or fourth forum, as the case may be, does not interfere with the concurrent findings of the courts below on the issues of facts unless it is shown that such findings are on the face of it against the evidence available on the record of the case and is so patently improbable or perverse that no prudent person could have reasonably arrived at it on the basis of that evidence. A mere possibility of forming a different view on the reappraisal of the evidence is not a sufficient ground to interfere with such findings.
ii) The preamble to the Act sets out the objective of the Act and provides for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive forces. The Act aims to address the situations that tend to lessen, distort or eliminate competition, such as (i) actions constituting an abuse of market dominance, (ii) competition restricting agreements, and (iii) deceptive marketing practices… Article 18 of the Constitution of Pakistan provides that every citizen shall have the right to conduct any lawful trade or business and clause (b) of the proviso to the said Article states that nothing in this Article shall prevent the regulation of trade, commerce or industry in the interest of free competition. Therefore, regulation in the interest of free competition actualizes the fundamental freedom guaranteed under the Constitution to conduct lawful trade and business. As free and fair competition ensures freedom of trade, commerce and industry and therefore forms an intrinsic part of the fundamental right to freedom of trade and business guaranteed under Article 18 of the Constitution. The preambular objective of the Act is to ensure "free competition" in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from "anticompetitive behaviour".
iii) Free and Fair competition is a fundamental concept in economics that involves providing a level playing field for all market participants. It is based on the

principles of a free market where businesses compete on equal terms, and consumers make decisions based on price, quality, and preference. Free and fair competition is competition that is based on quality, price, and service rather than unfair practices. Predatory pricing, competitor bashing, and the abuse of monopoly-type powers, for example, are unfair practices. When competitors can compete freely on a 'level playing field,' economies are more likely to thrive. On the other hand, unfair competition is using illegal, deceptive, and fraudulent selling practices that harm consumers or other businesses to gain a competitive advantage in the market. However, free and fair competition is encouraged and enforced through legislation and regulation to promote economic efficiency, innovation, and consumer welfare. Violations of fair competition principles can lead to legal consequences, penalties, or other corrective measures. Competition is not only healthy for businesses, but pivotal for innovation. It sparks creativity and nurtures transformation and progress.

iv) The "free competition" envisaged by the Constitution and aimed to be ensured by the Act, therefore, means a competition through fair means, not by any means. To ensure fair competition in trade and business, Section 10 of the Act has prohibited certain marketing practices by categorising them as deceptive marketing practices, and Sections 31, 37 and 38 of the Act have empowered the Commission to take appropriate actions to prevent those practices. With this constitutional underpinning in the background, we now proceed to examine the meaning and scope of clauses (a) and (d) of Section 10(2) of the Act.

v) The acts of distributing false or misleading information that is capable of harming the business interests of another undertaking and fraudulent use of another's trademark, firm name, or product labelling or packaging, which constitute deceptive marketing practices as per clauses (a) and (d) of Section 10(2), were in themselves wrongful acts even before the promulgation of the Act. The common law actions of 'injurious falsehood' and 'passing-off' were the well-known remedies for these wrongs. The Act has codified the common law on these two actions in clauses (a) and (d) of Section 10(2) and entrusted the adjudication of the same to the specialised forums – the Commission and the Tribunal. The main objective of codifying common law is to create a coherent and clear system of laws that is readily accessible and understandable to the public. Codification adds consistency, accessibility, clarity, uniformity and predictability. Any such codification may or may not amend or modify the common law.

vi) The expression 'fraudulent use' in Section 10(2)(d) has made the intention of the defendant (user of another's trademark, firm name, or product labelling or packaging) also relevant for holding him liable under the Act. However, as the Act has not defined the term 'fraudulent' and thus not given any particular meaning to it, the expression 'fraudulent use' in Section 10(2)(d) is to be understood in its ordinary sense of 'intentional and dishonest use' in contrast to a mere 'mistaken or negligent' use. Needless to mention that 'intention', being a state of mind, can rarely be proved through direct evidence, and in most cases, it is to be inferred from the surrounding facts and circumstances of the case.

vii) The word ‘use’ in the phrase of Section 10(2)(d), that is, ‘fraudulent use of another’s trademark, firm name, or product labelling or packaging’, also requires elaboration: whether it only relates to the use of the same trademark, firm name, or product labelling or packaging, or it includes the use of the similar trademark, firm name, or product labelling or packaging and whether it covers the ‘parasitic copying’ of another’s trademark, firm name, or product labelling or packaging. Since Section 10(2)(d) of the Act has codified the common law on passing-off action, we need to see how the use of another’s trademark, firm name, or product labelling or packaging is understood and applied in such common law action and whether the language of Section 10(2)(d) suggest any change. In this regard, it is notable that though the common law of passing-off action and the statutory law of infringement of registered trademarks deal in different ways with deceptive marketing practices, their basic principle is common. It is that ‘a trader may not sell his goods under false pretences, either by deceptively passing them off as the goods of another trader so as to take unfair advantage of his reputation in his goods, or by using a trade sign the same, or confusingly similar to, a registered trade mark.’ The misrepresentation alleged in a passing-off action is therefore also judged on the same or confusingly similar standard as it is done in a trademark-infringement action. Further, the criterion to determine the confusing similarity (also referred to as deceptively similar), which is described hereinafter, is also common in both these actions. As ‘nobody has any right to represent his goods as the goods of somebody else’, it is unlawful for a trader to pass off his goods as the goods of another by using the same or confusingly similar mark, name, or get-up. In a passing-off action, ‘the point to be decided’, as said by Lord Parker, ‘is whether, having regard to all the circumstances of the case, the use by the defendant in connection with the goods of the mark, name, or get-up in question impliedly represents such goods to be the goods of the plaintiff’. There is nothing in the language of Section 10(2)(d) of the Act that the meaning of the word use has been restricted therein to the use of the same trademark, firm name, or product labelling or packaging. We, therefore, hold that the word “use” in Section 10(2)(d) of the Act includes the use of trademark, firm name, or product labelling or packaging which is confusingly similar (also referred to as deceptively similar) to that of another undertaking.

viii) So far as the criterion to determine the confusing similarity is concerned, the same is well-established in our jurisdiction in passing-off and trademark-infringement actions, which also applies in deciding disputes under Sections 10(2)(d) of the Act. It is whether an unwary ordinary purchaser is likely to be confused or deceived into purchasing the article of the defendant carrying the contentious mark, name or get-up as that of the plaintiff (complainant). The criterion is thus that of such an ordinary purchaser ‘who knows more or less the peculiar characteristics of the article he wants; he has in his mind’s eye a general idea of the appearance of the article and he looks at the article not closely, but sufficiently to take its general appearance’. It is not that of a careful purchaser neither is it of a ‘moron in a hurry’. The purchaser is unwary in the sense that he

does not when he buys the article 'look carefully to see what the particular mark or name upon it is' but not that he does not even know the peculiar characteristic of the article he wants to buy. An ordinary customer is not supposed to precisely remember every detail of the mark, name or get-up of the article he intends to buy. The standard is therefore also described as that of a purchaser of average intelligence and imperfect recollection. Further, to determine the confusing or deceptive similarity from the point of view of an unwary ordinary purchaser, the leading characteristics, not the minute details, of the two marks, names or get-ups (labelling or packaging) are to be considered. As the competing marks, names or get-ups when placed side by side, may exhibit many differences yet the overall impression left by their leading characteristics on the mind of an unwary purchaser may be the same. An unwary ordinary purchaser acquainted with the one and not having the two side by side for comparison, may well be confused or deceived by the overall impression of the second, into a belief that he is buying the article which bears the same mark, name or get-up as that with which he is acquainted.

ix) The question, whether registration of trademark (or for that matter, registration of firm name, or product labelling or packaging) is necessary for the applicability of the provisions of Section 10(2)(d) of the Act, is not difficult, as neither the common law action of passing-off requires such registration nor does the language of Section 10(2)(d) provide for any such requirement. The statutory law and common law stand together on this point. We, therefore, endorse the view of the Tribunal on this point. One must remember, in this regard, the difference between the objectives of a passing off action and a trademark-infringement action. A passing-off action essentially aims to protect 'property in goods' on account of its reputation (goodwill), not the trademark thereof, whereas the trademark-infringement action is meant to protect 'property of trademark' as a trademark itself is a property.

x) The general difference between misrepresentation in a passing-off action and misrepresentation in an injurious falsehood action is that in the former action, the misrepresentation is made by the defendant concerning his own goods while in the latter it is made concerning the goods of the plaintiff. In a passing-off action, the defendant by misrepresentation primarily attempts to take the undue benefit of the reputation (goodwill) of the goods of the plaintiff though he thereby also causes damage to the business of the plaintiff indirectly; but in an injurious falsehood action, the direct and express purpose of the misrepresentation is to cause damage to the reputation (goodwill) of the goods of the plaintiff though it may also impliedly or indirectly benefit the business of the defendant.

xi) In this regard, we may observe that though the role of the Commission under the Act is primarily of a regulatory body, it is quasi-judicial as well under some provisions of the Act. The provisions of clauses (a) and (d) of Section 10(2) of the Act, in our view, envisage the quasi-judicial role of the Commission while deciding upon the divergent claims and allegations of two competing undertakings. And, as held by this Court in Wafaqi Mohtasib case, an

adjudicatory body deciding a matter in exercise of its quasi-judicial powers between two rival parties under a law cannot be treated as an aggrieved person if its decision is set aside or modified by a higher forum under that law or by a court of competent jurisdiction and such body thus does not have locus standi to challenge the decision of that higher forum or court.

Conclusion:

i) Supreme Court can not interfere with the concurrent findings of the courts below on the issues of facts unless it is shown that such findings are on the face of it against the evidence available on the record of the case and is so patently improbable or perverse.

ii) The legislative policy in promulgating the Competition Act 2010 is to address the situations that tend to lessen, distort or eliminate competition, such as (i) actions constituting an abuse of market dominance, (ii) competition restricting agreements, and (iii) deceptive marketing practices.

iii) The concept of Free and Fair competition is a competition that is based on quality, price, and service rather than unfair practices.

iv) The Competition Act 2010 prohibits the deceptive marketing practices.

v) Distributing false or misleading information is a wrongful act under the Competition Act 2010 and it was a wrongful act even before the promulgation of the Act.

vi) Intention of the defendant is relevant for holding him liable under the expression 'fraudulent use' as mentioned Section 10(2)(d) of the Act.

vii) The word 'use' in the phrase of Section 10(2)(d) of Act is not restricted to use of same trademark but it also include the use of trademark, firm name, or product labelling or packaging which is confusingly similar.

viii) The criterion to determine the confusing similarity in trademark is not the minute details but when competing marks, names or get-ups placed side by side, may exhibit many differences yet the overall impression left by their leading characteristics on the mind of an unwary purchaser may be the same.

ix) Registration of trademark is not necessary for the applicability of the provisions of Section 10(2)(d) of the Act.

x) The general difference between misrepresentation in a passing-off action and misrepresentation in an injurious falsehood action is that in the former action, the misrepresentation is made by the defendant concerning his own goods while in the latter it is made concerning the goods of the plaintiff.

xi) An adjudicatory body has no locus standi to contest for upholding its quasi-judicial decision.

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8. **Supreme Court of Pakistan**
Prof. Dr. Manzoor Hussain, etc. v. Zubaida Chaudhry, etc.
Civil Petition No.1942/2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1942_2022.pdf

Facts: The respondent No.1 alleged harassment at her workplace by the petitioners.

After her departmental complaint was not processed, she filed a complaint before the Federal Ombudsman under Section 8(1) of the Protection against Harassment of women at the Workplace Act, 2010 ("Act of 2010"). The complaint was allowed by imposing a minor penalty of censure on the petitioners along with a fine of Rs. 1,00,000/- each payable by the petitioners to respondent No.1. Against the said order of the Ombudsman, petitioner Nos. 2 and 3, and respondent No.1 filed their respective representations before the President. The President accepted the representations of the petitioners and dismissed the representation of respondent No.1. Respondent No.1 then filed a writ petition before the High Court assailing the order of the President. The writ petition was disposed of without adverting to the merits of the case, it was held that the President could not have delegated his decision-making authority to any other person or official, therefore, the order of the President was set aside and the matter was remanded. Hence, this civil petition has been filed against the judgment passed by High Court.

Issues:

i) How the word "process" used under Section 14(4) of the Federal Ombudsmen Institutional Reforms Act, 2013 can be defined?
ii) Whether the power to process and the power to decide a representation are distinct functions?
iii) What is object of the requirement of the nominated officer under the Act, 2013?
iv) What is role of the nominated officer under the Act, 2013?
v) Whether it is necessary for the president to agree with nominated officer for deciding the representation?
vi) Whether Section 14(4) of the Act of 2013 indicates that power to decide representation has been delegated to the nominated officer?

Analysis:

i) "Process" is defined as "a series of actions or steps towards achieving a particular end" or "a mode, method, or operation, whereby a result or effect is produced". Processing the representation therefore comprises of the actions or steps towards achieving the required objective i.e. a decision on the representation by the President.
ii) It is important to note that the power to process a representation, by preparing the case, and the power to decide that representation, after due application of mind, are inherently distinct functions and cannot be equated or conflated. The function of processing a representation by the nominated officer is only ancillary to the main objective of decision on the representation by the President. According to De Smith's Judicial Review5, Courts have even conceded that an authority has an implied power to entrust to a group of its own members with the authority to investigate, to hear evidence and make recommendations in a report, provided that (a) it retains the power to make decisions in its own hands6 and receives a report full enough to enable it to comply with its duty to "hear" before deciding, and (b) the context does not indicate that it must perform the entire

adjudicatory process itself.

iii) It is also evident that the object of the requirement of the nominated officer, a person of high legal standing who has acted or is qualified to act in a judicial or quasi-judicial capacity, to process the representation, which might involve significant substantive and technical legal questions, and to express his views on the said representation before sending the case to the President for decision thereon, is only to assist the President in deciding the representation. The President may or may not be a person with a legal background and, along with deciding representations filed under other diverse laws, has various other overbearing and important functions and duties as head of State, which include the functions, powers and duties of the President under the Constitution, and under other laws.

iv) As such, in view of the demanding and arduous position that the President holds, and, therefore, for practical purposes, the role of the nominated officer is only to consolidate and simplify the record, and prepare the case before him so that it can be presented before the President for his decision.

v) This in no manner dilutes the decision-making powers of the President because the discretion to accept or reject a representation is retained and vested entirely in the President himself, who, while deciding the representation, may agree with the recommendations/proposals so forwarded by the nominated officer, by adopting the reasons given by the nominated officer and/or also for his own reasons, or disagree with them for his own reasons and decide the representation after assessing the available record and independently applying his mind to the matter.

vi) As such, it is apparent that even though the views of the nominated officer in the form of such recommendations/proposals may assist the President in coming to a decision regarding the representation, however, it is only the President who decides the representation after conscious application of independent mind on the strength of tangible and material evidence, as is required under the law.14 Consequently, the power of the President to decide the representation himself remains intact and cannot be said to have been delegated to any other officer nominated by him under Section 14(4) of the Act of 2013.

Conclusion:

i) "Process" is defined as "a series of actions or steps towards achieving a particular end" or "a mode, method, or operation, whereby a result or effect is produced".

ii) The power to process and the power to decide a representation are distinct functions.

iii) The object of the requirement of the nominated officer is to nominate a person of high legal standing who has acted or is qualified to act in a judicial or quasi-judicial capacity, to process the representation.

iv) The role of the nominated officer is only to consolidate and simplify the record, and prepare the case before him so that it can be presented before the President for his decision.

v) It is not necessary for the president to agree with nominated officer for

deciding the representation and the president can disagree with nominated officer.
vi) Section 14(4) of the Act of 2013 does not indicate that power to decide representation has been delegated to the nominated officer.

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9. **Supreme Court of Pakistan**
Salman Ashraf v. Additional District Judge, Lahore, etc.
Civil Petition No.2000-L of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2000_l_2020.pdf

Facts: The petitioner seeks leave to appeal against an order of the Lahore High Court, whereby the High Court has dismissed his writ petition and upheld the order of the revisional court. By its order, the revisional court had dismissed the revision petition of the petitioner filed against the order of the trial court, dismissing the application of the petitioner for rejection of the plaint. All three courts below have thus decided the matter against the petitioner.

Issues: i) What is the object of civil and criminal proceedings?
ii) Whether civil as well as criminal proceeding could run simultaneously in one and the same matter?
iii) When the criminal proceedings may be stopped pending civil proceedings?
iv) Whether finding of a criminal court on a fact constituting the offence tried by that court is relevant in a civil proceeding?
v) What are essential ingredients to invoke the provisions of clause (d) of Rule 11 of Order 7, CPC?
vi) Whether there may be divergent judgments by the civil and criminal courts on the facts that give rise to both civil and criminal liabilities?

Analysis: i) It hardly needs reiteration that the object of a civil proceeding is to enforce civil rights and obligations while that of a criminal proceeding is to punish the offender for the commission of an offence.
ii) It is, therefore, a well-established legal position in our jurisdiction that both the civil proceeding and criminal proceeding relating to one and the same matter can be instituted and ordinarily proceeded with simultaneously.
iii) Although there is no bar to the simultaneous institution of both proceedings, the trial in the criminal proceeding may be stopped in certain circumstances. And the guiding principle in this regard is also well-defined. It is that where the criminal liability is dependent upon or intimately connected with the result of the civil proceeding and it is difficult to draw a line between a bona fide claim and the criminal act alleged, the trial in the criminal proceeding may be postponed till the conclusion of the civil proceeding. Thus, where either of these two conditions is not fulfilled, i.e., where the subject matter of civil proceeding and that of criminal proceeding are distinct, not intimately connected, or where the civil proceeding is instituted mala fide to delay the criminal prosecution, not bona fide,5 the criminal proceeding may not be stayed.

iv) It is notable that the whole jurisprudence on the subject, as briefly stated above, has developed while dealing with the question of staying criminal proceeding till the conclusion of the connected civil proceeding. Not a single case is brought to our notice wherein the question of staying civil proceeding till the culmination of the criminal proceeding had been raised. The reason is not far to see. The decision of a civil court as to any right, title or status, which only that court can finally decide, may have a substantial bearing upon a constituent ingredient of the offence being tried by the criminal court. On the other hand, any finding of a criminal court on a fact constituting the offence tried by that court is irrelevant in a civil proceeding to decide the same fact in the course of adjudicating upon and enforcing civil rights and obligations.

v) Section 9, CPC, provides that the civil courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. And as per clause (d) of Rule 11 of Order 7, CPC, a plaint can be rejected where the suit appears to be barred by any law. Thus, to succeed in his plea for rejection of the plaint in the suit of the respondent, the petitioner is to show under which law the suit of the respondent is either expressly or implied barred.

vi) Needless to mention that the standard of proof required in civil and criminal proceedings is different. In the former, a mere preponderance of probability is sufficient to decide the disputed fact but in the latter, the guilt of the accused must be proved beyond any reasonable doubt. There are, therefore, chances of giving divergent judgments by the civil and criminal courts on the facts that give rise to both civil and criminal liabilities.

Conclusions:

i) Object of a civil proceeding is to enforce civil rights and obligations while that of a criminal proceeding is to punish the offender.

ii) Both civil and criminal proceedings relating to one and the same matter can be instituted and ordinarily proceeded with simultaneously.

iii) Where the criminal liability is dependent upon the result of the civil proceeding and it is difficult to draw a line between a bona fide claim and the criminal act alleged, the trial in the criminal proceeding may be postponed till the conclusion of the civil proceeding.

iv) Any finding of a criminal court on a fact constituting the offence tried by that court is irrelevant in a civil proceeding.

v) To succeed in plea for rejection of the plaint it is to show under which law the suit is either expressly or implied barred.

vi) Because of different evidential standards, judgments of civil and criminal courts on the facts that give rise to both civil and criminal liabilities may be divergent.

10. **Supreme Court of Pakistan**
Said Rasool v. Maqbool Ahmed etc.
Civil Appeal No. 102 -L of 2017
Mr. Justice Munib Akhtar, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._102_l_2017.pdf

Facts: The predecessor of the respondents filed a suit for specific performance of an agreement for sale. The suit was decreed by the Trial Court. The appeal filed by the appellant was partly allowed by the Additional District Judge. The respondents filed a Revision Petition before the Lahore High Court, Lahore, which was allowed, hence, this appeal.

Issues: i) What are the basic elements to be proved for the enforcement of valid agreement and how are these elements determined?
ii) What is written agreement and when the parties are bound by it?
iii) What is legal requirement for a valid written agreement, when it pertains to financial or future obligations?
iv) How the written agreement is required to be proved?
v) Whether written agreement which is not signed by either or one of the parties, is valid and enforceable?
vi) How unsigned agreement is required to be proved and whether the same is enforceable?

Analysis: i) Therefore, the basic elements required to be proved for a valid agreement to be legally enforceable are mutual consent, expressed by a valid offer and acceptance; adequate consideration; capacity; and for it to be subject to the laws of the jurisdiction. These may be determined by looking at the objective manifestations of the intent of the parties as gathered by their expressed words and deeds, as well as objective evidence establishing that the parties intended to be bound.
ii) An agreement may be oral or in writing. A written agreement is an instrument whereby parties perform the act of declaring their consent as to any act or thing to be done by some or all parties through the process of writing. Where the parties to an agreement intend not to be bound until their agreement is reduced to writing and signed, neither party is bound until the writing is executed.
iii) If the written agreement pertains to financial or future obligations, it is to be compulsorily attested by two men or one man and two women , as provided by Article 17(2) of the Qanun-e-Shahadat Order, 1984 ("QSO, 1984 ") which is sine qua non for a valid agreement.
iv) Such written document should not be used as evidence until the attesting witnesses are called for the purpose of proving its execution in a manner enumerated in Article 79 of the QSO, 1984.
v) However, this situation must be distinguished from that in which the parties intend to bind themselves orally or by their conduct, but have the further intention of reducing their agreement to a writing after the oral agreement is made. In such case, the written agreement of the completed oral contract remains unaffected

even if it is not signed by either party. The requirement of signing the agreement by the parties is to show their free consent and intention to be legally bound by their oral offer and acceptance. In circumstances where the agreement is reduced into writing and is not signed by either or one of the parties, it may still be valid and enforceable, however, its legal effect will be limited and the enforceability may be more difficult to establish in such case.

vi) It is, therefore, necessary that it must be pleaded in the pleadings and the requirements of a valid contract must be proved through cogent evidence by the party relying upon it. These factors will be considered by the courts in determining the intent of the parties and steps partially taken for giving effect to the agreement. Thus, if the courts are satisfied that the party relying upon an unsigned agreement has proved the necessary ingredients for its validity, it may be enforced in favour of the party claiming its performance.

Conclusion:

i) Basic elements required to be proved for a valid agreement to be legally enforceable are mutual consent, expressed by a valid offer and acceptance; adequate consideration; capacity; and for it to be subject to the laws of the jurisdiction. These may be determined by looking at the objective manifestations of the intent of the parties.

ii) A written agreement is an instrument whereby parties perform the act of declaring their consent as to any act or thing to be done by some or all parties through the process of writing. Where the parties to an agreement intend not to be bound until their agreement is reduced to writing and signed, neither party is bound until the writing is executed.

iii) Written agreement is to be compulsorily attested by two men or one man and two women, when it pertains to financial or future obligations.

iv) Written agreement is required to be proved by producing the attesting witnesses in a manner enumerated in Article 79 of the QSO, 1984.

v) When the parties have the intention of reducing their agreement to a writing after the oral agreement is made and is not signed by either or one of the parties, it may still be valid and enforceable.

vi) It is necessary that unsigned agreement must be pleaded in the pleadings and the requirements of a valid contract must be proved through cogent evidence.

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11. **Supreme Court of Pakistan**
Jamaluddin etc. v. The State
Criminal Petition Nos. 41-K & 42-K of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Zazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._41_k_2023.pdf

Facts: Through the instant petitions, the petitioners have assailed the order passed by the learned Single Judge of the High Court of Sindh, with a prayer to grant pre-arrest bail and post-arrest bail in case/FIR under Sections 324/148/149 PPC.

Issues: i) Whether the principle that consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings applies where the petitioners/accused are ascribed the same role?
ii) Whether liberty of a person which is a precious right can be taken away merely on bald and vague allegations?

Analysis: i) As far as the principle enunciated by this Court regarding the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings is concerned, we have noticed that in this case both the petitioners are ascribed the same role. For the sake of arguments if it is assumed that the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency.
ii) Liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.

Conclusion: i) The principle that consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings does not apply where the petitioners/accused are ascribed the same role?
ii) Liberty of a person which is a precious right cannot be taken away merely on bald and vague allegations.

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12. **Supreme Court of Pakistan**
Nadia Naz v. The President of Islamic Republic of Pakistan, President House, Islamabad and others
Civil Review Petition No.255 and 570 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._255_2021.pdf

Facts: Civil Review Petitions are directed against judgment passed by this Court, the Petitioners pray for review and recall of the judgment due to its interpretation of the definition of harassment in Section 2(h) of the Protection against Harassment of Women at the Workplace Act, 2010.

Issues: i) Whether the word sexual includes gender, how it becomes relevant and gives meaning in the context of harassment and becomes actionable as per the Harassment of Women at the Workplace Act, 2010?
ii) Whether harassment is limited to sexual activity and when it becomes workplace harassment?

iii) What will be the impact if the conduct of harasser is given restricted meaning to sexual nature or form?
iv) Whether the Protection against Harassment of Women at the Workplace Act 2010, is restricted to female victims?
v) What is the meaning of sexual harassment at the workplace?
vi) What is the purpose of harassment laws?
vii) What should be the standard to determine the harassment?

Analysis:

i) If the definition of the word sexual is taken to also include the gender, the impact is significant when reading Section 2(h) of the Act as harassment means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes. So in the context of harassment, the word sexual and sexually are relevant and give meaning to the word harassment, which in this context becomes actionable when it relates to the gender, being sex-based discrimination as opposed to only meaning coital relations and advances.
ii) The definition of harassment explains that sex-based discrimination does not have to be limited to sexual activity, rather it is behaviour which is promoted on account of the gender as a result of gender-based power dynamics, which behaviour is harmful and not necessarily a product of sexual desire or sexual activity. Such harassment is motivated to degrade and demean a person by exploitation, humiliation and hostility which amounts to gender-based harassment and can include unwanted sexual alleviation and sexual coercion. Such behaviour in law becomes harassment at the workplace when it causes interference with work performance or creates an intimidating, hostile or offensive work environment and has the effect of punishing the complainant for refusal to comply with a request or is made a condition for employment.
iii) If the conduct of the harasser is given a restricted meaning to being of sexual nature or form, it takes away the essence of the meaning of harassment, its purpose and reduces its impact and scope and ignores that sexual harassment is oftentimes less about sexual interest and more about reinforcing existing power dynamics. Such an application of the law limits the protection offered under the Act and effectively excludes many instances where the victim may be harassed but cannot bring action against the harasser since the conduct was not sexual in nature.
iv) The Act is not restricted to female victims, as the word employee defined in Section 2(f) of the Act means any regular or contractual employee and does not simply state women employees. Furthermore, complainant defined in Section 2(e) under the Act means a woman or man who has made a complaint. Hence, the Act recognizes that harassment is gender-based and that the victim can be a man or a woman.
v) Sexual harassment at the workplace means that the presence of women at the workplace triggers this gender-based harassment, which in turn undermines a women's right to public life, her right to dignity and most important, her basic

right to be treated equal. Sexual harassment compromises these rights of a woman which entails being economically and financially independent and being able to make independent decision and more importantly to be considered as a productive member of society.

vi) The purpose of harassment laws is to address gender-based discrimination at the workplace and not to limit it to sexual forms of harassment. It includes a broad range of conduct and behaviour which results in workplace problems with serious consequences, one of the main being gender inequality. Being an issue grounded in equal opportunity and equal treatment of men and women in matters of employment, sexual harassment in any form violates the dignity of a person as it is a demeaning practice that aims to reduce the dignity of an employee who has been forced to endure such conduct. Sexual harassment as gender-based discrimination is gender-based hostility, which creates a hostile work environment. It is a reflection of the unequal power relations between men and women which translates into a form of abuse exploitation and intimidation at the workplace which makes it a violation of a basic human right.

vii) In cases of harassment, the victim's perspective is relevant as against the notion of acceptable behaviour. The standard of a reasonable woman should be considered to determine whether there was harassment, which rendered the workplace hostile and all relevant factors should be viewed objectively and subjectively.

Conclusion:

i) The word sexual includes the gender so, in the context of harassment, the word sexual and sexually are relevant and give meaning to the word harassment, which in this context becomes actionable when it relates to the gender.

ii) Harassment is not limited to sexual activity; rather it is behaviour which is promoted on account of the gender. Such behaviour in law becomes harassment at the workplace when it causes interference with work performance.

iii)) If the conduct of the harasser is given a restricted meaning to being of sexual nature or form, it takes away the essence of the meaning of harassment that sexual harassment is oftentimes less about sexual interest and more about reinforcing existing power dynamics.

iv) The Act is not restricted to female victims, as the word employee defined in Section 2(f) of the Act means any regular or contractual employee and does not simply state women employees.

v) Sexual harassment at the workplace means that the presence of women at the workplace triggers this gender-based harassment, which in turn undermines a women's right to public life, her right to dignity and most important, her basic right to be treated equal.

vi) The purpose of harassment laws is to address gender-based discrimination at the workplace and not to limit it to sexual forms of harassment.

vii) The standard of a reasonable woman should be considered to determine whether there was harassment.

13. **Supreme Court of Pakistan,**
Muhammad Ijaz v. The State,
Jail Petition. No. 206 of 2019,
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi.
https://www.supremecourt.gov.pk/downloads_judgements/j.p._206_2019.pdf

Facts: The trial Court convicted the petitioner under Section 302(b) PPC and sentenced him to imprisonment for life and payment of compensation to the legal heirs of the deceased or, in default whereof, to undergo simple imprisonment for further six months, and his conviction and sentence was maintained in appeal by the High Court. Hence, this jail petition.

Issues: i) What is probative strength of evidence of witnesses in the nature of *waj takar?*
ii) In what situation a related witness would become an interested witness?
iii) Which discrepancies in prosecution evidence need not be given importance?
iv) How a court would treat a motive which is not proved with evidence?
v) How a long abscondence of an accused would be weighed if same is not denied by him?

Analysis: i) The doctrine of *res gestae* is based upon the assumption that statements of witnesses constituting part of the *res gestae* are attributed a certain degree of reliability, because they are contemporaneous making them admissible by virtue of their nature and strength of their connection with a particular event and their ability to explain it comprehensively.
ii) A related witness cannot be termed as an interested witness under all circumstances. A related witness can also be a natural witness. If an offence is committed in the presence of the family members, then they assume the position of natural witnesses. The Court is required to closely scrutinize the evidence of an eye-witness who is a near relative of the victim.
iii) If discrepancies and contradictions in the statements of the eye-witnesses are agitated without pointing out any major contradiction amounting to shatter the case of the prosecution, then such discrepancies do not need be given much importance because they are of minor character and do not go to the root of the prosecution story.
iv) Motive is considered as vaguely formulated if material evidence is not available to prove same.
v) When there is no denial to fact that the accused remained absconder for a long period of more than five years, then evidentiary value of such abscondence should be weighed against accused.

Conclusion: i) If evidence of witnesses is in the nature of *waj takar*, then probative strength of such evidence rests in the doctrine of *res gestae* in view of Article 19 of the Qanun-e-Shahadat Order, 1984.
ii) A related witness would become an interested witness when his evidence is tainted with malice and it shows that he is desirous of implicating the accused by fabricating and concocting evidence.

iii) Discrepancies do not need be given much importance if those do not shake the salient features of the prosecution version.
iv) Court would be right to disbelieve motive, if no evidence produced to prove it.
v) If his long abscondence is not denied by accused, it would be a corroboratory piece of evidence against him.

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14. **Supreme Court of Pakistan**
Saeed Ullah, Yar Muhammad, Inayat Ullah v. The State and another
Criminal Petition No. 245 of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._245_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the judgment passed by the learned Single Judge of the High Court, with a prayer to grant post-arrest bail in case under Sections 324/34 PPC, in the interest of safe administration of criminal justice.

Issues: i) What can be considered by the court when on the one hand the medical officer declared the injuries as "simple" and on the other hand he held the same to be "grievous"?
ii) Whether liberty of an individual can be taken away merely on bald and vague allegations?

Analysis: i) When the medico legal report reveals that at the one hand the medical officer declared the injuries as "simple" and on the other hand he held the same to be "grievous". Then his observation declaring the injuries as "simple" can be considered as it is now well settled principle of law that if two views are possible from the evidence adduced in the case then the view favorable to the accused is to be adopted.
ii) Liberty of an Individual is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.

Conclusion: i) When the medico legal report reveals that at the one hand the medical officer declared the injuries as "simple" and on the other hand he held the same to be "grievous". Then his observation declaring the injuries as "simple" can be considered.
ii) Liberty of an individual cannot be taken away merely on bald and vague allegations.

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15. **Supreme Court of Pakistan,**
Dr. Abdul Nabi, Professor, Department Of Chemistry, University Of Balochistan v. Executive Officer, Cantonment Board, Quetta,
Civil Petition No.47-Q of 2016,
Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail,
Mr. Justice Muhammad Ali Mazhar.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._47_q_2016.pdf

Facts: This civil petition for leave to appeal is filed against the order of the learned Balochistan High Court, Quetta, dismissing constitution petition of the petitioner i.e. a Professor in the Basic Pay Scale 21, pertaining his claim that he is a government servant within the meaning of section 39 of the University of Balochistan Act, 1996, but the respondent declined to recognize his status as a Government Servant (BPS-21) and refused to grant the claimed exemption and/or rebate.

Issues: i) Whether an employee of the University can claim rebate or exemption being a public servant?
ii) What is a deeming clause and how much the Court is obligated to give effect to the deeming provisions in order to interpret the statute?
iii) What will be effect of the absence of 'public servant' in definition clause of an enactment?
iv) What will be adequate or alternate remedy to effectively bar the jurisdiction of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan,1973?

Analysis: i)Under Section 2(k) of the University of Balochistan Act, 1996, an "Employee" means a person borne on pay roll of the University but shall not include (a) a person holding purely fixed tenure post, (b) a person appointed by the University on contract basis, or (c) a person on deputation with the University. The section 39(1) of the University of Balochistan Act, 1996 states that all employees of the university including employees appointed on contract basis and/or on fixed tenure posts shall be deemed to be provincial public servants as defined by section 21 of Pakistan Penal Code. The employees of the University, in line with the provisions of the University of Balochistan Act, 1996 are deemed to be public servants within the meaning of section 21 of PPC; therefore they shall be dealt with strictly during the course of duties as compared to other classes and genres of persons mentioned in the definition of public servant.
ii) According to Black's Law Dictionary, Ninth Edition,Pg. 477-478, the meaning of the word "Deem" is to treat something as if it was really something else, or it has qualities that it does not have. 'Deem' is necessary to establish a legal fiction either positively by 'deeming' something to be what it is not or negatively by 'deeming' something not to be what it is..." When a statute contemplates that a state of affairs should be deemed to have existed, it clearly proceeds on the assumption that in fact it did not exist at the relevant time, but by a legal fiction we have to assume as if it did exist. In order to interpret the statute, the Court is obligated to give effect to the deeming provisions while taking into consideration its object and the intention of legislature, so it should not cause any injustice. The purpose of importing a deeming clause is to place an artificial construction upon a word/phrase that would not otherwise prevail and sometimes it is to make the construction certain.

iii) The absence of 'public servant' in definition clause of an enactment does not mean that the persons concerned who are covered by the enactment are not to be treated at all as public servants. What it means is that section 21 of the PPC will determine which of such persons can be treated as falling in the category of public servant.

iv)The extraordinary jurisdiction of the High Court under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry into disputed facts. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy, which should also be *remedium juris* i.e. more convenient, beneficial and effective.

Conclusion:

i) The employee of the University, in line with the provisions of the University of Balochistan Act, 1996 can claim rebate or exemption being a public servant within the meaning of section 21 of PPC.

ii) A deeming clause is a fiction, which cannot be extended beyond the language of the section by which it is created or by importing another fiction.

iii) In absence of 'public servant' in definition clause of an enactment, section 21 of the PPC would come into play.

iv)To effectively bar the jurisdiction of the High Court under Article 199 of the Constitution, the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a writ petition.

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16. **Supreme Court of Pakistan**
Chancellor Preston University, Kohat & others v. Habibullah Khan
Civil Appeal No. 1833 of 2019
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1833_2019.pdf

Facts:

The suit of the Respondent, an ex-student, for damages against the Appellant University for the reason that the University established its Faculty of Engineering without accreditation and consequently, his degree would not be recognized by the HEC and he would not be recognized with the Council, was decreed by the learned Trial Court and through this Civil Appeal, the Appellant has challenged the judgment of the High Court whereby his Regular First Appeal against the judgment and decree of the learned Civil Court was dismissed.

Issue:

Whether an institution and/or university can offer engineering education and can enroll students before obtaining their accreditation from the Pakistan Engineering Council?

Analysis:

The fulfilment of the requirements prescribed in the Pakistan Engineering Council Act, 1976 and the Engineering Council Regulations for Engineering Education in Pakistan with regard to the accreditation of engineering disciplines, accreditation of the institutions offering engineering qualifications, and registration of persons completing BEng programs from the accredited institutions, is mandatory in nature. In such view of the matter, it is necessary for each institution and/or

university to obtain their accreditation from the Council before offering engineering education. It is, therefore, incumbent upon them to disclose and inform the students regarding their accreditation status before offering admissions. The HEC, the Council, and any other relevant authority, if so empowered in this behalf, while keeping within their respective domains, shall ensure that no institution/university offers engineering education without prior accreditation.

Conclusion: An institution and/or university cannot offer engineering education and cannot enroll students before obtaining their accreditation from the Pakistan Engineering Council because it is necessary for each institution and/or university to obtain their accreditation from the Council before offering engineering education.

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17. **Lahore High Court**
Sarfraz Ahmed v. Member (VI),
Punjab Service Tribunal, Lahore etc.
W.P. No. 38694 of 2023
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC3262.pdf

Facts: Through the instant writ petition, the petitioner has assailed the order passed by the Punjab Service Tribunal (PST).

Issue: Whether the remedy of appeal lies before the Supreme court against an order of Administrative Tribunal only when it is established under Article 212(2) of the Constitution?

Analysis: It is crystal clear that the remedy of appeal before the Apex Court of the country against an order of Administrative Tribunal, established through a provincial enactment, is not available until and unless the Parliament, by law, extends the provisions of Article 212(2) of the Constitution to include a Court or Tribunal established under provincial law..

Conclusion: Yes, the remedy of appeal lies before the Supreme court against an order of Administrative Tribunal only when it is established under Article 212(2) of the Constitution.

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18. **Lahore High Court**
Safdar Iqbal Chaudhry v. Chief Operating Officer,
Technical Education & Vocation Training Authority
Writ Petition No.65818 of 2020
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC3238.pdf

Facts: Through this Writ Petition, the petitioner assailed the order of Chief Operating Officer, Technical Education & Vocational Training Authority (TEVTA), whereby, he while issuing retirement notification of the petitioner ordered to withhold Rs.37,73,122/- from his pensionary emoluments till the decision of

denovo inquiry/Public Accounts Committee Audit Para, in terms of rule 1.8 of the Punjab Civil Services Pension Rules, 1963. Through the connected petition, the petitioner has also assailed the validity of letters, asking him to appear for inquiry.

Issues:

i) Whether an aggrieved person who is remediless can approach the High Court?
ii) Where the show cause notice has been issued in violation of the law on the subject, whether the same can be challenged in Writ Petition?
iii) Whether availing of legal remedy by an aggrieved employee does entail any departmental action?
iv) Whether the departmental proceedings, pending against a government servant, stand abated in the event of his retirement from government service?
v) To initiate proceedings against a retiree under rule 1.8 of the Punjab Civil Services Pension Rules, 1963, whether it is condition precedent that the Competent Authority should prove misconduct on the part of a retiree?
vi) Whether right to pension can be withheld without fulfillment of the conditions enumerated under sub-section 3 of section 18 of the Punjab Civil Servants Act, 1974?
vii) When a specific amount of recovery is involved whether the relevant authority can invoke clause (a) of the rule 1.8 of the Punjab Civil Services Pension Rules, 1963?

Analysis:

i) Since no final order has been passed against the petitioner, he cannot approach the Punjab Service Tribunal as urged by learned Law Officer as well as learned counsel appearing on behalf of the respondent-TEVTA, rather the petitioner being remediless has only option to approach this Court.
ii) It is important to observe over here that in routine, Writ Petition against issuance of Show Cause Notice is not maintainable, however, where the show cause notice has been issued in violation of the law on the subject, the same can be challenged in Writ Petition.
iii) It was alleged that instead of complying with the transfer order, the petitioner resorted to file various Writ Petitions before this court, which prima facie stands proof of the fact that departmental authorities, being annoyed with the petitioner on account of filing proceedings before this court, put up the matter before the competent authority for initiation of disciplinary proceedings against the petitioner despite the fact that availing of legal remedy by an aggrieved employee does not entail any departmental action.
iv) According to Fundamental Rule 54-A, the departmental proceedings, pending against a government servant, stand abated in the event of his retirement from government service.
v) To initiate proceedings against a retiree under rule 1.8 ibid, it is condition precedent that the Competent Authority should prove misconduct on the part of a retiree.
vi) According to section 18 of the Punjab Civil Servants Act, 1974, a retiree has indefeasible right to pension on his retirement and the same can only be withheld

upon fulfillment of the conditions enumerated under sub-section 3 of section 18.
vii) When a specific amount of recovery is involved the relevant authority can invoke clause (b) instead of clause (a). As far as the case in hand is concerned, admittedly the departmental authorities want to recover Rs.37,73,122/- allegedly paid to the petitioner during the period when he did not perform any duty, thus, clause (a) is inapplicable to his matter rather the department could start proceedings under clause (b) of rule 1.8 ibid.

Conclusion: i) An aggrieved person who is remediless can approach the High Court.
ii) Where the show cause notice has been issued in violation of the law on the subject, the same can be challenged in Writ Petition.
iii) Availing of legal remedy by an aggrieved employee does not entail any departmental action.
iv) The departmental proceedings, pending against a government servant, stand abated in the event of his retirement from government service.
v) To initiate proceedings against a retiree under rule 1.8 of the Punjab Civil Services Pension Rules, 1963, it is condition precedent that the Competent Authority should prove misconduct on the part of a retiree.
vi) Right to pension cannot be withheld without fulfillment of the conditions enumerated under sub-section 3 of section 18 of the Punjab Civil Servants Act, 1974.
vii) When a specific amount of recovery is involved the relevant authority can invoke clause (b) instead of clause (a) of the rule 1.8 of the Punjab Civil Services Pension Rules, 1963.

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19. **Lahore High Court**
Muhammad Anwar etc v. The State etc.
Criminal Appeals No.s 204964, 204976, 204979, 204982, 204968, 204969, 204973 of 2018
The State v. Abdul Rehman, etc
Murder Reference No. 189 of 2018
Mst. Rani Bibi v. Shabbir Hussain etc.
Criminal Revision No.213819 of 2018
Justice Miss Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC3163.pdf

Facts: Through the afore-titled criminal appeals under Section 410 Cr.P.C.,the appellants have challenged the vires of judgment rendered by the learned Addl. Sessions Judge in case FIR, in respect of offence under Sections 302, 324, 148, 149, 427 & 109 PPC whereby they were convicted and sentenced. The learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the appellants whereas complainant also preferred criminal revision seeking enhancement of sentence of those appellants who were not awarded with death sentence through this common judgment.

Issues: i) Whether promptness in reporting the matter to the police diminishes chances of

consultation or deliberation at the part of the prosecution?

ii) Whether the motive is considered as an essential ingredient to provide foundation to any crime?

iii) Which is important in the matter of appreciation of the evidence, quality of evidence or number of witnesses?

iv) Whether mere relationship of the eye-witnesses with the deceased is sufficient to discard their evidence?

v) Whether the prosecution is bound to produce all the witnesses?

vi) Whether any lapse due to act of the investigating officer for recording statements under Section 161 Cr.P.C. belatedly can benefit to the defence in any eventuality?

vii) Whether minor discrepancies appeared upon surface after lengthy cross-examination have any significance in criminal justice system?

viii) Whether delay in conduct of autopsy of deceased on the part of hospital can benefit the accused?

ix)Whether inconsequential fact of recovery can be ground for lessor punishment when the ocular account is found to be confidence inspiring?

x)Whether absconsion is conclusive proof of guilt of an accused?

Analysis:

i) When unfortunate incident took place at certain time and which was reported to the police promptly on the same day within about one hour and formal FIR was chalked out accordingly despite the fact that inter-se distance between the place of occurrence and the police station was several kilometers containing names of the appellants with their specific role of making fire shots at the deceased as well as the injured witnesses, which not only confirms presence of the eye witnesses at the spot but also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case and also rules out the possibility of mistaken identification or substitution…

ii)The motive is considered as an essential ingredient to provide foundation to any crime. No doubt previous enmity, being motive, is always considered as a double edged weapon.

iii) In the matter of appreciation of the evidence it is not the number of witnesses rather quality of evidence is worth importance. There is no requirement under the law that a particular number of witnesses are necessary to prove/disprove a fact. It is time honoured principle that evidence must be weighed and not counted.

iv) It is well established principle in criminal administration of justice that mere relationship of the eye-witnesses with the deceased is not sufficient to discard their evidence, if the same was otherwise found confidence inspiring and trustworthy.

v) It is well settled by now that the prosecution is not bound to produce all the witnesses. If the accused persons were sure that the leftover witnesses were not ready to support the prosecution witnesses, they had ample opportunity rather at liberty to examine them in their defence or even submit application before the trial Court to summon them as Court Witnesses but merely on that basis other

overwhelming and confidence inspiring prosecution evidence cannot be discarded…

vi) No doubt delay in recording statements of the eye-witnesses is mostly seen with doubt but when in situation of unfortunate incident where many persons sustained fire arm injuries, out of which two breathed their last at the spot, whereas, rest were in semi-conscious condition. In such scenario, the natural human reaction should be to make all out efforts to save the lives of injured persons despite being in the condition of sorrow and anguish due to death of close kith and kin. It can be safely concluded that both the injured witnesses sustained injuries during the occurrence and if there was any lapse due to act of the investigating officer for recording their statements under Section 161 Cr.P.C. belatedly, its benefit cannot be extended to the defence in any eventuality…

vii) It is well settled principal of criminal administration of justice that the witnesses who were subjected to fatiguing, taxing and tiring cross-examination for days together are bound to get confused and made some inconsistent statements, therefore, discrepancies cited by learned defence counsels should not be blown out of proportion. It is well settled by now that the discrepancies of minor character which neither go to the root of the prosecution version nor shake its salient features are of no significance.

viii) When all the codal formalities including lodging of crime report, recording of statements of prosecution witnesses U/S 161 Cr.P.C. have already been completed than It can safely be concluded that it was pattern of the hospital to conduct autopsy after a certain period either due to some administrative issue or non-availability of doctor, therefore, its benefit cannot be extended to the accused persons…

ix) Non-recovery of weapons of offence from accused persons after such a long period is immaterial. Even otherwise, it is well settled law that when the ocular account is found to be confidence inspiring and trustworthy, mere fact that recovery is inconsequential by itself could not be a ground for lessor punishment…

x) No doubt absconsion is not a conclusive proof of guilt of an accused but at the same time it cannot be overlooked when the evidence available on record suggests that the accused had deliberately and intentionally avoided to face the trial due to their guilty conscious.

Conclusion: i) Yes, promptness in reporting the matter to the police diminishes chances of consultation or deliberation at the part of the prosecution.

ii) Yes, the motive is considered as an essential ingredient to provide foundation to any crime.

iii) In the matter of appreciation of the evidence it is not the number of witnesses rather quality of evidence is worth importance.

iv) Mere relationship of the eye-witnesses with the deceased is not sufficient to discard their evidence.

v) Prosecution is not bound to produce all the witnesses.

vi) Any lapse due to act of the investigating officer for recording statements under Section 161 Cr.P.C. belatedly cannot benefit to the defence in any eventuality.
vii) Minor discrepancies appeared upon surface after lengthy cross-examination have no significance in criminal justice system.
viii) Delay in conduct of autopsy of deceased on the part of hospital cannot benefit the accused.
ix) Inconsequential fact of recovery cannot be ground for lessor punishment when the ocular account is found to be confidence inspiring.
x) Absconsion is not conclusive proof of guilt of an accused but subject to intentional avoidance to face the trial due to his guilty conscious.

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20. **Lahore High Court**
The State v. Ali Ahsan alias Sunny
Murder Reference No.164 of 2018
Ali Ahsan alias Sunny v. The State, etc.
Crl. Appeal No.193932 of 2018
Muhammad Khalid v. The State, etc.
Crl. Appeal No.206624 of 2018
Miss. Justice Aalia Neelum, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2869.pdf

Facts: Feeling aggrieved by the trial court's judgment the appellant has assailed his conviction and sentence by filing the instant appeal. The trial court also referred to confirm the death sentence awarded to the appellant. Whereas the complainant also filed appeal against the acquittal of respondent No.2. All the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

Issues: i) What is the obligation of a police officer whenever he receives the information regarding cognizable offence?
ii) What will be the consequence if the FIR is lodged after unexplained delay?
iii) Whether the evidence of a witness can be discarded only on the ground that he is a related witness?
iv) Whether the site plan is a substantive piece of evidence?

Analysis: i) Whenever an 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.
ii) 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.
iii) It is settled law that the evidence of a witness cannot be discarded only on the ground that he is a related witness. But it is only the rule of prudence, the rule of caution, that evidence of such witness is scrutinized with some extra caution.

Once the Court is satisfied that the witness was present at the scene of occurrence and his evidence inspires confidence, the same cannot be discarded on the sole ground of relationship with the deceased or chance witness.
iv) The site plan is not a substantive piece of evidence in Article 22 of the Qanune-e-Shahdat Order 1984 as held in the case of Mst. Shamim Akhtar v. Fiaz Akhter and two others (PLD 1992 SC 211), but it reflects the view of the crime scene, and the same can be used to contradict or disbelieve eyewitnesses.

Conclusion: i) Whenever an 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.
ii) The evidential value of the First Information Report will be reduced if it is made after the unexplained delay.
iii) The evidence of a witness cannot be discarded only on the ground that he is a related witness.
iv)) The site plan is not a substantive piece of evidence.

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21. **Lahore High Court**
Abdul Shakoor deceased through his Legal Heirs etc. v.
Rana Abid Mahmood etc.
Civil Revision No.63321 of 2020,
Mr. Justice Masud Abid Naqvi.
https://sys.lhc.gov.pk/appjudgments/2023LHC2978.pdf

Facts: Suit of respondent No.1 seeking decree for specific performance of agreement to sell alongwith possession of subject property was decreed and consequent appeal was dismissed by learned Additional District Judge and, being dissatisfied, the petitioners/defendants No.1 to 8 have now filed the instant Revision Petition challenging the validity of the said judgments and decrees mentioned.

Issues: i) If the owner of subject property executed earlier agreement to sell whilst specifically allowing the buyer to execute subsequent agreement to sell with someone else and to receive earnest money, then can said buyer's successors avoid his obligation under such commitment/subsequent agreement to sell?
ii) When concurrent findings of the Trial Court and Appellate Court may be interfered by a Revisional Court whilst exercising jurisdiction under Section 115 of the Code of Civil Procedure, 1908?

Analysis: i) Owner of subject property in earlier agreement to sell had allowed the buyer to execute subsequent agreement to sell with someone else and to receive earnest money, so the subsequent agreement to sell executed by the said buyer is binding upon his successors.
ii) When both the learned Courts below have properly discussed in detail the pleadings and oral & documentary evidence adduced by both the parties as well

as have elaborately discussed the factual and legal controversy between the parties to arrive at concurrent conclusion, then no scope is left for interference by Court of Revision.

Conclusion: i) Successors in interest of buyer of earlier agreement to sell cannot wriggle out of his commitment in subsequent agreement to sell executed by him after his such act had been allowed in earlier agreement to sell executed by original owner of subject property.
ii) A Revisional Court may interfere in concurrent findings of the Courts below only if any misreading or non-reading of evidence or any infirmity, legal or factual, is pointed out there in such concurrent findings.

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22. **Lahore High Court**
National Command Authority, etc. v. Zahoor Azam, etc.
R.F.A No.83 of 2014
Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3306.pdf

Facts: This appeal and connected appeals are arising from award whereby land measuring 177- Kanal 2-Marla situated in village Lab Thathoo, Tehsil Taxila, District Rawalpindi was acquired for the expansion and protection against any security hazard to Air Weapons Complex. The appellants assailed the decision of learned Senior Civil Judge on a reference petition.

Issues: i) Whether an evasive denial of the facts asserted in the petition amounts to an admission of facts as per contemplation of Order VIII Rule 5 of CPC?
ii) What are the salient features to be taken into consideration for assessing the compensation of acquired land as outlined by the Superior court?
iii) Whether the dominant factor for determining the compensation against the acquired land is the potential value of the land?
iv) What legal inference can be drawn if a witness is not summoned by the orders of the Court as is required under Order XVI Rule 6 of CPC?
v) Whether Article 134 of the Qanun-e-Shahadat Order, 1984 only immunes a witness from the test of cross-examination if he is summoned to produce a document?
vi) Whether a document which is made part of record through the statement of counsel and does not come within the exceptions ordained in Articles 111, 112 and 113 of the Qanun-e-Shahadat Order, 1984 can be termed as admissible?
vii) If more than one appeals are arisen out of a common judgment and if one or more of those appeals are even barred by time, whether same can be dismissed on account of limitation?
viii) Whether Land Acquisition Collector is always bounden duty to take into consideration all the relevant factors, while determining the amount of compensation?

Analysis:

i) While responding these assertions, the beneficiary department did not specifically deny the facts asserted in the petition. In para-1 in the latter portion of their reply, an evasive denial to this effect was though made, which is nothing but an admission of fact on their part as per contemplation of Order VIII Rule 5 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as "CPC").

ii) While interpreting the true import of section 23 of the "Act", the Superior Courts have outlined the salient features to be taken into consideration for assessing the compensation of acquired land. Most commonly derived of which are as under: - (a) its market value at the prevalent time and its potential; (b) one year average of sale taken place before publication of notification under section 4 of the Act of the similar land; (c) its likelihood of development and improvement; (d) a willing purchaser would pay to a willing buyer in an open market arms length transaction entered into without any compulsion; (e) loss or injury occurred by severing of acquired land from other property of the land owner; (f) loss or injury by change of residence or place of business and loss of profit; (g) delay in the consummation of acquisition proceedings and; (h) peculiar facts and circumstances of each case.

iii) Section 23 of the Land Acquisition Act, 1894, thus, does not hinge upon a single factor, rather it provides for various matters to be taken into consideration while determining compensation. Initially, there was a trend that while determining the compensation, market value of the land at the date of publication of notification under section 4 of the "Act" was mainly taken into consideration but with the passage of time, law to this effect has gone under radical change and now the dominant factor is the potential value of the land. Market value is only one of such factors to be considered for the purpose of award of compensation to the land owners. Location, neighborhood, potentiality or other benefits, which may ensue from the land in future could not be ignored. The most dominant and guiding factor would be that the compensation should be determined at the price, which a willing buyer would pay to a seller as per his satisfaction.

iv) It is though stance of the "land owners" that he was only examined for the purpose of tendering report Exh.A1 but admittedly he was not summoned by the orders of the Court as is required under Order XVI Rule 6 of "CPC". The said witness was even not the court witness, so no other legal inference can be drawn except that he was produced by the "land owners" for their own cause, as such he shall be treated as their witness, being examined to support their claim.

v) Article 134 only immunes a witness from the test of cross-examination if he was summoned to produce a document but this is not the case. As already observed that said witness was never summoned as was required under Order XVI Rule 6 "CPC", rather he was produced by the "land owners" as their own witness. Article 134 of the Qanun-e-Shahadat Order, 1984 would thus not come into play and as such said witness was rightly cross-examined.

vi) It appears that the Referee Court, while ignoring the above noted material pieces of evidence, rested its findings mainly on Exh.A8, which was made part of record through the statement of counsel for the "land owners" depriving the

"beneficiary department" to raise any objection qua its admissibility. Coming to the admissibility of the document Exh.A8, after having an overview of the principles mentioned hereinabove, it is observed that in the light of principles laid down in MANZOOR HUSSAIN (deceased) through L.Rs. v. MISRI KHAN supra, since the document does not come within the exceptions ordained in Articles 111, 112 and 113 of the "Order, 1984", so it cannot be termed as admissible.

vii) It is trite law that if more than one appeals are arisen out of a common judgment and if one or more of those appeals are even barred by time, same could not be dismissed on account of limitation.

viii) It is always bounden duty of the Land Acquisition Collector to take into consideration all the relevant factors, while determining the amount of compensation instead of relying upon the compensation assessed by the price assessment committee or the Board of Revenue.

Conclusion:

i) An evasive denial of the facts asserted in the petition amounts to an admission of facts as per contemplation of Order VIII Rule 5 of CPC.

ii) The Superior Courts have outlined the salient features to be taken into consideration for assessing the compensation of acquired land. Most commonly derived of which are as under: - (a) its market value at the prevalent time and its potential; (b) one year average of sale taken place before publication of notification under section 4 of the Act of the similar land; (c) its likelihood of development and improvement; (d) a willing purchaser would pay to a willing buyer in an open market arm's length transaction entered into without any compulsion; (e) loss or injury occurred by severing of acquired land from other property of the land owner; (f) loss or injury by change of residence or place of business and loss of profit; (g) delay in the consummation of acquisition proceedings and; (h) peculiar facts and circumstances of each case.

iii) The dominant factor for determining the compensation against the acquired land is the potential value of the land.

iv) If a witness is not summoned by the orders of the Court as is required under Order XVI Rule 6 of CPC, a legal inference can be drawn the he is produced by the party for his own cause and shall be treated as his witness.

v) Article 134 of the Qanun-e-Shahadat Order, 1984 only immunes a witness from the test of cross-examination if he is summoned to produce a document.

vi) A document which is made part of record through the statement of counsel and does not come within the exceptions ordained in Articles 111, 112 and 113 of the Qanun-e-Shahadat Order, 1984 cannot be termed as admissible.

vii) If more than one appeals are arisen out of a common judgment and if one or more of those appeals are even barred by time, same cannot be dismissed on account of limitation.

viii) Land Acquisition Collector is always bounden duty to take into consideration all the relevant factors, while determining the amount of compensation instead of relying upon the compensation assessed by the price assessment committee or the

Board of Revenue.

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23. **Lahore High Court**
Sufi Abdul Qadeer, etc v. Learned Addl. District Judge, etc.
W.P.No.3868 of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC3225.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 stems from the judgment, whereby the Additional District Judge, while allowing the revision petition filed by respondent No.2 set aside the order passed by the learned Civil Judge in which an application claiming privilege under section 216 of the Income Tax Ordinance, 2001 for production of record was dismissed.

Issue: Whether a court can summon record from any Government Department in proceedings where controversy involves between private parties?

Analysis: From the bare reading of the section 216 of the Income Tax Ordinance, 2001 it is manifestly clear that in terms of sub-section 2, a bar is imposed upon the powers of the Court or other authority to require any public servant to produce before it any return, accounts, or documents contained in , or forming a part of the records relating to any proceedings under the "Ordinance" or declarations made under the Voluntary Declaration of Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018 or the Assets Declaration Act, 2019 or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof except in the manner provided in the "Ordinance". Subsection 3, however, ordains that nothing contained in subsection (1) shall preclude the disclosure of any such particulars to a Civil Court in any suit or proceedings to which the Federal Government or any income tax authority is a party which relates to any matter arising out of any proceedings under the "Ordinance". Though in terms of sub-section 4, it is stated that nothing in section 216 shall apply to the production by public servant before a Court of any document, declaration, or affidavit filed or the giving of evidence by a public servant in respect thereof but said provision cannot be read in isolation to sub-section 3.

Conclusion: A court cannot summon record from any Government Department in proceedings where controversy involves between private parties.

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24. **Lahore High Court**
Shah Muhammad v. The Province of Punjab and others.
C.R. No. 568 of 2014/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC3220.pdf

Facts: Through instant revision petition, petitioner has challenged judgment, passed by learned District Judge, whereby appeal filed by respondents No. 2 to 5 against order suspending implementation of order, regarding change of design and size of outlet in question was allowed and plaint of the suit was rejected under Order VII Rule 11 CPC being barred by law.

Issues: i) Whether the Appellate or Revisional Court is competent to reject the plaint of the suit under Order VII Rule 11, C.P.C. while dealing with an appeal filed against order of ad-interim injunction?
ii) What is difference between the scope of proceedings of an application for grant of temporary injunction and the rejection of the plaint?

Analysis: i) No doubt an incompetent suit shall be taken off the file at its inception and plaintiff be allowed to retrace his steps. At the same time, it is settled law that plaint can be rejected even before summoning the defendants or later-on at any stage of suit proceedings but this power must be exercised by the Court where the plaint is pending or under challenge because scrutiny is only permissible pertaining to the matter pending before that Court. There is no cavil with the proposition that the plaint of a suit can be rejected by Appellate as well as Revisional Court, however, it was not proper to reject the plaint of the suit under Order VII, Rule 11 C.P.C. while dealing with an appeal filed against the order granting or refusing interim injunction. Admittedly, learned Appellate Court was not seized of the main suit as the same was pending before Learned Trial court. The scope of appeal before the learned Appellate Court was as to whether the appellant was entitled for the ad-interim injunction in accordance with law or not. In short, adjudication upon merits of lis/suit without its pendency before the appellate forum is restricted/prohibited.
ii) Needless to observe here that there is striking difference between the scope of proceedings of an application for grant of temporary injunction in a pending proceeding and the rejection of the plaint under Order VII, Rule 11, C.P.C. on account of failure to disclose a cause of action in the plaint or the plaint being barred under some provision of law. The reason for different approach while rejecting a plaint under Order VII, Rule 11, C.P.C. is quite obvious. In the former proceedings, even if the Court reaches the conclusion that the plaintiff has failed to make out a prima facie case, it can only refuse to grant temporary injunction, but this rejection cannot result in the dismissal of the suit which proceeds to trial notwithstanding a finding by the Court that the plaintiff has failed to make out a prima facie case for grant of temporary injunction. On the contrary, if the Court reaches the conclusion that the plaint failed to disclose any cause of action or suit appears to be barred under some law, the proceedings come to an end immediately and the plaintiff is non-suited before he is allowed an opportunity to lead evidence and substantiate his allegation made in the plaint. We are, therefore, of the view that the rejection of plaint at a preliminary stage when the plaintiff has not led any evidence in support of his/her case, is possible only if the Court

reaches this conclusion on consideration of the statements contained in the plaint and other material available on record before the Court which the plaintiff admits as correct.

Conclusions: i) The plaint of a suit can be rejected by Appellate or Revisional Court, however, it is not proper to reject the plaint of the suit under Order VII, Rule 11 C.P.C. while dealing with an appeal filed against the order granting or refusing interim injunction.

ii) If the Court reaches the conclusion that the plaintiff has failed to make out a prima facie case, it can only refuse to grant temporary injunction, but if the Court reaches the conclusion that the plaint failed to disclose any cause of action or suit appears to be barred under some law, the proceedings come to an end immediately.

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25. **Lahore High Court**
Province of Punjab through EDO (R) v. Mehnga Khan (deceased) through Legal Heirs, etc.
C.R. No.80-D of 2010
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC3209.pdf

Facts: Petitioner assailed vires of judgments and decrees passed by Civil Judge and Addl. District Judge respectively, whereby suit for possession through pre-emption filed by respondents No.1 to 6 was decreed by trial court and appeal filed by the petitioner was dismissed by the appellate court.

Issues: Whether right of pre-emption can be claimed regarding a property located in colony area and owned by the Province of Punjab?

Analysis: The scheme of the Colonization of Government (Punjab) Lands Act, 1912 indicates that right to acquire property is a grant by the government and the government has the power to allot or refuse allotment of a property. The discretion of government to select the person as transferee of colony land is so important that even the original allottee cannot transfer or sell the land in his occupation to a third person without obtaining permission by the Collector under Section 19 of the Act, which provides that rights or interests vested in a tenant cannot be transferred without written consent of the Commissioner…Similarly, the cases of tenants under the Schemes where there is an inbuilt concept of conferment of proprietary rights to the extent provided in the Scheme would also be covered subject to continuance of the tenancies as per terms and conditions governing them. Therefore, all Government grants are required to take effect according to their tenor in the statement of conditions governing them. It is difficult to press into service a right of tenant other than that enforceable under the law in accordance with the statement of conditions providing for the same. Such a right or a vested interest in terms of section 19 of the Act of 1912 is created in a tenant on the examination of his eligibility for conferment of proprietary rights in

his favour. As a necessary consequence so long as a property in colony area is owned by the Government and not by a private party, any transaction done under section 19 of the Act of 1912 would not be pre-emptible.

Conclusion: The right of pre-emption cannot be claimed regarding a property located in colony area and owned by the Province of Punjab.

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26. **Lahore High Court**
Shahadat Ali v. The State, etc & The State v. Shahadat Ali
Criminal Appeal No.1303 of 2019, 2096 of 2019 & Capital Sentence Reference No. 15-N of 2018
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC2967.pdf

Facts: Having faced trial in case FIR, offence under section 9(c) of The Control of Narcotic Substances Act, 1997, registered with the Police Station RD ANF, the appellant, was convicted by the learned Judge special Court (CNS), Lahore under section 9(c) of The Control of Narcotic Substances Act, 1997 and sentenced him to death with direction to pay Rs. 1,00,000/- (rupees one lac only) as fine and in case of default the same shall be recovered as arrears of land. The appellant has challenged his above-said conviction and sentence before this Court by way of filing the instant Criminal Appeal under section 48 of The Control of Narcotic Substances, Act, 1997, whereas, a Capital Sentence Reference sent by the learned trial Court under Section 374, Act V of 1898 is also under consideration, for confirmation or otherwise of the sentence of death awarded to the appellant. However, the ANF/the State has also challenged the vires of judgment qua releasing of vehicle/car in favour of its original owner, by filing of Criminal Appeal. We are deciding all these matters together through this consolidated judgment.

Issues: (i) Whether any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the samples?
(ii) Whether owner is entitled to the return of the vehicle if prosecution failed to establish against even his knowledge?
(iii) What is the complete mechanism given in Rule 5 and 6 of The Control of Narcotic Substances (Government Analysts Rules, 2001) regarding adoption of procedure by Chemical Examiner while preparing the report?
(iv) Whether benefit of doubt can be extended to the accused in Narcotic cases?
(v) Under what situations the vehicle can be seized under the Control of Narcotic Substances Act, 1997?

Analysis: (i) The prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the

conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction.

(ii) Section 32 of the Act, 1997 deals with the final confiscation or release of the vehicle to the owner, after the conclusion of the trial, if he proves that he has no knowledge about the offence, which allegedly had been committed in the vehicle. Not only that an innocent owner of the vehicle is entitled to the return of the vehicle but the burden has been placed on the prosecution to establish that the owner had the knowledge of his vehicle being used in the crime. As far as the question of knowledge is concerned, undisputedly it is required to be proved by leading evidence and the learned trial Court can form such opinion after having taken into consideration the facts of the case.

(iii) A complete mechanism has been given in Rule 5 and 6 of The Control of Narcotic Substances (Government Analysts Rules, 2001), the Chemical Examiner is required to adopt complete procedure and then the report is to be submitted after referring necessary protocols and mentioning the tests applied and their results. In the instant case, required test was not applied on the basis of which chemical examiner has concluded that the samples sent to him for chemical examination contained opium or charas. The said agency has failed to provide the details that how much quantity, he has tested and when the report is not prepared in the prescribed manner then it may not qualify to be called a report in the context of section 36 of the Control of Narcotic Substances Act, 1997 and such report of National Institute of Health, Drugs Control and Traditional Medicines Division, Islamabad, Pakistan would loses its sanctity and that cannot be relied upon for the purposes of conviction.

(iv) It is by now well settled that since the provisions of the Control of Narcotic Substances Act, 1997 provides stringent punishments, therefore, its proof has to be construed strictly and the benefit of any doubt in the prosecution case must be extended to the accused.

(v) A vehicle can be seized under the Control of Narcotic Substances Act, 1997 only in three situations, i.e. firstly, where it is carrying unlawful narcotics along with some lawful narcotics, secondly, where it is a part of the assets derived from narcotic offences and, thirdly, where narcotics have been recovered from its secret chambers, cavities or compartments, etc. Apart from the above mentioned three implied situations we have not been able to find any other express or implied situation or provision in the context of the Control of Narcotic Substances Act which may make it permissible for seizure of a vehicle or conveyance in a case of narcotic.

Conclusion:

(i) Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness.

(ii) If prosecution fails to establish the knowledge of owner about the offence then he is entitled to the return of the vehicle.

(iii) When the report is not prepared in the prescribed manner then it may not qualify to be called a report in the context of section 36 of the Control of Narcotic Substances Act, 1997 and such report would loses its sanctity and that cannot be relied upon for the purposes of conviction.
(iv) The benefit of doubt can be extended to the accused even in Narcotic cases.
(v) There are three situations under the Control of Narcotic Substances Act, 1997 to seize the vehicle; firstly, where it is carrying unlawful narcotics along with some lawful narcotics, secondly, where it is a part of the assets derived from narcotic offences and, thirdly, where narcotics have been recovered from its secret chambers, cavities or compartments, etc.

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27. **Lahore High Court**
Mansab Ali v. The State etc.
Criminal Appeal No. 220945-J of 2018
Ameen Bibi v. Mansab Ali etc.
Criminal Revision 218894 of 2018
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC3287.pdf

Facts: The appellant and his co-accused were tried under section 302/34 PPC and the Additional Sessions Judge while acquitting co-accused, found the appellant guilty of the offence under section 302 (b) PPC and sentenced him for imprisonment of life with direction to pay compensation. The appellant has preferred criminal appeal through jail, while the complainant has filed criminal revision for enhancement of sentence awarded to the appellant. Criminal Appeal and revision has been disposed of together through this single judgment.

Issues: i) What the delay in post mortem examination of the dead body suggests?
ii) How a chance witness can be defined?
iii) What is evidentiary value of testimony of a witness whose presence at the place of occurrence not proved by prosecution beyond scintilla of doubt?
iv) Whether adverse inference can be drawn when driver of vehicle on which dead body was shifted to hospital has not been produced during the trial?
v) What is evidentiary value of a witness who claims that his clothes were smeared with blood while handling the deceased but the same has not been produced?
vi) What is distance of deceased at which blackening appears on the body?
vii) Whether prosecution suffers the consequences when motive alleged but not proved?
viii) Whether eye witnesses can corroborate themselves?
ix) Whether once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused?

Analysis: i) No doubt, the noticeable delay in post mortem examination of the dead body is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses before preparing police papers

necessary for the same.

ii) In ordinary parlance, a chance witness is the one who, in the normal course is not supposed to be present on the crime spot unless he/she offers cogent, convincing and believable explanation, justifying his/her presence there.

iii) It needs no elaboration that presence of eyewitnesses at the spot is not to be inferred rather is to be proved by prosecution beyond scintilla of doubt. In the absence of some confidence inspiring explanation regarding their presence at crime scene, the two witnesses are found to be chance witnesses and their testimony can safely be termed as suspect evidence.

iv) Though investigating officer (CW12) claims that the complainant had produced one driver who shifted the dead body to hospital along-with the complainant party, but astonishingly the driver of the said wagon had not been produced by the prosecution during the trial which give rise to an adverse inference that had he been entered the witness-box he would have deposed against the prosecution.

v) Both the witnesses (PW2) and (PW3) had claimed that while handling the deceased their clothes had been smeared with the blood of the deceased but admittedly no such blood-stained clothes of the said eye-witnesses had been secured or produced which otherwise could prove conveniently that they took the deceased to the hospital. It is also significant to note that both the PWs during the cross-examination stated that their clothes were smeared with blood but at the same breath they took somersault by stating that they washed the same. This omission on the part of the eyewitnesses strikes at the roots of the case of the prosecution and bespeaks volumes about the dishonest and false claim of the said witnesses.

vi) It is a settled law that blackening appears on the dead body in case the deceased has received injuries at a distance of 4 feet according to medical jurisprudence by Modi.

vii) The motive part of the occurrence, being words of mouth, could not get corroboration from any other independent source of the evidence, which remains unproved and a shrouded mystery as well. It is by now well settled that once the motive is setup by the prosecution, but thereafter fails to prove the same, then prosecution must suffer the consequences and not the defence.

viii) It is fundamental principle of justice that corroboratory evidence, must come from independent source providing strength and endorsement to the account of the eyewitnesses, therefore, eye-witnesses, in the absence of extraordinary and very exceptional and rare circumstances, cannot corroborate themselves by becoming attesting witness/witnesses to the recovery of crime articles. In other words, eye-witnesses cannot corroborate themselves but corroboratory evidence must come from independent source and shall be supported by independent witnesses other than eye-witnesses.

ix) It is a trite principle of law and justice that once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory

evidence coming from independent source and shall be unimpeachable in nature.

Conclusion:

i) Delay in post mortem examination of the dead body suggests that time has been consumed by the police in procuring and planting eye-witnesses.
ii) A chance witness is the one who, in the normal course is not supposed to be present on the crime spot.
iii) Testimony of a witness whose presence at the place of occurrence not proved by prosecution beyond scintilla of doubt can safely be termed as suspect evidence.
iv) Adverse inference can be drawn when driver of vehicle on which dead body was shifted to hospital has not been produced during the trial.
v) Evidence of a witness who claims that his clothes were smeared with blood while handling the deceased but the same has not been produced, his claim can be termed as dishonest and false.
vi) Blackening appears on the dead body in case, the deceased may receive injuries at a distance of 4 feet.
vii) Prosecution must suffer the consequences when motive alleged but not proved.
viii) Eye-witnesses cannot corroborate themselves but corroboratory evidence must come from independent source.
ix) Once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature.

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28. **Lahore High Court**
Muhammad Talha v. The State etc.
Case No: Crl.Misc.No.27751-B-2023
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC3185.pdf

Facts:

This is second petition U/S 497 Cr.P.C. whereby, the petitioner seeks his post arrest bail in case, in respect of an offence U/S 489-F PPC. The first one was opted to be withdrawn by the petitioner.

Issues:

i) Whether the matter can be transferred to any other bench, upon which counsel has partially addressed the arguments?
ii) What will be the effect if the petitioner engages such lawyer, who is blocked by any of Benches and what should be the fate of such practice?

Analysis:

i) Keeping in view the dictum laid down by the Apex Court in famous Zubair's case (PLD 1986 SC 173), such matter cannot be transferred to any other Bench, upon which counsel partially addressed the arguments.
ii) If the petitioner engages an Advocate, who is blocked by any Bench, on the one hand, this act of the petitioner is colored with malafide while on the other hand, providing professional services to the petitioner by the advocate, despite

having knowledge that the Bench has already blocked his name is highly unprofessional. This practice should be discouraged with iron hands, otherwise it would become very easy for every litigant to control fixation of cases. Falling prey of these strategies would not only encourage these types of elements but also bring the judicial system in disrepute.

Conclusion: i) The matter cannot be transferred to any other bench, upon which counsel has partially addressed the arguments.
ii) If the petitioner engages an Advocate, who is blocked by any of the Benches, on the one hand, this act of the petitioner is colored with malafide while on the other hand, despite having knowledge that the Bench has already blocked lawyer's name is highly unprofessional. This practice should be discouraged with iron hands.

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29. **Lahore High Court**
Hayat Kimya Pakistan (Private) Limited v. Humair Yusuf and others
Writ Petition No. 3103/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2938.pdf

Facts: Petitioner through this writ petition has challenged the order of ex-officio Justice of Peace whereby its application filed under section 22-A Cr. P.C 1898 for the registration of FIR, on account of dishonouring of cheques, was dismissed.

Issues: Whether a cheque given as a 'security' or as a 'guarantee' would attract section 489-F PPC if it is returned unpaid?

Analysis: The general rule is that the cheques, which are not intended to settle any specific transaction but to foster trust between the parties in their usual business operations, are not susceptible to criminal prosecution under section 489-F PPC. This issue was raised before the Supreme Court of Pakistan for the first time in Mian Allah Ditta v. The State and others (2013 SCMR 51). In that case, the Investigating Officer informed the Court that during the investigation, he found that the parties had a dispute, which they agreed to resolve through arbitration. The arbitrator took the cheque from the accused as security before initiating the proceedings, and the sum written on it was never adjudicated against him. The Supreme Court observed that if the cheque was not issued to repay an outstanding loan or fulfilment of an existing obligation but to meet a prospective future liability that may be determined as a result of another exercise, then one of the key elements of section 489-F PPC is lacking. Given the facts of the case, the Supreme Court held that the cheque in question was furnished as security and admitted the accused to pre-arrest bail. However, it avoided detailed deliberation on the issue lest it may prejudice anyone during the investigation or trial. In Indus Airways Private Limited v Magnum Aviation Private Limited [(2014) 12 SCC 539], the purchaser delivered post-dated cheques as an advance payment against a

purchase order that was subsequently cancelled. The supplier presented those cheques, but they were not cashed. The Supreme Court ruled that section 138 would only apply if a legally enforceable debt existed on the date of the drawing of the cheque. Post-dated cheques may be classified into three broad categories: (a) cheques issued to discharge a liability that has already accrued or that is determined and would accrue on a specific date; (b) cheques issued to satisfy a future liability which may or may not occur; and (c) cheques provided for the payee's comfort under an express agreement and are not the product of any specific transaction. Criminal liability under section 489-F PPC generally arises only in respect of the cheques falling in category (a) unless the one-transaction or the continuing act theory can be applied.

Conclusion: No. A cheque given as a 'security' or as a 'guarantee' would not attract section 489-F PPC if it is returned unpaid.

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30. **Lahore High Court**
Muhammad Ramzan etc. v. The State etc.
Writ Petition No. 9139/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC3274.pdf

Facts: Through this petition, the petitioners claim that they were not involved in the incidents of 9th May and seek the indulgence of the Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 for an early holding the Test Identification Parade (TIP) so that they can begin the procedures for their release. The petitioners further allege that the Government is deliberately delaying the TIP to keep them imprisoned.

Issues: What directives are essentially to be followed by the Magistrate and the Police for conducting Test Identification Parade (TIP) of an accused?

Analysis: The current practice for the TIPs is inefficient. The delay in conducting the test following the accused's arrest also compromises the credibility of the procedure. Therefore, the courts insist that it should be conducted as early as possible after the arrest of the accused. Besides causing unnecessary hardship to the accused, such delays impact his fundamental rights to liberty, dignity, due process, and a fair trial. The constitutional courts are the guardian of the Constitution. They are required to review the executive actions and the conduct of the public authorities on the touchstone of fairness, reasonableness, and proportionality. It is necessary to issue the following directives to actualize the rights guaranteed to the accused under Articles 4, 9, 10, 10A and 14 of the Constitution:

1. In all cases where the Area Magistrate commits an accused to jail for the TIP, he shall immediately forward a copy of his order to the Sessions Judge. He shall fix it as a "TIP Case" in his cause list to ensure the accused is produced before him after the TIP.

2. If, for any reason, the Magistrate who sends an accused to jail for the TIP is not the Area Magistrate, he shall also forward a copy of his order to him.

3. Immediately on receipt of a copy of the Magistrate's order as aforesaid, the Sessions Judge shall depute a JM/SJM for holding the TIP, who shall direct the Investigating Officer to take the requisite steps and conclude the exercise within 48 hours.

4. If the Sessions Judge has designated a JM/SJM in any area for the TIPs, he shall direct him, or if he is not available for any reason, depute another JM/SJM for holding the TIP. Such JM/SJM shall also conclude the exercise within 48 hours.

5. If the TIP is not done within 48 hours as aforesaid, the JM/SJM shall bring the matter to the notice of the Sessions Judge and the Police Head concerned. If he finds any delinquency or dereliction of duty by the Investigating Officer, he shall also recommend action against him. In any case, the JM/SJM shall ensure the TIP is held the next day.

6. The JM/SJM concerned shall promptly forward his report to the Sessions Judge after the TIP is done.

7. The Sessions Judge's office shall prepare a separate file for all TIP requests and place them on the court's cause list until the matter is disposed of.

8. Where the matter relates to a Special Court/Anti-Terrorism Court and the Investigating Officer requests it for the TIP of an accused, it shall also ensure that it is done within 48 hours.

Conclusion: The Court's directives No. 1 to 8 as mentioned above, shall be followed by the Magistrate and the Police for conducting the Test Identification Parade (TIP) of an accused.

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31. **Lahore High Court**
MCB Bank Limited v. Adeel Shahbaz Steel Mills and others
Civil Original Suit No.01 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2922.pdf

Facts: Plaintiff Bank filed a suit under Section 9 of the Financial Institution (Recovery of Finances) Ordinance, 2001 against the defendant, its partners and guarantors.

Issues: (i) What is the important of a preamble in interpretation of a statute?
(ii) Where the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, then whether Plaintiff can institute a suit anywhere else?
(iii) Whether a court can establish its jurisdiction solely on the basis of the registered office of a defendant firm?

Analysis: (i) Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.

(ii) A plain reading of section 20 CPC arguably allows the Plaintiff a multitude of choices in regard to where it may institute its lis, suit or action. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If sub-sections (a) and (b) of said Section are to be interpreted disjunctively from sub-section (c), as the use of the word 'or' appears to permit the Plaintiff to file the suit at any of the places where the cause of action may have arisen regardless of whether the Defendant has even a subordinate office at that place. However, if the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, then the Plaintiff is precluded from instituting the suit anywhere else. Obviously, this is also because every other place would constitute a forum non conveniens.

(iii) No doubt, the registered office of a defendant/firm serves as official address for legal and administrative purpose and determines the jurisdiction to which the firm is subject to but at the same time it is important to note that the registered office does not necessarily determines the sole basis for establishing jurisdiction, especially when the cause of action arises in a different location/city and in cases where the cause of action accrues in a different city, such as the location of the contract execution, the place where the cause of action arose, or the defendant's reside may also be considered in determining the appropriate jurisdiction for legal proceedings.

Conclusion: (i) The preamble of a statute holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.

(ii) Where the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, then Plaintiff is precluded from instituting the suit anywhere else.

(iii) A court cannot establish its jurisdiction solely on the basis of the registered office of a defendant firm, especially when the cause of action arises in a different location.

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32. **Lahore High Court**
Shabana Kousar v. Addl. District Judge and others
W.P. No.9656 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC3325.pdf

Facts: Through this constitutional petition, the petitioner assailed the orders of the trial court and the appellate court, whereby, her application under Order XXXIX,

Rules 1 and 2, C.P.C. for grant of temporary injunction to restrain alternation and change to the nature and condition of property pending decision of suit, was dismissed.

Issue: Whether at the instance of preemptor who is yet to succeed after proving talbs and qualifying of superior rights, a bona fide purchaser/owner of the property can be restrained from constructing thereupon or be prevented from using the property for own purpose as he choose?

Analysis: The petitioner's claim is based on pre-emptory right which was dependent on the proof of requisite talbs and other facts to establish superior right of preemption. At present the plea regarding the alleged talbs is just an assertion which is yet to be proved by evidence. As against the petitioner, the respondents are bona fide transferee for consideration who possibly could not be deprived of their rights of uninterrupted use of their property. It is clear from the above that the consistent view of the court has been that at the instance of pre-emptor who is yet to succeed after proving talbs and qualifying of superior rights, a bona fide purchaser/owner of the property could not be restrained from constructing thereupon or be prevented from using the property for own purpose as they choose and that any restraint would be violative of the fundamental rights that have been guaranteed by the Constitution Of Islamic Republic Of Pakistan, 1973.

Conclusion: At the instance of pre-emptor who is yet to succeed after proving talbs and qualifying of superior rights, a bona fide purchaser/owner of the property cannot be restrained from constructing thereupon or be prevented from using the property for own purpose as he choose and that any restraint would be violative of the fundamental rights that have been guaranteed by the Constitution Of Islamic Republic Of Pakistan, 1973.

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33. **Lahore High Court**
Subtain Abbas Nizami v.
Board of Intermediate & Secondary Education, etc.
Civil Revision No.3966 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2963.pdf

Facts: This revision petition has been directed against the judgment, whereby the learned District Judge, accepted the appeal filed by the respondents and remanded the case to the trial Court for decision afresh.

Issues: i) Whether appellate court is justified in remanding the case to the trial court when sufficient evidence is already available on record?
ii) What are the powers of appellate court in remanding the case to trial court?
iii) Whether appellate court can decide the matter itself by resettling the issues?
iv) What procedure should the appellate court follow when the trial court has omitted to frame or try any issue?

Analysis:

i) The learned appellate Court, despite there being sufficient material on record did not consider the same and illegally remanded the case to the learned trial Court throwing the parties in another round of litigation. Since the appellate jurisdiction is in continuation of the original lis, the first appellate Court having similar powers as provided in Section 107 of the CPC, should have itself decided the matter instead of remanding the same back to the trial Court. (…) Furthermore, it is well settled by now that where the evidence on record is sufficient for the appellate Court to decide the matter itself, remand should not be ordered.

ii) Although the learned appellate Court is empowered to remand the case to the learned trial Court afresh, but with certain restrictions. (…) In view of Rule 23 and 23-A of Order XLI of the C.P.C., the appellate Court is empowered to remand the case and direct as to what issues shall be tried in the case so remanded, if the decree appealed against is on a preliminary point and is reversed in appeal. However, in the instant case, the trial Court had finally decided the matter and not on a preliminary point, therefore, the appellate Court should not have remanded the case but it should have considered all the points itself and decided the same in accordance with law.

iii) Under the provisions of Rule 24 of Order XLI of the C.P.C. when evidence on record was sufficient to enable the appellate Court to pronounce judgment, it may, after resettling the issues, if necessary, finally determine the suit.

iv) As per Rule 25 of Order XLI of the C.P.C. even in case where the trial Court has omitted to frame or try any issue or to determine any question of fact, which appears to be essential, the appellate Court may frame issues and refer the same for trial and direct to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor. (…) In view of the above provisions of law, remand should not be lightly ordered if the evidence on the record is sufficient for the appellate Court to decide the question itself. Learned counsel for the respondents could not dispute the settled legal position regulating remand conceding that impugned judgment was not covered by the afore-referred Rules 23, 23-A and 25 of Order XLI of the C.P.C.

Conclusions:

i) Where the evidence on record is sufficient for the appellate Court to decide the matter itself, remand should not be ordered.

ii) Under Rule 23 and 23-A of Order XLI of the C.P.C., the appellate Court is empowered to remand the case and direct as to what issues shall be tried in the case so remanded, if the decree appealed against is on a preliminary point and was reversed in appeal. But when the trial Court has finally decided the matter and not on a preliminary point, the appellate Court should not remand the case but should itself decide the same.

iii) Under the provisions of Rule 24 of Order XLI of the C.P.C. when evidence on record is sufficient to enable the appellate Court to pronounce judgment, it may,

after resettling the issues, if necessary, finally determine the suit.
iv) As per Rule 25 of Order XLI of the C.P.C. in case trial Court has omitted to frame or try any issue, the appellate Court may frame issues and refer the same for trial and direct to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings.

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34. **Lahore High Court**
Abdul Ghaffar, etc. v. The State, etc.
Criminal Appeal No. 245 of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC3190.pdf

Facts: Appellants with the allegation of committing murder of their brother and sister-in-law faced trial in case FIR, registered under sections 302, 34 PPC and at the conclusion of trial in the aforesaid case, vide judgment, the learned trial court convicted and sentenced them. Aggrieved by the said judgment, the appellants have filed the titled appeal against their conviction and sentences before this Court.

Issues: i) What characteristics of evidence are required from prosecution keeping in view the demand of principle of natural justice?
ii) Whether medical evidence is sufficient to connect the accused with the commission of offence?
iii) What is the evidentiary value of improved statement by witness at trial?
iv) If motive is alleged but not proved by the prosecution then what would be effect of this failure?
v) What is the standard of proof required in criminal case?

Analysis: i) Principle of natural justice demands that prosecution should led evidence of such characteristic which needs to no other conclusion except the guilt of the accused without any hint of doubt and benefit of a single doubt in the prosecution case must be extended in their favour.
ii) It is settled law that medical evidence may confirm the ocular evidence with regard to the seat of injury, nature of the injury, kind of weapon used in the occurrence but it would not connect the accused with the commission of offence.
iii) It has been held that the statement of any witness improved at trial is not worth relying rather such improvement creates serious doubt about his veracity and credibility.
iv) It is also a well settled principle of criminal jurisprudence that if the prosecution sets up a motive and fails to prove it, then it is the prosecution who has to suffer and not the accused.
v) It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The findings as

regard their guilt 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 person 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 person, the benefit of that doubt is to be given to the accused person as of right, not as of concession.

Conclusion: i) The principle of natural justice demands that prosecution should lead vidence of such characteristic which needs to no other conclusion except the guilt of the accused without any hint of doubt.
ii) The medical evidence may confirm the ocular evidence with regard to the seat of injury but it would not connect the accused with the commission of offence.
iii) The statement of any witness improved at trial is not worth relying rather such improvement creates serious doubt about his veracity.
iv) If prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.
v) 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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35. **Lahore High Court**
Iftikhar Ahmad v. The State, etc.
Criminal Revision No.340 of 2013
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2911.pdf

Facts: The trial court after trial for offences under Sections 324, 337-F(v), 334, 34 PPC, convicted the appellant under Section 324 PPC and sentenced.

Issues: i)Whether admission or confession made by the accused should have been considered as a whole?
ii) What is the definition of Mistake(Khata)?
iii) Whether infliction of punishment of dismissal can only be awarded if the police officer is sentenced to rigorous imprisonment exceeding one month or to any other punishment not less severe?

iv) Whether PEEDA Act, 2006 is applicable on employees in police service?
v) Whether under PEEDA Act,2006, dismissal from service is mandatory on conviction in all types of offence?

Analysis:

i) Admission or confession made by the accused should be considered as a whole… Reliance in this respect is placed on the case reported as "ALI AHMAD and another versus The STATE and others" (PLD 2020 Supreme Court 201) wherein the Hon'ble Supreme Court has held that "When prosecution fails to prove its case the statement of the accused, under section 342 Cr.P.C. is to be considered in its entirety and accepted as a fact".

ii) Though there is no definition of mistake (khata) in PPC but import of section 318 PPC makes it clear that causing harm either by mistake of act or mistake of fact amounts to khata and section 319 PPC labels a rash and negligent act as khata.

iii) Awarding of punishment even on judicial sentence is not an automatic phenomenon rather a departmental inquiry is must and procedure is explained in Rule 16.24 of of Police Rules, 1934; conclusion of departmental inquiry is subject to decision on review under Rule 16.28 or on appeal under Rule 16.29. Even otherwise Rule 16.2 (2) above does not require to impose punishment if the civil servant is convicted rather it is the sentence that decides taking of departmental action and there is difference between conviction and sentence. Such rule authorizes infliction of punishment of dismissal only if the police officer is sentenced to rigorous imprisonment exceeding one month or to any other punishment not less severe…

iv) It is observed that PEEDA Act, 2006 is not applicable now on employees in police service. According to Section 1 (4) of PEEDA Act, 2006, it is applicable on followings;it shall apply to--(i)employees in government service;(ii)employees in corporation service; and (iii)retired employees of government and corporation service; provided that proceedings under this Act are initiated against them during their service or within one year of their retirement. And "employee in government service" is defined in the said Act in Section 2(h) but later its clause (ii)was substituted by the Punjab Employees Efficiency, Discipline and Accountability (Amendment) Act 2012 (XLVI of 2012) as under; (ii) in Government service or who is a member of a civil service of the province or who holds a civil post in connection with the affairs of the province or any employee serving in any court or tribunal set up or established by the Government but does not include- (aa) a Judge of the Lahore High Court or any court subordinate to that Court or an employee of such courts; and (bb) an employee of Police.

v) As per clause (a) of section 8 of PEEDA Act, 2006, dismissal on conviction is only for offence of corruption etc. whereas for all other offences action under sections 7 or 9 of the Act is mandatory. Section-9 regulates the process of imposition of penalty after regular inquiry whereas section 7 though authorizes the authority to dispense with conduct of an inquiry and pass sentence after giving a show cause notice, yet it says that it must be in the presence of accused civil

servant and in said eventuality authority can impose any one or more penalties mentioned in section 4; which makes it clear that penalty of dismissal from service is not mandatory in every situation.

Conclusion: i) Yes, admission or confession made by the accused should be considered as a whole.
ii) Import of section 318 PPC makes it clear that causing harm either by mistake of act or mistake of fact amounts to Khata.
iii) Yes, infliction of punishment of dismissal can only be awarded if the police officer is sentenced to rigorous imprisonment exceeding one month or to any other punishment not less severe.
iv) PEEDA Act, 2006 is not applicable on employees in police service.
v) Under PEEDA Act, 2006, dismissal from service is not mandatory on conviction in all types of offence.

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36. **Lahore High Court**
Ali Nawaz v. The State etc.
Crl. Misc. No.8329-B of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2950.pdf

Facts: Through this petition, the petitioner seeks post arrest bail in case FIR registered under Sections 324,109,148,149 PPC read with Section 13(2a) Pakistan Arms Ordinance, 1965.

Issues: i) Whether the court of ordinary jurisdiction can transfer cases to Anti-terrorism Court?
ii) What if any case is pending trial before a Court of ordinary jurisdiction or any other Special Court for an offence and by virtue of an amendment such offence is included in the third schedule of Anti-terrorism Act, 1997?
iii) What course should be adopted for sending the case to Anti-terrorism court?
iv) If the case is pending before the Court of a Magistrate whether he can send the case directly to the Anti-terrorism Court when the case has crossed the stage of cognizance?
v) Whether High Court is empowered to transfer the case from Court of ordinary jurisdiction to Anti-terrorism Court?

Analysis: i) There are two situations when the case routs from court of ordinary jurisdiction to Anti-terrorism Court and both have different regimes. If the challan is put before any Court of ordinary jurisdiction and said Court on receiving challan considers that scheduled offence of Anti-terrorism Act is attracted from the facts of the case, it shall return the challan to prosecution for its presentation before Anti-terrorism Court because under section 190 of Cr.P.C. However, when the case is pending trial and a question of jurisdiction arises then of course challan cannot be returned to the prosecution because by the time certain court processes

are on the record including the evidence that become part of judicial record which cannot be handed over to the prosecution nor can be kept in isolation in court record while detaching the challan only because evidence recorded by one Court can be acted upon by the Successor Court. In such situation the right course would be sending the challan directly by the Court of ordinary jurisdiction to the Anti-terrorism Court.

ii) If any case is pending trial before a Court of ordinary jurisdiction or any other Special Court for an offence and by virtue of an amendment such offence is included in the third schedule of Anti-terrorism Act, 1997 the case shall immediately be sent by the Court of ordinary jurisdiction to the Anti-terrorism Court as held by Division Bench of this Court in case reported as "Rana ABDUL GHAFFAR Versus ABDUL SHAKOOR and 3 others" (P L D 2006 Lahore 64).

iii) A case reported as "Rana ABDUL GHAFFAR Versus ABDUL SHAKOOR and 3 others" (P L D 2006 Lahore 64) is referred in this respect. In the cited case on an application when Antiterrorism Court declined to call for record of case from the Court of Sessions, the Hon'ble Division Bench of this Court has deprecated such practice and allowed the case to be transferred to the Anti-terrorism Court. On the same analogy when any Court of ordinary jurisdiction suspects commission of an offence under Anti-terrorism Act, 1997, it can send the case directly to the Antiterrorism Court and Court on determination of its jurisdiction shall proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to recall and re-hear any witness who has given evidence and may act on the evidence already recorded because section 350 of Cr.P.C. has been made applicable for trial by Anti-terrorism Courts by virtue of section 32 of Anti-terrorism Act, 1997.

iv) If the case is pending before the Court of a Magistrate then a slight shift in the procedure is the requirement of law. Magistrates though assume jurisdiction on a report submitted u/s 173 Cr.P.C. however, they are subordinate to the Session Judge and work is distributed among them as per section 17 of the said Code, therefore, though they are authorized to return the challan before the cognizance is taken, yet they cannot send the case directly to the Anti-terrorism Court when the case has crossed the stage of cognizance.

v) High Court u/s 526 (3) Cr. P.C. is empowered to transfer the case from Court of ordinary jurisdiction to Anti-terrorism Court.

Conclusion:

i) Yes the court of ordinary jurisdiction can transfer cases to Anti-terrorism Court.

ii) If any case is pending trial before a Court of ordinary jurisdiction or any other Special Court for an offence and by virtue of an amendment such offence is included in the third schedule of Anti-terrorism Act, 1997 the case shall immediately be sent by the Court of ordinary jurisdiction to the Anti-terrorism Court.

iii) When any Court of ordinary jurisdiction suspects commission of an offence under Anti-terrorism Act, 1997, it can send the case directly to the Antiterrorism Court.

iv) If the case is pending before the Court of a Magistrate then he cannot send the case directly to the Anti-terrorism Court if the case has crossed the stage of cognizance.

v) High Court u/s 526 (3) Cr. P.C. is empowered to transfer the case from Court of ordinary jurisdiction to Anti-terrorism Court.

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37. **Lahore High Court**
Zahid Saleem v Mst. Gulshan Shaukat etc.
Writ Petition No. 14105/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC3004.pdf

Facts: Briefly stated facts of the case are that respondent No.1/plaintiff/decree holder instituted a suit for recovery of the dowry articles or its alternate value against the petitioner/defendant/judgment debtor which was decreed by learned Family Judge and alternate value was adjudicated whereas when the appeal was preferred by the respondent/decree holder, the same was partially allowed without mentioning any amount as regards the alternate value of dowry articles in the decree sheet drawn by the learned Appellate Court below. Now, through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the said order.

Issue: Whether in the absence of any explicit amount mentioned in the decree sheet drawn by the court, in a family matter, can the learned executing court seek guidance from the judgment of the court which passed the decree, while executing the said decree?

Analysis: Executing Court cannot travel beyond the decree while implementing the same, however that does not mean that it has no duty to find out true effect of the decree. For construing a decree, the learned executing court can in appropriate cases, opt to take into consideration the pleadings as well as proceedings leading upto the judgment that forms the foundation of the decree. In order to find out meaning and scope of the words employed in the decree, the executing court often has to ascertain the circumstances under which those words have been or can be used.

Conclusion: The learned executing court can seek guidance from the judgment in the absence of any explicit amount mentioned in the decree sheet drawn by the court.

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38. **Lahore High Court**
Mst. Nadara Parveen etc. v. Additional District Judge etc.
Writ Petition No. 3264 of 2020
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC2994.pdf

Facts: Through this constitutional petition, the petitioners have challenged the concurrent findings of the learned Courts below whereby their application under Section 12(2) of the Code of Civil Procedure, 1908 ("the CPC"), challenging the ex-parte judgment and decree passed in suit for specific performance of contract instituted by respondent No.3 against respondent No.2, was dismissed.

Issues: i) Whether the estate of deceased immediately vests in the legal heirs on the death of the deceased especially when the status of the legal heir is disputed?

ii) What is required by law to establish the claim of *bonafide* purchaser for value?
iii) Whether a vendee can obtain the possession of his undivided share from a joint un-partitioned immovable property?

Analysis: i) The legal position that the estate of deceased immediately vests in the legal heirs on the death of the deceased is an ineluctable position, but the fact as to whether a particular person is a legal heir or not is required to be determined and declared by a Court of competent jurisdiction, particularly when the status of the legal heir as such is disputed. Once the Court makes such declaration in favour of the legal heirs, their names can be added as the title holder in the relevant record maintained by the regulatory authorities such as the Revenue, Excise or Settlement Departments, etc. In order to obtain such a declaratory decree, the legal heirs have to prove before the Court that they are the only legal heirs of the propositus.

ii) To seek protection of *bonafide* purchaser for value, suffice to observe that one of the essential components of defense of *bonafide* purchaser is to establish that there was no dishonesty of purpose or tainted intention to enter into the transaction. In addition, it is also required to be established that due diligence as to the title was carried out prior to purchase of the property in question. Case reported as "Hafiz Tassaduq Hussain v. Lal Khatoon and others" (PLD 2011 SC 296) is referred in this regard.
iii) The law in this regard is settled to the effect that an undivided share of a co-sharer can be a subject matter of sale/transfer, but the possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either by the decree of a Court in a partition suit, or by settlement among the co-sharers.

Conclusion: i) The estate of deceased immediately vests in the legal heirs on the death of the deceased is an ineluctable position, but the fact as to whether a particular person is a legal heir or not is required to be determined and declared by a Court of competent jurisdiction, particularly when the status of the legal heir as such is disputed.

ii) To seek protection of *bonafide* purchaser for value, it is required to establish that there was no dishonesty of purpose or tainted intention to enter the transaction and that due diligence as to the title was carried out prior to purchase of the property in question.

iii) A vendee cannot obtain the possession of his undivided share from a joint un-

partitioned immovable property unless it is partitioned by metes and bounds, either by Court in a partition suit, or by settlement among the co-sharers.

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39. **Lahore High Court,**
Ali Hassan, etc v. Major (Retired) Masood Saeed Khan, etc.,
Writ Petition No.81565/2022,
Mr. Justice Anwaar Hussain.
https://sys.lhc.gov.pk/appjudgments/2023LHC2985.pdf

Facts: Through this writ petition, the judgment of learned Additional District Judge is challenged, by virtue of which the order of learned Rent Tribunal has been set aside and the application of respondent No.2, under Order I Rule 10 of the Code of Civil Procedure, 1908 for impleading him as a respondent in the eviction petition filed by the petitioners, has been accepted.

Issue: Whether an order dismissing the application filed under Order I Rule 10 of the CPC, passed by the Rent Tribunal is final order for the purposes of Section 28 of the Punjab Rented Premises Act, 2009 and the appeal there against is maintainable or not?

Analysis: Section 2(b) of the Punjab Rented Premises Act, 2009 provides definition of the term "final order" whereas Section 28 of the Act ibid confers the right of appeal on the aggrieved party against the final order only. Under Section 2(b) of the Act ibid, the first part defining the term "final order" uses the words "means" followed by the expression "culminating the proceedings" and provides the principle and test to determine what is "final order" i.e., any order which culminates and concludes the proceedings. Whereas, the second part uses the word "including" and lists down some of the matters such as adjustment of *pagri*, advance rent, security, arrears of rent, compensation or costs which, when dealt with by the learned Rent Tribunal, also are in the nature of the final order(s) or part thereof. In the definition or interpretation clause in a Statute, the word "means" is employed to restrict the meaning, whereas the word "includes" is used to widen the meanings of the term so defined. So, Section 2(b) of the Act ibid, indicates that the legislature intended to widen the scope of the term "final order" by use of the word "including". It is imperative to analyze the meaning of the term "culminating the proceedings" used in Section 2(b) of the Act ibid. According to "*Webster's Encyclopaedic Unabridged Dictionary of the English Language*", the term "culminate" means *to "terminate at the highest point meaning thereby to have result or be the final result of a process".* The term "proceeding" has not been explicitly defined under the Act ibid. However, the term proceeding(s) has been also used in Section 24 of the CPC and defined in a non-exhaustive manner to include not only the suit but the execution proceedings as well so as to include within its ambit all matters coming up for adjudication. When a third person approaches the Rent Tribunal with an application under Order I Rule 10 of the CPC, a set of proceeding other than the main proceeding

commence as between the said applicant and the ejectment petitioner as well as the tenant. Therefore, the term "*final order culminating proceedings",* under Section 2(b) of the Act ibid *viz.* the ejectment petitioner and the applicant of the application under Order I Rule 10 of the CPC, means the order by virtue of which the said application is decided and when such application is dismissed and the applicant is not allowed to be part of the main proceedings, hence, proceedings against him have certainly been culminated before the learned Rent Tribunal.

Conclusion: The order dismissing the application of third party under Order I, Rule 10 of the CPC, is a final order in terms of Section 2(b) of the Punjab Rented Premises Act, 2009 as such third party is non-suited and his application is dismissed, proceedings against him have certainly been culminated before the Rent Tribunal and the appeal thereof is maintainable in terms of Section 28 of the Act ibid.

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40. **Lahore High Court**
Nargis Bibi (deceased) through her legal heirs, etc. v.
Muhammad Amin, etc.
Civil Revision No.2534 of 2014
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC3231.pdf

Facts: Respondent No.1 instituted a suit for declaration along with recovery of possession etc. Trial Court decreed the suit after framing of issues and recording of evidence of the parties. The appeal preferred by the predecessor-in-interest of the petitioners against the judgment and decree was dismissed by the Additional District Judge. Hence, the present Civil Revision.

Issues: i) When the High Court exercises its revisional jurisdiction to interfere in the concurrent findings of the Courts below?
ii) Whether mutation creates or extinguishes the title to the property and who is under the obligation to prove the correctness of mutation if it is disputed in absence of original PTD/registered deed?
iii) Who is to establish his ownership while seeking possession of the property?

Analysis: i) High Court in exercise of its revisional jurisdiction is usually reluctant to interfere in the concurrent findings of the Courts below, however, it is not a rule of thumb and this Court cannot close its eyes where the Courts below misinterpreted the material available on record or erred in appreciating the same, in its proper perspective, or overlooked to comprehend the same. On the material misreading of evidence alone, the concurrent findings of the Courts below are liable to be set aside as it is trite law that the Courts are expected to deliver justice, which is not only to be done but also seen to be done, and cannot shut their eyes or turn a deaf ear to perverse conclusion based on patent errors on account of misreading and non-reading of evidence.

ii) Mutation of a property in the revenue record neither creates nor extinguishes the title to the property or has any presumptive value qua title as such entries are relevant only for the purpose of collecting land revenue. If the mutation, on the basis of which right in the property is claimed, is disputed on account of absence of the original PTD/registered deed, etc., the onus of proving the correctness of the mutation and genuineness of the transaction contained therein would be on the party claiming the right.

iii) While seeking possession of the property, a plaintiff is under a bounden duty to establish his ownership without any shadow of doubt, by producing title document and while doing so the burden of proof on a party is to be discharged unclinchingly and not with shaky evidence, it is held in "Manzoor Ahmad and 9 others v. Ghulam Nabi and 5 others" (2010 CLC 350).

Conclusion: i) High Court exercises its revisional jurisdiction to interfere in the concurrent findings of the Courts below where the Courts below misinterpreted the material available on record or erred in appreciating the same.

ii) Mutation of a property in the revenue record neither creates nor extinguishes the title to the property whereas the onus of proving the correctness of the mutation would be on the party claiming the right.

iii) A plaintiff is under a bounden duty to establish his ownership without any shadow of doubt while seeking possession of the property.

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41. **Lahore High Court**
Falak Sher and 2 others v. Abdul Aziz (deceased) through L.Rs etc.
Civil Revision No. 36424 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC3213.pdf

Facts: The petitioner through this Civil Revision has assailed the order passed by the learned Additional District Judge (the "appellate court") whereby the appellant was given an adjournment at the request of the learned counsel and his appeal was fixed for final arguments along with arguments on the application for permission to produce additional evidence.

Issues: i) What does the term any case which has been decided or "case decided" means?

ii) Whether the revision petition before High Court is maintainable against interlocutory orders of the subordinate Courts fixing the case for arguments etc.?

Analysis: i) Reading of section 115 of the Civil Procedure Code, 1908 reflects that the revisional jurisdiction can be exercised when defects contemplated by the above provision are arising out of any case which has been decided. In the case titled "Messrs National Security Insurance Company Limited and others versus Messrs Hoechst Pakistan Limited and others" (1992 SCMR 718) the Honourable Supreme Court of Pakistan has already decided that the term any case which has been decided or "case decided" can be construed as decision in respect of any state of

facts after judicially considering the same, though it is not required that this decision has disposed of the whole matter in the cause pending.
ii) Examination of the relevant provision and the case law on the subject reveals that High Court should not too readily interfere with the interlocutory orders of the subordinate Court, unless express or implied conditions of clause "a", "b" and "c" of section 115(1) of the Code are involved and only those interlocutory orders do attract revisional jurisdiction that deals with some question in controversy before the Court or it has effect on rights of the parties to the lis. Baseless apprehensions or assumptions as to wrong exercise of jurisdiction or orders of adjournment or orders fixing the case for arguments, certainly do not fall within the scope of "case decided" to maintain revision-petition under section 115 of the Code.

Conclusion: i) The term any case which has been decided or "case decided" means a decision in respect of any state of facts after judicially considering the same, though it is not required that this decision has disposed of the whole matter in the cause pending.

ii) The revision petition before High Court is not maintainable against interlocutory orders of adjournments or fixing the case for arguments etc. by the subordinate Courts.

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42. **Lahore High Court**
Rukhsana Bibi v. Federation of Pakistan, etc.
Case No. W. P. No.33181 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC2862.pdf

Facts: The petitioner has invoked the constitutional jurisdiction of this Court for issuance of a direction to respondents to remove her husband's name from the blacklist so that he may be able to renew his passport and return to Pakistan to face trial in the criminal case registered against him.

Issues: i) Whether the accused loses some of his rights being fugitive from law?
ii) When the accused gets back his rights which he has lost being fugitive from law?
iii) Whether a citizen can be deprived of his right to return to the home land and surrender before court of law?

Analysis: i) There is no cavil with the proposition that being a fugitive from law, the accused loses some of his rights such as right to audience as well as right to have an Advocate to defend him, as held in the case of Hayat Bakhsh and others vs. The State(PLD 1981 Supreme Court 265).
ii) However, loss of such rights is till such time the accused surrenders himself before the Court, as held in the case of "Lahore High Court Bar Association and others vs. General (Retd.) Pervez Musharraf and others (2019 SCMR 1029).

iii) The right to return to the homeland to surrender before the Court or the concerned law enforcement agency to face proceedings in accordance with law is something a citizen is not deprived of owing to his abscondance.

Conclusion: i) Yes, the accused loses some of his rights being fugitive from law.
ii) The accused who has lost his rights being fugitive from law gets back his rights when he surrenders himself before the Court.
iii) The right to return to the homeland to surrender before the Court is something a citizen is not deprived of owing to his abscondance.

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43. **Lahore High Court**
Sajid Iqbal Sheikh v. ADJ, Lahore, etc.
Writ Petition No.38170 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC3270.pdf

Facts: The petitioner has invoked the constitutional jurisdiction of this Court to challenge the judgment passed by the Additional District Judge, whereby on appeal filed by respondent No.3, order of the Special Judge (Rent), was set aside and eviction petition was accepted.

Issues: i) Whether it is necessary that the tenancy agreement should be in writing?
ii) Whether any other agreement between the landlord and tenant will affect their relationship inter se?
iii) Who is presumed to be the owner of the premises in the absence of contrary evidence with regard to title of the disputed premises?

Analysis: i) The tenancy agreement is not necessarily required to be in writing rather it may be oral and implied.
ii) Any other agreement between the landlord and tenant does not affect their relationship inter se unless the tenancy agreement is revoked.
iii) In the absence of contrary evidence with regard to title of the disputed premises the owner of the premises is to be presumed as landlord and the person in its possession is supposed to be tenant.

Conclusion: i) The tenancy agreement is not necessarily required to be in writing.
ii) Any other agreement between the landlord and tenant does not affect their relationship inter se.
iii) In the absence of contrary evidence with regard to title of the disputed premises the owner of the premises is to be presumed as landlord.

LATEST LEGISLATION/AMENDMENTS

1. Clause 8 (1), 10(1) and Schedule AA of Punjab Private Sector Agricultural Marketing Regulations 2021has been substituted.
2. Declaration regarding certain minerals for the grant as prospecting license and mining lease through competitive bidding or sealed tenders, instead of doling out on application basis vide Notification No. 81 of 2023.
3. Denotification/withdrawal of "Rock Salt Policy" and "Amended Rock Salt Policy" issued vide notifications dated 18.08.2022 & 06.01.2023 vide Notification No. 82 of 2023.
4. Declaration of the United Arab Emirates to be a reciprocating territory vide Notification No. S.R.O. 208(I)/2007.
5. Rule 17 of the Revised Leave Rules, 1981is amended vide Notification No. FD.SR.II/2-97/2019.
6. Sections 13 and 15A of the Federal Employees Benevolent Fund and Group Insurance Act, 1969 have been amended.
7. The Pakistan Institute of Research and Registration of Quality Assurance Act, 2023 is enacted to provide for the establishment of the Pakistan Institute of Research and Registration of quality Assurance.
8. The Supreme Court (Review of Judgments and Orders) Act, 2023 is enacted to facilitate and strengthen the Supreme Court of Pakistan in the exercise of its powers to review its judgments and orders.
9. Sections 4 to 8, 15, 16, 16A, 19, 21, 28, 30, 31D, 31DD, 32 & 33 of The National Accountability Ordinance, 1999 are amended.
10. Section 6 of The Punjab Procurement Regulatory Authority Act, 2009 has been amended.
11. Vide Notification No. SO(MP)21-1/2023 Rules 17 and 18 of the Pakistan Prison Rules, 1978 are amended.
12. Vide Notification No. SO(MP)21-2/2023 Rules 215 and 216 of the Pakistan Prison Rules, 1978 are amended.

SELECTED ARTICLES

1. **CAMBRIDGE LAW JOURNAL**
https://www.cambridge.org/core/journals/cambridge-law-journal/article/abs/illegality-defence-and-sanctionshifting-in-defence-of-gray-v-thames-train-ltd/F8865C25AC718E138BBBFA26F8A6FD9A

The Illegality Defence and Sanction-Shifting: In Defence of *Gray v. Thames Train Ltd* by Ivan Sin

This article considers the rule that a claimant who has been wronged will be denied recovery where the damage flowed from a sanction imposed as a result of their own illegal acts such that compensating the claimant would divert a sanction intended to be imposed on the claimant to the defendant. The article has two purposes. The first aim is to provide a counterweight to the overwhelming body of academic literature critical of Gray v Thames Trains Ltd. in which the House of Lords, in applying the illegality bar found it unnecessary to examine the purpose of the criminal sanction against the claimant, preferring to treat its existence as sufficient to lead to a denial of recovery. The article argues that academic support for adoption of an alternative test of "significant personal responsibility" rests on precarious grounds, depending, as it does, on the "unsatisfactory state of law" and "different policies" arguments. This article reconceptualises the rule in Gray and systematically examines the role played by the theme of consistency between the civil law and criminal law in judicial decision-making. The second aim is to evaluate Gray in light of Patel v Mirza. The article critiques the Supreme Court's inconsistent treatment of deterrence in Henderson v Dorset University NHS Foundation Trust and Stoffel v Grondona, and argues that the way the court in Henderson conceptualised the relationship between Gray and Patel discloses an approach which is more closely aligned with that adopted by the minority in Patel.

2. ACADEMIA

https://www.academia.edu/262766/ADR_In_England_and_Wales_12_Am

ADR in England and Wales: A Successful Case of Public Private Partnership by Professor Dr Loukas A Mistelis

More recently, in the late twentieth century, systems of alternative dispute resolution (ADR) were introduced and were often entrenched in the legal system overnight. Some ADR systems are significantly older but there are no sufficient records and rarely a regulatory regime. Modern ADR is a voluntary system, according to which the parties enter a structured negotiation or refer their disputes to a third party for evaluation and/or facilitation of resolution. Especially in that the justice system was flooded by disputes of variable importance and complexity, and that the parties are almost invariably intimidated by the atmosphere in the court room and the litigation proc-ess itself, ADR has now become an acceptable and often preferred alternative to judicial settlement or settlement of disputes by arbitration.

3. HUMAN RIGHTS LAW REVIEW
https://academic.oup.com/hrlr/article/23/3/ngad013/7187934?searchresult=1

The Indivisibility of Human Rights: An Empirical Analysis by Jan Essink, Alberto Quintavalla, Jeroen Temperman

This article aims to test whether human rights have an indivisible nature. To do that, we perform correlation analysis and Granger causality tests to test 1) the relationship within socio-economic rights and 2) between socio-economic rights and civil-political rights. The results show that certain socio-economic rights have mutual reinforcing relationships, lending support to the existence of widespread indivisibility. This finding yields relevant policy implications. Given their financial constraints, states could make use of the existence of widespread indivisibility, in combination with the progressive implementation clause, to foster the efficient allocation of resources for human rights implementation. Furthermore, this article shows that the intensity of indivisibility varies depending on the income category of states: the indivisible nature of socio-economic rights is more intense in low-income countries while seems to achieve a saturation point at the highest levels of human rights compliance. We, thus, propose to define this phenomenon as 'indivisibility saturation'. Lastly, our findings detect a more complex picture for the indivisibility principle between the two classes of human rights. While widespread indivisibility does not follow from the tests, important unidirectional relationships between different human rights exist and are equally important for human rights policy-making purposes.

4. STATUTE LAW REVIEW
https://academic.oup.com/slr/article-abstract/42/1/101/5252089?redirectedFrom=fulltext

Minors' Contracts: A Major Problem with the Indian Contract Act, 1872 by Shivprasad Swaminathan, Ragini Surana

Section 10 of the Indian Contract Act, 1872 stipulates that all agreements made with the 'free consent' of parties who are 'competent' to contract are enforceable as contracts. Section 11 declares that minors are not competent to contract. While the Act goes on to specifically set out the consequences of vitiated 'consent' in sections 19, 19A, and 20, it omits spelling out the consequences of contracting with a minor. Nevertheless, a decision of the Privy Council, Mohori Bibee v. Dharmodas Ghose (1903) read the Act as having given a definitive answer to this question and took the view that minors' contracts were void ab initio (not voidable or void) which meant that neither party could enforce it, nor could they seek to be restituted to their original positions under provisions stipulating restitution in the case of either voidable (section 64) or void (section 65) contracts. Indian courts have since invoked Mohori Bibee in bloodless

abstraction, as if it were an unquestionable axiom of Indian contract law. This article argues that the Privy Council's reading of the Act in Mohori Bibee is problematic, and its invention of the category of contracts void ab initio is unsupported by the Act.

5. YALE JOURNAL OF LAW AND TECHNOLOGY
https://yjolt.org/defining-reasonable-cybersecurity-lessons-states

Defining "Reasonable" Cybersecurity: Lessons from the States by Scott J. Shackelford Anne Boustead & Christos Makridis

Questions over what constitutes "reasonable" cybersecurity reporting and operating practices have long vexed businesses and policymakers. Given a lack of clear guidance from Congress, states have filled the vacuum by passing a series of laws requiring "reasonable" cybersecurity such as for manufacturers of Internet-connected devices. Other states have elected instead to provide safe harbors, like Ohio, which rewards companies for investing in a pre- determined list of recognized cybersecurity standards and frameworks—such as the National Institute for Standards and Technology (NIST) Cybersecurity Framework—by minimizing liability in the aftermath of a data breach. This Article: (1) summarizes the current state of state-level cybersecurity policymaking with a special emphasis on how states are defining "reasonable" cybersecurity; (2) discloses the results of a statewide survey on cybersecurity perceptions and practices among organizations in Indiana done in partnership with the Indiana Attorney General's Office; and (3) makes a series of suggestions based on these findings about how to better educate and incentivize firms about instituting reasonable cybersecurity best practices.

LAHORE HIGH COURT

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(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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

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.

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 retainedsome 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.

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FORTNIGHTLY CASE LAW BULLETIN

(01-07-2023 to 15-07-2023)

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

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LATEST LEGISLATION/AMENDMENTS

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1. **Supreme Court of Pakistan**
M/s Rajby Industries Karachi etc. v. Federation of Pakistan and others
Civil Petitions No. 4700, 310-K to 314-K, 423-K To 426-K, 553-K & 493-K of 2021
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4700_2021.pdf

Facts: The claim of petitioners regarding input tax was prohibited on packing material with effect from 1.7.2016, vide SRO 491(I)/2016, whereby condition (x) of SRO 1125(I)/2011 was amended to disallow the adjustment of Sales Tax on packing material as Input Tax. Being aggrieved by this amendment, the petitioners had challenged the vires of said Notification in the Sindh High Court. However, during the pendency of the aforesaid constitution petitions, the impugned proviso of condition (x) was withdrawn vide amending notification, S.R.O. 777(I)/2018 dated 21.6.2018. Thereafter, the petitioners took an additional plea that the amendment was curative and beneficial in nature which should be given retrospective effect but their constitution petitions were dismissed by the learned High Court. Hence, these civil petitions.

Issues: i) How the tax statutes ought to be construed and whether it can be given retroactive operation?
ii) What is dominant rationale of interpretation of any legislative instrument?
iii) What does expression "Non-obstante" connotes?
iv) What is meant by ultra vires and intra vires?
v) How the words of a statute are primarily understood and phrases and sentences are construed?
vi) What is function of a proviso?
vii) How to find out whether any beneficial, remedial or curative legislation has a retrospective effect?

Analysis: i) According to Crawford's Statutory Construction, Interpretation of Laws, Chapter XXVIII, page 738-739, para-359, the laws which impose a tax on sales, being tax laws, are subject to a strict construction in accordance with the tax statutes generally. In other words, a sales tax statute must be strictly construed in considering its coverage and no strained construction may be indulged in against the taxpayer simply because of the apparent purpose to raise needed revenue, nor will such statutes be given a retroactive operation, unless such an effect is clearly intended by the lawmakers.
ii) The dominant rationale of interpretation of any legislative instrument is to bring to light the intention of the legislature and the foremost sense of duty of the Courts is to catch on the same by reference to the language used.
iii) The expression "Non-obstante" is a Latin terminology which connotes 'notwithstanding anything contained'. This turn of phrase, for all intents and purposes invests powers in the legislature to set down any provision which may

have an overriding effect on any other legal provision under the same law or any other laws, being a legislative apparatus and method of conferring overriding effect over the law or provisions that qualifies such clause or section of law. A non-obstante clause is commonly put into operation to signify that the provision should outweigh regardless of anything to the contrary. It is a well settled elucidation of law that a taxing statute should be construed strictly, even if the literal interpretation results in some hardship or inconvenience.

iv) The doctrine of ultra vires envisages that an authority can exercise only so much power as is conferred on it by law. An action of the authority is intra vires when it falls within the limits of the power conferred on it but ultra vires if it goes outside this limit. To a large extent the courts have developed the subject by extending and refining this principle. If an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it is carried out shorn of authority, it is ultra vires. The law can be struck down if it is found to be offending against the Constitution for absenteeism of lawmaking and jurisdictive competence or found in violation of fundamental rights.

v) The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary.

vi) The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein. If the enacting portion of a section is not clear a proviso appended to it may give an indication as to its true meaning.

vii) It is well settled that the curative statute is meant for lawmakers to recuperate the prior enactment for rectifying the defect or omission. In order to find out whether any beneficial, remedial or curative legislation has a retrospective effect, the litmus test is to explore whether it is intended to clear up an ambiguity or oversight in the prevailing or standing law and in its pith and substance, it corrects or modifies an existing law or an error that interferes with interpreting or applying the statute. For sure, its scope is clarificatory in nature but if it has no such character or essence, it cannot be deduced to be retroactive merely for the reason that it amounts to beneficial legislation. The retroactive application of curative legislation can be gauged and measured from the plain language and intention of legislature .A statute is not to be applied retrospectively in the absence of express enactment or necessary intendment, especially where the statute is to affect vested rights, past and closed transactions or facts or events that have already occurred. This principle(s) is attracted to fiscal statutes which have to be construed strictly, for they tend to impose liability and are therefore burdensome (as opposed to beneficial legislation). Furthermore, it is not only the wording/text of the statute which is to be considered in isolation; we are not to examine simpliciter whether such law has a retrospective effect or not, rather it has to be examined holistically by considering several factors such as, the dominant intention of the legislature which is to be gathered from the language used, the object indicated or the

mischief meant to be cured, the nature of rights affected, and the circumstances under which the statute is passed.

Conclusion: i) A sales tax statute must be strictly construed in considering its coverage and such statutes be given a retroactive operation, unless such an effect is clearly intended by the lawmakers.

ii) The dominant rationale of interpretation of any legislative instrument is to bring to light the intention of the legislature and the foremost sense of duty of the Courts is to catch on the same by reference to the language used.

iii) The expression "Non-obstante" is a Latin terminology which connotes 'notwithstanding anything contained'. The non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect.

iv) If an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it is carried out shorn of authority, it is ultra vires.

v) The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning.

vi) If the enacting portion of a section is not clear a proviso appended to it may give an indication as to its true meaning.

vii) The retroactive application of curative legislation can be gauged and measured from the plain language and intention of legislature. It has to be examined holistically by considering several factors such as, the dominant intention of the legislature which is to be gathered from the language used, the object indicated or the mischief meant to be cured, the nature of rights affected, and the circumstances under which the statute is passed

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2. **Supreme Court of Pakistan**
Imran Ahmed Khan Niazi v. The State and others
Criminal M. A. No. 641 of 2023 in Criminal Petition No. 519 of 2023 and Criminal Petition No. 519 of 2023
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._519_2023_detailed_order.pdf

Facts: The present Crl. Petition has been filed before this Court by the petitioner, against the judgment of the Islamabad High Court wherein his arrest from the premises of the High Court was declared to be not per se illegal.

Issues: i) Whether the dignity, sanctity and safety of the courts for the benefit of all concerned stakeholders are violable and can be compromised?

ii) Whether the arrest of a person from a court office situated inside the High Court premises violates the dignity, sanctity and safety of the High Court in a

manner that undermined its decorum and also infringes the petitioner's Fundamental Right of access to justice?

iii) Whether the Fundamental Rights of access to justice and fair trial/due process apply equally to bail applications as the latter are directly connected to the liberty of persons?

iv) Whether protection of Fundamental Rights, in particular the right of access to justice, is a constitutional obligation of the courts that prevails over their duty to defend the dignity, sanctity and safety of their premises?

Analysis: i) It is a well-settled principle that the dignity, sanctity and safety of the courts for the benefit of all concerned stakeholders are inviolable and cannot be compromised. This is because courts of law are sanctuaries which the people approach to seek justice with the assurance that they will be able to pursue their relief freely in a safe, orderly and dignified environment. The breach of this assurance undermines the effective dispensation of justice by deterring people from seeking the resolution of their disputes from the courts.

ii) Having surrendered before the High Court to invoke its jurisdiction, the petitioner's arrest from the High Court premises preemptively blocked his recourse to the judicial relief of pre-arrest bail and thereby violated his Fundamental Right of access to justice. Indeed, such action also interfered with the working of the High Court, intervened in the exercise of its lawful jurisdiction and obstructed its process. The manner and mode in which the arrest was executed, namely, the breaking of the door, glass partitions and windows of the bio-metric verification room and the manhandling and injuring of a number of lawyers, High Court staff and police personnel undermined and lowered the authority of the High Court and disturbed its decorum.

iii) The Fundamental Rights of access to justice and fair trial/due process are ordinarily invoked to rectify the illegalities and defects committed during criminal trials and/or proceedings pertaining to the determination of civil rights/obligations. However, these rights apply equally to bail applications as the latter are directly connected to the liberty of persons. It may be noted that liberty is a Fundamental Right granted by Article 9 of the Constitution which is primarily enforced through bail applications. There can be no denial that the relief of pre-arrest bail is a judicial remedy availed by accused persons under Section 498 of the Cr.P.C. Therefore, the right of an accused person to seek this remedy must be construed in a manner that safeguards and advances his/her Fundamental Right of access to justice.

iv) Nonetheless, it may be observed with confidence that on a fair interpretation of Fundamental Rights, in particular the right of access to justice, it becomes clear that the protection of such rights of the people is a constitutional obligation of the courts that prevails over their duty to defend the dignity, sanctity and safety of their premises.

Conclusion: i) The dignity, sanctity and safety of the courts for the benefit of all concerned

stakeholders are inviolable and cannot be compromised.
ii) The arrest of a person from a court office situated inside the High Court premises violates the dignity, sanctity and safety of the High Court in a manner that undermined its decorum and also infringes the petitioner's Fundamental Right of access to justice.
iii) The Fundamental Rights of access to justice and fair trial/due process apply equally to bail applications as the latter are directly connected to the liberty of persons.
iv) Protection of Fundamental Rights, in particular the right of access to justice, is a constitutional obligation of the courts that prevails over their duty to defend the dignity, sanctity and safety of their premises.

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3. **Supreme Court of Pakistan**
Abid Jan v. Ministry of Defence through its Secretary, Islamabad and others
Civil Petition No.2467 of 2020
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2467_2020.pdf

Facts: This Civil Petition for leave to appeal is directed against the order passed by the Federal Service Tribunal, Islamabad ("FST") in appeal whereby the appeal of the petitioner was dismissed in limine, being barred by time.

Issues: i) Whether petitioner is required to file fresh memo of appeal when the writ petition was directed to be transmitted to the Federal Service Tribunal by the High Court?
ii) Whether Supreme Court or High Court can convert and treat one type of proceedings into another type and proceed to decide the matter either itself or may remit the lis to the competent authority?
iii) Whether limitation run when any petition has been filed in High Court within period of limitation as provided for the departmental appeal and High Court transmit it to Service Tribunal for decision?
iv) Whether every court has the power to rectify ex debito justitiae its judgment and order to prevent abuse of process and severe patent oversights and mistakes?
v) Whether a patent and obvious error or oversight on the part of Court in any order or decision may be reviewed when it prejudice any one?

Analysis: i) When the original writ was directed to be transmitted to the FST by the High Court in the aforementioned order, then it was neither within the dominion of the petitioner to present the fresh memo of appeal by himself, nor was he obligated to submit a fresh memo of appeal which would otherwise have become time barred when, in order to save the lis from the rigors of limitation, the Writ Petition was converted into an appeal.
ii) In the case of Muhammad Akram v. DCO, Rahim Yar Khan and others (2017 SCMR 56), an identical controversy was dilated upon by this Court and it was held that no fetters or bar could be placed on the High Court and/or this Court to

convert and treat one type of proceedings into another type into another and proceed to decide the matter either itself, provided it has jurisdiction over the lis before it in exercise of another jurisdiction vested in the very Court or may remit the lis to the competent authority/forum or Court for decision on merits.

iii) It was further held that once the Writ Petition which was filed within the period of limitation as provided for the departmental appeal, was treated and remitted by the High Court as departmental appeal, that too where the limitation by then had not run out as noted above, therefore the learned Punjab Services Tribunal had fallen into error to dismiss the Appeal before it on the ground of limitation alone, without adverting to the merits of the case and as a consequence of these findings, this Court had set aside the Punjab Services Tribunal order and remanded the matter with the direction to decide the pending appeal on merits.

iv) Every Court has the power to rectify ex debito justitiae its judgment and order to prevent abuse of process and severe patent oversights and mistakes. This power is an inherent power of the Court to fix the procedural errors if arising from the Court's own omission or oversight which resulted in a violation of the principles of natural justice or due process…This Court in the case of Government of the Punjab, through Secretary, Schools Education Department, Lahore etc. vs. Abdur Rehman & others (2022 SCMR 25), held that the lexicons of law provide the definition of the legal maxim "Ex Debito Justitiae" (Latin) "as a matter of right or what a person is entitled to as of right". This maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act ex debito justitiae is an inherent power of courts to fix the procedural errors if arising from courts own omission or oversight which resulted violation of the principle of natural justice or due process.

v) It is the foremost duty of the Court and Tribunal to do complete justice. A patent and obvious error or oversight on the part of Court in any order or decision may be reviewed sanguine to the renowned legal maxim "actus curiae neminem gravabit", which is a well-settled enunciation and articulation of law expressing that no man should suffer because of the fault of the Court, or that an act of the Court shall prejudice no one, and this principle also denotes the extensive pathway for the safe administration of justice. It is interrelated and intertwined with the state of affairs where the Court is under an obligation to reverse the wrong done to a party by the act of Court which is an elementary doctrine and tenet to the system of administration of justice beyond doubt that no person should suffer because of a delay in procedure or the fault of the Court. This is a de rigueur sense of duty in the administration of justice that the Court and Tribunal should be conscious and cognizant that nobody should become a victim of injustice as a consequence of their mistake and, in the event of any injustice or harm suffered by mistake of the Court, it should be remedied by making the necessary correction forthwith. According to the principle of restitution, if the Court is satisfied that it has committed a mistake, then such person should be restored to the position which he would have acquired if the mistake did not

happen. This expression is established on the astuteness and clear-sightedness that a wrong order should not be perpetuated by preserving it full of life or stand in the way under the guiding principle of justice and good conscience. So in all fairness, it is an inescapable and inevitable duty that if any such patent error on the face of it committed as in this case, the same must be undone without shifting blame to the parties and without further ado being solemn duty of the Court to rectify the mistake.

Conclusion: i) A petitioner is not required to file fresh memo of appeal when a writ petition was directed to be transmitted to the Federal Service Tribunal by the High Court.
ii) Supreme Court or High Court can convert and treat one type of proceedings into another type and proceed to decide the matter either itself provided it has jurisdiction over the lis or may remit the lis to the competent authority.
iii) Limitation may not run when any petition has been filed in High Court within period of limitation as provided for the departmental appeal and High Court transmit it to Service Tribunal for decision.
iv) Every court has the power to rectify ex debito justitiae its judgment and order to prevent abuse of process and severe patent oversights and mistakes.
v) A patent and obvious error or oversight on the part of Court in any order or decision may be reviewed when it prejudice any one.

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4. **Supreme Court of Pakistan**
Liaquat Ali Khan v. Muhammad Akram & another
Civil Appeal No.431 of 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._431_2021_07072023.pdf

Facts: The plaintiff filed a suit for specific performance of two agreements along with grant of possession which was decreed. On first appeal, the high Court set aside the decree of trial court and dismissed the suit of plaintiff. Hence, this appeal.

Issue: Whether suit for specific performance can be decreed for the breach of agreement committed by defendant despite of failure of plaintiff to prove his own willingness to perform the essential terms of agreement regarding payment of consideration?

Analysis: Even assuming that defendant has committed breach, if the plaintiff has failed to prove that he was always ready and willing to perform the essential terms of the agreements which were required to be performed by him, there was a bar to specific performance in his favour. The remedy by way of specific performance is equitable and it is not obligatory on the Court to grant such a relief merely because it is lawful to do so. Section 22 of the Specific Relief Act, 1877 expressly stipulates so…

Conclusion: Even assuming that defendant has committed breach, if the plaintiff has failed to prove that he was always ready and willing to perform the essential terms of the agreements which were required to be performed by him, there was a bar to specific performance in his favour.

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5. **Supreme Court of Pakistan**
Muhammad Munir & others etc. v. Umar Hayat & others
Civil Appeal Nos.1731 & 1732 of 2021 & C.M.A.Nos.13433 & 13475 of 2021
Mr. Justice Ijaz ul Ahsan, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1731_2021.pdf

Facts: These two appeals are by the defendants and arise out of two declaratory suits and the relief claimed therein was first dismissed by the trial Court, and then on appeal by the first appellate Court, but on revision, this was accepted and the High Court issued decrees in favour of the plaintiffs. In this judgment both appeals have been decided together for not only the matter in issue in both of them are directly and substantially the same, but it is also between the same parties, who are litigating under the same title.

Issues: i) What standard of proof is required to prove the plea of insanity or unsoundness of mind of a person?
ii) Whether any party can be allowed to go beyond the scope of its pleadings?
iii) What is best evidence to prove the mental disorder of a person?
iv) Whether denial of a particular fact for want of its knowledge by a witness can be said to be an admission of fact?
v) Whether a contract of sale will be vitiated if the consent of either party is given by a person of unsound mind?
vi) Who can be said to be of sound mind person for the purpose of making the contract?
vii) Whether certificate endorsed on the conveyance deed by the Registering Officer is a relevant piece of evidence to presume that the deed is valid in law?
viii) What is standard of proof required in a civil dispute?

Analysis: i) Be it noted that plea of insanity or unsoundness of mind is an exception and the standard of proof for such a plea is somewhat higher than that of normal proof in civil cases.
ii) This was a material fact that ought to have been disclosed in the plaint, but was conspicuously omitted, and since the plaintiffs could not go beyond the scope of their pleadings, they could not even be allowed to put in any statement or material to rectify the omission during the course of evidence1, and as such, it would be fair to hold that the plaintiffs had failed to discharge their burden of pleadings, and tumbled at the first stage of the trial of their claim.
iii) It seems appropriate to point out that the best evidence of one's mental disorder could have been the medical attendant who treated him at the relevant

time. Evidence of layman especially relatives like son, daughter, wife etc, may be relevant, but being biased and exaggerated it cannot be conclusive.

iv) The denial of a particular fact for want of its knowledge by a witness cannot be said to be an admission of fact.

v) It is worth noting that a contract of sale, like any other contract, would be vitiated if the consent of either party is given by a person of unsound mind as provided in Section 11 of the Contract Act, 1872.

vi) Under Section 12 of that Act, a person is said to be of sound mind for the purpose of making the contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest. A person of unsound mind is thus not necessarily a lunatic or insane. It is sufficient if the person is incapable of judging the consequences of his acts…It is now well recognized that a permanent paralytic affection, though it somewhat saps the physical energy of the sufferer, does not necessarily impairs his mental power to such an extent to render him incapable of transacting business.

vii) It is important to stress here that registration of a document is a solemn act to be performed in the presence of a competent officer appointed to act as Registrar, whose duty it is to attend to the parties during the registration and see that the proper persons are present, are competent to act, and are identified to his satisfaction; and all things done before him in his official capacity and verified by his signature will be presumed to be done duly and in order. Therefore, the certificate endorsed on the conveyance deed by the Registering Officer under Section 60 of the Registration Act, 1908 is a relevant piece of evidence to presume that the deed is valid in law.

viii) It is settled that the standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt. In absence of any tangible evidence produced by the plaintiffs to support the plea of fraud, it does not take the matter further.

Conclusion: i) Plea of insanity or unsoundness of mind is an exception and the standard of proof for such a plea is somewhat higher than that of normal proof in civil cases.

ii) Any party cannot be allowed to go beyond the scope of its pleadings.

iii) The best evidence to prove the mental disorder of a person can be the evidence of a medical attendant who treated him at the relevant time.

iv) The denial of a particular fact for want of its knowledge by a witness cannot be said to be an admission of fact.

v) A contract of sale will be vitiated if the consent of either party is given by a person of unsound mind.

vi) A person is said to be of sound mind for the purpose of making the contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.

vii) The certificate endorsed on the conveyance deed by the Registering Officer under Section 60 of the Registration Act, 1908 is a relevant piece of evidence to presume that the deed is valid in law.

viii) The standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt.

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6. **Lahore High Court**
Mian Arif Said v. Province of Punjab etc.
Writ Petition No. 37087/2023.
Mr. Justice Ali Baqar Najafi, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4015.pdf

Facts: Through this Constitutional petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner has challenged the continued illegal custody/detention of the detenue seeking further direction to produce before this Court and then set at liberty.

Issues: i) Whether a party can allege malafide against the Investigating Officer and the police in general terms?
ii) Why the courts do not interfere into the investigation of a criminal case?

Analysis: i) No one can allege malafide against the Investigating Officer and the police in general terms which will not be sufficient as it has to be specifically pleaded against the government officials. However, it is most difficult to prove and the onus is always upon the person alleging as there is a presumption of regularity in all official acts and until that is rebutted, the action cannot be challenged.
ii) Under the concept of separation of powers, the investigation of a criminal case falls in the domain of the police. If independence of judiciary is a hallmark of a democratic dispensation then on the other hand independence of the investigation agency is equally important to the concept of rule of law. Undue interference in each other's role destroyed the concept of separation of powers and will go towards the defeating of jurisdiction.

Conclusion: i) No one can allege malafide against the Investigating Officer and the police in general terms.
ii) The courts do not interfere into the investigation of a criminal case under the concept of separation of powers.

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7. **Lahore High Court**
Rabia Sultan v. Province of Punjab and two others
Writ Petition No.43904/2023
Mr. Justice Ali Baqar Najafi, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4045.pdf

Facts: Through this writ petition, the petitioner assailed the order passed by Additional Chief Secretary (Home), whereby, petitioner's application for providing better class facility in the jail to her husband was dismissed.

Issues: i) Whether a prisoner who has not been involved in, or convicted for an offence under section 395 PPC shall be awarded better class jail facilities under rule 242

(2)(c)(v) of the Pakistan Prison Rules, 1978?
ii) Whether a prisoner can claim better class jail facility on the principle of parity?

Analysis: i) It has been observed that better class facility to the petitioner's husband was restricted by the authority by applying Rule 242 (2) (c) (v) supra, which though include section 395 PPC but not the section-7 of Anti-terrorism Act, 1997. We have minutely examined the language used in clause (c) above which is reproduced again for ready reference as under; "(c) has not been involved in, or convicted for, an offence:" In this clause, the words "has not been" are used; whereas Clause (a) of same subsection finds mentioned the word 'is' & 'has not been' and Clause (b) uses the words 'is' or 'has been'. Both the words, 'is' or 'has been' maintain different connotations and meanings; the use of word "is" obviously represents the present tense and would refer to something that is to be done or is being done in the present, therefore, by not using the word 'is', rather simply inserting the word "has been" in clause (c) makes it clear that it talks about something done in the past, thus the instant clause would apply on an offender who remained involved previously in such offences and this clause is not specified for first offender.
ii) The similarly placed prisoners were already extended this facility, therefore, it is the constitutional right of the petitioner's husband to enjoy the protection of law and to be treated in accordance with law which is an inalienable right of every citizen wherever he may be, as ordained under Article 4 of the Constitution of the Islamic Republic of Pakistan. 1973, therefore, he cannot be deprived of such right.

Conclusion: i) A prisoner who has not been involved in, or convicted for an offence under section 395 PPC shall be awarded better class jail facilities under rule 242 (2)(c)(v) of the Pakistan Prison Rules, 1978.
ii) A prisoner can claim better class jail facility on the principle of parity.

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8. **Lahore High Court**
Ghulam Abbas v. GOP, etc.
Criminal Appeal No.67693/2022
Mr. Justice Ali Baqar Najafi, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4080.pdf

Facts: The Appellant challenged the order whereby his name was entered in the 4th schedule of Anti-terrorism Act, 1997 and the order by which his review petition against the above order was rejected.

Issues: (i) What are the criteria or prerequisites for listing a person as a proscribed in the fourth schedule of Anti-terrorism Act, 1997?
(ii) How the term "reasonable grounds" as used in section 11-EE of the Anti-terrorism Act, 1997 is to be adjudged?

Analysis: (i) The criteria or prerequisites for listing a person as a proscribed in the fourth schedule of ATA, 1997 are almost settled by the courts i.e. the State must

demonstrate that the person sought to be notified as such, was involved in cases under Sections 6 and 7 of the ATA,1997 or was an office-bearer, activist or associate with an organization notified in terms of Section 11-B for proscription of organization by Federal Government or was member of such organization which was under observation in terms of Section 11-D of ATA, 1997 or was involved in terrorism or sectarianism. Further, in order to arrive at a conclusion on above aspects, the information may be gathered from any credible source whether domestic or foreign including governmental and regulatory authorities, the law enforcement agencies, financial intelligence units, banks and non-banking companies and even international institutions.

(ii) Section 11-EE of ATA, 1997 though enumerates different situations attracting liability for the persons to be enlisted in 4th schedule but use of words "reasonable grounds" in the section requires to evaluate the material/information within that scope… The reasonable grounds flow from the information available or collected against the delinquents and such information is usually derived from the links propagated through many types of material including SMS/Voice Messages, messages on WhatsApp or other social media accounts, pamphlets/handouts, posters, photographs, painting, caricatures, books/Literature, newspapers, Audio/Video CDs, electronic and digital material, wall chalking, banners/Pena flex, demonstrations in Rallies, material on Facebook, twitter or any other social media account, communication on Telephone/Mobile (CDR), speeches in Public Meetings, Radio & T.V. shows, surveillance report in any form, reports from international agencies, suspicious transaction report from any financial institution… All the persons who are involved in acts advancing a religious, sectarian or ethnic cause or promoting political destabilization could well be judged for enlisting in 4th schedule if credible information in any of the forms cited above or evidence is available against them. The authority before enlisting any person in 4th schedule must ensure that information be available in more than one forms as highlighted above so as to make it credible and be more than a suspicion. It is expected that authority should maintain record periodically for addition or deletion of any activities of the suspect during the period he is taken on 4th schedule so as to place it before the courts for proper assistance and decisions. It must be ensured that the person, once involved in such activities, is still alive and in touch with same state of affairs in order to avoid any deprivation of an individual from his fundamental rights whose dignity is to be respected which is inviolable right of a citizen as contemplated under Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: (i) Above mentioned are the criteria or prerequisites for listing a person as a proscribed in the fourth schedule of Anti-terrorism Act, 1997.

(ii) The term "reasonable grounds" as used in section 11-EE of the Anti-terrorism Act, 1997 envisages that the information for enlisting any person in 4th schedule must be available in more than one forms as highlighted above so as to make it credible and be more than a suspicion.

9. **Lahore High Court**
Muhammad Rehmat Ullah v. The State etc.
Criminal Appeal No.73676 of 2022
Mr. Justice Ali Baqar Najafi, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4087.pdf

Facts: Through this criminal appeal, the appellate assailed his sentence and conviction awarded to him in case FIR registered under sections 11-F(2), 11-W and 8/9 of Anti-terrorism Act, 1997 by the learned judge, Anti-terrorism Court.

Issues: i) Whether the document exhibited by the trial court must be sent to the court of appeal with records?
ii) Whether book in bound set is a document?
iii) Whether the presumption falls under Article 129 of Qanun-e-Shahadat Order, 1984 is optional with the court to presume or not to presume?
iv) Whether principles of evidence in criminal matters stand at variance or at different premise to one applied in civil matters?
v) Whether material extracted from the mobile phone of accused can be used against him if it was not put to him in his statement u/s 342 Cr.P.C?
vi) Whether retrieval of data from mobile phone of accused by PFSA without the consent of accused amounts to self-incrimination prohibited under Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973?
vii) Whether the right to privacy is meant to take precedence over any other inconsistent provisions of domestic law?
viii) When any mobile phone is recovered from a suspect and any data retrieval whereof from said phone is essential for criminal investigation, whether it can be obtained without the permission of concerned Court?
ix) What is the process which regulates the use and disposal of any information which is required to be extracted from a mobile phone recovered from an accused at the time of his arrest?

Analysis: i) Chapter 24-B of High Court Rules & Orders Volume-III states that exhibited articles, which are not documents and are not referred to in paragraphs 41 and 42 of this Chapter, should not be sent to the High Court, unless the High Court calls for them, or unless the Sessions Judge considers that a particular exhibit will be required in the High Court, in which case he should record a note at the foot of his judgment that the exhibit should be forwarded to the High Court in the event of an appeal. The above dictates of law requires that the documents exhibited must be sent to the court of appeal with records.
ii) The definition of ‘document’ in our law is the “matter expressed or described upon any substance” and not the substance itself, therefore information in the form of writing, words painted, map or plan, inscription or caricature etc. when appear on a substance would qualify to be a document which means book in bound set is not the document but the information therein.

iii) So far as the contention that judicial function are protected as having presumption of truth, suffice it to say that such presumption falls under Article 129 of Qanun-e-Shahadat Order, 1984, it says that 'Court may presume' which means that it is optional with the court to presume or not to presume because it is not like rebuttable presumption as of some referred under Article 90 to 95 & 99. Such Articles use word "shall" for presumption of facts mentioned therein, therefore, if facts are not rebutted, shall be presumed as in existence. Presumption under Article 129 of the said Order is also not like irrebuttable presumptions (conclusive) as referred in Article 55 and 128 of the said Order.

iv) As a legal challenge we turn to the contention of learned APG that fact of alleged non-exhibition of documents has not been challenged during recording of evidence, therefore, any fact if not cross examined shall be presumed as admitted or proved. We know that principles of evidence in criminal matters stand at variance or at different premise to one applied in civil matters.

v) So much so prosecution has also attached with the record a USB allegedly containing images, audios, videos, chat, call log etc., retrieved from the phone. This evidence cannot be used against the accused due to the reason that images retrieved from mobile phone were not put to the accused in his statement u/s 342 Cr.P.C.

vi) Article 13 of the Constitution prohibits self-incrimination. Above expression in Article 13(b) clearly indicates that no one can be compelled to be witness against himself. Retrieval of data from mobile phone of accused/appellant by PFSA without the consent of accused amounts to self-incrimination prohibited under Article-13 of the Constitution of the Islamic Republic of Pakistan, 1973.

vii) As a fundamental constitutional right, the right to privacy is meant to take precedence over any other inconsistent provisions of domestic law. Article 8 of the Constitution provides that "any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred under the Constitution, shall, to the extent of such inconsistency, be void."

viii) The acquisition of data stored in an information system or seizure of any articles containing such data requires intervention of Court either by obtaining warrant in this respect or otherwise an intimation to the Court after such seizure within 24 hours. When any mobile phone is recovered from a suspect, and any data retrieval whereof from said phone is essential for criminal investigation, it could only be obtained with the permission of concerned Court with strict regard to privacy rights guaranteed under the Constitution.

ix) For any property recovered on search u/s 51 of Cr.P.C. an appropriate order can only be made by magistrate concerned. This situation requires that Police officer if wanted to use such mobile/cell phone can request the magistrate for its analysis in support of allegation in the FIR, and magistrate after hearing the accused can pass order for examination and extraction of such information which is relevant to the case only, keeping strict regard to Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: i) The document exhibited by the trial court must be sent to the court of appeal with records.
ii) Book in bound set is not a document but the information therein.
iii) The presumption falls under Article 129 of Qanun-e-Shahadat Order, 1984 is optional with the court to presume or not to presume.
iv) Principles of evidence in criminal matters stand at variance or at different premise to one applied in civil matters.
v) Material extracted from the mobile phone of accused cannot be used against him if it was not put to him in his statement u/s 342 Cr.P.C.
vi) Retrieval of data from mobile phone of accused by PFSA without the consent of accused amounts to self-incrimination prohibited under Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973.
vii) The right to privacy is meant to take precedence over any other inconsistent provisions of domestic law.
viii) When any mobile phone is recovered from a suspect and any data retrieval whereof from said phone is essential for criminal investigation, it cannot be obtained without the permission of concerned Court.
ix) For any property recovered on search u/s 51 of Cr.P.C. an appropriate order can only be made by magistrate concerned. This situation requires that Police officer if wanted to use such mobile/cell phone can request the magistrate for its analysis in support of allegation in the FIR, and magistrate after hearing the accused can pass order for examination and extraction of such information which is relevant to the case only, keeping strict regard to Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973.

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10. **Lahore High Court**
Arzoo Textile Mills Ltd. etc. v. Federation of Pakistan etc.
W.P. No. 23960 of 2023
Mr. Justice Ali Baqar Najafi
https://sys.lhc.gov.pk/appjudgments/2023LHC4059.pdf

Facts: The petitioners prayed for setting-aside the notification of the Federal Government No.PF-5-(02-ZR) 2020, dated 28.02.2023 regarding withdrawal of subsidy on electricity, being unconstitutional, illegal, unlawful, coram non-judice and without lawful authority.

Issue: Whether a time subsidy granted through the decision of the Federal Government sent in Federal Cabinet can be withdrawn before the expiry of its term?

Analysis: The main emphasis of the arguments advanced by the learned counsels for the petitioners is that the Respondent/Federal Government works under a definite and permanent system of understanding and the decisions taken under the Constitutional mandate and on the basis of the command of the Parliament through the Cabinet which have to be followed. The principles of promissory estoppel and *locus poenitentiae* have been relied upon in support of the

contentions. It is also the case of the petitioners that based on this time-bound subsidy, the petitioner-companies engaged in many contracts and, therefore, any change of tariff is bound to affect their working. The stand of the Respondent/Federal Government, on the other hand, is that it is not in a position to continue with the time-bound subsidy due to the fluctuation in Dollar rates as well as other geo-strategic and geo-political situations. Also it is their case that executive subsidies are not supported and approved by international donors who have seriously objected to the said concessions granted to the petitioners. However, no Government can function if its policy is continuously reviewed without giving any permanence but no Government can earn a good reputation amongst its masses if it takes a decision without any economic viability. Similarly, no Government can survive unless it is in a position to give economic benefits to its subjects and it is equally important that no Government is acceptable unless it properly appropriate funds for the promotion of the export oriented industry to compete with the international commodities. But the policy decisions are to be taken on the basis of hard ground realities which cannot be interfered with by this Court. Besides, subsidy is to be merged into tariff before it is charged to the petitioner-companies, hence its challenge is to be made before the appropriate forum… there is no cavil to the proposition that the commitment if not based on thorough research input and, understanding reached between stakeholder made superficially and cosmetically but if it cannot be practically acted upon should not bind the Government… sovereign commitment must be given on a statutory basis and not merely in the decision of the cabinet, therefore, is not applicable to the present case. The legislative command is not supporting the case of the petitioners. The principles of *locus poenitentiae* or promissory estoppel are not attracted in this case for the reasons…Last but not least is that policy decision of Government cannot be interfered with.

Conclusion: A time subsidy granted through the decision of the Federal Government sent in Federal Cabinet can be withdrawn before the expiry of its term.

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11. **Lahore High Court**
Muhammad Younis and others v. Mst. Dolat Bibi and others
Civil Revision No.620 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3883.pdf

Facts: The petitioners through a suit for declaration alongwith permanent injunction assailed the mutations on the ground that they are against law and facts, ineffective upon the rights of petitioners and are liable to be cancelled. The trial Court after giving issue-wise findings dismissed the suit. The petitioners being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree; hence, the instant revision petition.

Issues: i) Whether Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the

Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction and said provision of law also requires the identification of such person by two respectable persons?
ii) Whether mutation entry is a document of title?
iii) Whether the entire structure built on illegal and defective foundation would have any value in the eyes of law?
iv) Once a mutation is challenged whether the party relies on such mutation is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation in dispute?
v) Whether while seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge?

Analysis: i) Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction. The said provision of law also requires the identification of such person by two respectable persons.
ii) It is a settled principle of law that mutation entry is not a document of title, which by itself does not confer any right, title or interest.
iii) It is also a well settled law that if the foundation is illegal and defective then entire structure built on such foundation would have no value in the eyes of law.
iv) It is a settled principle of law that once a mutation is challenged the party that relies on such mutation(s) is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation(s) in dispute.
v) Article 95 of the Limitation Act, 1908 provides that while seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge.

Conclusion: i) Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction and said provision of law also requires the identification of such person by two respectable persons.
ii) The mutation entry is not a document of title.
iii) The entire structure built on illegal and defective foundation would have no value in the eyes of law.
iv) Once a mutation is challenged, the party relies on such mutation is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation in dispute.
v) While seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge.

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12. **Lahore High Court**
Muhammad Nadir Khan (deceased) through L.Rs v. Muhammad Usama and others
Civil Revision No.42577 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3877.pdf

Facts: The petitioners instituted a suit for specific performance on the basis of agreements to sell against the respondents No.1 to 3/defendants with regards to the suit property. On the other hand, the respondents No.1 and 2 instituted suit for possession with permanent injunction and recovery of rent against the present petitioners and respondent No.4. The trial Court dismissed suit for specific performance of the petitioners and decreed suit for possession of the respondents No.1 and 2. The petitioners being aggrieved preferred two separate appeals which were dismissed, hence, the instant revision petition.

Issue: Whether father of minors can execute agreement to sell on behalf of minors without being appointed as guardian?

Analysis: There is no denial to the fact that disputed property is owned by the respondents No.1 and 2 who at the relevant time of purported agreements to sell were minors and respondent No.4 though was father but was not appointed as guardian of the said minors and no permission was accorded to him to sell out the property of the minors or enter into any kind of agreement on behalf of the minors by the Court of competent jurisdiction; therefore, he was not competent to enter into alleged agreements to sell on behalf of the minors. Under section 11 of the Contract Act, 1872 the minor disqualifies from entering into any contract, for disposal of his property, without appointment of a guardian by a Court of competent jurisdiction and if any such contract is entered the said transaction is void ab-initio and does not have any binding force.

Conclusion: Father of minors cannot execute agreement to sell on behalf of minors without being appointed as guardian.

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13. **Lahore High Court**
Commissioner Inland Revenue. v M/s Mehran Business International (Pvt) Ltd.
Sales Tax Reference No.53 of 2017.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC3960.pdf

Facts: A show cause notice was issued to the respondent wherein it was charged with contravention of Sections 3, 6, 7, 8B, 22 and 26 of the Sales Tax Act, 1990 read with S.R.O. No.647(I)/2007, dated 27.06.2007 as amended. The respondent joined the adjudicating proceedings and the Deputy Commissioner passed the assessment order. The respondent preferred an appeal against the aforementioned

assessment order, which was dismissed by the Commissioner Inland Revenue (Appeals). The respondent preferred further appeal before the Tribunal, which was dismissed however, the respondent filed an application for rectification of order and the Tribunal reversed its order and accepted appeal of the respondent. Now, the petitioner has filed this reference application under Section 47 of the Sales Tax Act, 1990.

Issues: i)What is the scope of power of rectification under section 57 of the Sales Tax Act, 1990?
ii) What is essential condition for exercise of power of rectification of mistake?
iii) Whether failure to adjudicate upon a substantial plea taken or controversy raised, which materially affects outcome of the case, constitutes a mistake apparent from the record and is rectifiable under Section 57 of the STA, 1990?
iv) Whether a mistake can be rectified when the decision sought to be rectified has already been assailed in appeal or Tax Reference?

Analysis: i) A comparison of the text of provisions of Section 57 of the Act makes it abundantly clear that the scope of rectification, which was previously confined to correction of clerical or arithmetical errors in any assessment, adjudication, order or decision, has been enlarged to rectify any mistake in the order which is apparent from the record. Rectification of mistake in the order may be made by the officer of Inland Revenue, Commissioner, the Commissioner (Appeals) or the Tribunal on his or its own motion or when the same is brought to his or its notice by a taxpayer or, in the case of the Commissioner (Appeals) or the Appellate Tribunal, by the Commissioner.

ii) The essential condition for the exercise of such power is that the mistake should be apparent from the record i.e. the mistake which may be seen floating on the surface and does not require investigation or further evidence. Any mistake in the order which is not patent and obvious from the record cannot be termed to be rectifiable.

iii) The power of rectification visualized under Section 57 ibid may not cover a full-fledged review of an order on discovery of new evidence or fresh legal ground becoming available after the decision sought to be corrected. However, the failure to adjudicate upon a substantial plea taken or controversy raised, when materially affects outcome of the case, in our opinion, does constitute a mistake apparent from the record which is rectifiable under Section 57 of the Act subject to satisfaction of other conditions and limitations specified therein. It is evident from perusal of Paragraph No.4 of the order dated 02.06.2016 passed by the Tribunal that the respondent raised a categorical plea that 10% unadjusted input tax was available for adjustment in the very next tax period which, being a substantive right of the taxpayer, could not be denied. This being a substantial plea materially affecting outcome of the case i.e. determination of tax liability of the respondent, was required to be adjudicated upon and failure to do so by the Tribunal constituted a mistake obvious and apparent from the record that was

rectifiable.
iv) A mistake is not rectifiable when the decision sought to be rectified has already been assailed in appeal or Tax Reference which merged into the final decision of that higher forum…

Conclusion: i) After substitution of section 57, correction of clerical or arithmetical errors in any assessment, adjudication, order or decision, has been enlarged to rectify any mistake in the order which is apparent from the record.
ii) The essential condition for the exercise of such power is that the mistake should be apparent from the record i.e. the mistake which may be seen floating on the surface and does not require investigation or further evidence.
iii) The failure to adjudicate upon a substantial plea taken or controversy raised, when materially affects outcome of the case does constitute a mistake apparent from the record which is rectifiable under Section 57 of the Act subject to satisfaction of other conditions and limitations specified therein.
iv) A mistake is not rectifiable when the decision sought to be rectified was already assailed in appeal or Tax Reference which merged into the final decision of that higher forum.

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14. **Lahore High Court**
Muhammad Ibrar, etc v. Govt. of Punjab, etc.
W.P.No.940 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC4007.pdf

Facts: The petitioners were owners of flour mills. They sought writ of mandamus for enhancement of wheat quota. The grievance of the petitioners was that the respondents were though bound to release the wheat for each district on the basis of need of the targeted population of that district but instead they decreased the supply of wheat quota to the flour mills without any lawful excuse.

Issues: i) Whether court can abridge the powers of executive to frame a policy or to settle its terms as per wishes and whims of a particular individual or a group of society while exercising of constitutional jurisdiction?
ii) Whether Right of freedom of trade, business or profession is an absolute and unbridled right or is subject to some qualifications?
iii) What is the basic responsibility of state regarding the promotion of social and economic well-being of the people guaranteed by the Constitution of Pakistan 1973?

Analysis: i) This Court in exercise of constitutional jurisdiction cannot abridge the powers of executive to frame a policy or to settle its terms as per wishes and whims of a particular individual or a group of society. While analyzing the vires of a policy, the Court is obliged to keep in mind the concept of trichotomy of powers between legislature, executive and judiciary. This well-known principle is inbuilt in the

"Constitution" which is founded on the ground that the legislature being representative of the people enacts the law and the law so enacted acquires legitimacy. Framing of a policy with regard to a particular subject is within the exclusive domain of the executive, which is in a better position to decide on account of its mandate, experience, wisdom and sagacity which are acquired through diverse skills. The last pillar of the trichotomy of powers is the judiciary, who is entrusted with the task to interpret the law and to play the role of an arbiter in cases of disputes between the individuals inter se and between individual and the State.

ii) Right of freedom of trade, business or profession is not an absolute and unbridled right, rather it is regulated by some restrictions. (…) From the bare perusal of Article 18 of the "Constitution", there remains no cavil that right of freedom, trade, business or profession is always subject to such qualifications, if any, as may be prescribed by law. These qualifications empower the Government to frame a policy, which is even provided under section 3 of the "Act, 1958". It is an oft repeated principle of law that in absence of any illegality, perversity, arbitrariness or an established malafide, it will not be open for the High Court to annul a policy framed by the executive.

iii) Article 38 of the "Constitution" guarantees the promotion of social and economic well-being of the people. Sub-article (d) though ordains that the State shall provide basic necessities of life e.g. food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment but its mandate cannot be extended for the benefit of petitioners being mill owners only to promote their business.

Conclusion: i) The Court in exercise of constitutional jurisdiction cannot abridge the powers of executive to frame a policy or to settle its terms as per wishes and whims of a particular individual or a group of society.

ii) Right of freedom of trade, business or profession is not an absolute and unbridled right, rather it is regulated by some restrictions. According to Article 18 of the Constitution of Pakistan 1973 there remains no cavil that right of freedom, trade, business or profession is always subject to such qualifications, if any, as may be prescribed by law.

iii) According to Article 38 of the Constitution of Pakistan 1973, the State shall provide basic necessities of life e.g. food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.

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15. **Lahore High Court**
Shakil-ur-Rehman v. The State & another and
The State v. Shakil-ur-Rehman & another
CSR No.2-N/2018, Crl. Appeal No.182346/2018, 197051/2018
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC3942.pdf

Facts: **A**ppellant filed an appeal under Section 48 of the Control of Narcotic Substances Act, 1997 against his conviction and sentence while the trial court forwarded Capital Sentence Reference under Section 374 Cr.P.C. for confirmation or otherwise of death sentence awarded to the convict. The prosecution also filed Crl. Appeal through which order qua handing over car to its real owner was questioned.

Issues: i) Whether the report of Chemical Examiner which does not give details of protocol and tests will meet the evidentiary presumption attached to a report of the Government Analyst under Section 36(2) of the CNSA, 1997?
ii) Whether Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 makes it mandatory on an analyst to mention result of sample analyzed with full protocols?
iii) If Supreme Court interprets or declares the law, whether the same interpretation must be applicable from the time when the law or provision in question was enacted?
iv) Whether the case carrying stringent sentence must be proved through cogent evidence?
v) Whether a single circumstance is sufficient to extend the benefit of doubt to an accused as of right?

Analysis: i) It is settled law by now that any report failing to describe in it, the details of the full protocols applied for the test will be inconclusive, defective, unreliable and will not meet the evidentiary presumption attached to a report of the Government Analyst under Section 36(2) of the CNSA, 1997.
ii) Rule 6 makes it imperative on an analyst to mention result of sample analyzed with full protocols applied thereon along with other details in the report issued for test/analysis by the Laboratory.
iii) It is settled law that when the Supreme Court interprets or declares the law, that interpretation only clarifies the meaning of the words already used by the legislature or the competent authority drafting the provisions. It stands to reason, therefore, that the same interpretation must be applicable not from the time when the judgment pronouncing such interpretation was rendered but from the time when the law or provision in question was enacted.
iv) It is cardinal principle of criminal justice system that the case carrying stringent sentence must be proved through cogent evidence in order to rule out the possibility of false implication.

v) It is golden principle of criminal law that a single circumstance creating reasonable doubt would be sufficient to smash the veracity of prosecution case and sufficient to extend the benefit of doubt in favour of the accused not as a matter of grace or concession but as of right.

Conclusion: i) Any report failing to describe in it, the details of the full protocols applied for the test will be inconclusive, defective, unreliable and will not meet the evidentiary presumption.
ii) Rule 6 makes it mandatory on an analyst to mention result of sample analyzed with full protocols.
iii) When the Supreme Court interprets or declares the law then the same interpretation must be applicable not from the time when the judgment pronouncing such interpretation was rendered but from the time when the law or provision in question was enacted.
iv) The case carrying stringent sentence must be proved through cogent evidence in order to rule out the possibility of false implication.
v) Only a single circumstance is sufficient to extend the benefit of the doubt to an accused as of right.

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16. **Lahore High Court,**
Ch. Fawad Ahmad and others v. Government of the Punjab and others,
Writ Petition No. 24153/2023
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Farooq Haider,
Mr. Justice Muhammad Amjad Rafiq.
https://sys.lhc.gov.pk/appjudgments/2023LHC3967.pdf

Facts: Police tried to execute non-bailable warrants of arrest against an accused but the arrest was obstructed. The police registered several FIRs. In this background, on the request of the Inspector General of Police, Punjab, vide Order dated 22.3.2023, the Home Department constituted a Joint Investigation Team (JIT) to investigate ten FIRs. The JIT has issued notices under section 160 Cr.P.C., to the Petitioners. The Petitioners, through this petition under Article 199 of the Constitution, challenged the legality of the order dated 22.3.2023 and sought quashment of the JIT's proceedings.

Issues: i) When and how an action is reckoned as offence of "terrorism" in a particular case, according to the Anti-Terrorism Act, 1997?
ii) Whether a notice under section 160 Cr.P.C. can be challenged under Article 199 of the Constitution before the High Court?
iii) Whether the High Court should, while exercising jurisdiction under Article 199 of the Constitution, intervene in the investigation before it is completed?
iv) Whether judicial review of an order can be filed when an alternative remedy is available?
v) What is Constitutionality of the Joint Investigation Team, Who can form it, what procedure it follows and whether its formation can be judicially reviewed?
vi) Whether section 19 of the Anti-Terrorism Act, 1997, violates Article 10-A of the Constitution i.e., right to a fair trial because it does not provide right for a change of investigation from a Joint Investigation Team?

vii) What is the difference among the roles of the Attorney General of Pakistan, Advocate General Punjab and the Prosecutor General?
viii) At what stage the Threshold Test can be applied in a case involving offence of terrorism?

Analysis: i)An action can only be characterized as "terrorism" when the *actus reus* specified in section 6(2) of the Anti-Terrorism Act, 1997 is accompanied by the *mens rea* required by section 6(1)(b) or 6(1)(c) of the Act ibid. Rule 25.3(3) of the Police Rules, 1934, states that the Investigating Officer must find out the truth of the matter under investigation, discover the actual facts, and arrest the real culprits. Therefore, he cannot commit himself prematurely to any account of the incident, including the one set out in the FIR, to reckon an act as offence of terrorism.
ii) The "doctrine of ripeness" applies in the matter of challenging a notice issued under section 160 Cr.P.C. It postulates that the Courts may not decide cases that involve uncertain and contingent future events that may not occur as anticipated, or indeed may not occur at all.
iii) The High Court should not, while exercising jurisdiction under Article 199 of the Constitution, intervene or otherwise comment on the applicability of any section of the Anti-Terrorism Act, 1997 before the investigation is completed.
iv) The Supreme Court of Pakistan guided that: (i) If the relief available through the alternative remedy is not what is necessary to give the requisite relief, (ii) If the relief available through the alternative remedy, is not speedy, affordable and convenient with reference to a comparison of the speed, expense or convenience of obtaining that relief under Article 199 of the Constitution, then such alternative remedy is not considered as an 'other adequate remedy'.
v) According to Article 13 of the EU Mutual Legal Assistance Convention, a Joint Investigation Team (JIT) is an "operational investigation team consisting of representatives of law enforcement and other authorities for different Member States and possibly from other organizations like Europol and Eurojust". Pakistan adopted the concept of the JIT in section 19 of the Anti-Terrorism Act, 1997, Article 18-A of the Police Order, 2002, section 30 of the Prevention of Electronic Crimes Act, 2016, and section 9 of the Anti-Rape (Investigation and Trial Act) 2021. Section 19(1) of the Anti-Terrorism Act, 1997 grants the Federal and Provincial Governments concurrent powers to form a Joint Investigation Team. The JITs perform their functions in accordance with the Anti-Terrorism Act, 1997, the Code of Criminal Procedure, the Police Rules, 1934, and the Investigation for Fair Trial Act, 2013. The formation of JIT is a purely administrative act, hence, it is not subject to judicial review.
vi) There is neither any rule of law nor administrative practice which gives any person a vested right to have the investigation of a case transferred and Sections 19(1A) and 28(3) of the Anti-Terrorism Act, 1997 give this authority to the Federal Government. If a person has a genuine grievance, he may also make a representation before it.
vii) The office of the Advocate General of a province established by Article 140 of the Constitution owes an independent obligation towards the courts under Order XXVII-A CPC. He is charged with the duty to advise the Provincial Government upon such legal matters and to perform such other duties of a legal character as may be referred or assigned to him. The Attorney General has two capacities: (1) Where the Federal Government directs him to appear in a case, and carry out instructions, whatever may be, and (2) as advisor, under the Constitution or law to advise the courts as to the interpretation of Constitution or law. The

Prosecutor General is the head of the Punjab Criminal Prosecution Service, established under the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006. Section 5(1) of the Act ibid states that the Punjab Government shall exercise superintendence over the Prosecution Service to achieve the Act's objectives, while section 5(2) states that the Service's administration shall, in the prescribed manner, vest in the Prosecutor General.
viii) The evidential consideration of the Threshold Test has two parts: the first is that the prosecutor must be satisfied, after evaluating the available evidence, that the person to be charged committed the offence. In the second part, the prosecutor must be convinced that the ongoing investigation will yield more evidence within a reasonable time so that all the evidence combined can establish a realistic prospect of conviction under the Full Code Test.

Conclusion: i) As per section 6 of the Anti-Terrorism Act, 1997, an action is reckoned as terrorism if it "is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect" or if such action is intended to "create a sense of fear or insecurity in society". The evidence gathered during the investigation would determine that the act done is offence of terrorism.
ii) A notice under section 160 Cr.P.C., cannot be challenged under Article 199 of the Constitution before the High Court unless it is patently illegal, mala fide, without jurisdiction or *coram non judice.*
iii) The judiciary should not interfere with the police in matters which are exclusively within their domain e.g., investigation process.
iv) A litigant cannot seek judicial review of an order if an alternative, convenient and efficacious remedy is available to him.
v) The Federal and Provincial Governments have concurrent powers to form a Joint Investigation Team and its formation cannot be subject to judicial review.
vi) The section 19 of the Anti-Terrorism Act, 1997, does not violate Article 10-A of the Constitution by not providing for a right of change of investigation from a Joint Investigation Team.
vii) The Advocate General of a province owes an independent obligation towards the courts and charged with the duty to advise the Provincial Government upon such legal matters as may be referred or assigned to him whereas, the duties of the Attorney General is to represent the Federal Government and act as an advisor to the interpretation of Constitution or law. However, the duties of Prosecutor General have been described under the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006.
viii) Paragraph 6.4 of the Code of Conduct of Prosecutors states that the Threshold Test should be applied at a later stage of the case involving offence of terrorism, such as when filing an interim report under section 173 Cr.P.C.

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17. **Lahore High Court**
Sharafat Ali v. The State etc.
Crl. Misc. No. 10982/B/2023
Mr Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4041.pdf

Facts: Petitioner sought pre-arrest bail in case FIR registered for offences under sections 337-U, 337-L(2) of the Pakistan Penal Code, 1860 ("PPC").

Issues: i) Whether the tooth is a bone or an organ?
ii) Whether breaking of tooth merely attracts section 337-U of PPC and the offence is punishable with Arsh only?

Analysis: i) Although teeth and bones share many similarities in composition and structure, there are significant distinctions. For example: (i) Teeth are not considered bones because they are unrelated to other body bones. Teeth are anchored in the gums and jawbone but do not form part of the skeletal system. (ii) Bones provide structural support for the body, protecting organs and facilitating movement. On the other hand, teeth are meant to break down food into little pieces that can be easily swallowed and digested. Teeth also play a vital role in communication because they aid in facial expressions and speech. (iii) Teeth are ectodermal organs like hair, skin, sweat glands, and salivary glands. Bones are living tissues. (iv) Bones undergo constant remodelling, whereas teeth do not. Bones can repair themselves, even after a significant injury, such as a fracture. In contrast, teeth are incapable of self-repair. If a tooth is damaged or decayed, it cannot recover on its own. Instead, it must be fixed with dental procedures, such as fillings, root canals, or crowns. (v) Bones also contain marrow, which produces blood cells. Teeth do not have marrow. It follows that teeth are not bones.

ii) Breaking of tooth constitutes Itlaf-i-salahiyyat-i-udw. This offence is punishable under section 336 PPC with Qisas, and if that is not executable under the principles of equality enunciated by Islam, the offender is liable to Arsh and may also be punished with imprisonment of either description for a term extending up to ten years as Ta'zir. Section 337-U PPC sets out the scale of Arsh for teeth. The Arsh for causing Itlaf of a tooth other than a milk tooth shall be equivalent to one-twentieth of Diyat. (The impairment of the portion of a tooth outside the gum amounts to causing Itlaf of a tooth). The Arsh for causing Itlaf of twenty or more teeth shall be equal to the value of Diyat. Where the Itlaf is of a milk tooth, the offender is liable to Daman and may also be punished with imprisonment of either description for a term extending to one year. Where, however, Itlaf of a milk tooth impedes the growth of a new tooth, the offender is liable to Arsh equal to one-twentieth of the Diyat. In cases of Itlaf-i-salahiyyat-i-udw, sections 332, 335, 336 and 337-U PPC are to be read conjointly. It does not merely attract section 337-U and the offence is not punishable with Arsh only.

Conclusion: i) Tooth is not a bone. Teeth are ectodermal organs like hair, skin, sweat glands, and salivary glands.

ii) In cases of Itlaf-i-salahiyyat-i-udw, merely section 337-U of PPC is not attracted and the offence is not punishable with Arsh only rather breaking of tooth constitutes Itlaf-i-salahiyyat-i-udw for which sections 332, 335, 336 and 337-U PPC are to be read conjointly.

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18. **Lahore High Court**
Fareed-ud-Deen Ahmed v. Chancellor University of Education, etc.
W.P.No.18847 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC3889.pdf

Facts: The petitioner was working as junior Key Punch Operator in the University of Education and he was removed from service on the charges of corruption. He challenged his removal through appeal before syndicate which was dismissed. He there-after filed departmental appeal against afore referred orders before the Governor of the Punjab in his capacity as Chancellor of University of Education, which was also dismissed as not maintainable. He has challenged all the afore-mentioned orders through this Constitution petition.

Issues: i) Whether appeal can be dismissed for the reason that incorrect law or provision of law has been referred to in the title of the appeal?
ii) Whether right of appeal is a procedural in nature which can be taken away?
iii) Whether entire case is reopened for consideration before the appellate forum?
iv) Whether formalities or technicalities can be allowed to defeat the ends of justice?

Analysis: i) Where remedy of appeal is available before the same forum under any other law or provision of law instead of the law cited in the title of the appeal, the same could not be dismissed for the reason that incorrect law or provision of law had been referred to in the title of the appeal and any such reasoning given for dismissal of appeal as misconceived and not maintainable would not be based on correct interpretation of law for the reason that wrong mentioned of law or a provision of law would not be an illegality but a curable defect in view of principles laid down by the Honourable Supreme Court of Pakistan in cases titled "Olas Khan and others versus Chairman NAB through Chairman and others" (PLD 2018 SC 40) and "MARGRETE WILLIAM versus ABDUL HAMID MIAN" (1994 SCMR 1555), wherein it is settled that mere mentioning of wrong provision of law could not be treated as an impediment in the way of filing or maintainability of an appeal, especially where remedy was available before the same authority or forum under some other provision of law and one type of proceedings could be converted to another type of proceedings by correction of mis-description of title of proceedings.
ii) Besides the right of appeal although procedural in nature is not merely a matter of procedure but a substantive right which once it has accrued according to law cannot be taken away unless the exercise of such right is barred under some provision of law as settled by the principles laid down by the Honourable Supreme Court.
iii) There is another aspect of the matter that unless curtailed by law, an appeal is the continuation of original proceedings, wherein the entire case is reopen for consideration before the Appellate forum and the appellate forum while deciding

the appeal has the same powers available with it as were vested in the original forum in view of the principles laid down in the judgments of the Honourable Supreme Court.

iv) Moreover, it is a settled law that principal object behind all legal formalities was to safeguard paramount interest of justice and proceedings should be held in order to do substantial justice and to avoid technicalities unless the same are insurmountable in view of some impediment placed on exercise of jurisdiction by law or is necessary on grounds of public policy as all procedures are meant for advancement of justice and to avoid injustice to the parties and mere technicalities unless offering an insurmountable hurdle should not be allowed to defeat the ends of justice…It is settled law that purpose behind legal and codal formalities and technicalities of procedure was nothing but only to ensure the safe administration of justice and avoid the chances of injustice/miscarriage of justice.

Conclusion: i) An appeal cannot be dismissed for the reason that incorrect law or provision of law has been referred to in the title of the appeal.

ii) The right of appeal although procedural in nature is not merely a matter of procedure but a substantive right which once it has accrued according to law cannot be taken away unless the exercise of such right is barred under some provision of law as settled by the principles.

iii) Entire case is reopened for consideration before the appellate forum and the appellate forum while deciding the appeal has the same powers available with the original forum.

iv) Formalities or technicalities cannot be allowed to defeat the ends of justice unless the same are insurmountable in view of some impediment placed on exercise of jurisdiction by law.

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19. **Lahore High Court**
Ahmad Muneel v. The State etc.
Criminal Appeal No.669 of 2023
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC3899.pdf

Facts: The appellant/convict assailed the order passed by trial court whereby the appellant was convicted under Section 228, P.P.C. and sentenced with imprisonment of 07 days.

Issue: Whether the act of intentional non-appearance of a witness before a court in defiance of its order amounts to intentional insult and/or interruption in a judicial proceeding?

Analysis: Admittedly, the trial Court has powers to punish for committing the contempt of the Court under section 228, P.P.C., but it was to be seen that the act of contempt by disobeying/violating the order was committed on the face of the Court…So far as the acts of "violation" and "disobedience" allegedly committed by the

appellant, punishments for the same have been provided in the Code of Criminal Procedure, as such the trial Court erred in law in holding the appellant guilty of contempt of Court for the said acts. Even otherwise, procedure has been provided in the Criminal Procedure Code in certain cases of contempt…Section 480 Cr.P.C. deals with what is known as direct Contempt of Court and in such an exigency, the Court has anoption to proceed either under section 480, Cr.P.C. or under section476, Cr.P.C. The alleged acts of "violation" or "disobedience" would not be taken as interference or interruption in the Court's work. Although the trial Court had jurisdiction to convict any person for committing contempt of the Court, but only in the circumstances mentioned in Section 228, P.P.C. The law has provided the procedure for proceeding against a contemnor who committed contempt of Court or insulted the Court on its face. In such-like cases, the Court is bound to follow the procedure provided in Sections 480 and 476, Cr.P.C. and where the Courts have not followed the procedure provided in section 480, Cr.P.C. the conviction and sentence are not maintainable.

Conclusion: The act of intentional non-appearance of a witness before a court in defiance of its order does not amount to intentional insult and/or interruption in a judicial proceeding.

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20. **Lahore High Court**
Hafeez Ullah Shahid. v. ASJ/JOP, etc.
Writ Petition No. 10957/2023.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC3920.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, petitioner has challenged the vires of order passed by learned Additional Sessions Judge/Ex-officio Justice of the Peace under section 22-A (6) Code of Criminal Procedure, 1898 to register FIR against the present petitioner under Article 155(1) (c) of Police Order, 2002 on alleged misappropriation of case property.

Issue: What course of action is available to the ex-officio Justice of the Peace if a complaint of neglect, failure or excess committed by any police officer/official is received?

Analysis: The scheme of law indicates that if a complaint of neglect, failure or excess committed by any police officer/official is received by the ex-officio Justice of the Peace, he can simply pass it to District Police Officer concerned for placing it before the Police Complaints Authority who is authorized to channelize it as per Article 36 of the Police Order, 2002, or ex-officio justice of the peace can direct the aggrieved person to approach the Police Complaints Authority by filing an application and further course of action shall be taken care of by the said authority under the law. If both the directions are not met, ex-officio justice of the Peace

can proceed as per law suggested above.

Conclusion: If a complaint is received, the ex-officio Justice of the Peace can simply pass it to District Police Officer or can direct the aggrieved person to approach the Police Complaints Authority if a complaint is received. If both the directions are not met, then he can proceed as per law suggested above.

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21. **Lahore High Court**
Nasira Bibi v. Special Judge Rent, Lahore and another
Writ Petition No. 80035 of 2022
Mr. Justice Sultan Tanvir Ahmed
https://sys.lhc.gov.pk/appjudgments/2023LHC3949.pdf

Facts: Through the present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed order passed by learned Special Judge (Rent), Lahore.

Issues: i) Whether directory provisions can be ignored altogether by the Rent Tribunal by construing section 19(3) of the Punjab Rented Premises Act, 2009 or its substantial compliance is obligatory?
ii) Whether the litigants should provide copies of all documents in their possession that they want to rely upon, at initial stage, by appending them with ejectment petition or leave petition?

Analysis: i) The real question is if by construing section 19(3) of the Act as directory, the rent tribunal can be permitted to altogether ignore giving the due weight or significance to the said provisions or if it is at all in the interest of justice or fair play to permit the litigants to introduce new evidence at belated stages and by doing the same the relevant provisions are being rendered useless or redundant. By now it is well settled law that mandatory enactments require strict compliance. An act or thing in non adherence of the mandatory enactments is invalid. It is also equally settled that a provision of law when is determined as directory, its substantial compliance is obligatory. When needed in the interest of justice the minor deviations from directory laws can be overlooked provided that there is substantial compliance. It is duty of the Courts to attend the scheme of Act and then to carefully examine the concerned provisions to reach the intent of legislature and to give effect to the same. (…) The Supreme Court of Pakistan has concluded that non-compliance of directory provisions might not invalidate an act but as it provides legislative process based on public interest, transparency and good governance, its substantial compliance is necessary.
ii) Keeping in view the object as well as the scheme of the Act, leads to irresistible conclusion that the legislature has intended that in order to resolve dispute of landlords and tenants in quick, expeditious and cost-effective manners the litigants should provide copies of all documents in their possession that they want to rely upon, at initial stage, by appending them with ejectment petition or

leave petition, as the case may be. The pleadings are required to be accompanied by affidavits of witnesses and if the leave is granted the affidavits can be treated as examination-in-chief.

Conclusion: i) The rent tribunal cannot altogether ignore the directory provision by construing section 19 (3) of the Punjab Rented Premises Act, 2009 and a provision of law when is determined as directory, its substantial compliance is obligatory.
ii) The litigants should provide copies of all documents in their possession that they want to rely upon, at initial stage, by appending them with ejectment petition or leave petition.

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22. **Lahore High Court**
M/s Abdullah Sugar Mills Ltd. v Federation of Pakistan, etc.
Writ Petition No. 42272 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC3935.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, The petitioner has challenged the show cause notice along with notice issued by the Deputy Commissioner Inland Revenue, on the ground that case of the petitioner falls within the purview of sub-section (6) of section 11 and outside the scope of sub-section (1) of section 11 of the Sales Tax Act, 1990, therefore, the impugned show cause notice has been issued without lawful authority and the same is of no legal effect.

Issues: i) Whether the scope of sub-section (1) of section 11 of the Sales Tax Act, 1990, is confined to those persons who are liable to be registered but not actually registered?
ii) Whether the provision of sub-section (6) of Section 11 of the Sales Tax Act is non obstante in nature?

Analysis: i) It is abundantly clear that provision of subsection (1) of section 11 of the Sales Tax Act, 1990 can be invoked only against a person required to file a return under the Act i.e. registered person. However, upon registration under the Act of a person, sub-section (1) of section 11 of the Sales Tax Act, 1990 becomes invocable against even for such period of default during which the person was liable to be registered and furnish return under the Act.
ii) There is no apparent inconsistency within the provisions of sub-section (1) and (6) of Section 11 of the Sales Tax Act inasmuch as those have been enacted for different purposes. While sub-section (1) of the Act confers authority to determine final tax liability of a person who defaulted in filing a tax return for a tax period or paid an amount for some miscalculation less than the amount of tax actually payable, jurisdiction under sub-section (6) of Section 11 of the Sales Tax Act is confined to determination of minimum tax liability of such registered person in default so in the absence of any apparent inconsistency or patent conflict within

the provisions of sub-section (1) and (6) of Section 11 of the Sales Tax Act, the question qua non obstante clause does not arise.

Conclusion: i) The provision of subsection (1) of section 11 of the Sales Tax Act, 1990 can be invoked only against a person required to file a return under the Act i.e. registered person.
ii) There is no apparent inconsistency within the provisions of sub-section (1) and (6) of Section 11 of the Sales Tax Act and sub-section (6) of Section 11 of the Sales Tax Act, is not non obstante clause.

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23. **Punjab Subordinate Judiciary Service Tribunal**
Ali Ashtar Naqvi v. Lahore High Court, Lahore Through its worthy Registrar and another
Service Appeal No.10 of 2018
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4073.pdf

Facts: The appellant was appointed as Civil Judge-cum-Judicial Magistrate and on successful completion of period of probation; the appellant was promoted to BS-18. The appellant tendered his resignation which was accepted. This followed a representation on behalf of the appellant but it was rejected, hence this appeal under Section 5 of the Punjab Subordinate Judiciary Service Tribunal Act, 1991.

Issues: i) How the term "resignation" can be defined?
ii) What should be taken into consideration to determine the fact whether resignation is voluntary or otherwise?
iii) Whether resignation can be withdrawn even after its acceptance by the competent authority?
iv) What is limitation period to file appeal or representation in respect of any order relating to terms and conditions of service?
v) Whether appeal before Service Tribunal would be hit by limitation when departmental appeal or representation is barred by time?
vi) What are the pre-requisites for filling appeal before Service Tribunal by the aggrieved person?

Analysis: i) Joint reading of the above referred definitions of "resignation" leads us to an irresistible conclusion that resignation means "formal renouncement or relinquishment of an office". It must be intentional and voluntary.
ii) It is trite law that for drawing a conclusion as to whether the resignation was voluntary or otherwise facts and circumstances in toto have to be taken into consideration.
iii) It is also an oft repeated principle of law that once a resignation is accepted by the competent authority, the employee tendering the same is precluded to recall it.
iv) Adverting to the question of limitation it is noticed that in terms of Section 21 of the Punjab Civil Servants Act, 1974 (hereinafter referred to as "Act, 1974")

right of appeal or representation is available to a Judicial Officer in respect of any order relating to terms and conditions of service, which is to be moved within sixty days of communication of such order to him.

v) Law is well settled that when departmental appeal or representation is barred by time even if the appeal before the Service Tribunal is filed within time it would be hit by limitation.

vi) In terms of Section 5(a) of the "Act, 1991" where an appeal, review or representation to a departmental authority is provided under the "Act, 1974", or any rules against any such orders, no appeal shall lie to the Tribunal unless the aggrieved person has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application, or representation was so preferred.

Conclusion: i) Resignation means "formal renouncement or relinquishment of an office".

ii) To determine the fact whether the resignation is voluntary or otherwise facts and circumstances in toto have to be taken into consideration.

iii) Resignation cannot be withdrawn after its acceptance by the competent authority.

iv) Limitation period to file appeal or representation in respect of any order relating to terms and conditions of service is sixty days from communication of such order.

v) When departmental appeal or representation is barred by time even if the appeal before the Service Tribunal is filed within time it would be hit by limitation.

vi) No appeal shall lie to the Tribunal unless the aggrieved person has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application, or representation was so preferred.

LATEST LEGISLATION/AMENDMENTS

1. The Day Care Centres Act, 2023 is promulgated to provide for the facility of day care centers in public and private establishments
2. The Trained Paramedical Staff Facility Act, 2023 is promulgated to provide for the facility of trained paramedical staff in public and private schools
3. The Maternity and Paternity Leave Act, 2023 is promulgated to provide for the facility of maternity and paternity leave to the employees of public and private establishments under administrative control of the Federal Government
4. Vide the Transplantation of Human Organs and Tissues (Amendment) Act, 2023, new section 4A is inserted
5. Vide the Limitation (Amendment) Act, 2023, the First Schedule is amended
6. Vide the Specific relief (Amendment) Act, 2023, amendment has been made in section 42

7. Presidential Order No. 02 of 2023 is made regarding the Salary of Judges of the Supreme Court of Pakistan.
8. Presidential Order No. 03 of 2023 is made regarding the Salary of Judges of the Supreme Court of Pakistan.
9. Vide Notification No. E&A(HEALTH)1-607/2021 dated 17th May, 2023, the order of SHC & ME Department dated 15.05.2023 regarding nomination of Focal Person in all court cases related to the Establishment Wing, SHC&ME Department of Allied Health Professionals is cancelled/ withdrawn.
10. Vide Notification No. E&A(HEALTH)1-607/2021 dated 15th May, 2023, Deputy Secretary (Establishment-II) SHC&ME Department is nominated as Focal Person in all court cases related to the Establishment Wing.
11. Vide Notification No. FD(W&M)9-138/ 2023 dated 12th July, 2023, amendments have been made in the Punjab Pension Fund Rules 2007.
12. Vide Notification No. SO(E&M)2-3/ 2018 (E-R) dated 7th July, 2023, amendment has been made in the Punjab Fiscal Order, 2017
13. Notification No. SOTAX(E&T)3-3/ 2022 dated 7th July, 2023 is issued to extend the valuation lists prepared on the basis of valuation tables notified vide Notification No. SO.Tax(E&T)3-38/2014 dated 26.06.2014
14. Notification No. SOTAX(E&T)3-38/ 2024(Vol-VII) dated 7th July, 2023 is issued to remit the Property Tax in respect of all property units where the property tax liability for the financial year exceeds 120% of the property tax payable for the financial year 2013-2014
15. Notification No. SO (E&M)1-101/2018 dated 7th July, 2023 is issued to grant an exemption of tax at the rate of ninety five percent in respect of all motor vehicles propelled on a road entirely by electrical power
16. Vide Notification No. FD(W&M)7-653/ 2023 dated 12th July, 2023, The Punjab Public Financial Management (Special Purpose Fund) Rules 2023 have been made.

SELECTED ARTICLES

1. YALE JOURNAL OF LAW AND TECHNOLOGY

https://yjolt.org/blog/bias-and-ethics-ai-enabled-legal-technology-examining-role-and-impact-human-inputs-ai-rendered

Bias and Ethics in Ai-Enabled Legal Technology: Examining the Role and Impact of Human Inputs on Ai-Rendered Results in Legal Matters by Peter Gronvall , Nathaniel Huber-Fliflet, Jianping Zhang

Advancements in the application of data analytics and artificial intelligence technologies are increasingly influencing the way legal service providers, including law firms, technology partners, and even in-house corporate legal teams, operate in the types of large-scale legal matters that prevail today. At unprecedented rates, corporations, law firms, and state and federal enforcement agencies are accepting and adopting the use of advanced technology solutions to help understand and engage with essentially infinite

data volumes – and vastly disparate data types – that fall within the scope of today's legal matters. Current innovative approaches, such as workflow automation, artificial intelligence, machine learning, and algorithm-driven data analytics are enabling the discovery of the most relevant facts in these high data volume legal matters. As the legal field embraces rapid technology innovation, a vigorous debate has emerged around what boundaries those technologies should abide by, especially as they relate to how humans and machines should interact in the 'fact discovery' process. This debate'sprevailing themes, include focusing on affirming the efficacy of machine training methodologies, employing defensible technology validation processes, and understanding where human intervention in an AI-enabled workflow should end, and where AI-rendered results can be trusted. These tenets generally frame the 'machines versus humans' debate that is now alive and well – and, some would suggest, far from being resolved – with interested and well-vested parties on both sides. This debate is driving a vigorous academic search for two principles which we seek to address in our research: (i) understanding the 'right' balance between machines and humans; and (ii) understanding how to evaluate the roles of human inputs in impacting the quality of AI-rendered results. The first phase of our research explored what a fair and 'right' balance between machines and humans could be, in machine-learning scenarios, and we highlight that research first within this article. Next, we describe our new study, which seeks to expand upon this debate to understand further the nuanced role of humans in guiding, testing, and applying results generated by machines, to outcomes, with particular focus on how those results impact legal case strategies.

2. Human rights Law Review

https://academic.oup.com/hrlr/article/23/3/ngad013/7187934?searchresult=1

The Indivisibility of Human Rights: An Empirical Analysis by Jan Essink, Alberto Quintavalla, Jeroen Temperman

This article aims to test whether human rights have an indivisible nature. To do that, we perform correlation analysis and Granger causality tests to test 1) the relationship within socio-economic rights and 2) between socio-economic rights and civil-political rights. The results show that certain socio-economic rights have mutual reinforcing relationships, lending support to the existence of widespread indivisibility. This finding yields relevant policy implications. Given their financial constraints, states could make use of the existence of widespread indivisibility, in combination with the progressive implementation clause, to foster the efficient allocation of resources for human rights implementation. Furthermore, this article shows that the intensity of indivisibility varies depending on the income category of states: the indivisible nature of socio-economic rights is more intense in low-income countries while seems to achieve a saturation point at the highest levels of human rights compliance. We, thus, propose to define this phenomenon as 'indivisibility saturation'. Lastly, our findings detect a more complex picture for the indivisibility principle between the two classes of human rights. While widespread indivisibility does not follow from the tests, important unidirectional relationships between different human rights exist and are equally important for human rights policy-making purposes.

3. Manupatra

https://articles.manupatra.com/article-details/Vicarious-Liability-and-Negotiable-Instruments-Unsettling-the-settled-position

Vicarious Liability and Negotiable Instruments: Unsettling the Settled Position by Sanya Singh and Dhruv Kohli

*The Delhi HC in **Fadi El Jaouni v. Gian Chand Garg**, while applying section 141 of the Negotiable Instruments Act, 1881 ("NI Act"), had held that the Chief Financial Officer of the company was not vicariously liable under section 141 of the NI Act. The reasoning however, given by the court while arriving at its decision appears to go against the basic tenants of liability established by the courts under section 141 of the NI Act. Section 138 of the NI Act deals with cheque bounce cases wherein the cheque bounces for want of insufficient funds. Section 141 of the act deals with cases wherein the accused, is a company or a firm and seeks to impose vicarious liability on the individuals who were in control of the company when the said offense was committed. The purpose of this article is to critically analyse the judgment by pointing out the flaws in the decision and how the decision may have a negative impact on the implementation of other laws.*

4. Manupatra

https://articles.manupatra.com/article-details/Analysing-the-types-of-disputes-in-Corporate-Governance-and-Role-of-ADR-in-Dispute-Resolution

Analysing the Types of Disputes in Corporate Governance and Role of ADR in Dispute Resolution by Rushank Kumar

Corporate Governance refers to a mechanism that helps in effective and efficient functioning of a company, while maintaining a harmonious relationship between all the stakeholders of a company and protecting the interest of all stakeholders. It laws down the roles and responsibilities of each and every member in the corporation bringing in place a mechanism that ensures the proper and smooth functioning, decision making and planning.

However, while taking decisions or forming strategies there could be disagreements between the stakeholders of the company which can have a negative impact on its growth and on other stakeholders associated with it. Here, ADR mechanisms could be used like mediation to resolve the conflict between various individuals or stakeholders in a company that could help easy, quick and efficient disposal of disputes, which in turn would help in avoiding litigation costs and time.

The aim of this paper is to understand the various types of disputes that arise in a company and how ADR mechanisms could be used to resolve the disputes in a much efficient manner. The paper would focus on gaps existing in the system of Corporate Governance where ADR could be used in the advantage of all stakeholders and the company itself.

5. Manupatra

https://articles.manupatra.com/article-details/BENEATH-THE-SURFACE-OF-POWER-RELATIONS-UNDERSTANDING-THE-DYNAMICS-OF-ABUSE

Beneath the Surface of Power Relations: Understanding the Dynamics of Abuse by Lokesh Patel and Kalash Jain

Liberty may be endangered by the abuse of liberty, but also by the abuse of power" ***- James Madison***

The theory of abuse of power stems back to Plato's Republic, which described it as unjust use of power or authority. It would also include definitions for key terms such as exploitation and manipulation.

Some people think that abuse is only physical; however, psychological abuse can be worse in some ways. There's more to it than that. Abuse of power is the dominance or control over another by the use of threats or violence. It can be physical, psychological, sexual, or financial. Abuse of power occurs when an organization puts the personal agenda of a leader over the needs of employees and customers. That can include internal corruption, political infighting, and self-dealing. Simply said, Abuse of power refers to the use of power unfairly to advance an individual, an organization, or a regime. There are several different ways to define "abuses of power", including "white-collar crime", "economic crime", "organized crime", "labor crime", "public corruption", as well as "governmental" and "corporate" deviation. The community element of the crime is trumped. Although such actions have been carried out since the earliest history, recent technological and social "followers" have created a climate more favorable to them.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-07-2023 to 31-07-2023)

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

		composition of Management Committee; Manipulation of Constitution of PCB 2014; Interference by Constitutional Courts in policy matters; Effective representation of four elected representatives from regions		
10.		Challenge to compromise/consent decree once raised and finally decided up till SC & principle of res judicata; Grant of additional mark-up beyond contracted mark-up after promulgation of FI(ROF)O, 2001;	Civil Law	13
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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Federation of Pakistan through Secretary Revenue Division/Chairman, Federal Board of Revenue, Islamabad v. Sus Motors (Pvt.) Ltd. and other connected petitions
Civil Appeals No. 565/2011, 772 to 780/2012, 768 to 772/2014, 1070/2015, 132 to 156/2017
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._565_2011.pdf

Facts: The forty-one appeals have been decided through single judgment. Forty out of these forty-one appeals involve the interpretation of section 81 of the Customs Act, 1969. There are four sets of impugned judgments in the said forty appeals, which have been rendered by four different Divisional Benches of the High Court. Hence, these civil appeals have been filed against the judgments passed by High Court.

Issue: Whether Collector of Customs is empowered to extend the period for final assessment/determination when goods could not be assessed/reassessed within the stipulated period?

Analysis: At the time of the enactment of the Act in 1969 its section 81 was titled Provisional assessment of duty1 which was substituted in 2005 by Provisional determination of liability. Section 81 has undergone a number of changes from time to time, however, to the extent of these cases it has in substance remained the same. Imported goods are assessed to duty when the bill of entry, later changed to goods declaration, is filed under section 80 of the Act. If however imported goods could not immediately be assessed to duty they would be provisionally assessed/reassessed by the concerned officer of Customs and within the stipulated period finally assessed/reassessed. If within the stipulated period the goods could not be assessed/reassessed the Collector of Customs was empowered in exceptional circumstances to extend the period for final assessment/determination… The learned Judges of the High Court in the said forty appeals had correctly applied the law, and did so in accordance with the stated precedent of this Court. It is also not the case of the appellants that the learned Judges had miscalculated the stipulated periods prescribed in section 81 of the Act. The learned Judges were also correct in observing that there were no circumstances of exceptional nature to justify the extension of the period.

Conclusion: The Collector of Customs is empowered in exceptional circumstances to extend the period for final assessment/determination when goods could not be assessed/reassessed within the stipulated period.

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2. **Supreme Court of Pakistan**
Asrar Ahmed and 5 others v. Chairman Pakistan Aeronautical Complex Board, Kamra and others
Civil Petitions No. 657 to 662 of 2020
Mr. Justice Umar ata Bandial, HCJ, Mr. Justice Amin-ud-Din khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._657_2020.pdf

Facts: Six Civil Petitions for leave to appeal were directed against the common Judgment dated 11.12.2019, passed by learned Federal Service Tribunal, Islamabad whereby the service appeals filed by the petitioners were dismissed wherein they claimed eligibility for promotion to the next higher grade as civil servant on the score that they opted to continue as civil servant.

Issues: i) Whether extending the first right of refusal in terms of PACB Ordinance, 2000 read with PACB Employees (Service) Rules, 2002 to opt the new service rules and service structure of the Board or to be governed by old rules, can be inferred as the violation or infringement of any fundamental rights?
ii) Whether contradictory demeanor of employees, by asserting an option to be governed under Civil Servants Act, 1973 without any proof on record and simultaneously by appearing in non-stop attempts of departmental examinations, is hit by the doctrine of approbate and reprobate?

Analysis: i) It is also beyond any logical comprehension that according to the petitioners they were forced to sit in the examination, but they never put forward any objection or reservation, nor anything was brought on record to show that they appeared in the examinations without prejudice to their right to challenge. It is clear from the conduct of the petitioners that, after failure in the departmental examinations, a fall back stand was set in motion that the promotion cases of the petitioners should be processed in accordance with the APT Rules, being civil servants, and not as the employees of the PAC Board without submitting their option at the relevant time when they were afforded an opportunity to segregate themselves from the purview of the PACB Rules, but they failed to do so despite receiving an evenhanded and fair opportunity. According to the respondents, nothing is available on their record to indicate that any option was ever tendered by the petitioners. The first right of refusal was extended in terms of Ordinance to opt the new service rules and service structure of the Board according to the scheme of restructuring and reorganization, which cannot be construed the violation or infringement of any fundamental rights of the petitioner but it was founded on consensual act of every individual employee without any compulsion or pressure and the particular portion or provision of law inviting options from the employees was never challenged by the petitioners if in actual fact considered to be ultra vires the Constitution or the law.
ii) The chronicles of the petitioners' case expounds that they intermittently appeared in the departmental examinations starting from the year 2012 to 2018, but nobody could qualify the examination which was a precondition for awarding

promotion. On one hand, the petitioners are asserting that they submitted the option but on the other hand, their never-ending and non-stop attempts in the departmental examination unambiguously corroborated that they never submitted any option in keeping with the requirements laid down in the PACB Ordinance. On the contrary, right through, the demeanor of petitioners signifies they assented and acquiesced to be governed by the PACB Ordinance and the PACB Rules, rather than being governed under the Civil Servants Act 1973 and the APT Rules. The plea of the petitioners is also hit by the doctrine of approbate and reprobate; the maxim *qui approbat non reprobat* (one who approbates cannot reprobate) is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument, which both grants a benefit and imposes a burden, cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument. For all intents and purposes, the doctrine is somewhat nip in the bud to a contradictory demeanor which activates in circumstances where a person has to pick and choose between two rights and he cannot pick out both. If he opted one between the two, then he cannot later on ask for the other.

Conclusion: i) The first right of refusal extended in terms of PACB Ordinance, 2000 to opt the new service rules and service structure of the Board, cannot be construed the violation or infringement of any fundamental rights of the petitioner especially when it was founded on consensual act employees without any compulsion or pressure.

ii) Act of an employee by appearing in non-stop departmental examination and asserting option to be governed by old laws is contradictory demeanor and thus hit by doctrine of approbate and reprobate.

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3. **Supreme Court of Pakistan**
Special Secretary-II (Law & Order), Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar
Civil Petition No.3750 of 2020
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3750_2020.pdf

Facts: The respondent filed writ petition after a lapse of 12 years for compensation on account of alleged damage to his house during the Army Operation of Rah-i-Nijat. High Court allowed the Writ Petition with the directions to the petitioners to pay the compensation to the respondent as estimated by the political agent in the year 2007. This Civil Petition for leave to appeal is directed against the judgment passed by the High Court.

Issues: i) Which law provides the procedure and mechanism of payment of compensation for damage caused by reason of any disaster in Khyber Pakhtunkhwa?

ii) Whether civil court has the ultimate jurisdiction to decide the claim of special

and/or general damages after recording evidence of the parties?
iii) Whether disputed questions of facts can be entertained and adjudicated in the writ jurisdiction?
iv) What is object of proceedings under Article 199 of the Constitution?
v) What is touchstone of jurisdiction conferred upon the High Courts under Article 199 of the Constitution?
vi) Whether principle of laches applies on constitutional petitions?

Analysis: i) In order to provide for an effective national disaster management system and for matters connected therewith or incidental thereto, the Provincial Assemblies of Balochistan, Khyber Pakhtunkhwa, and Punjab had passed Resolutions under Article 144 of the Constitution of the Islamic Republic of Pakistan, 1973, to the effect that Majlis-e-Shoora (Parliament) may, by law, regulate the national disaster management system to overcome unforeseen situations and, as a result of aforesaid Resolutions, the National Disaster Management Act, 2010 was promulgated. Originally, Section 39 of the 2010 Act was in relation to the compensation payable on requisition of any premises as rent to its owner, which was subsequently substituted by Khyber Pakhtunkhwa Act No.VI of 2012 and according to substituted Section 39, the procedure and mechanism of payment of compensation was laid down which accentuates that where by reason of any disaster, resulted in a substantial loss of life or human suffering or damage to and destruction of property or a large scale migration of the affected people consequent to the disaster, there shall be paid compensation to the affected people for the losses to the life or property, in addition to relief, rehabilitation, settlement activities, provided that amount of compensation shall be determined by the Provincial Government.

ii) The Civil Court had the ultimate jurisdiction to decide the claim of special and/or general damages after recording evidence of the parties and, in order to reach a just and proper conclusion, the right course was to approach Civil Court rather than the High Court in the Writ jurisdiction.

iii) It is a well settled exposition of law that disputed questions of facts cannot be entertained and adjudicated in the writ jurisdiction. The learned High Court in the impugned judgment itself observed that it cannot practically assess the amount of damage but, despite that, the petition was allowed in disregard of a crucial facet that in the constitutional jurisdiction, the High Court cannot go into miniature and diminutive details which could only be resolved by adducing evidence by the parties vice versa. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression “adequate remedy” signifies an effectual, accessible, advantageous and expeditious remedy.

iv) The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right and, therefore, the

right of the incumbent concerned which he seeks to enforce must not only be clear and complete but simpliciter and there must be an actual infringement of the right.

v) Whereas in the case of Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib & others (2011 SCMR 1813), this Court intensely conversed the prerequisite and touchstone of jurisdiction conferred upon the High Courts under Article 199 of the Constitution and held that the question of adequate or alternate remedy has been discussed time and again by this Court and it is well settled by now that the words "adequate remedy" connote an efficacious, convenient, beneficial, effective and speedy remedy. It should be equally inexpensive and expeditious. To effectively bar the jurisdiction of the High Court under this Article the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a petition under Art. 199. The other remedy in order to be adequate must be equally convenient, beneficial and effective and the relief afforded by the ordinary law must not be less efficacious, more expensive and cumbersome to achieve as compared to that provided under the Article.

vi) There is no exception to the rule that a delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if the remedy of filing a constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Delay would defeat equity which aids the vigilant and not the indolent. Laches in its simplest form means the failure of a person to do something which should have been done by him within a reasonable time. If the remedy of constitutional petition was not availed within reasonable time, the interference could be refused on the ground of laches. Question of laches in constitutional petition is always considered in the light of the conduct of the person invoking constitutional jurisdiction.

Conclusion: i) Khyber Pakhtunkhwa Act No.VI of 2012 provides the procedure and mechanism of payment of compensation for damage caused by reason of any disaster in Khyber Pakhtunkhwa.

ii) Civil court has the ultimate jurisdiction to decide the claim of special and/or general damages after recording evidence of the parties.

iii) Disputed questions of facts cannot be entertained and adjudicated in the writ jurisdiction.

iv) The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right.

v) The touchstone to effectively bar the jurisdiction of the High Court under Article 199 of the Constitution is that the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a petition.

vi) Principle of laches applies on constitutional petitions and question of laches in constitutional petition is always considered in the light of the conduct of the person invoking constitutional jurisdiction.

4. **Supreme Court of Pakistan**
The President of Pakistan and others v. Justice Qazi Faez Isa
C.M.A. 2012 OF 2023 IN C.M. APPEAL NO. 81 OF 2021 and other connected petitions
Mr. Justice Umar Ata Bandial, HCJ
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._2012_2023_10042023.pdf

Facts: The appellants filed Civil Misc. Applications seeking the withdrawal of their curative review petitions filed against the Supreme Court's decision given in its review jurisdiction in Justice Qazi Faez Isa v. President of Pakistan (PLD 2022 SC 119).

Issue: Whether a curative review petition/second review petition is maintainable against a decision of the Supreme Court of Pakistan?

Analysis: The bar on filing a second review petition is declared in the Supreme Court Rules, 1980… This bar has also been affirmed by a 5 Member Bench of the Court in Khalid Iqbal Vs. Mirza Khan (PLD 2015 SC 50) at para 12. Therefore, under the current scheme of the law the appellants appear to be precluded from filing a review against the Subject Judgment because it has finally disposed of the review petitions filed against the original judgment… Insofar, as the principle of curative review petitions is concerned, it is not disputed by the appellants that the existence of this jurisdiction has hitherto not been considered by the Court. In fact, all the judgments cited by them in support of their curative review petitions reiterate what has been held above: that a second review is barred by law and that the Court alone is empowered, if so inclined, to re-visit, review or set aside any of its previous judgments/orders. Further a study of the Indian law on curative review reveals that it is a remedy altogether distinct from the *Suo Motu* exercise of jurisdiction by the Court. Whereas curative review has no standing in our jurisprudence the availability of *Suo Motu* review has long been accepted by the Court, albeit in the limited circumstances of doing complete justice under Article 184(3) and/or Article 188 read with Article 187 of the Constitution. It is of course clear that both types of judicial interventions, curative review and *Suo Motu* review, possess a similar purpose i.e., to correct a fundamental error in a previous judgment/order. However, the key difference, *inter alia*, between the two jurisdictions lies mainly in their mode and manner of invocation.

Conclusion: A curative review petition/second review petition is not maintainable against a decision of the Supreme Court of Pakistan.

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5. **Supreme Court of Pakistan**
National Database and Registration Authority (NADRA) through its Chairman, Islamabad and others v. Jawad Khan, Ghulam Saddiq, Amjad Ali
CIVIL PETITIONS NO.596 TO 598 OF 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._596_2021.pdf

Facts: The respondents qualified for the post of CSE but they were appointed as DEOs, therefore the respondents filed Writ Petitions in the High Court with this cause of distress and the High Court allowed the Writ Petitions with directions to NADRA to treat the present respondents/petitioners at par and to appoint them to the posts of CSE with effect from the date from which the petitioner was ordered to be appointed. These Civil Petitions for leave to appeal are directed against this judgment whereby the writ petitions were allowed with certain directions to the petitioner No.1, the National Database and Registration Authority ("NADRA").

Issues: i) What is the doctrine of legitimate expectation and what is its purpose?
ii) What are the essential prerequisites for lodging a right and entitlement under the doctrine of promissory estoppel?
iii) Whether doctrine of promissory estoppel is equivalent to estoppel?

Analysis: i) The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. In fact, a legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government or a public authority. When such a legitimate expectation is obliterated, it affords a locus standi to challenge the administrative action and even, in the absence of a substantive right, a legitimate expectation may allow an individual to seek judicial review of a wrongdoing; and in deciding whether the expectation was legitimate or not, the Court may consider that the decision of the public authority has breached a legitimate expectation and, if it is proved, then the Court may annul the decision and direct the concerned authority/person to live up to the legitimate expectation. This doctrine is basically applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation.
ii) The essential prerequisites for lodging a right and entitlement under the doctrine of promissory estoppel are that there must be a promisor and a promisee, and the promisee suffered a loss due to renunciation of promise. In such a situation, the Courts may put into operation this doctrine for administering justice to an aggrieved person. It is not necessary in all circumstances for the attraction of this doctrine that the promisee who placed trust and dependence on the promise

should sustain harm, but what actually necessary is that the promisee should have changed his position in reliance on the promise and was caused prejudice.
iii) The doctrine of promissory estoppel cannot be repressed in line with equivalent constriction as estoppel in the stricto sensu, rather it is an equitable course of therapy developed by the Courts for doing justice against a valid cause of action.

Conclusion: i) The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. This doctrine is applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation.
ii) The essential prerequisites for lodging a right and entitlement under the doctrine of promissory estoppel are that there must be a promisor and a promisee, and the promisee suffered a loss due to renunciation of promise.
iii) This doctrine cannot be repressed in line with equivalent constriction as estoppel.

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6. **Supreme Court of Pakistan**
Muhammad Riaz v. Muhammad Ramzan and others.
Civil Petition No.446 -L of 2014
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._446_l_2014.pdf

Facts: Through this Civil Petition for leave to appeal is directed against the Judgment passed by the High Court in R.S.A. whereby the regular second appeal filed by the petitioner was dismissed.

Issues: i) Whether partial decree of Pre-emption is possible?
ii) Whether a person can approbate and reprobate or accept and reject the same instrument?

Analysis: i) It is a well-settled legal precept that no partial decree is possible in a pre-emption suit as the right of pre-emption is one of substitution, even in the case of pre-emption under statute law, unless the statute itself has made a departure in this regard to any extent. From the doctrine that the right of pre-emption is one of substitution it follows that, unless the statute conferring the right of pre-emption otherwise provides, the pre-emptor must take over the whole bargain, that is to say, the pre-emptor must seek pre-emption of the whole of the subject-matter of the sale and pay the entire price paid by the vendee as consideration. This, however, is subject to certain limitations which, at any rate, do not include the vendor's defective or want of title. Suffice it to say by way of example that a pre-emptor is not bound to seek pre-emption of the whole of the property sold and pay the full sale price if his right of pre-emption extends over only a portion of the

property sold or if a portion of the property is capable of pre-emption and the other is not. In case of any such limitation, partial pre-emption on payment of proportionate price may be permitted as of necessity and not because the pre-emptor wants it.

ii) When a person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. This principle is founded on equity and justness with straightforward objective to prevent fraud and ensure justice, and though it is described as a rule of evidence, it may have the effect of constituting substantive rights as it impedes someone from averring a truth that is defined as contradictory to an already established truth...A person cannot approbate and reprobate or accept and reject the same instrument.

Conclusion: i) Partial decree of Pre-emption is possible but subject to certain limitations which, at any rate, do not include the vendor's defective or want of title.

ii) A person cannot approbate and reprobate or accept and reject the same instrument.

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7. **Supreme Court of Pakistan**
M. Hamad Hassan v. Mst. Isma Bukhari and 2 others.
Civil Petition No.1418 Of 2023
Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1418_2023%20.pdf

Facts: The respondent no. 01 filed a suit for recovery of dower, maintenance allowance and dowry articles, etc. against the petitioner which was decreed. The petitioner challenged the judgment and decree before appellate court which was dismissed being meritless while enhancing the annual increase of maintenance allowance from 10% to 20%. Being aggrieved, the petitioner filed a writ petition under Article 199 of Constitution which was dismissed being devoid of any merit, hence this petition.

Issues: i) Whether High Court in constitutional jurisdiction can reappraise the evidence and decide the case on its facts?

ii) Whether in the absence of a second appeal, the High Court ought to offer another opportunity of hearing after decision of appellate court on facts?

Analysis: i) In Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another (2023 SCMR 246) it was clarified that while the trial court is primarily responsible for assessing facts, the High Court can intervene as a corrective measure when actual findings are based on misreading or non-reading of evidence, or if the lower court's order is arbitrary, perverse, or in violation of the law or if the error is so obvious that it may not be acceptable, for example, when

the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumptions, clear legal errors, considering inadmissible evidence, exceeding or abusing jurisdiction, and taking an unreasonable view of evidence. Similarly, in the case of Arif Fareed v. Bibi Sara and others (2023 SCMR 413), this Court held that it is while some cases justify interference by the High Court, however, most do not. Thus, the legal position is that the constitutional jurisdiction cannot be invoked as a substitute for a revision or an appeal. This means that the High Court in constitutional jurisdiction cannot reappraise the evidence and decide the case on its facts. Interference is on limited grounds as an exception and not the rule.

ii) The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by reevaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms.

Conclusion: i) High Court in constitutional jurisdiction cannot reappraise the evidence and decide the case on its facts. Interference is on limited grounds as an exception and not the rule.

ii) If the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing.

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8. **Lahore High Court**
M/s Honda Atlas Cars (Pakistan) Limited. v. Additional Collector, Legal, LTU, Lahore etc.
S.T.R No.93 of 2010
Mr. Justice Shams Mehmood Mirza, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4256.pdf

Facts: This Sales Tax Reference is filed to seek the opinion of this Court on the questions of law which are said to have arisen from the judgment rendered by the Appellate Tribunal, Inland Revenue.

Issues: i) Whether a transaction missing consideration did fall within the definition of supply as contained in the Sales Tax Act 1990 before the replacement of definition of supply by the Finance Act 2008?
ii) Whether the replacement of auto parts under the warranty did form part of supply of taxable goods before the replacement of definition of supply by the Finance Act 2008?

Analysis: i) The definition of "supply" in the Sales Tax Act 2009 at the relevant time was as follows. "Supply" includes sale, lease or other disposition of goods carried out for consideration and also includes …This definition was replaced by the Finance Act, 2008 in the following manner. "Supply" means a sale or other transfer of the right to dispose of goods as owner, including such sale or transfer under a hire purchase agreement, and also includes …It is evident that the expression "sale carried for consideration" was omitted in the subsequent definition of "supply".
ii) The contract of sale in the present case related to composite supply of vehicle and the service for replacement of defective parts. Both were bundled in one contract. The auto parts were supplied free of charge to the customers by the applicant under the warranty and at the time of such replacement no separate consideration was charged for the reason that consideration of such parts formed an integral part of the price of the contract which was received at the time of sale. It is thus axiomatic that sales tax charged and paid on the contractual consideration at the time of supply of motor vehicle included such tax on auto parts to be replaced under the warranty. In other words, the cost of warranty replacements was incorporated in the price of the motor vehicle on which sales tax had already been paid. Absent the consideration in such transaction, it does not fall under the definition of 'supply' as contained in the Act at the relevant time. Given the fact that the replacement of auto parts under the warranty did not form part of supply of taxable goods, the reliance by the learned counsel for the respondents on the definition of "taxable supply" is not apt.

Conclusion: i) A transaction missing consideration did not fall within the definition of supply as contained in the Sales Tax Act 1990 before the replacement of definition of supply by the Finance Act 2008.
ii) The replacement of auto parts under the warranty did not form part of supply of taxable goods before the replacement of definition of supply by the Finance Act 2008.

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9. **Lahore High Court**
Naveed Mushtaq Abbasi v Federation of Pakistan, etc.
W. P. No. 2376 of 2023.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC4155.pdf

Facts: During the interim period**,** composition of the Board of Governors of Pakistan Cricket Board was changed by the Election Commission through Notification, by replacing the Presidents of the Regions, including petitioner with President and new Management Committee of Pakistan Cricket Board, was appointed by Federal Government through Notification.

Issues: i) Whether the Election Commissioner, during interim period, has power to change the composition of Board of Governors of PCB Constitution, 2014?
ii) Whether the Federal Government is competent to renotify and change composition of Management Committee?
iii) Whether Constitution of PCB 2014, is manipulated to get the politically motivated results?
iv) Whether Constitutional Courts can interfere in policy making which is exclusive domain of the elected Government?
v) Whether four elected representatives from the regions on the basis of rotation are given effective representation from different parts of the country without political influence?

Analysis: i) Perusal of Paragraph 7(2) of PCB Constitution, 2014, reveals out that during the interim period, the powers of day-to-day management of the Board of Governors shall rest in the Election Commissioner but no long-term decision can be taken during interim period. Notification for change in composition of Board of Governors is a long-term decision having a permanent character, therefore, is beyond the scope of day-to-day management of Board.
ii) Federal Government is competent, under Section 3 of the Sports (Development and Control) Ordinance, 1962, read with Paragraphs 38 and 48, to renotify and change composition of Management Committee.
iii) Practice and history, shows that Chairman of Cricket Board is elected from the two members nominated by the Patron because the Government is always in a position to influence the representatives of Service Organizations and Departments. This Court expects and recommend that suitable amendments shall be brought in the Paragraphs No.7 and 10 of PCB Constitution, 2014 to ensure that sovereignty (policy making and management) in the Cricket Board is exercised by the elected representatives of the stakeholders who are effectively involved in the game of Cricket at grass root level.
iv) Though Constitutional Courts cannot and should not interfere in policy making which is exclusive domain of the elected Government, yet Courts can interfere or at least observe, where policy making infringes the fundamental right guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. Bedrock of the Constitution of Pakistan is exercise of sovereignty through elected representatives.
v) Clause (e) of the Paragraph 10, envisages that for first Election under the PCB Constitution, 2014, four representatives of the Regions shall be from top four finishing teams of the latest Quaid-e-Azam Trophy Tournament. It was convincingly explained that top four finishing teams of the tournaments, if given

representations in every Election of the BoG would restrict representation of regions, where the game of cricket is not developed. The Court is convinced and holds accordingly with direction that by excluding the Regions, already represented in earlier two BoGs, the Election of the representatives of four Regions shall be strictly in accordance with the regulation, if any. In absence of regulation, effective representation from different parts of the country without political influence shall be ensured. The purpose should be representation of the Regions for effective policy making and not to get a person of Government's choice elected as Chairman.

Conclusion: i) During interim period, Election Commissioner cannot change the composition of Board of Governors of Cricket Board.
ii) Federal Government is competent to renotify and change composition of Management Committee.
iii) Constitution of PCB 2014 is manipulated to get the politically motivated results and court expected and recommended that suitable amendments shall be brought in the Paragraphs No.7 and 10 of PCB Constitution, 2014.
iv) Constitutional Courts cannot interfere in policy making, yet it can interfere or at least observe, where policy making infringes the Fundamental Rights, under the Constitution of Islamic Republic of Pakistan, 1973.
v) Effective representation of four elected representatives from the regions on the basis of rotation from different parts of the country shall be ensured without political influence by excluding the Regions, already represented in earlier two Board of Governors, elections.

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10. **Lahore High Court**
M/s G.A Traders (Sole Proprietorship) v. Allied Bank of Pakistan
E.F.A No.22133 of 2023
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4195.pdf

Facts: Through this Execution First Appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the Appellant has questioned the legality and propriety of Order passed by Banking Court, pursuant whereto the Objection Petition under section 19 of the Ordinance of 2001 filed by the Appellant, inter alia, seeking dismissal of Execution Petition was dismissed.

Issues: i) Whether any challenge to the Compromise Agreement or Consent Decree that once raised and finally decided till Supreme Court will hit by principle of res judicata?
ii) Whether a financial institution can claim from Court any additional mark-up beyond the contracted mark-up after the promulgation of the Ordinance, 2001?
iii) Whether executing court can extend the benefit of the new law by replacing the mark-up awarded by the Court under Act of 1997 with the award of only cost of funds permitted under the Ordinance of 2001?

Analysis: i) The default towards the liabilities rescheduled/ restructured or renewed through Deed of Compromise culminating into Consent Decree cannot be termed as inexecutable by seeking a declaration that under the Ordinance of 2001 it is only recoverable through cost of funds, more specifically when the matter already stood adjudicated by the Executing Court up till Supreme Court of Pakistan. The legal as well as factual points now being agitated before us are clearly hit by res judicata as the controversy inter se parties stood finally decided up till Supreme Court of Pakistan and at this stage if the Appellant coins a logic that the instant controversy was never agitated earlier in that case the present controversy will be hit by constructive res judicata.

ii) The position of law emerging after the promulgation of the Ordinance, 2001 is that in addition to the contractually chargeable markup, a financial institution cannot now claim from Court any additional mark-up except the cost which it had to bear for its finance stuck up with its defaulting customer. Thus the concept of earning further income in the shape of mark-up was replaced with the concept of compensating financial institutions with the cost of funds and that too is determinable by State Bank as envisaged under section 3 of the Ordinance of 2001. Thus the change in law i.e. withdrawal of Court's power to award mark-up beyond contracted period under the provisions of Act of 1997 with the award of cost of funds under the Ordinance of 2001 was clearly intended to remove the perception that the award of mark-up beyond the contracted mark-up is in the nature of interest.

iii) As at the time of passing of the decree in question the Act of 1997 was in force, therefore, notwithstanding the harshness of the Act of 1997, which permitted award of continuous mark-up beyond the contracted mark-up, the court being an Executing Court cannot now extend the benefit of the new law by replacing the mark-up awarded by the Court under Act of 1997 with the award of only cost of funds permitted under the Ordinance of 2001. This would amount to empowering the Executing Court to amend the decree.

Conclusion: i) Any challenge to the Compromise Agreement or Consent Decree that once raised and finally decided will either be hit by principle of res judicata and if omitted or relinquished to be raised earlier will surely be hit by principles of constructive res judicata.

ii) A financial institution cannot claim from Court any additional mark-up beyond the contracted mark-up after the promulgation of the Ordinance, 2001

iii) Executing court can extend the benefit of the new law by replacing the mark-up awarded by the Court under Act of 1997 with the award of only cost of funds permitted under the Ordinance of 2001. This would amount to empowering the Executing Court to amend the decree.

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11. **Lahore High Court**
Ghulam Ghous v. Province of Punjab through Secretary Higher Education Department and another
Writ Petition No.77143 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4149.pdf

Facts: Through instant petition, petitioner has called into question vires of order / letter issued by Government of the Punjab, Higher Education Department, whereby petitioner was held disentitled to get age relaxation in terms of Rule 3(v) of the Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976.

Issues: i) Whether period of continuous service of a Government servant shall be excluded while computing upper age limit?
ii) Whether rights of general age relaxation and exclusion of period served in Government employment can be pressed into service by Government employees seeking further employment?
iii) Whether employees of autonomous bodies can be considered as officials serving in connection with the affairs of the Government?
iv) Whether Government College University, Faisalabad is an Autonomous Body of the Higher Education Department, Government of Punjab and the Finance Department of the Government of Punjab has financial supervision over it?

Analysis: i) The Rules of 1976 have been framed by the Governor of the Punjab by deriving authority from section 23 of the Punjab Civil Servants Act, 1974 and are applicable to the recruitment of all posts. The afore-referred Rule specifically provides that period of continuous service of a Government servant shall be excluded while computing upper age limit. The above Rule does not specifically provide that it would apply to civil servants rather it is providing benefit to Government servants. Had the Rules making authority intended to extend benefit of this Rule to 'civil servants' only, it could have used these words in explicit terms in the said Rule. The term 'Government servant' connotes all Government servants including civil servants and not vice versa.
ii) Needless to say that general age relaxation and exclusion of period served in Government employment for the purpose of computation of upper age limit are two separate and distinct benefits / rights awarded to Government employees including contract employment. These rights can be pressed into service by Government employees seeking further employment. Rules 3(v) of the Rules of 1976 is a beneficial dispensation and is to be interpreted in a manner so as to advance the remedy.
iii) Autonomous Public Bodies are an emanation of the Government and are clearly a limb of the Government or even an agency of the State and recognized by and clothed with rights and duties, either by or under a Statute and thereby become extended arms of the Government. The employees of autonomous bodies are considered as officials serving in connection with the affairs of the Government and hence, can be stated to be in the service of Government i.e.

Government servants.

iv) It is pertinent to mention here that under Rule 2(c) of the Punjab Government Rules of Business, 2011, 'Autonomous Body' means a Body mentioned in Column No. 4 of the First Schedule while Rule 2(d) of the Punjab Government Rules of Business, 2011 states that "Business" means the work done by the Government. Similarly, Rule-3 deals with Allocation of Business and sub-rule (3) states that the business of the Government shall be distributed amongst several Departments in the manner indicated in the Second Schedule. The Government College University, Faisalabad has been mentioned as an Autonomous Body of the Higher Education Department, Government of Punjab in Entry No. (xiv) of Column No. 4 of the Serial No. 16 of the First Schedule. Moreover it is further mentioned at Serial No. 37 (xiv) under the Higher Education Department in the Second Schedule. So provision of higher education is business of the Government of the Punjab, which business is tasked to be performed by the Higher Education Department and the Government College University Faisalabad is the vehicle and tool through which such business of the Government is conducted. Furthermore, the Finance Department of the Government of Punjab is also obligated with financial supervision and oversight of the autonomous bodies (which includes the Government College University Faisalabad) as per Second Schedule.

Conclusion: i) Period of continuous service of a Government servant shall be excluded while computing upper age limit.

ii) Rights of general age relaxation and exclusion of period served in Government employment can be pressed into service by Government employees seeking further employment.

iii) The employees of autonomous bodies can be considered as officials serving in connection with the affairs of the Government.

iv) Government College University, Faisalabad is an Autonomous Body of the Higher Education Department, Government of Punjab and the Finance Department of the Government of Punjab has financial supervision over it.

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12. **Lahore High Court**
Abdul Hameed v. Station House Officer etc.
Writ Petition No. 72703/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4122.pdf

Facts: The petitioner sought quashment of FIR registered against him under section 489-F PPC on the ground that the alleged agreement between the parties was void and the consideration for the subject cheque was unlawful and against public policy.

Issues: (i) Whether a case FIR for an offence under section 489-F can be quashed on the basis that the issuance of the cheque originated from an unlawful contract i.e. bribery?

(ii) Whether both the bribe-giver and the bribe-taker are liable to be prosecuted for the offence of bribery?

Analysis: (i) Once the FIR is registered, the occurrence is regarded as a "case", and every step taken in the ensuing investigation under sections 156, 157, and 159 Cr.P.C. is a step taken in that case. The contents of the FIR do not guide or govern the Investigating Officer, and he is not under any obligation to establish that version. Instead, he must find out the truth. He is required to collect information from any number of people who appear to be acquainted with the facts of the occurrence. Every new piece of information he obtains during the process or the discovery of a new circumstance relevant to the commission of the offence does not require the registration of a separate FIR. Such additional information or knowledge is part of the ongoing investigation into the same case, which began when the FIR was registered. I am aware that the courts quash the criminal proceedings when the allegations in the FIR or the complaint, taken at face value and accepted in entirety, do not *prima facie* constitute an offence or make out a case against the accused. This principle cannot be applied to the present case. The Petitioner seeks quashing of the FIR rather than a private complaint. Even if his contention is accepted that Cheque No.D-15380129 is void because the consideration is unlawful and against public policy, an investigation is required to determine whether the crime of corruption has been committed. The State is interested in fighting corruption and prosecuting those who indulge in it.

(ii) Pakistan Penal Code expressly recognizes that the bribe-giver is the collaborator of the bribe-taker. The Explanation to section 109 PPC states that "an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment." In view of the fact that the bribe-giver is an accomplice of the bribe-taker, both are liable to be prosecuted.

Conclusion: (i) A case FIR for an offence under section 489-F cannot be quashed on the basis that the issuance of the cheque originated from an unlawful contract i.e. bribery.

(ii) Both the bribe-giver and the bribe-taker are liable to be prosecuted for the offence of bribery.

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13. **Lahore High Court**
Muhammad Ayub v. Secretary Primary & Secondary Healthcare Department etc.
Writ Petition No. 20192/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4270.pdf

Facts: The Petitioner joined the service of the Province of the Punjab, Health Department, as Hakeem in BS-15 and he retired on after serving for about 28 years. In 2016, the Governor of the Punjab upgraded all technical/non-technical personnel holding posts in BS-5 to BS-16. In 2018, the Director General Health Services Punjab (Respondent No.2) held that the Finance Department's notification dated 4.1.2016 did not apply to Hakeems. Therefore he declared their

upgradation to Senior Tabeeb/Hakeem (BS-16) illegal. The Petitioner first applied for review before and then filed an appeal against the order but they did not decide them. Two days before his superannuation, the Petitioner applied for issuance of his retirement order and pensionary benefits. Respondent No.5 wrote to the Petitioner that he had been drawing the salary of BS-16 until the day of superannuation and received money beyond his entitlement. By this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 the Petitioner impugns the order of Respondent No.5. Consequently, orders issued by Respondents No.2 and 4 also come under challenge.

Issues: i) Whether upgradation is distinct from promotion and what is its purpose?
ii) Whether Service Tribunals has jurisdiction over the matters relating to upgradation?
iii) Whether The Punjab Health Department (Tibb) Service Rules, 2018 applied retrospectively to the employees who are already upgraded?

Analysis: i) "Upgradation" is distinct from promotion. In Regional Commissioner Income Tax and another v. Syed Munawar Ali and others (2016 SCMR 859), the Supreme Court of Pakistan held that "upgradation" is not defined in the Civil Servants Act or the Rules framed thereunder. It applies to the posts and not the person occupying them. In Federal Public Service Commission v. Anwar-ul-Haq and others (2017 SCMR 890), the apex Court held that upgradation is carried out without necessarily creating posts in the relevant pay scales. It is done under a policy and a specific scheme. It is exclusively used for incumbents of isolated positions with no other advancement options, and its purpose is to overcome the issue of their stagnation and frustration.
ii) The Service Tribunal has exclusive jurisdiction under Article 212 of the Constitution in issues relating to the terms and conditions of persons who are or have been civil servants, including disciplinary matters. It is, however, well settled that upgradation does not form a part of the terms and conditions of service.
iii) The Punjab Health Department (Tibb) Service Rules, 2018 – were published in the Gazette on 20.6.2019. They cannot be applied retrospectively to the employees who are already upgraded. In Commissioner of Sales Tax (West), Karachi v. Messrs Kruddsons Ltd. (PLD 1974 SC 180), the Supreme Court held that rules could not operate retrospectively to impair existing rights or nullify the effect of final judgment. Similarly, Kohinoor Textile Mills Ltd. v. Commissioner of Income-Tax, Lahore (PLD 1974 SC 284) held that they could not have a retrospective effect.

Conclusion: i) "Upgradation" is distinct from promotion. It is done under a policy and a specific scheme and its purpose is to overcome the issue of stagnation and frustration of incumbents.

ii) The Service Tribunals have no jurisdiction to entertain any appeal involving the issue of upgradation, as it does not form part of the terms and conditions of service of the civil servants.
iii) The Punjab Health Department (Tibb) Service Rules, 2018 cannot be applied retrospectively to the employees who are already upgraded.

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14. **Lahore High Court**
Muhammad Farooq v. Zarai Taraqiati Bank Limited.
R.F.A. No. 299 of 2022
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC4277.pdf

Facts: Through this appeal filed under Section 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001 the appellant (judgment-debtor) has called in question the judgment & decree passed by learned Judge Banking Court whereby application for leave to defend filed by the appellant under section 10 of the Ordinance has been dismissed and the recovery suit filed by the respondent-bank under section 9 of the Ordinance was decreed against the appellant, in favour of respondent-bank.

Issues: i) Whether it is mandatory requirement for bank to produce on record not only the duly certified statement of accounts but plaint also required to be supported by relevant documents relating to grant of finance?
ii) Whether non-availability of original file with the bank, entitles the loanee for grant of leave to defend?

Analysis: i) In view of mandatory requirement of Section 9 of Ordinance, the respondent bank was required to produce on record not only the duly certified statement of accounts certified under the Bankers Books Evidence Act, 1891 but plaint also was required to be supported by relevant documents relating to grant of finance, which implies that the said documents in original were assumed to be actually maintained by the bank in its office… The requirements of both sections 9 and 10 of the Ordinance have been declared to be mandatory by the Honourable Supreme Court of Pakistan.
ii) Non-availability of original file with the respondent-bank, entitles the appellant for grant of leave to defend as the same raised substantial question of law and fact requiring recording of evidence for determination.

Conclusion: i) Yes, it is mandatory requirement for bank to produce on record not only the duly certified statement of accounts but plaint also required to be supported by relevant documents relating to grant of finance.
ii) Yes, non-availability of original file with the bank, entitles the loanee for grant of leave to defend.

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15. **Lahore High Court**
Parvez Elahi v. Care Taker Government of Punjab etc.
Writ Petition No. 45360 of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4107.pdf

Facts: The petitioner requested for information about details of criminal cases and pending inquiries against him with further prayer to supply copies of said FIRs and inquiries and that the petitioner may not be arrested in unknown criminal cases with ensued consequences for grant of opportunity to approach the concerned Court, if any cases are found registered.

Issues: (i) Whether it is not necessary that one must be in the captivity to define it as in custody?
(ii) Whether the practice of police to arrest the accused intermittently at their wish in different cases one after another for conducting investigation separately amounts to denial of fundamental rights to life and liberty?
(iii) Whether a High Court while exercising powers under Article 199(1)(c) of the Constitution can exercise powers *ex debito Justitiae* and can grant a relief ?
(iv) Whether the arrest after arrest of an accused if based on *malafide* amounts to commission of offence u/s 337K of PPC?
(v) Whether section 54 of the Cr.P.C gives unbridled powers of arrest to police without warrant of arrest?

Analysis: (i) It is not necessary that one must be in the captivity to define it as in custody, rather restriction on his freedom of movement due to fear of arrest or threat to life amounts to, as in the custody… Therefore, when one cannot reach to the Court due to fear of arrest, his absence be given an opportunity for an explanation particularly in sheer or extreme cases of real exigency.
(ii) The practice of police to arrest the accused intermittently at their wish in different cases one after another for conducting investigation separately amounts to denial of fundamental rights to life and liberty…once an accused is arrested, he can be put into investigation for all cases registered against him and if the investigation cannot be completed within stipulated period during a physical remand, it can well be continued during judicial custody of accused in the jail with all just legal exceptions, of course with the permission of concerned Magistrate; therefore, arrest after arrest or successive remands in different cases amounts to denial of fundamental rights to life and liberty and also opposes to principle of due process.
(iii) The High Court under Article 199(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973 is competent to pass appropriate orders on the application of any aggrieved person yet this appropriation must not violate any provision of law. However, when there is no express provision in the context of remedy sought for or which could cater to a situation as the justice demands then the Court can exercise powers *ex debito Justitiae* and can grant a relief not specifically prohibited by law.

(iv) The uncalled practice for arrest after arrest cannot be weighed in the light of object of law enforcement agencies, rather from the actions which speak intentions, alive in this case, and many others, they were so prompt and swift so as to leave desperation as foot prints in the book of history. Without collecting proper information and sufficient material rushing for an arrest stands in complete negation of dictum of Honourable Supreme Court in a case reported as "Mst. SUGHRAN BIBI versus The STATE" (PLD 2018 Supreme Court 595) which otherwise is binding on every organ of the State as per Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973. Any deflection of such dictum in the given situation amounts to a *malafide* action couched in ulterior motives for keeping the petitioner behind the bars at every cost….Putting somebody in captivity with threatened incarceration, of course indicate design either to obtain required information or to secure forced confession of alleged or supposed crime. People resist against injustice with inner strength both physical and mental but are prone to rely on support from outside world like friends, relatives, colleagues, community or general masses; therefore, captivity, particularly illegal, disconnects the person from outside world and breaks him down so badly as to accept everything before him to avoid danger to his health, mind, property and most of all the family. Producing such effects amounts to commission of offence u/s 337K of PPC which is a cognizable offence; therefore, arrest after arrest also falls in the same category….It is held that if it spurs out from the record that arrest in different cases is not being sought for the purpose of investigation but to keep the accused in physical custody of law enforcement agency for a longer period in order to kneel down him to their terms, then it is not only illegal but an offence, and bona fide of police for arrest in different cases is reflected if they put remand request with criminal record of accused.

(v) It is trite that section 54 of Cr.P.C. empowers the police to arrest without a warrant any person required in nine situations mentioned therein but it is only permissible and cannot be used as substitute of might is right, therefore, for effecting arrest, a warrant should be obtained and as per section 75 (2) of Cr.P.C. it remains operative until executed or cancelled by the Magistrate/Court concerned. therefore, whenever any arrest is required, law enforcement agencies are duty bound to submit information of all cases in which the arrest of accused is being sought. This command of law in fact provides opportunity to ensure the compliance of dictum laid down by Honourable Supreme Court in "Sughran Bibi Case" supra for collection of sufficient material before making arrest. The concerned Magistrate/Court are the Guardian of the Constitution and shall accord permission to arrest only if it does not oppose to fundamental right to 'safeguards as to arrest and detention' as enshrined in Article-10 of the Constitution. The request of police must be supplemented by an opinion of concerned prosecutor so as to convince the Magistrate/Court that material is or isn't available to give a go to the request of police.

Conclusion: (i) It is not necessary that one must be in the captivity to define it as in custody.
(ii) The practice of police to arrest the accused intermittently at their wish in different cases one after another for conducting investigation separately amounts to denial of fundamental rights to life and liberty.
(iii) When there is no express provision in the context of remedy sought for or which could cater to a situation as the justice demands then the High Court while exercising powers under Article 199(1)(c) of the Constitution can exercise powers *ex debito Justitiae* and can grant a relief not specifically prohibited by law.
(iv) The arrest after arrest of an accused if based on *malafide* amounts to commission of offence u/s 337K of PPC.
(v) Section 54 of the Cr.P.C does not give unbridled powers of arrest to police without warrant of arrest.

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16. **Lahore High Court**
Adeel Khalid Bajwa v. Bashir Ahmad Tahir,etc.
F.A.O. No.81002 of 2021
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4226.pdf

Facts: The instant appeal calls into question the legality, validity and propriety of order passed by the appellate court pursuant whereto the order passed by the trial court rejecting the plaint in a suit filed by respondent no.1 was set aside and the matter was remanded to the trial court with a direction to frame issue on the maintainability of the subject matter suit and proceed in accordance with law.

Issues: i) Whether under order VII rule 11 of the CPC, other material can be referred or relied upon by the Court except the plaint and its contents?
ii) Whether a person who is not a member/shareholder of company does have legal capacity, entitlement and/or locus standi to question the validity and legality of Board Resolution?
iii) Whether any remedy to question the validity of meeting or Board Resolution lies before the High Court or before Civil Court?
iv) Whether a shareholder of a company has any entitlement to question the transfer of its assets by such company to any third person?
v) Whether for the purpose of seeking rendition of accounts, it is essential that the defendant must be an 'accounting party' and on account of their legal relationship, the defendant is obliged to render the accounts?
vi) Whether power to reject the plaint under Order VII rule 11 of the CPC must be exercised only if the Court comes to the conclusion that even if all the allegations are proved, the plaintiff would still not be entitled to any relief whatsoever?

Analysis: i) In view of the High Court Amendment notified on 22.08.2018 substituting the provisions of Order VII rule 11 (d) of the CPC from "whether the suit appears from the statement in the plaint to be barred by law" to "whether the suit appears from the record available with the Court to be barred by any law." The afore-

noted amendment has equipped the Court to seek assistance from the available record, while determining the fate of the suit under Order VII rule 11 of the CPC. Even otherwise the Court, besides the averments made in the plaint and other material on record which on its own strength is legally sufficient to completely refute the claim of the Plaintiff, can also look into for the purposes of rejection of the plaint.

ii) The Respondent No.1 who is not even a member/shareholder of Wincom does not have legal capacity, entitlement and/or locus standi to question the validity and legality of Board Resolution.

iii) The Civil Court had no jurisdiction to entertain the suit as the incorporated entities and all matters pertaining thereto are tried and adjudicated upon under the provisions of special law i.e. the Companies Act, 2017. The Section 5 of the said Act expressly bars the jurisdiction of Civil Court in the matters falling within the purview of the Companies Act, 2017 and the word 'shall' has been used in the Act, which makes it mandatory, especially, when there appears to be no mala fide or ill-will of the Court. The Companies Act, 2017 being a special law in such circumstances is to override the provisions of general law to the extent of any conflict or inconsistency between the two. Therefore, any remedy to question the validity of meeting or Board Resolution lies before the High Court and in this respect the jurisdiction of Civil Court is barred.

iv) Even if the Respondent No.1 claims to be a shareholder of Wincom LLC, he had no entitlement to question the transfer of its assets by Wincom to any third person. The said transfer of property in which Company has an interest can only be questioned by the Company or its Board.

v) The suit for rendition of accounts does not lie merely because that some accounts are maintained somewhere. Such suit lies only when one party is accountable to the other in some fiduciary capacity, e.g. as in the case of trustee and beneficiary, principal and agent, guardian and ward, person entrusted with control over some property for benefit of the other, etc. Therefore, for the purpose of seeking rendition of accounts, it is essential that the defendant must be an 'accounting party' and on account of their legal relationship, the defendant is obliged to render the accounts.

vi) For the purposes of determination whether the plaint discloses a cause of action or not, Court has to presume that every averment made in the plaint is true, therefore, power to reject the plaint under Order VII rule 11 of the CPC must be exercised only if the Court comes to the conclusion that even if all the allegations are proved, the plaintiff would still not be entitled to any relief whatsoever.

Conclusion: i) Under order VII rule 11 of the CPC, other material can be referred or relied upon by the Court except the plaint and its contents.

ii) A person who is not a member/shareholder of company does not have legal capacity, entitlement and/or locus standi to question the validity and legality of Board Resolution.

iii) Any remedy to question the validity of meeting or Board Resolution lies

before the High Court.

iv) A shareholder of a company does not have any entitlement to question the transfer of its assets by such company to any third person.

v) For the purpose of seeking rendition of accounts, it is essential that the defendant must be an 'accounting party' and on account of their legal relationship, the defendant is obliged to render the accounts.

vi) Power to reject the plaint under Order VII rule 11 of the CPC must be exercised only if the Court comes to the conclusion that even if all the allegations are proved, the plaintiff would still not be entitled to any relief whatsoever.

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17. **Lahore High Court**
Sui Northern Gas Pipelines Limited v. M/s Zam Zam CNG
R.S.A No.14411 of 2019
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4167.pdf

Facts: Through this Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908, the Appellant, has questioned the concurrent findings contained in the Impugned Judgments and Decrees passed by the Trial Court and Appellate Court respectively.

Issues: i) When appeal to High Court under Section 100 of the CPC is maintainable?

ii) Whether second appeal can be filed to question the findings on facts?

iii) What will be the effect on limitation if objections raised by the office are not removed during the period allowed by the office and meanwhile the limitation period expires?

Analysis: i) Law clearly draws distinction between scope of first appeal and second appeal. Under Section 100 of the CPC, appeal only lies to High Court on the grounds that the decision is either contrary to law or it fails to determine some material issue of law or it suffers from substantial error or defect in the procedure provided by the Code or law.

ii) Meaning thereby that it does not lie to question the findings on facts especially when these findings are concurrent and nature of challenge raised by Appellant is bereft of material on record.

iii) There is consistency in the principles that if objections raised by the office are not removed during the period allowed by the office and meanwhile the limitation period expires, the Petition become barred by time.

Conclusions: i) Under Section 100 of the CPC, appeal only lies to High Court on the grounds that the decision is either contrary to law or it fails to determine some material issue of law or it suffers from substantial error or defect in the procedure provided by the Code or law.

ii) Second appeal to High Court does not lie to question the findings on facts especially when these findings are concurrent and nature of challenge raised by Appellant is bereft of material on record.

iii) If objections raised by the office are not removed during the period allowed by the office and meanwhile the limitation period expires, the Petition becomes barred by time.

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18. **Lahore High Court**
Government of Pakistan through Secretary Ministry of Housing and Works v. Muhammad Anwar Khan, etc.
C.M.No.72-C of 2010 in RSA No.146 of 2006
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4215.pdf

Facts: Instant Application under Section 12(2) of the CPC has been filed against the Judgment and Decree passed by this Court in Regular Second Appeal which was filed against the Judgment and Decree passed by learned Additional District Judge, being Appellate Court and Judgment and Decree passed by learned Senior Civil Judge, being Trial Court.

Issues: i) In which court application under section 12(2) CPC would lie, if an appeal /revision/constitutional petition is accepted and judgment etc. is reversed, varied, modified or affirmed on merits?
ii) In which court application under section 12(2) CPC would lie, if the appellate court did not dispose of matter on merits, but on some grounds other than on merit?

Analysis: i) In cases where a remedy of appeal/revision is provided against a judgment, order and decree, or a remedy of writ is availed, the appellate/revisional/constitutional forum records reasons on the consideration of the issues of law and/or fact and the judgment, decree or order of the subordinate court/forum will merge into the decision of the appellate court etc. irrespective of the fact that such judgment reverses, varies or affirms the decision of the subordinate court/forum and its decision will be operative and capable of enforcement on the principle of merger and the application under Section 12(2) of the CPC will be maintainable before the appellate/revisional/ constitutional forum, as the case may be. This will be the situation where an appeal/revision/ constitutional petition is accepted and judgment etc. is reversed, varied, modified or affirmed on merits.
ii) Where an appeal/revision/writ petition is not disposed of on merits, but on some grounds other than on merits, the exception to the rule of merger comes into field. The rule of merger becomes inapplicable where an appeal etc. has been dismissed on technical ground, such as dismissal for non-prosecution, lack of jurisdiction, lack of competence, barred by law or barred by time. In such a case where controversy falls within the noted exceptions, the forum for an application under Section 12(2) of the CPC is the one against whose decision the matter has come and been disposed of in the above manner by the higher forum.

Conclusion: i) Where an appeal/revision/ constitutional petition is accepted and judgment etc.

is reversed, varied, modified or affirmed on merits the application under Section 12(2) of the CPC will be maintainable before the appellate/revisional/ constitutional forum, as the case may be.

ii) The rule of merger became inapplicable if the Judgment and Decree passed by the Trial Court actually never merged into Order/Judgment passed by the Appellate Court etc. as it neither adjudicated controversy on fact nor on law and not reversed, modified or affirmed the decision on merits. Therefore, in such situation the final and only Court which passed the Judgment on merits in terms of Section 12(2) of the CPC is the Trial Court.

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19. **Lahore High Court**
Rehan Iqbal v. Abdul Haq, etc.
Writ Petition No.70519/2022
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4173.pdf

Facts: Through this Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner has called into question the legality and validity of Order passed by the learned Revisional Court, whereby the Revision Petition of the Respondents was allowed and Order passed by the learned Civil Judge allowing the application for setting aside ex-parte Judgment and Decree was set aside.

Issues: i) What is the mode of summoning when defendant is resident of some other district?

ii) When the court can order for substituted service?

iii) Whether adherence and observance to provisions contained in Order V CPC is mandatory?

iv) What is the limitation for setting aside ex-parte decree?

Analysis: i) The first obligation of the learned Trial Court was that if it had noticed that the Petitioner was resident of another District, the safest mode should have been to follow the provisions of Order V rules 21 and 23 of the CPC, which provides that if Defendant resides within the jurisdiction of another Court, the summons shall be sent by the Court by which it is issued either by one of its officers or by post to any Court having jurisdiction in the place where the defendant resides. Under rule 23 of Order V of the CPC, the Court to which summons are sent under rule 21 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record of its proceedings with regard thereto.

ii) The provisions of rules 16, 17 and 18 of Order V of the CPC were also ignored by the learned Trial Court as the said provisions are not illusory and it was bounden duty of the Court to ensure substantial compliance of these provisions before directing substituted service as unless provisions contained in rules 16, 17, 18, 21 and 23 are not satisfied, the order for substituted service under Order V

rule 20 of the CPC is nullity in the eyes of law as the Court for the said purpose has to satisfy itself that all the efforts to affect service in the ordinary mode have failed. Non-adherence to the mandatory provisions renders the process of service through publication invalid and edifice built automatically falls down.

iii) Adherence and observance to these provisions is mandatory as due service is the first fundamental right of every litigant, who is to defend his cause before the court of law. Therefore, it is not only a formality but a matter of importance that these provisions are duly complied with. According to law laid down by the Supreme Court of Pakistan in judgment reported as Mrs. Nargis Latif vs. Mrs. Feroz Afaq Ahmed Khan (2001 SCMR 99) "unless all efforts to effect service in the ordinary manner are verified to have failed, substituted service cannot be resorted to."

iv) Under Article 164 of the Limitation Act, 1908, a defendant may seek setting aside of ex-parte decree within a period of thirty days and Column No.III of the said Article provides that these thirty days are to be computed from the date of decree or where the summons were not duly served when the applicant had knowledge of the decree.

Conclusions: i) If defendant resides within the jurisdiction of another Court, the summons shall be sent to any Court having jurisdiction in the place where the defendant resides. The Court to which summons are sent shall, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue.

ii) It is bounden duty of the Court to ensure substantial compliance of provisions of rules 16, 17, 18 21 and 23 of Order V of the CPC before directing substituted service.

iii) Adherence and observance to provisions of Order V of the CPC is mandatory.

iv) Limitation for setting aside of ex-parte decree is thirty days from the date of decree or where the summons are not duly served when the applicant has knowledge of the decree.

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20. **Lahore High Court**
Amir Sajjad v. Ghulam Murtaza Ch.
Civil Revision No.15213/2023
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4182.pdf

Facts: These two connected Revision Petitions under Section 115 of the Code of Civil Procedure, 1908, emanated from consolidated Judgments and Decrees, are decided together. Pursuant to the Impugned Judgment and Decree passed by the Trial Court, counter suits filed by the parties seeking specific performance of agreement to sell and cancellation of said agreement to sell were dismissed. However, the Appellate Court maintained the Judgment and Decree passed in suit for specific performance of agreement to sell filed by the Petitioner, whereas the Judgment and Decree passed by the Trial Court in the suit filed by the Respondent was reversed and his suit was decreed.

Issues: i) What would be the consequence of not following the mandate of law in case where adverse party categorically pleaded that the subject matter agreement to sell was forged one alleging an interpolation with respect to date contained therein?
ii) Whether mere statement of the Plaintiff regarding death of a witness alleviates or exonerates him to prove the contents of a disputed document?

Analysis: i) If adverse party categorically pleaded that the subject matter agreement to sell was forged one alleging an interpolation with respect to date contained therein then, in such scenario, it cannot be accepted that the subject matter agreement to sell was an admitted document. Therefore, it becomes obligatory to produce the original document and in case of contention that original agreement to sell was with the adverse party, it was responsibility of the petitioner to follow the mandate contained in provisions of Article 76 of the *Qanun-e-Shahadat* Order, 1984 with respect to production of secondary evidence.
ii) When the subject matter agreement to sell bears names of two marginal witnesses but only one witness appeared before the Court and the other witness could not be produced as he had already died, then the Petitioner was under an obligation to prove his death and prove through secondary evidence the elements such as comparison of signatures and thumb impressions with admitted thumb impressions and signatures on other documents and he was required to prove signatures or thumb impressions of dead person through identification of his signatures from any one of his relatives like son, brother, etc. These steps should have been taken to adduce secondary evidence with the leave of the Court.

Conclusion: i) one of the fundamental consequences, in case where adverse party categorically pleaded that the subject matter agreement to sell was forged one, is that without following the mandate of law the petitioner was debarred to produce secondary evidence.
ii) Mere statement of the Plaintiff regarding death of a witness does not alleviate or exonerate him to prove the contents of a disputed document.

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21. **Lahore High Court**
Karam Elahi v. Ahmad Din, etc.
Civil Revision No.1432 of 2015
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4189.pdf

Facts: The Petitioner has challenged the Judgments and Decrees passed by the learned Trial Court and the learned Appellate Court respectively, through this Civil Revision, pursuant whereto Suit for specific performance of agreement to sell filed by Respondent No.1 was conditionally decreed by the learned Courts below.

Issues: i) Would an oral agreement be valid in eyes of law?
ii) What would be the consequence of failure of Respondent/vendor to appear in the witness box?

iii) What would be evidentiary value of the deposition of the subsequent purchaser about the subject matter agreement to sell?

Analysis: i) It is not mandatory that an agreement to sell be written or printed on a stamp paper as the law fully acknowledges even an oral agreement**.**
ii) In case of non-appearance of Respondent being vendor in the witness box, Article 129(g) of the Qanoon-e-Shahadat Order, 1984 permits the Court to draw an adverse inference against the party who fails to appear in the witness box. Therefore, no matter how strong the written statement filed by Respondent /vendor was, it lost its efficacy as he did not make himself available for the cross-examination, and his written statement could not have been treated as substantive piece of evidence.
iii) A challenge by a subsequent purchaser would be hit by the principle of *lis-pendens*. Such purchaser would sink and sail with the vendor and does not have a *locus standi* to take up cudgels for and on behalf of the defendant or the vendor as he was not in a position to depose with respect to the existence and contents of the subject matter agreement to sell.

Conclusion: i) Under the law a contract can be in writing or oral and oral agreement would be valid and enforceable just like a written agreement provided it fulfills the requirements of valid agreement.
ii) The failure of the vendor to appear in written box, depose and rebut the evidence of the Respondent /Plaintiff has serious consequences as under the law it amounts to admission.
iii) The deposition of the subsequent purchaser about the subject matter agreement to sell was just hearsay.

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22. **Punjab Subordinate Judiciary Service Tribunal**
Ch. Mehmood ul Hassan v. Registrar, Lahore High Court, Lahore
Service Appeal No.25 of 2015
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2018LHC4206.pdf

Facts: Through instant appeal, the appellant has assailed order passed by respondent, whereby appellant's representation for grant of proforma promotion as District and Sessions Judge was declined.

Issues: i) What is the difference between deferment and supersession?
ii) Whether proforma promotion is to be given under well-established principles of law when the temporary embargoes (adverse remarks and complaint) are not existing?

Analysis: i) There is a difference between deferment and supersession in a way that deferment depicts temporary non consideration while supersession is done after due consideration and in case of supersession a person cannot claim proforma

promotion as of right.
ii) When the temporary embargoes (adverse remarks and complaint) are not existing, the proforma promotion is to be given under well-established principles of law.

Conclusion: i) There is a difference between deferment and supersession in a way that deferment depicts temporary non consideration while supersession is done after due consideration and in case of supersession a person cannot claim proforma promotion as of right.
ii) Proforma promotion is to be given under well-established principles of law when the temporary embargoes (adverse remarks and complaint) are not existing?

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23. **Punjab Subordinate Judiciary Service Tribunal**
Mian Shahid Mehmood-II v. The Registrar, Lahore High Court, Lahore
Service Appeal No.15 of 2015
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4137.pdf

Facts: Through these appeals, appellants have assailed vires of the show cause notices and subsequent notification, issued by the respondent / Registrar, Lahore High Court, Lahore, whereby appellants were retired from service under Section 12 of the Punjab Civil Servants Act, 1974. Appellants have also assailed orders dismissing their representations against adverse remarks appearing in their respective PERs and sought expunction of the adverse remarks.

Issues: i) What does the expression public interest imply?
ii) Whether an order passed by the competent authority under section 12(1)(i) of the Punjab Civil Servants Act 1974 must have reasonable nexus with the public interest?
iii) Whether there is a difference between retirement under section 12(i) of the Punjab Civil Servants Act 1974 and Section 4(b)(ii) of Government Servants (Efficiency and Discipline) Rules, 1973?
iv) Whether statutes, notifications, executive and administrative orders operate prospectively unless retrospective operation is expressly provided therein?
v) Whether notification which is duly published in the official gazette take effect from the date on which it was published except otherwise provided in the notification itself?
vi) Whether disciplinary proceedings once initiated against a civil servant under a specific law shall be culminated under the same law and not under the law came into existence on the same subject subsequently?
vii) Whether the competent authority for civil servants in Grade-19 and above, in terms of Explanation to section 12 of the Punjab Civil Servants Act 1974, is the Chief Minister?
viii) Whether as per Rule 2.1 of the Punjab Civil Servants Pension Rules, 1955

the period of previous service in a government department shall be added into twenty years of qualifying service for pension as contemplated under section 12(i) of the Punjab Civil Servants Act 1974?

ix) Whether section 12 of the Punjab Civil Servants Act 1974 is ultra vires of the constitution?

Analysis: i) The expression public interest implies a matter relating to the people at large, nation or a community as a whole and if the interest of general public or community is not involved in a matter, it cannot be brought within the purview of public interest.

ii) The requirement of public interest may vary from case to case, however an order passed by the competent authority under section 12(1)(i) of the Act of 1974 must have reasonable nexus with the public interest. The assessment of the performance of a civil servant to judge his suitability must not be based on the personal reasons or considerations not related to the public interest.

iii) There is basic difference between retirement under section 12(i) of the Act of 1974 and Section 4(b)(ii) of Government Servants (Efficiency and Discipline) Rules, 1973, as retirement in terms of former provision is not a punishment and civil servant get all service benefits without any stigma whereas compulsory retirement under latter provision is a punishment.

iv) As per the general rules of interpretation, these Rules would have a prospective effect for the reason that no expressed provision to the contrary is available therein. Consequently, the cases already pending and decided before enactment of aforesaid Rules would remain unaffected by the new legislation. Statutes, notifications, executive and administrative orders operate prospectively unless retrospective operation is expressly provided therein.

v) Notification which is duly published in the official gazette takes effect from the date on which it was published except otherwise provided in the notification itself.

vi) Disciplinary proceedings once initiated against a civil servant under a specific law shall be culminated under the same law and not under the law came into existence on the same subject subsequently.

vii) The argument of appellants that competent authority for civil servants in Grade-19 and above, in terms of Explanation to section 12 of the Act of 1974, is the Chief Minister, thus impugned retirement order has been passed by incompetent authority is totally misconceived. The Punjab Judicial Service Rules, 1994 regulate recruitment of the Punjab Judicial Service and prescribe conditions of service. Rule 3 provides that the service shall comprise the post of:- a) District and Sessions Judges; b) Additional District & Sessions Judges; c) Civil Judges-cum-Judicial Magistrates. Rule 4 provides that appointments to the service shall be made by the High Court. Admittedly, appellants were appointed by the High Court, thus the competent authority to pass their retirement order in terms of section 12 of the Act of 1974 is the High Court, which is comprised of the Chief Justice and Judges.

viii) It was brought to our notice that before entering into judicial service, said appellant had more than seven years' service at his credit in F.I.A., therefore, as per Rule 2.1 of the Punjab Civil Servants Pension Rules, 1955, the said period of service shall be added into twenty years of qualifying service for pension as contemplated under section 12(i) of the Act of 1974.

ix) So far as vires of Section 12 of the Act of 1974 is concerned, the Hon'ble Supreme Court in the case reported as Muhammad Qadeer and 2 others v. Secretary, Defence Production Division, Government of Pakistan and others (2003 SCMR 1804), observed that present section 13 of the Civil Servants Act, 1973 was in line with the principles laid down by the Shariat Appellate Bench of Supreme Court in case reported as Pakistan and others v. Public at Large and others (PLD 1987 SC 304), thus, validity and proprietary of section 13 was not disputed. Undeniably, section 12 of the Act of 1974 is *pari materia* to section 13 of the Civil Servants Act, 1973, therefore it is intra vires the Constitution.

Conclusion: i) The expression public interest implies to a matter relating to the people at large, nation or a community as a whole and if the interest of general public or community is not involved in a matter, it cannot be brought within the purview of public interest.

ii) An order passed by the competent authority under section 12(1)(i) of the Punjab Civil Servants Act 1974 must have reasonable nexus with the public interest.

iii) Yes, there is a difference between retirement under section 12(i) of the Punjab Civil Servants Act 1974 and Section 4(b)(ii) of Government Servants (Efficiency and Discipline) Rules, 1973.

iv) Statutes, notifications, executive and administrative orders operate prospectively unless retrospective operation is expressly provided therein.

v) Notification which is duly published in the official gazette takes effect from the date on which it was published except otherwise provided in the notification itself.

vi) Disciplinary proceedings once initiated against a civil servant under a specific law shall be culminated under the same law and not under the law came into existence on the same subject subsequently.

vii) The competent authority for civil servants in Grade-19 and above, in terms of Explanation to section 12 of the Punjab Civil Servants Act 1974, is not the Chief Minister but the High Court which is comprised of Chief Justice and Judges.

viii) As per Rule 2.1 of the Punjab Civil Servants Pension Rules, 1955 the period of previous service in a government department shall be added into twenty years of qualifying service for pension as contemplated under section 12(i) of the Punjab Civil Servants Act 1974.

ix) Section 12 of the Punjab Civil Servants Act 1974 is intra vires of the constitution.

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24. **Punjab Subordinate Judiciary Service Tribunal Lahore**
Jameel Ahmed Khokhar v. The Registrar, Lahore High Court, Lahore
Service Appeal No.14 of 2013
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2018LHC4196.pdf

Facts: Through instant appeal, appellant has assailed vires of order passed by respondent, whereby appellant's representation for grant of proforma promotion as Senior Civil Judge was declined.

Issues: i) When proforma promotion can be granted?
ii) What is concept of proforma promotion?

Analysis: i) Proforma promotion can be granted in a case where an officer whose junior was promoted on regular basis but he was deferred due to the reason that he was facing a departmental inquiry provided eventually he was exonerated of the charge. Even otherwise, once an employee is reinstated into service after exoneration of the charges levelled against him, the period during which he remained either suspended or dismissed or compulsorily retired, cannot be attributed as a fault on his part.
ii) The concept of proforma promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his / her legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his / her right for such promotion or a legal restraint was posed against his / her claim owing to any departmental proceedings, inquiry etc., and the said obstacle is done away with ultimately. Then in such a situation his monetary loss and loss of rank is remedied through proforma promotion.

Conclusion: i) Proforma promotion can be granted in a case where an officer whose junior was promoted on regular basis but he was deferred due to the reason that he was facing a departmental inquiry provided eventually he was exonerated of the charge.
ii) The concept of proforma promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his / her legitimate turn due to any reason but not a fault of his own.

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25. **Punjab Subordinate Judiciary Service Tribunal Lahore**
Raja Muhammad Shafique Javed v. The Registrar, Lahore High Court, Lahore
Service Appeal No.05 of 2017
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2018LHC4200.pdf

Facts: Through instant appeal, appellant has assailed vires of order passed by

respondent, whereby appellant's representation for grant of proforma promotion as Senior Civil Judge, Additional District & Sessions Judge and District & Sessions Judge, was declined.

Issues: i) Whether proforma promotion can be granted after retirement?
ii) What will be effect of reinstatement in service of employee after exoneration of charges against him on period during which he remained absent due to dismissal?
iii) What is concept of proforma promotion?

Analysis: i) A civil servant is entitled to be promoted even after his retirement through awarding proforma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own. If the civil servant was facing departmental inquiry leading to his dismissal from service, therefore, his promotion was deferred and eventually, he was reinstated into service with back benefits while exonerating him from the charges, thus, he became entitled for proforma promotion from the date on which he would otherwise have been promoted with consequential benefits.
ii) Once an employee is reinstated in service after exoneration of charges against him, the period during which he remained dismissed, cannot be attributed as a fault on his part, but it was due to the order passed by the employer. An employee/civil servant whose wrongful dismissal has been set aside, goes back to his service as if he were never dismissed from service. The restitution of employee, in this context, means that there has been no discontinuance in his service and for all purposes he had never left his post.
iii) The concept of proforma promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his / her legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his / her right for such promotion or a legal restraint was posed against his / her claim owing to any departmental proceedings, inquiry etc., and the said obstacle is done away with ultimately. Then in such a situation his monetary loss and loss of rank is remedied through proforma promotion.

Conclusion: i) A civil servant is entitled to be promoted even after his retirement through awarding proforma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own.
ii) An employee/civil servant whose wrongful dismissal has been set aside, goes back to his service as if he were never dismissed from service. The restitution of employee, in this context, means that there has been no discontinuance in his service and for all purposes he had never left his post.
iii) The concept of proforma promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his / her legitimate turn due to any reason but not a fault of his own.

26. **Punjab Subordinate Judiciary Service Tribunal**
Muhammad Ameen Shehzad v. Lahore High Court, Lahore through Registrar
Service Appeal No.11 of 2021
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4145.pdf

Facts: Through instant appeal, appellant has assailed vires of order passed by respondent, whereby appellant's representation for grant of proforma promotion as Senior Civil Judge, was declined.

Issues: i) How the term "proforma promotion" can be defined?
ii) Who is entitled to claim proforma promotion?

Analysis: i) Needless to say that proforma promotion means predating of promotion of a civil servant with effect from the date of promotion of his juniors for the purpose of payment of arrears and fixation of pay.
ii) It means that a civil servant who was entitled to be promoted from a particular date, but for no fault of his own, was wrongfully prevented from rendering service in the higher post, is entitled for proforma promotion and payment of arrears of pay/allowances and re-fixation of pay.

Conclusion: i) Proforma promotion means predating of promotion of a civil servant with effect from the date of promotion of his juniors for the purpose of payment of arrears and fixation of pay.
ii) A civil servant can claim proforma promotion who was entitled to be promoted from a particular date, but for no fault of his own, was wrongfully prevented from rendering service in the higher post.

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27. **Lahore High Court**
S.M. Iqtidar-ul-Hassan Bukhari v. Lahore High Court, Lahore through its Registrar, etc.
Service Appeal No.10 of 2003
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4132.pdf

Facts: The petitioner filed an application for placing on record necessary documents in an appeal against an order passed by the respondent No.1, whereby appellant's representation for expunction of remarks recorded in his Annual Confidential Report was declined.

Issues: (i) Whether a person can be dubbed as corrupt in his Annual Confidential Report without any cogent material or justification for recording such remarks?
(ii) Whether mentioning of an overall average performance of a civil servant in

his ACR can be treated as adverse remarks?
(iii) Whether a Reporting Officer can record adverse remarks of a civil servant unless proper counseling or advice of his performance is communicated?

Analysis: (i) Describing a person as reported to be corrupt is a very serious allegation which can spoil his whole career as a civil servant. Therefore, while examining ACRs, where a person is dubbed as corrupt we have to see as to whether there was any cogent material or justification for recording the remarks. It is true that ordinarily, in recording remarks or opinions, full reasons need not be given but the conclusions have to be based on facts and when in contest, as in this case the concerned officer should have plausible explanation to justify his conclusions.
(ii) Record shows that in the ACR for the period in question, overall performance of the appellant was average which as per well settled principles of law cannot be treated as adverse remarks unless same are treated so and duly communicated to appellant.
(iii) Needless to say that an officer is to be informed if his Reporting Officer or Countersigning Officer is not satisfied with his work and the communication of such dissatisfaction with advice or warning should be prompt so that the officer may exterminate the fault and improve his performance. The Reporting Officer should not record adverse remarks of a civil servant unless proper counseling or advice of his performance is communicated. The civil servant must be apprised his weak points and advised to improve and then adverse remarks should be recorded if the concerned civil servant failed to improve despite counseling. As the purpose of counseling is to improve the performance of the officer and not to insult him and the advice given orally or in written form would be beneficial for the officer improving his performance.

Conclusion: (i) A person cannot be dubbed as corrupt in his Annual Confidential Report without any cogent material or justification for recording such remarks.
(ii) Mentioning of an overall average performance of a civil servant in his ACR cannot be treated as adverse remarks unless same are treated so and duly communicated to him.
(iii) A Reporting Officer should not record adverse remarks of a civil servant unless proper counseling or advice of his performance is communicated.

LATEST LEGISLATION/AMENDMENTS

1. Vide Act XXXIV of 2023 the President has given assent to the Act of Majlis-e-Shoora i.e "The Finance Act 2023".
2. Amendment in "The Elections (Amendment) Act, 2023" vide Act No. XXXV of 2023.
3. Amendment in "The Export Processing Zones Authority (Amendment) Act, 2023" vide Act No. XXXVI of 2023.

4. Vide notification no. 104 of 2023 the Governor of Punjab has pleased to make the amendments in the "Punjab Local Governments (Accounts) Rules 2017".
5. Vide notification No. 105 of 2023, "Policies for transfer/disposal of state land of Colonies Department, Board of Revenue, Punjab" were issue by the Government of the Punjab.
6. Vide notification no. 106 of 2023 the Governor of Punjab has pleased to determine the rates of royalty of the minerals produced and carried away from the licensed or leased areas.
7. Vide notification No. 107 of 2023, the Government of the Punjab has Drafted rules in The Punjab Motor Vehicles Rules, 1969, in rule 42, in sub-rule(1) in the table, in clause (c).
8. Vide notification No. 108 of 2023, the Government of the Punjab has Drafted rules in The Punjab Motor Vehicles Rules, 1969, in rule 47, in sub-rule(1) in Second Schedule, for Sr. No. 10.
9. Vide Ordinance No. I of 2023, the President has promulgated "The National Accountability (Amendment) Ordinance, 2023".

SELECTED ARTICLES

1. Journal of International Criminal Justice
https://academic.oup.com/jicj/advance-article-abstract/doi/10.1093/jicj/mqad024/7231099?redirectedFrom=fulltext

Crimes *without* Humanity?: Artificial Intelligence, Meaningful Human Control, and International Criminal Law by Guido Acquaviva

The development of autonomous weapons systems (AWS) and, more generally, the role of artificial intelligence in warfare, may come to pose unprecedented challenges to criminal law, including by making it harder to link harm to individuals who can be held responsible, due to the pivotal role of the concepts of actus reus, mens rea *and causation in that domain. In this context, the notion of meaningful human control has been proposed to address some of the challenges of ensuring accountability for serious violations of international humanitarian law. One possibility might be to link — conceptually, or even legally — meaningful human control with the 'control theory' propounded at the International Criminal Court to assign criminal responsibility. Under this theory, the ascription of criminal responsibility to an individual as a direct perpetrator requires an assessment of whether they enjoy an effective ability to decide on the commission of a crime. This article elaborates on some of the issues posed by this approach, proceeding then to consider the most 'extreme' instance of AWS, i.e. the deployment of swarms of drones operating autonomously and coordinating their behaviour in a decentralized manner.*

2. **Human Rights Law Review**
https://academic.oup.com/hrlr/article-abstract/23/3/ngad016/7232311?redirectedFrom=fulltext

The Silences of International Human Rights Law: The Need for a UN Treaty on Violence Against Women by Julie Ada Tchoukou

In the face of women's disproportionate experience of violence and the growing scholarly literature and advocacy on this issue, there is no international treaty recognising violence against women (VAW) as a human rights violation in and of itself. The Convention on the Elimination of Discrimination against Women (CEDAW) does not include a definition of gender-based violence, violence against women or even domestic violence. Many soft law documents address VAW, including the CEDAW committee's general recommendations. However, even though soft laws are persuasive in developing norms, their non-binding character effectively means that States cannot be held responsible for violations. Currently, to accommodate VAW within various treaties, certain 'jurisdictional gymnastics' must be done. This article argues that a critical re-characterization is necessary. The reality of women's lives in many parts of the world necessitates an effective international legal framework that explicitly defines VAW, in all its forms, as a human rights violation.

3. **Manupatra**
https://articles.manupatra.com/article-details/Determination-of-the-Legal-Identity-of-AI

Determination of the Legal Identity of AI by Rohit Bishnoi & Tushar Dutt Dave

In Roman law, the terms 'person' and 'personality' refer to other entities or groups with legal rights and responsibilities who could stand up for their rights through representation. There is no issue of individuality under Greek and British law after 1846 because animals and trees can have rights and duties. Slaves were not regarded as "persons" in ancient times since they could not exercise rights and responsibilities. According to Hindu law, a spiritual "sanyasi" who has given up the world loses all property rights. Therefore, everything and human have separate identities and different rights. Technological changes are currently changing people's perspectives on values, conduct, and goals. Artificial intelligence, also known as machine intelligence or deep learning, is a type of technology that is slowly infiltrating all aspects of society, from some of the most critical to the mundane. Artificial intelligence (AI) is a science and a collection of computing technologies influenced by how people use their neurological networks to perceive, remember, think, and act. These new technologies assist a variety of industries, but there is concern that they may be misapplied or used in unexpected and potentially dangerous ways. In this situation, any necessary innovation must be both socially desirable and defensible. The purpose of this research paper is to determine the legal identity of Artificial Intelligence. As stated above, it is pertinent to do so due to the increase in digital revolutions and increase in the need for artificial intelligence. This paper will provide insight to the readers about the validity of AI to spread awareness among them. The research paper presents an introduction to defining the meaning of AI

and its aspects. It is followed by the legal system which identified the rights and duties of artificial intelligence. The next section presents the benefits of artificial intelligence for a better future ahead. The last section deals with the challenges posed by artificial intelligence which can create obstructions in the legal identity of AI.

4. **Manupatra**
https://articles.manupatra.com/article-details/Evidentiary-value-of-Forensic-Accounting-Auditing-and-Investigation-in-Financial-Crimes

Evidentiary value of Forensic Accounting, Auditing, and Investigation in Financial Crimes by Divishyaa T

This paper discusses the conflict that prevails in the law of evidence concerning the expert witness. Section 451 to Section 512 of the Indian Evidence Act mentions the provision related to third-party witnesses, which are now referred to as an expert witness. The paper is an attempt at a qualitative approach to support the reader's conclusive analysis. The paper discusses the admissibility of forensic accounting evidence in courts and addresses the lacunae in the expert opinion infrastructure between criminal and commercial cases. The paper also examines the previous judicial pronouncements to project the weightage of an expert witness under Indian Law. This paper examines how forensic accounting can be used to collect evidence for use in court cases involving financial crimes. The problems with forensic accounting are discussed. Recommendations based on the incorporation and inclusion of expert witnesses in the matter of financial crimes in the Indian Context are discussed.

5. **Manupatra**
https://articles.manupatra.com/article-details/Right-to-Information-in-Private-Unaided-Institution

Right to Information in Private Unaided Institution by Advocate Manish Kumar

The right to Information Act was passed to ensure transparent governance and a government that is effective, responsible, and accountable. It helps to improve democracy by serving as a check on the actions and choices of the administration. But recently, a number of governmental tasks that are vital to the public and seen as state welfare tasks, like education, have been privatised. However, despite the fact that these duties are mostly carried out by private organisations, the government has always governed and exerted control over them because they are in the public interest. However, because these private organisations were not included in the scope of the Right to Information Act, their management was free to direct their operations as they saw fit. To include Private Unaided Schools in its purview, the Chief Information Commission (CIC) attempted to interpret and correlate the term "information." But the lack of an express provision could make it difficult to use the right to information against private unaided schools. This Paper will look at the Right to Information Act's clauses and the higher courts' and CIC's rulings that are pertinent to private unaided schools. A public authority or other organisations that are created, managed, or mainly supported by the government may be asked for information by citizens. However, it is still unclear whether the definition of Section 2(h) applies to private institutions established by non-governmental

organisations (NGOs) that are not subsidized by the government but are governed in part by it.

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BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-08-2023 to 15-08-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Ghulam Mohiuddin v. Federation of Pakistan thr. M/o Law & Justice and another
Constitution Petitions No.21, 22 & 23 of 2023
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Ijaz-ul-Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/const.p._21_2023_11082023.pdf

Facts: The Petitioners have challenged the vires of the Supreme Court (Review of Judgements and Orders) Act, 2023 (Act No.XXIII of 2023) (the "2023 Act") through the instant Petitions under Article 184(3) of the Constitution of Pakistan, 1973 (the "1973 Constitution").

Issues: i) Whether this court has the constitutional mandate to directly entertain matters related to enforcement of fundamental rights which raise questions of public importance?
ii) What is the primary duty of the Supreme Court?
iii) Whether the 1973 Constitution Provides the right of appeal against the orders and judgments of this court passed in exercise of jurisdiction under Article 184(3)?
iv) What is the effect of inserting a right of appeal through ordinary legislation?
v) What will be the effect if the Parliament through ordinary legislation changes the very essence of review under Article 188 of the 1973 Constitution to the extent that it would for all intents and purposes stand converted into an appeal under Article 185?
vi) What was the rationale for conferring rule making powers on the Supreme Court?
vii) Whether the parliament have the power to make laws and whether the parliament can legislate regarding any matter relating to jurisdiction and powers of the Supreme Court?
viii) Whether the Constitution empowers the Parliament to "enlarge" the review jurisdiction of the Supreme Court under Article 188 of the Constitution?
ix) Whether section 2 of the Act 2023 enlarges the jurisdiction of the Supreme Court under Article 184(3)?
x) Who constitutes Benches and fix the number of Judges; whether the legislature can enact a law on the subject of the constitution of benches?
xi) What is the difference between "jurisdiction" and "power"?
xii) Whether any law can be saved or protected by way of an ouster clause?
xiii) If the gist of the Act and its very basis is declared to be unconstitutional whether the ancillary provisions can stand alone?

Analysis: i) Unlike Article 199 of the 1973 Constitution, this Court has the unique constitutional mandate under Article 184(3) to directly entertain matters related to enforcement of fundamental rights which raise questions of public importance. This jurisdiction is also to be exercised "Without prejudice to the provisions of in Article

199 …". Therefore, while the power of this Court to issue writs in terms of Article 199 is concurrent with that of the High Courts, it is only before this Court that questions of public importance with reference to enforcement of fundamental rights can directly be raised and entertained without being hampered by the trappings of Article 199 of the 1973 Constitution.

ii) The 2023 Act is an intrusion in the basic and fundamental feature of the Constitution namely the independence of the judiciary directly and undisputedly affects fundamental rights of citizens. The protection, preservation and enforcement of fundamental rights are the primary duty of this Court in its constitutional mandate as the guardian of fundamental rights of the citizens.

iii) It is clear and obvious from a plain reading of the 1973 Constitution that the framers did not envisage or provide a right of appeal against orders/judgements of this Court passed in exercise of jurisdiction under Article 184(3) which are final except for a right to seek review under Article 188 read with the 1980 Rules.

iv) Any attempt to insert a right of appeal through ordinary legislation, couched in whatever language, in whatever manner and through whatever device used, amounts to introducing an amendment in the Constitution and is clearly ultra vires the Constitution.

v) If the Parliament through ordinary legislation changes the very essence of review under Article 188 of the 1973 Constitution to the extent that it would for all intents and purposes stand converted into an appeal under Article 185 and thereby virtually obliterate the fundamental difference between the two. Such course of action, if permitted, would open the door for interference in the independence of judiciary through statutory instruments that the Constitution prohibits.

vi) The rationale for conferring rule making powers on the Supreme Court is a supplement to the foundational tenet of the 1973 Constitution to protect and preserve the complete independence of the Court from the possibility of any interference by other organs of the State.

vii) Under Article 142(a), the Parliament, subject to the Constitution, "shall have exclusive power to make laws with respect to any matter in the Federal Legislative List." The Federal Legislative List is found in the Fourth Schedule to the Constitution. For the purposes of these Petitions, the relevant Entry in the Fourth Schedule is Entry No.55. The first limb of the Entry is straightforward. Parliament cannot legislate regarding any matter relating to jurisdiction and powers of the Supreme Court. It is the second limb which states that Parliament can legislate on the enlargement of the jurisdiction of the Supreme Court and the conferring thereon of supplemental powers as is expressly authorized by or under the Constitution.

viii) The said Rules have been framed in exercise of an independent Constitutional power keeping in mind a fundamentally important feature of the Constitution namely independence of judiciary and cannot be changed, modified, or overridden by ordinary legislation. Further, there is no "express authorization" anywhere in the Constitution empowering the Parliament to "enlarge" the review jurisdiction of the Supreme Court under Article 188 of the Constitution. In addition, the 2023 Act does not "enlarge" review jurisdiction, it "creates" a new appellate jurisdiction

which has no constitutional basis, sanction or authorization. Therefore, any attempt by way of ordinary legislation to interfere in the scope of its powers and jurisdiction including but not limited to its review jurisdiction would constitute a wrong and erroneous reading and interpretation of the Constitution. There can be no two opinions that the power to interpret the Constitution vests exclusively with the Supreme Court of Pakistan. The 2023 Act appears to be an overt and glaring intrusion in the independence of the judiciary, which is a grund-norm of our constitutional scheme and has been vigorously, resolutely, and robustly guarded by the framers of the 1973 Constitution as is evident from various provisions of the 1973 Constitution. The very preamble of the 1973 Constitution categorically states: "… the independence of the judiciary shall be fully secured". Any legislation interfering with the independence of the judiciary, would by its nature and from its very inception, be unconstitutional, null, void and of no legal effect.

ix) Under the Constitution, orders and judgements passed by the Supreme Court under Article 184(3) are final except to the limited extent that the same may be subject to review jurisdiction under Article 188. Section 2 by providing an appeal on facts and law against the judgements and orders passed under Article 184(3), reduces rather than enlarges the jurisdiction of the Supreme Court under Article 184(3) since such judgements and orders are now subject to a rehearing and re-appraisal by a larger bench hearing the review as an appeal thereby destroying the finality of such judgments or orders. It may be noted that looked at from another angle, an "expansion" of review jurisdiction and converting it into an appeal would necessitate amending various Constitutional Articles (including Articles 184(3), 185 and 188) as well as modification of the 1980 Rules. The 2023 Act alone, and by itself, cannot alter, modify or amend Constitutional provisions without adhering to the mandatory requirements set forth in Articles 238, 239 and 269 of the 1973 Constitution.

x) A five-member bench of this Court, in SMC No.4 of 2021 (PLD 2022 SC 306 @ para 33), has already held that: " … it is settled law that it is the Chief Justice alone who is the master of the roster and who, from time to time, constitutes Benches for the exercise of the various jurisdictions of the Court. This applies (to take the language of Order XI of the 1980 Rules) to "every cause, appeal or matter" to be heard and disposed of by the Court …" Since this Court has declared that under the 1980 Rules, it is the sole prerogative of the Chief Justice of Pakistan to constitute Benches, to fix the number of Judges who constitute the said Benches, it would veer towards irrationality to hold that while the original exercise and invocation of jurisdiction under Article 184(3) is the sole prerogative of the Chief Justice under the 1980 Rules, the legislature has the authority to supersede the Chief Justice and enact a law taking away the prerogative of the Chief Justice of nominating and fixing the number Judges to hear a review petition.

xi) Jurisdiction of a Court is a well-understood concept which means the capacity of a court to decide a dispute arising before it. On the other hand, the "power of the Court" means the actions which a Court may take i.e. the judgement or order it may pass after assuming jurisdiction.

xii) No law that is found to offend any provision of the Constitution including the fundamental rights enshrined in the 1973 Constitution can be saved or protected by way of an ouster clause. Article 8(1) of the 1973 Constitution expressly states that: "Any law … in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void." It is trite that ouster of jurisdiction provisions contained in statutory instruments do not and cannot affect, curtail or diminish the Constitutional powers and jurisdiction of this Court.

xiii) It is a settled principle of law that if the gist of the Act and its very basis is declared to be unconstitutional then the ancillary provisions too must go as those cannot stand alone. Parliament is deemed to have passed those ancillary provisions on the assumption that the main gist or life of the Act, namely that the review be converted into an appeal before a larger bench, is valid. If Section 2 is declared to be unconstitutional and void then the remaining sections of the Act cannot stand on their own and the entire Act ought to be declared void.

Conclusion: i) Unlike Article 199 of the 1973 Constitution, this Court has the unique constitutional mandate under Article 184(3) to directly entertain matters related to enforcement of fundamental rights which raise questions of public importance.

ii) The protection, preservation and enforcement of fundamental rights are the primary duty of this Court in its constitutional mandate.

iii) Reading of the 1973 Constitution did not envisage or provide a right of appeal against orders/judgements of this Court passed in exercise of jurisdiction under Article 184(3).

iv) Any attempt to insert a right of appeal through ordinary legislation amounts to introducing an amendment in the Constitution and is clearly ultra vires the Constitution.

v) Such course of action, if permitted, would open the door for interference in the independence of judiciary through statutory instruments that the Constitution prohibits.

vi) The rationale for conferring rule making powers on the Supreme Court is to protect and preserve the complete independence of the Court from the possibility of any interference by other organs of the State.

vii) The parliament have the power to make laws but the parliament cannot legislate regarding any matter relating to jurisdiction and powers of the Supreme Court rather can legislate on the enlargement of the jurisdiction of the Supreme Court and the conferring thereon of supplemental powers as is expressly authorized by or under the Constitution.

viii) There is no "express authorization" anywhere in the Constitution empowering the Parliament to "enlarge" the review jurisdiction of the Supreme Court under Article 188 of the Constitution.

ix) Section 2 by providing an appeal on facts and law against the judgements and orders passed under Article 184(3), reduces rather than enlarges the jurisdiction of the Supreme Court under Article 184(3) since such judgements and orders are now

subject to a rehearing and re-appraisal by a larger bench hearing the review as an appeal thereby destroying the finality of such judgments or orders.

x) It would veer towards irrationality to hold that while the original exercise and invocation of jurisdiction under Article 184(3) is the sole prerogative of the Chief Justice under the 1980 Rules, the legislature has the authority to supersede the Chief Justice and enact a law taking away the prerogative of the Chief Justice of nominating and fixing the number Judges to hear a review petition.

xi) Jurisdiction of a Court is a well-understood concept which means the capacity of a court to decide a dispute arising before it. On the other hand, the "power of the Court" means the actions which a Court may take.

xii) No law that is found to offend any provision of the Constitution including the fundamental rights enshrined in the 1973 Constitution can be saved or protected by way of an ouster clause.

xiii) It is a settled principle of law that if the gist of the Act and its very basis is declared to be unconstitutional then the ancillary provisions too must go as those cannot stand alone.

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2. **Supreme Court of Pakistan**
Mohammad Sibtain Khan and others v. Election Commission of Pakistan through Chief Election Commissioner, Islamabad and others
Constitution Petition No.5 of 2023
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Ijaz-ul-Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/const.p._5_2023_detailed_reasons.pdf

Facts: This petition can be regarded as a follow up of the decision in a bunch of matters that had been taken up earlier, being SMC 1/2023 and two constitutional petitions filed under Article 184(3) of the Constitution. Those matters were ultimately heard by a five member Bench and decided by a majority of 3:2.

Issues: i) Whether an act, decision or omission, by the Commission is beyond the purview of judicial review?

ii) Whether the jurisprudence of the Court in relation to such clauses (which are all variants on the "shall not be called in question…" line) where they do exist need to be set out here?

iii) Whether the constitutional duty to hold elections as required can convert the duty into a power?

iv) Whether the Commission is master of all electoral matters?

v) Can the Commission, in putative exercise of a claimed constitutional power, push elections beyond the applicable period set out in Article 224?

vi) What types of powers are conferred upon the commission to alter the election program?

vii) What could the Commission do if the executive authorities failed or refused to fulfil their constitutional duties under Article 220?

Analysis: i) An act, decision or omission, by the Commission is not beyond the purview of judicial review. There are two reasons for this. Firstly, to repeat the oft-quoted words of Marshall, CJ in Marbury v Madison 5 US (1 Cranch) 137 (1803)), "[it] is emphatically the province and duty of the Judicial Department to say what the law is". This duty applies in relation to both statutory and constitutional provisions. Secondly, it is to be noted that the Constitution does not protect any act, omission or decision of the Commission with an ouster clause.

ii) The jurisprudence of the Court in relation to such clauses (which are all variants on the "shall not be called in question…" line) where they do exist need not therefore be set out here. The absence of such clauses in relation to the Commission does however indicate that there is no immunity from judicial scrutiny. Of course, the decisions and acts of the Commission are not to be taken lightly and are to be given due respect and consideration. But, in the end, it is for the Court itself to decide on the correctness and legality thereof.

iii) The constitutional duty to hold elections as required (honestly, justly, fairly) does not, and cannot, convert the duty into a power vis-à-vis other constitutional provisions.

iv) On the constitutional plane, the Commission is not the master but rather the forum or organ that the Constitution has chosen to perform the task that lies at the heart of constitutional democracy.

v) In our view, the answer can only be in the negative. It is to be noted that both clauses of Article 224 here relevant are couched in mandatory terms: each uses the word "shall" twice, first in relation to the period in which the elections are to be held and then the period in which the results are to be declared. These clauses are mandatory and binding. They tell us when, at the latest, the elections are to be held, and when, at the latest, the result is to be declared. (Of course, elections can be held at any time within the stipulated period, and the result ought to be declared as swiftly as possible, which is what the 2017 Act, quite properly, mandates.) Article 218(3) tells us how those elections are to be held. Both provisions impose constitutional duties. They are complementary. By fixing the time period(s) in Article 224, the Constitution binds everyone, including the Commission itself. The other duty, of holding the elections, is imposed on the Commission, and binds the executive branch to assist it in this regard. In their own terms both duties are mandatory. But the Commission cannot read one constitutional duty as conferring upon it the constitutional power to negate the other, and thereby convert what is mandatory into something that is only directory. It is this conflation of, and confusion between, "duty" and "power" on the constitutional plane that underlies the Commission's case.

vi) It is to be noted that the power to alter the election program is circumscribed and not open-ended. It can only be exercised if "necessary for the purposes of [the 2017] Act" and not otherwise. Furthermore, the power conferred comprises of two distinct limbs, which operate separately from each other. The first limb empowers the Commission to make "alterations in the Election Programme" "for the different

stages of the election". In other words, the dates given for the different stages or events in the election program may be altered or varied, but the overall program must recognizably remain the same. The second limb allows the Commission to "issue" "a fresh Election Programme", i.e., to abandon the earlier notified program and issue an entirely new one.

vii) The answer, on the constitutional and legal plane, is clear. It was not for the Commission to (metaphorically) wring its hands and then, bowed under the weight of its own professed inability to persuade or cajole the executive authorities to obey the constitutional command of Article 220, pass an unconstitutional order pushing forward the election by several months. The legal path was clear. It was for the Commission to speedily approach this Court for relief in the shape of a writ of mandamus.

Conclusion: i) An act, decision or omission, by the Commission is not beyond the purview of judicial review.

ii) The jurisprudence of the Court in relation to such clauses (which are all variants on the "shall not be called in question…" line) where they do exist need not therefore be set out here.

iii) The constitutional duty to hold elections as required (honestly, justly, fairly) does not, and cannot, convert the duty into a power.

iv) The Commission is not the master but rather the forum or organ that the Constitution has chosen to perform the task.

v) The Commission cannot in putative exercise of a claimed constitutional power, push elections beyond the applicable period set out in Article 224, and thereby defeat and deny the constitutional command therein enshrined.

vi) It can only be exercised if "necessary for the purposes of [the 2017] Act" and not otherwise.

vii) It was for the Commission to speedily approach this Court for relief in the shape of a writ of mandamus.

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3. **Supreme Court of Pakistan**

Khalid Mehmood v. Chaklala Cantonment Board through its CEO and others
C.M. Appeal No. 47 of 2020 in CMA Nil of 2020 in C.R.P. 664 of 2018 in C.P. 130 of 2016

Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar

https://www.supremecourt.gov.pk/downloads_judgements/c.m.appeal._47_2020.pdf

Facts: The facts leading to the filing of the present appeal, briefly, are that the appellant filed a writ petition in the Lahore High Court against the respondents regarding an auction matter, which was allowed by a Single Bench of that High Court against which respondents' intra-court appeal before the Division Bench failed. They then filed a petition for leave to appeal in Supreme Court, which was allowed by a three-member Bench of this Court whereby impugned judgments of the High Court were set aside and the writ petition of the appellant was dismissed on the ground of

laches. The appellant filed a review petition against the said order of Supreme Court, which was dismissed by this Court, holding that no ground for review had been made out. The appellant then filed an application under Article 187 of the Constitution of the Islamic Republic of Pakistan ("Constitution") read with Rule 2 of Order X and Rule 6 of Order XXXIII of the Supreme Court Rules 1980 ("Supreme Court Rules"), for passing appropriate orders in the interest of justice. The Institution Officer of Supreme Court returned the said application of the appellant by determining in his order that the application amounted to a second review petition which was not entertainable under Rule 9 of Order XXVI and Rule 2 of Order X of the Supreme Court Rules. The present appeal has been filed against this order of the Institution Officer.

Issues: i) Whether second review petition or "curative review", is maintainable under Article 188 of the Constitution read with the Supreme Court Rules, 1980?
ii) Whether jurisdiction can be vested in Supreme Court which is otherwise not conferred on it by the Constitution or any other law?
iii) Whether any transplant of a rule from a foreign jurisdiction be made in Pakistan jurisdiction?
iv) Whether Article 187(1) of the Constitution confers jurisdiction upon Supreme Court to take cognizance of any case or matter?
v) Whether Supreme Court can exercise suo motu review jurisdiction to entertain a second review petition under Article 188 of the Constitution?
vi) Whether review jurisdiction conferred on the Supreme Court by Article 188 of the Constitution be exercised in any judgment or order made in review jurisdiction by the Court under the same Article?
vii) Whether correction or development of the law declared by Supreme Court can be revisited only once?

Analysis: i) The review jurisdiction is conferred on this Court by Article 188 of the Constitution, which states that the 'Supreme Court shall have power, subject to the provisions of any Act of Majlis-e-Shoora (Parliament) and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it'. The review jurisdiction conferred by Article 188, as it is evident from the reading of that Article, is subject to the provisions of any Act of Parliament and any rules made by the Court. The Parliament has not so far passed any Act under this Article; however, the Supreme Court Rules made by this Court contain the rules that regulate its review jurisdiction… In view of the above rules, the question of maintainability of, and the jurisdiction of this Court to entertain, a second review petition has been considered and decided by this Court in many cases. The legal position as to the non-maintainability of a second review petition is so well settled by the repeated pronouncements of this Court that I consider it unnecessary to delve into this question again and reference to some of these cases here, should suffice: See Ahmad v. Abdul Aziz 1991 SCMR 234; Abdul Hameed Dogar v. Federation of Pakistan 2010 SCMR 312; Shabbar Raza v. Federation of Pakistan 2018 SCMR 514 (7-MB); Akhter Lalayka v. Mushtaq Sukhaira 2018 SCMR 1218 (5-MB);

Moinuddin v. State PLD 2019 SC 749 (7-MB). The declaration made by a seven-member larger Bench of this Court in the last mentioned case of Moinuddin is reproduced here to show what the law of the land on this matter is:

> 6……. There is, thus, no scope for maintainability of a second or subsequent review petition before this Court after the first review petition has been decided. It is sometimes argued that in such a situation, particularly in a case of extreme hardship, this Court may attend to the matter in exercise of its jurisdictions under Articles 184(3) or 187 of the Constitution or may resort to revisiting the earlier order or judgment in order to safeguard the interests of justice but such arguments have consistently been rejected by this Court in the past. In many previous cases this Court has consistently held that after exhausting the review jurisdiction of this Court a party to a case cannot invoke Articles 184(3) or 187(1) of the Constitution for reopening the same case.

ii) Article 175(2) of the Constitution unequivocally declares that '[n]o court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law'. I am, therefore, of the considered view that entertaining a second review petition would amount to vesting the Court with a jurisdiction not conferred on it by the Constitution or by or under any law in terms of Article 175(2) of the Constitution. It is reiterated that the courts in Pakistan enjoy jurisdiction which is conferred on them by the Constitution or by or under any law and do not possess any inherent jurisdiction on the basis of some principles of English common law, equity or good conscience.

iii) As there is no provision in the Indian Constitution similar to Article 175(2) of our Constitution, the Rupa Ashok case of the Indian jurisdiction, which held that the Indian Supreme Court has the inherent jurisdiction to act ex debito justitiae and can entertain in some rarest of the rare cases a second (curative) review petition, does not advance the argument of the learned counsel for the appellant in any manner. Any transplant of a rule from a foreign jurisdiction in ours can only be made after considering closely and thoroughly the difference in the constitutional texts and contexts. In view of the difference of provisions in the Constitutions of both countries, the reference to the said Indian case is misplaced.

iv) So far as the reference to Article 187(1) of the Constitution by the appellant in his application (second review petition) is concerned, the same is also misconceived. The bare reading of Article 187(1) shows that its provisions are subject to and controlled by Article 175(2) of the Constitution. It only confers power on the Court 'to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it', and does not confer jurisdiction to take cognizance of any case or matter. The phrase 'in any case or matter pending before it' used in Article 187(1) is the key to construe the provisions thereof. It leaves little doubt to find that no independent proceedings can be initiated under this Article. The Court can invoke its power under Article 187(1)

only in a case or matter that is competently filed before it under any Article of the Constitution or provision of some other law conferring jurisdiction as stated in Article 175(2) and is also pending before it. Article 187(1) of the Constitution is not applicable where the case or matter stands finally concluded and is no more pending before the Court.

v) It is true that the Supreme Court Rules bar entertaining the second review petition but are silent on the point whether this Court can exercise suo motu review jurisdiction to entertain a second review petition under Article 188 of the Constitution. In my opinion, it cannot do so for the reason that the prohibition on entertaining a second review petition is meant to put an end to litigation and ensuring finality of the judgments and orders of the apex court of the land, in the public interest. If this is the substance and purpose of the Supreme Court Rules, the prohibition operates both on the parties in moving the second review petition and on the Court as well, in exercising suo motu review jurisdiction the second time. If we assume that there is no prohibition on the suo motu exercise of its review jurisdiction the second time by the Court regarding a judgment or order, there will be no end to litigation nor will there be any finality of the judgment or orders of the Court as this suo motu review jurisdiction can then be exercisable for unlimited times and not only for the second time.

vi) More importantly, review jurisdiction conferred on the Court by Article 188 of the Constitution, is with regard to 'any judgment pronounced or any order made by the Court' under the preceding Articles of the Constitution, i.e., Articles 184 in its original jurisdiction or under Article 185 in its appellate jurisdiction. Article 188 is not concerned with any judgment or order made in review jurisdiction by the Court under the same Article. And unless the judgment or order passed on the first review petition or in the first suo motu review proceedings is recalled, the judgment or order passed in the original or appellate jurisdiction cannot be reviewed. If this is not the meaning and scope of the words 'any judgment' or 'any order' used in Article 188 of the Constitution but are taken to include the judgment or order passed in the review jurisdiction also, then any judgment or order passed in the second, third or fourth suo motu review proceedings will also be reviewable in the third, fourth or fifth suo motu review proceedings. Such an interpretation of the words 'any judgment' or 'any order' in Article 188 of the Constitution, if adopted, would be against the legislative intent and the public interest that lies in putting an end to litigation and ensuring finality of the judgments and orders of the apex court of the country. Article 188 of the Constitution, thus, envisages only one-time exercise of the review jurisdiction, whether made on a review petition or suo motu, by the Court in respect of any of its judgments or orders passed in its original or appellate jurisdiction.

vii) Nonetheless, it may be pertinent to underline here that revisiting, and overruling or modifying if found necessary, a decision on a question of law or enunciation of a principle of law, that is binding on all other courts in the country as per Article 189 of the Constitution, in a case other than that in which the said decision or enunciation was made, must not be confused with reviewing that very judgment or

order in which the said decision or enunciation was made. There is no limit, under the Constitution or any law, as to how many times a question of law once decided or a principle of law enunciated in one case can be revisited, if found necessary to do so, in some other case by a larger Bench or the Full Court Bench of this Court, as an exception to the doctrine of stare decisis for the correction or development of the law declared by this Court.

Conclusion: i) Second review or curative review is not maintainable before Supreme Court under Article 188 of the Constitution read with the Supreme Court Rules, 1980.
ii) Courts in Pakistan only enjoy jurisdiction which is conferred on them by the Constitution or by or under any law and do not possess any inherent jurisdiction on the basis of some principles of English common law, equity or good conscience.
iii) Any transplant of a rule from a foreign jurisdiction in ours can only be made after considering closely and thoroughly the difference in the constitutional texts and contexts.
iv) Supreme Court can take cognizance under Article 187(1) only in a case or matter that is competently filed before it under any Article of the Constitution or provision of some other law conferring jurisdiction as stated in Article 175(2) and is also pending before it.
v) Supreme Court cannot exercise suo motu review jurisdiction to entertain a second review petition under Article 188 of the Constitution for the reason that prohibition on second review is to put an end to litigation and ensuring finality of the judgments and orders of the apex court of the land.
vi) Review jurisdiction conferred on the Supreme Court by Article 188 of the Constitution cannot be exercised in any judgment or order made in review jurisdiction by the Court.
vii) Correction or development of the law declared by Supreme Court can be revisited, if found necessary to do so, in some other case by a larger Bench or the Full Court Bench of Supreme Court, as an exception to the doctrine of stare decisis for the correction or development of the law declared by this Court.

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4. **Supreme Court of Pakistan**
The Commissioner of Income Tax, Companies, etc. v. M/s Pak Saudi Fertilizers Ltd., Karachi through M.D etc.
Civil Appeals no.1275 of 2009 etc.
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1275_2009.pdf

Facts: These Civil Appeals with leave of the Court are directed against the two judgments passed by the respective High Courts two different provinces in Income Tax Appeal and in Tax Reference.

Issues: i) Whether the law of agency is a common law doctrine commanding and regulating the affiliation between agent and principal?
ii) Whether principal may be held liable for the misdemeanor and misdeed of its

agent?
iii) Whether in contract of sale of specific or ascertained goods the intentions of the parties much regarded during transfer of property to buyer?
iv)Whether time of payment of price or delivery of goods is immaterial in case of unconditional contract for the sale of specific goods?
v)What are the definitions of "Agent" and "Principal"?
vi) What are the extents of agent's authority?
vii) What are the duties of an Agent and Principal?
viii) Whether employer is liable to indemnify the agent when he acts in good faith?
ix) Whether Section 80-C of the ITO 1979 articulates that any amount received under which tax is deductible under Section 50(4) was deemed to be the total income tax liability of the assessee?

Analysis: i) The law of agency is a common law doctrine commanding and regulating the affiliation between agent and principal. The relationship originates when the agent is conferred the authority to act for the principal through a binding agreement with an explicit authority to perform the duties and obligation as required by the principal in terms of agency to achieve the task.
ii) The principal may be held liable for the misdemeanor and misdeed of its agent under the doctrine of vicarious liability. Agency is a series and sequence of passing on the authority by a principal to the agent to act on its behalf and under the quintessence of an agency contract the principal is legally bound by the acts performed by the agent, but the agent also owes a range of obligations to his principal and is duty-bound to adhere to the terms and conditions of agency religiously. In order to culminate the relationship of principal and agent, various avenues are available for valediction and wrap ping up the arrangement, including termination through mutual agreement , revocation by the principal , repudiation by the agent and /or annulment or retraction of authority by the principal.
iii) In line with Section 19 of the Sales of Goods Act 1930, where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred and for the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
iv)Section 20 of the Sales of Goods Act 1930 explicates that, where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.
v)Section 182 of the Contract Act defines the expressions "Agent" and "Principal" which manifests that an agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal.
vi) Section 188 of the Contract Act pertains to the extent of the agent's authority i.e. that an agent having the authority to do an act has authority to do every lawful

thing which is necessary in order to do such act. This further elaborates that an agent having the authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

vii) The duties of an agent towards the principal are dealt with under Section 211 of the Contract Act wherein the agent is bound to conduct the business of the principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it. Whereas Section 222 is germane to the duties of the principal with regard to its agent wherein the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

viii) Taking into account the niceties of Section 223 of the Contract Act, where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it may cause injury to the rights of third persons.

ix) It is quite noticeable that Section 80-C of the ITO 1979 started with a non-obstante clause, that notwithstanding anything contained in the ITO 1979 or any other law for the time being in force, where any amount referred to in sub-section (2) is received by or accrues or arises or is deemed to accrue or arise to any person being a resident, the whole of such amount shall be deemed to be income of the said person and tax thereon shall be charged at the rate specified in the First Schedule…Sub-section (4) of Section 80-C ITO 1979, further conveys that where the assessee has no income other than the income referred to in sub-section (1) in respect of which tax has been deducted or collected, the tax deducted or collected under Section 50 shall be deemed to be the final discharge of his tax liability under this Ordinance. Whereas according to the niceties of Section 50 (4) (a) of ITO 1979 , any person responsible for making any payment in full or in part to any person being resident on account of the supply of goods or for service rendered to, or the execution of a contract with the Government, or a local authority, or a company or a registered firm or any foreign contractor or consultant or consortium shall, where the total value, in any financial year, of goods supplied or contracts executed exceeds ten thousand rupees, deduct advance tax, at the time of making such payment, at the rate specified in the First Schedule, and credit for the tax so deducted in any financial year shall, subject to the provisions of Section 53, be given in computing the tax payable by the recipient for the assessment year commencing on the first day of July next following the said financial year, or in the case of an assessment to which Section 72 or Section 81 applies, the assessment year, if any, in which the said date, as referred to therein, falls, whichever is the later.

Conclusion: i) Yes**,** the law of agency is a common law doctrine commanding and regulating

the affiliation between agent and principal.
ii) Yes, the principal may be held liable for the misdemeanor and misdeed of its agent.
iii)Yes, in contract of sale of specific or ascertained goods the intentions of the parties much regarded during transfer of property to buyer.
iv) Yes, time of payment of price or delivery of goods is immaterial in case of unconditional contract for the sale of specific goods.
v) Section 182 of the Contract Act defines the expressions "Agent" and "Principal".
vi) Section 188 of the Contract Act pertains to the extent of the agent's authority.
vii) The duties of an agent towards the principal are dealt with under Section 211 of the Contract Act.
viii) Yes, employer is liable to indemnify the agent when he acts in good faith taking into account the niceties of Section 223 of the Contract Act.
ix)Yes, Section 80-C of the ITO 1979 articulates that any amount received under which tax is deductible under Section 50(4) was deemed to be the total income tax liability of the assessee.

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5. **Supreme Court of Pakistan**
M/s Islamabad Electric Supply Company Limited (IESCO) through its Finance Director, Islamabad v. The Appellate Tribunal Inland Revenue (H.Q), Islamabad through its Chairman and others
Civil Petitions No.1920 to 1924 of 2022
Mr. Justice Umar Ata Bandial, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1920_2022.pdf

Facts: The petitioner is a public limited company dealing in the supply of electricity to the consumers. The respondent No.3 initiated the proceedings under Section 161 and 205 of the Income Tax Ordinance 2001, he passed the order and created the tax demand for payment against non-deduction of withholding tax, including default surcharge under Sections 161 and 205 read with Section 124 of the Ordinance. Being aggrieved, the petitioner filed appeals before the respondent No.2 but could not succeed, thereafter; the appeals were filed before the Appellate Tribunal Inland Revenue which were also decided against the petitioner. As a last resort, the petitioner filed aforesaid Income Tax References in the learned High Court but the question of law framed in the Tax References was also answered in negative, while upholding the order passed by the learned Appellate Tribunal Inland Revenue.

Issues: i) Whether the proceedings and order passed under section 161/205 is justified without proceedings under Section 177 of the Income Tax Ordinance, 2001?
ii) What is the rule of construction or interpretation of any statute or its particular provision?

Analysis: i) The legislature has not put into effect any precondition under Section 177 of the Ordinance to embark on an audit exercise first, and then start off proceedings under Section 161 of the Ordinance. The course of action and benchmark enumerated

under Section 161 of the Ordinance is not contingent upon the compliance of pre-audit requirements mentioned under Section 177, nor does Section 177 of the Ordinance override or overlap the provisions contained under Section 161 of the Ordinance as a precondition of audit, rather both the provisions are, in all fairness, seemingly independent with self-governing corollaries. So far as Section 205 of the Ordinance is concerned, it is by and large related to default surcharge which obviously emanates the characterization of defaults in different scenarios, including where a person who fails to collect tax as required or fails to pay an amount of tax collected or deducted as required under section 160 on or before the due date for payment is liable for default surcharge at a rate mentioned in the Section.

ii) The well recognized rule of construction or interpretation of any statute or its particular provision is that the intention of the legislature must be discovered from the words used. If the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction. If the words of a statute or its any provision are readily understood without any ambiguity, then obviously, it is not for the court to raise any doubt as to what they mean for any contrary view, rather than implementing the same without any hesitation. A statute or any enacting provision must be so construed as to make it effectual and operational. The legislature doesn't use superfluous or insignificant words in a provision or statute and therefore, while interpreting any word or terms in a statute a construction that makes the statute operative and the words pertinent must be preferred to the one that renders the words ineffective, void and useless.

Conclusion: i) The legislature has not put into effect any precondition under Section 177 of the Ordinance to embark on an audit exercise first, and then start off proceedings under Section 161 of the Ordinance. So far as Section 205 of the Ordinance is concerned, it is by and large related to default surcharge.

ii) The well recognized rule of construction or interpretation of any statute or its particular provision is that the intention of the legislature must be discovered from the words used.

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6. **Supreme Court of Pakistan**
Government of Khyber Pakhtunkhwa though Chief Secretary at Civil Secretariat, Peshawar and others v. Shah Faisal Wahab and others
Civil Petition No.614-P of 2022
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p.614_p_2022.pdf

Facts: This Civil Petition for leave to appeal has been brought to challenge the Judgment passed by the High Court whereby directions have been issued to the petitioners to adjust the respondent No.1 in the upcoming admissions for the Session 2022-2023 on the basis of the test already conducted and qualified by him.

Issue: Whether the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has jurisdiction to provide expeditious remedy without any elaborate enquiry or recording of evidence?

Analysis: The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is intended to provide an expeditious remedy in a case where the illegality of an impugned action can be established without any elaborate enquiry or recording of evidence, but if some complicated or disputed question of facts are involved, the adjudication of which could only possible to be resolved and decided by the Courts of plenary jurisdiction after recording evidence of the parties, then obviously the High Court should not embark on to decide convoluted issues of facts.

Conclusion: The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is intended to provide an expeditious remedy in a case where the illegality of an impugned action can be established without any elaborate enquiry or recording of evidence.

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7. **Supreme Court of Pakistan**
Muzafar Iqbal v. Mst. Riffat Parveen and others.
Civil Appeal No.307 of 2017
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._307_2017.pdf

Facts: This Civil Appeal is directed against the judgment passed by High Court, whereby Regular Second Appeal filed by the respondents was allowed by upsetting the concurrent findings recorded by the lower fora.

Issues: i) What are the minutiae of Section 100 of the CPC?
ii) Whether judgment of the Appellate Court shall state the points for determination and the reasons for the decision under Order XLI, Rule 31, CPC?
iii) Whether jurisdiction of a High Court under Section 100 CPC is meant to decide substantial question of law and not pure question of fact?
iv) What are the distinctions between the appellate jurisdictions under Section 96 and 100 CPC?

Analysis: i) According to the minutiae of Section 100 of the CPC, a second appeal may be preferred in the High Court against a decree passed in appeal on the grounds such as (a) the decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law, or (c) a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force, which may possibly have produced an error or defect in the decision of the case upon merits. It is categorically provided under Section 101, CPC that no second appeal shall lie except on the grounds mentioned in Section 100 and, consistent with Section 103, CPC, the High Court in any second appeal may, if the evidence on the record is

sufficient, determine any issue of fact necessary for the disposal of the appeal which has not been determined by the lower Appellate Court or which has been wrongly determined by reason of illegality, omission, error or defect as alluded to under sub-section (1) of Section 100.

ii) The procedure for dealing with appeals from original decrees as provided under Order XLI, CPC is made applicable in terms of Section 108, CPC for hearing second appeal against the appellate decrees and orders made in the Civil procedure Code or under any special or local law in which a different procedure is not provided. The prerequisites and rudiments of the Order XLI, Rule 31, CPC is that the judgment of the Appellate Court shall state (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

iii) The jurisdiction of a High Court under Section 100 CPC is constricted to appeals encompassing a substantial question of law rather than causing interference on a pure question of fact and, while taking cognizance by means of second appeal under Section 100 CPC, it is a foremost fragment of jurisdiction to formulate the question of law which is inherent in the spirit of such jurisdiction, hence, for all intents and purposes, the requirements of Order XLI, Rule 31, CPC must be complied with, however, if it is conceivable from the judgment that substantial compliance has been made whereby the cause of justice has not suffered or depreciated, that would be sufficient for the safe administration of justice despite non-adherence to the said Rule stricto sensu.

iv) The right of appeal gives rise to a notion of accentuating by twofold and threefold checks and balances to prevent injustice, and ensuring that justice has been done. There is also marked distinction between two appellate jurisdictions; one is conferred by Section 96 CPC in which the Appellate Court may embark upon the questions of fact, while in the second appeal provided under Section 100 ibid, the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the jurisdiction is somewhat is confined to the questions of law which is sine qua non for the exercise of the jurisdiction under Section 100 CPC.

Conclusion: i) The incidental details of section 100 of the CPC are mentioned in the analysis portion.

ii) Yes, judgment of the Appellate Court shall state the points for determination and the reasons for the decision under Order XLI, Rule 31, CPC.

iii) Yes, jurisdiction of a High Court under Section 100 CPC is meant to decide substantial question of law and not pure question of fact.

iv) There is marked distinction between two appellate jurisdictions; one is conferred by Section 96 CPC in which the Appellate Court may embark upon the questions of fact, while the second appeal is provided under Section 100 CPC.

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8. **Supreme Court of Pakistan**
Injum Aqeel v. Latif Muhammad Chaudhry, etc.
Civil Petitions No. 3059 & 3060 of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3059_2021.pdf

Facts: These Civil Petitions for leave to appeal are directed against the consolidated judgment passed by the High Court in RFAs, whereby both the Regular First Appeals filed by the petitioner were dismissed and the ex-parte award was maintained, however the additional claim of the respondent No.1 referred to in the local commission report was found to be beyond the scope of the Arbitration Proceedings which could be agitated through separate proceedings.

Issues: i) Whether resolution of disputes through arbitration often proves to be speedier than Court litigation?
ii) What are the powers of Arbitrators or Umpires?
iii) What are the powers of Court regarding observation of award for making it Rule of Court?
iv) When Arbitrator misconducts the proceedings of Arbitration?
v) What are the qualities of a good Arbitrator?
vi) Whether a Court can review the Award or parties can challenge the decision of Arbitrator?

Analysis: i) Due to somewhat moderate and flexible procedural rigidities, the resolution of disputes through arbitration often proves to be speedier and more cost-effective than Court litigation which passes through different stages or rounds of litigation from original to appellate forums. It is also a form of alternative dispute resolution (ADR) in which the parties may adopt to settle their disputes or differences outside the courts of law which sometimes runs faster to its logical end and proves to be more expeditious rather than litigating in court.
ii) Under Section13 of the Arbitration Act,1940, the arbitrators or umpires, unless a different intention is expressed in the agreement, may exercise (a) the powers to administer oath to the parties and witness appearing; (b) state a special case for the opinion of the Court on any question of law involved; (b) make an award conditional or alternative; (c) correct in an award any clerical mistake or error arising from any accidental slip or omission; and (d) administer to any party to the arbitration such interrogatories as may in the opinion of arbitrator or umpire be necessary…
iii) The Court is not supposed to act in a perfunctory manner in this regard, rather it should look into the award and, if any patent illegality is found, the Court may remit the award to the arbitrator for reconsideration or set aside the same…As per scheme of the Arbitration Act,1940, it divulges that the Court has been vested with ample powers to render judgment in terms of the award, or modify or correct it, remit the award for reconsideration, or set aside the award. According to Section

30 of the Arbitration Act, 1940, the Court may set aside the award if (a) an arbitrator or umpire has misconducted himself or the proceedings; (b) an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35; or (c) that an award has been improperly procured or is otherwise invalid. Merely filing an objection under Section 30 of the Arbitration Act, 1940 carries no great weight and is inconsequential unless some substantial grounds are alleged in the objections warranting and deserving the setting aside of the award which the petitioner failed to underline.

iv) It is a well settled exposition of law that the significance and connotation of the term 'misconducting the proceedings' is broader than the arbitrator's personal misconduct. Simply making an erroneous decision would not automatically be tantamount to misconduct unless it is proved that the arbitrator has failed to decide all the issues or objections; or decided such issues not included in the scope of the arbitration agreement, or the award was inconsistent, uncertain or vague; or there was some mistake of fact, if this mistake is either admitted or is clear beyond any reasonable doubt; or the arbitrator had some pecuniary interest in the matter…To sum up, an arbitrator misconducts the proceedings when (a) there is a defect in the procedure followed by him; (b) he commits breach and neglect of duty and responsibility; (c) he acts contrary to the principles of equity and good conscience; (d) he acts without jurisdiction or exceeds it; (e) he acts beyond the reference; (f) he proceeds on extraneous circumstances; (g) he ignores material documents; or (h) he bases the award on no evidence. Above are some of the omissions and commissions which constitute legal misconduct or, in other words, that an arbitrator has misconducted the proceedings within meaning of clause (a) of Section 30 of the Arbitration Act,1940. In the case of "moral misconduct" it is difficult to define exhaustively or determine exactly what amounts to "misconduct" on the part of an arbitrator…A deliberate departure or conscious disregard of the contract not only manifests a disregard of his authority or misconduct on his part, but it may also be tantamount to mala fide action and vitiate the award.

v) It is essential that there must be abundant good faith, and the arbitrator must be absolutely disinterested and impartial, as he is bound to act with scrupulous regard to the ends of justice. An arbitrator must be a person who stands indifferent between the parties. An arbitrator should in no sense consider himself to be the advocate of the cause of the party appointing him, nor is such party deemed to be his client. When a claim or matter in dispute is referred to an arbitrator, he is the sole and final Judge of all questions, both of law and of fact. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract.

vi) The Court cannot review the award, nor entertain any question as to whether the arbitrators decided properly or not on a point of law or otherwise. It is not open to the Court to re-examine and reappraise the evidence considered by the arbitrator to hold that the conclusion reached by the arbitrator is wrong. Where two views are possible, the Court cannot interfere with the award by adopting its own interpretation. The general principle underlying the concept of arbitration as

translated in the scheme of the Arbitration Act, 1940 is that, as the parties choose their own arbitrator to be the Judge in the dispute between them, they cannot, when the award is good on the face of it, object to his decision, either upon law or fact. The error or infirmity in the award which rendered the award invalid must appear on the face of the award and should be discoverable by reading the award itself. The arbitrator is the final Judge on the law and facts and it is not open to a party to challenge the decision of the Arbitrator, if it is otherwise valid.

Conclusion: i) Yes, resolution of disputes through arbitration often proves to be speedier than Court litigation.
ii) The powers of Arbitrators or Umpires are mentioned in the analysis portion provided under section 13 of the Arbitration Act,1940.
iii) As per scheme of the Arbitration Act,1940, it divulges that the Court has been vested with ample powers to render judgment in terms of the award, or modify or correct it, remit the award for reconsideration, or set aside the award.
iv) An arbitrator misconducts the proceedings under certain circumstances as mentioned in the analysis portion within meaning of clause (a) of Section 30 of the Arbitration Act,1940.
v) Along with other qualities the arbitrator must be absolutely disinterested and impartial, as he is bound to act with scrupulous regard to the ends of justice.
vi) A Court cannot review the Award or parties cannot challenge the decision of Arbitrator unless there is any error, factual or legal, which floats on the surface of the award or the record.

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9. **Supreme Court of Pakistan**
M/s Bentonite Pakistan Limited v. Bankers Equity Limited and others.
Civil Petition No.1123 of 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1123_2020.pdf

Facts: Through this petition filed under sub-Section (14) of Section 6 of the Companies Act, 2017 (the Act of 2017), leave has been sought against the order passed by the High Court, whereby C.M.A. in J.C.M. being misconceived was dismissed.

Issues: i) Whether all the proceedings under the Companies Act, 2017 are subject to the Limitation Act, 1908?
ii) Whether general provision of the Limitation Act, 1908 dealing with the applications would be applicable to the applications filed under the Companies Act, 2017 for which limitation period is three years?

Analysis: i) Subsection (2) of section 1 of the Limitation Act, 1908 (the Act of 1908) provides that it extends to the whole of Pakistan. Thus, by virtue of said provision, all the proceedings under the Act of 2017 are subject to the Act of 1908, except where any proceeding is expressly brought out of the purview of the said Act. The only provision in this regard in the Act of 2017 is Section 410, which speaks only about

limitation regarding filing of suit by a liquidator for the recovery of any debt due to the company. Thus, the exclusion is only to the extent of the said suit; however, for all other applications and proceedings, the Act of 1908 would be applicable.

ii) There is no specific provision in the Act of 1908 which deals with the applications or proceedings filed under the Act of 2017, except Article 112 thereof, which deals with "a call by a company registered under any Statute or Act"; therefore, the general provision dealing with the applications would be applicable to the applications filed under the Act of 2017. The general provision, which deals with the applications, where no period of limitation is provided in the Act of 1908, etc., is Article 181…any application filed under the Act of 2017 would be governed by Article 181 ibid and there would be a period of limitation of three years for such applications.

Conclusion: i) Yes**,** all the proceedings under the Companies Act, 2017 are subject to the Limitation Act, 1908.

ii) Yes, general provision of the Limitation Act, 1908 dealing with the applications would be applicable to the applications filed under the Companies Act, 2017 for which limitation period is three years.

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10. **Supreme Court of Pakistan**
Collector Customs, Model Customs Collectorate, Peshawar v. Muhammad Ismail and others
Civil Petition No.2682 of 2022
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2682_2022.pdf

Facts: The seized goods were confiscated along with the vehicle vide order-in-original by the Adjudicating Authority. Against this the respondents preferred an Appeal before the Customs Appellate Tribunal which was allowed and, the Order-in-original was set aside and the seized vehicle was released unconditionally. Being aggrieved, the petitioner filed Custom Reference before High Court which was also dismissed; hence the petitioner brought this civil petition for leave to appeal.

Issues: i) Whether the order for the confiscation of goods or for imposition of any penalty on any person can be passed without informing him in writing and without giving him opportunity of being heard?

ii) What is the purpose of show cause notice, whether it is necessary to contain all the allegations and legal provisions of law?

iii) Whether the Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings?

Analysis: i) Under Section 180, no order can be passed for the confiscation of any goods or for imposition of any penalty on any person unless the owner of the goods, if any, or such person is informed in writing of the grounds on which it is proposed to confiscate the goods or to impose the penalty. No doubt under Section 168, the letter of law articulates that the appropriate officer may seize any goods liable to

confiscation, but he cannot pass the order for the confiscation of any goods, or for imposition of any penalty on any person unless the owner of the goods, if any, or such person is informed in writing of the grounds on which it is proposed to confiscate the goods or to impose the penalty and he shall also be given an opportunity of making a representation in writing with reasonable opportunity of being heard personally or through a counsel or duly authorized agent.

ii) A show cause notice is served by an authority under the relevant provisions of law in order to provide a reasonable opportunity to defend the allegations and to explain as to why any penal action should not be taken against him. In essence, it is a well-structured process to provide a fair chance to the accused to respond to the allegations and explain their position within the stipulated timeframe or, in other words, it provides a level headed course of action to ensure impartiality, justness and rectitude to the person in receipt of notice with an opportunity to explain why he is not guilty of any violation of law. The show cause must contain all the allegations categorically and unambiguously, including the legal provisions related to the transgression of law or default.

iii) In the Mrs. Anisa Rehman vs. P.I.A.C. and another (1994 SCMR 2232), it was held by this Court that there is judicial consensus that the Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read in as a part of every statute if the right of hearing has not been expressly provided therein.

Conclusion: i) The order for the confiscation of goods or for imposition of any penalty on any person cannot be passed without informing him in writing and without giving him opportunity of being heard.

ii)A show cause notice is served by an authority under the relevant provisions of law in order to provide a reasonable opportunity to defend the allegations and to explain as to why any penal action should not be taken against him. The show cause must contain all the allegations categorically and unambiguously, including the legal provisions related to the transgression of law or default.

iii) The Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings.

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11. **Supreme Court of Pakistan**
Tassaduq Hussain Shah & others v. Allah Ditta Shah & others
Civil Appeals No.8-L to 10-L of 2009
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._8_l_2009.pdf

Facts: Through the present Appeals, the Appellants have challenged a judgment of the Lahore High Court, Lahore passed in Civil Revision. Through the Civil Revision Petition, the Appellants challenged the judgment and decree of the Additional District Judge whereby, the appeal of the Respondents was allowed and the judgment of the trial Court, through which the suit of the Respondents was

dismissed, was set aside, and the suit was decreed.

Issues: i) What are the essential conditions for Adna Malkiat?
ii) When the proprietorship of Ala Maliks was abolished?
iii) When the Adna Maliks were made full proprietors?
iv) What does the term Ala-cum-Adna-Maliks denotes?
v) If PWs evidence is found to be vague, whether a mere oral assertion on other part is sufficient to rebut and dislodge documentary evidence in the form of Revenue Records?

Analysis: i) The conditions which must be fulfilled in order to be declared an Adna Malik were discussed by this Court in Muhammad Ahsan v. Pathana (PLD 1975 Supreme Court 369). The two essential conditions for Adna Malkiat are, cultivating possession and, payment of land revenue to the State.
ii) Previously, land revenue was paid to Ala Maliks, who were superior owners, having a superior proprietary interest over the land either by virtue of settlement as first migrants or, as Jagirdars Ala Maliks then gave their land for tilling/cultivation to Adna Maliks and received tilling/compensation from them. However, their proprietorship was abolished after the promulgation of MLR 1959. As such, Ala Malkiat and similar other interests stood abolished and, Ala Maliks were held not entitled to any compensation from Adna Maliks.
iii) Subsequently, the West Pakistan Land Commission on 03-03-1960 issued a notification to the effect that Adna Maliks shall be made full proprietors of the land "*held by them as such*" and they shall discontinue payment of any compensation to Ala Maliks.
iv) The only exception provided in the said notification was that if there were no Adna Maliks then, Ala Maliks would be considered as full proprietors if they were in cultivating possession. This in effect made them Ala-cum-Adna-Maliks.
v) It is pertinent to mention here that even if PW-1's evidence was found to be vague, a mere oral assertion on part of the Appellants was not sufficient to rebut and dislodge documentary evidence in the form of Revenue Records and long standing entries therein. (…) It is settled law that documentary evidence takes precedence over oral evidence.

Conclusion: i) Two essential conditions for Adna Malkiat are, cultivating possession and, payment of land revenue to the State.
ii) Proprietorship of Ala Maliks was abolished after the promulgation of MLR 1959. As such, Ala Malkiat and similar other interests stood abolished and, Ala Maliks were held not entitled to any compensation from Adna Maliks.
iii) Through a notification issued by West Pakistan Land Commission on 03-03-1960 Adna Maliks were made full proprietors of the land "held by them as such".
iv) The term Ala-cum-Adna-Maliks denotes that if there were no Adna Maliks then, Ala Maliks would be considered as full proprietors if they were in cultivating possession.
v) Even if PW's evidence is found to be vague, a mere oral assertion on other part

is not sufficient to rebut and dislodge documentary evidence in the form of Revenue Records and long standing entries.

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12. **Supreme Court of Pakistan**
Zafar Iqbal v. The State etc.
Crl.P.497 -L/ 2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._497_l_2023.pdf

Facts: Through this criminal petition the petitioner sought leave to appeal against the impugned order, whereby pre-arrest bail in case FIR under Section 379 PPC, was denied to the petitioner.

Issues: i) Whether there is any limitation from the judgment or final order sought to be appealed in criminal matters under Article 185(3) of the Constitution?
ii) Whether fugitive from law is entitled to any relief?

Analysis: i) Rule 2 of Order XXIII of the Supreme Court Rules, 1980 ("Supreme Court Rules") provides that a petition for leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") in criminal matters has to be filed within thirty days from the judgment or final order sought to be appealed from. The law of limitation is fully applicable to petitions for leave to appeal in matters related to pre-arrest bail like in other criminal petitions filed under Article 185(3) of the Constitution, and a delay in a petition filed beyond the limitation period must be supported by an application for condonation of delay which is to be examined by the Court on its own merits.
ii) Failure to surrender before the authorities after dismissal of the pre-arrest bail petition by the High Court and then filing a time barred petition, impugning the decision of the High Court and seeking pre-arrest bail, before this Court could be indicative of an intent to remain a fugitive from the law. Such conduct could also be considered as a deliberate attempt to thwart the investigation, resulting in the loss of valuable evidence which is now simply lost or is impossible to collect due to afflux of time by failing to join the investigation.

Conclusion: i) Yes**,** there is limitation of thirty days from the judgment or final order sought to be appealed in criminal matters under Article 185(3) of the Constitution provided in Rule 2 of Order XXIII of the Supreme Court Rules, 1980.
ii) Fugitive from law is not entitled to any relief.

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13. **Supreme Court of Pakistan**
The State v. Chaudhry Muhammad Usman
Criminal Petition No.112 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._112_2020.pdf

Facts: The petitioner seeks leave to appeal against a judgment whereby the High Court has accepted the revision petition of the respondent filed against an order of the trial court. The trial court dismissed an application of the respondent filed under Section 265-C read with Section 94 of the Code of Criminal Procedure, 1898 for the production of certain documents.

Issues: i) Whether before the commencement of the trial, an accused can apply to the trial court to exercise its power under Section 94, CrPC, and direct the prosecution or the complainant to produce any document, in its or his possession or power, which is not covered under Section 265-C, CrPC?
ii) Whether before entering on his defence, an accused can make an application for the production of any document under Section 94 despite the provisions of Section 265-F(7), CrPC, which provides a similar opportunity to him at the stage of defence evidence?

Analysis: i) Section 94 does not restrict as to whose point of view, whether of the prosecution or the accused, the required document may be necessary or desirable for the purposes of the inquiry or trial. A court being a neutral arbiter does not act for either the prosecution or the accused but for the dispensation of justice. And for the dispensation of justice, the court is to ascertain the truth in respect of the matter under inquiry or trial before it. The production of a document that would facilitate the court in this regard is to be considered necessary or desirable for the purposes of the inquiry or trial. It is immaterial whether the production of such a document would support the prosecution case or the defence of the accused. Therefore, any party may at any stage of the inquiry or trial apply to the court, under Section 94, for the production of a document and is entitled to its production if it satisfies the court that the production of that document is necessary or desirable for the purposes of such inquiry or trial.
ii) The provisions of Section 94(1) have not been made subordinate by the legislature by the use of the expression, 'Subject to the other provisions of this Code', nor have the provisions of Section 265-F(7) been given any overriding effect by using therein the expression, 'Notwithstanding anything contained in other provisions of this Code'. Section 265-F(7), therefore, neither controls nor limits the power of a court under Section 94(1). In essence, the provisions of these two Sections differ from each other in their extent and scope. They are not opposed to each other. Section 94(1) affords both the parties to an inquiry or trial (not to the accused alone) the opportunity of causing the production of any document at any stage of such inquiry or trial, with the condition that the party applying for it must satisfy the court that the production of the required document is necessary or desirable for the purposes of the inquiry or trial. Section 265-F(7), on the other hand, only gives the accused another similar opportunity at the stage of his defence subject to a lesser condition, which is that his application should not be for the purpose of vexation or delay or defeating the ends of justice.

Conclusion: i) Even before the commencement of the trial, an accused can apply to the trial court to exercise its power under Section 94, CrPC, and direct the prosecution or the complainant to produce a document, in its or his possession or power, which is not covered under Section 265-C, CrPC, if the production of that document is necessary or desirable for the purposes of the inquiry or trial and on question.
ii) Even before entering on his defence, an accused can make an application for the production of a document under Section 94 despite the provisions of Section 265-F(7), CrPC, which provides a similar opportunity to him at the stage of defence evidence.

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14. **Supreme Court of Pakistan**
Zain Ali v. The State.
Criminal Appeal No. 208 of 2022
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._208_2022.pdf

Facts: Through this criminal appeal the appellant has assailed conviction order maintained by the High Court under Section 9(c) of the Control of Narcotic Substances Act, 1997 in which he was sentenced to life imprisonment.

Issues: i) Whether testimonies of the police personnel are required to be treated in the same manner as the testimony of any other witness?
ii) Whether minor contradictions on trivial matters can affect the core of the prosecution case and can be ground to reject evidence in its entirety?
iii) Whether during appreciating evidence of the witness it must be read as a whole and appears to have a ring of truth?
iv)Whether Control of Narcotic Substances (Government Analysts) Rules, 2001 place bar on the Investigating Officer to send the samples within a certain/specified period of time?

Analysis: i) It is well settled that testimonies of the police personnel are required to be treated in the same manner as the testimony of any other witness and there is no principle of law that without corroborating by the independent witnesses, their testimonies cannot be relied upon...The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds.
ii) It is also settled that minor contradictions, inconsistencies, embellishments or improvements on trivial matters, which do not affect the core of the prosecution case, should not be made a ground, on which the evidence can be rejected in its entirety. The Court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Mere marginal variations in the statement of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier…When the prosecution is able to prove its case on its salient features then un-necessary technicalities should not be allowed to hamper the very purpose of the law on the

subject.

iii) While appreciating the evidence of a witness, the approach must be whether evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the discrepancies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. However, as stated above, the prosecution witnesses of recovery remained firm on each and every material particular of the prosecution story and their testimony could not be shaken.

iv) In Liaquat Ali Vs. The State (2022 SCMR 1097), Supreme Court candidly held that the Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples within a certain/specified period of time. These Rules are stricto sensu directory and not mandatory in any manner. It does not spell as to whether in case of any lapse, it would automatically become instrumental to discard the whole prosecution case. The Rules cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997 and cannot in any manner frustrate the salient features of the prosecution case…

Conclusion: i) Yes**,** testimonies of the police personnel are required to be treated in the same manner as the testimony of any other witness.

ii) Yes, minor contradictions on trivial matters cannot affect the core of the prosecution case and cannot be ground to reject evidence in its entirety.

iii)Yes, during appreciating evidence of the witness it must be read as a whole and appears to have a ring of truth.

iv) Control of Narcotic Substances (Government Analysts) Rules, 2001 place no bar on the Investigating Officer to send the samples within a certain/specified period of time.

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15. **Supreme Court of Pakistan**
Rehmat Noor v. Zulqarnain
Civil Appeal No. 2121 of 2017
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2121_2017.pdf

Facts: The petitioner seeks to retain the property through this petition, claiming that her brother had validly gifted the same to her during his life time, and she had accepted the same, as was validated by the trial and appellate court, thus though, such findings of fact were for alien consideration set at naught by the revisional court vide impugned judgment.

Issues: i) What is the legal value of mutation prior to its incorporation in the record of rights?

ii) Whether the entries in mutation are admissible in evidence?
iii) Whether an oral transaction establishes a title in favour of the beneficiary?
iv) Whether a mutation is considered as document of title?

Analysis: i) A mutation is always sanctioned through summary proceedings and to keep the record updated and for collection of revenue such entries are made in the relevant Register under Section 42 of the Land Revenue Act,1967. It has no presumption of correctness prior to its incorporation in the record of rights.
ii) It is settled law that entries in mutation are admissible in evidence but the same are required to be proved independently by the persons relying upon it through affirmative evidence.
iii) An oral transaction reflected therein does not necessarily establish title in favour of the beneficiary.
iv) A mutation cannot by itself be considered a document of title and proving of the mutation can never vest title in a party over immovable property. At best, it may be considered as evidence in support of the material produced by a party to prove the transaction of gift.

Conclusion: i) Mutation has no presumption of correctness prior to its incorporation in the record of rights.
ii) Entries in mutation are admissible in evidence but the same are required to be proved independently.
iii) An oral transaction reflected therein does not necessarily establish title in favour of the beneficiary.
iv) A mutation cannot by itself be considered a document of title.

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16. **Supreme Court of Pakistan**
Muhammad Yaseen v. Secretary, Ministry of Interior & Narcotics Control, Narcotics Control Division, Islamabad and another
Civil Petition No. 873 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._873_2021.pdf

Facts: The petitioner has called in question the legality of the judgment, passed by the learned Federal Service Tribunal whereby the service appeal filed by the petitioner was dismissed and the penalty of dismissal from service imposed by the departmental authority was upheld through this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan.

Issues: i) Whether the pensionary benefits are the right of an employee?
ii) Whether the constitution protects discrimination?

Analysis: i) After serving the department for a long period, the pensionary benefits are the right of an employee, which enable him to spend rest of his life peacefully.
ii) Article 25(1) of the Constitution ordains defiance of discrimination. However, by dismissing the one of accused officials from service while awarding minor penalties to the other officials, that one official discriminated against.

Conclusion: i) The pensionary benefits are the right of an employee, which enable him to spend rest of his life peacefully.
ii) Article 25(1) of the Constitution ordains defiance of discrimination.

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17. **Supreme Court of Pakistan**
M/s Tri-Star Industries (Pvt.) Limited v. TRISA Burstenfabrik AG Triengen & another
Civil Petition No.1496-K of 2021
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1496_k_2021.pdf

Facts: The facts leading to the filing of the present civil petition for leave to appeal, briefly, are that Registrar, Trade Marks allowed extension of time to file opposition and condoned the delay against alleged trademark and that order was assailed in Sindh High Court, wherein Sindh High Court vide impugned judgment allowed the appeal and the decision passed by the Registrar, Trade Marks was set aside.

Issues: i) Whether notice of opposition to the registration of a trade mark should be given within two months from the date of advertisement of the application for registration in the Journal in the light of Rule 30 of Revised Rules 1963?
ii) Whether Rule 76 of the Revised Rules 1963 grant a special jurisdiction to the Registrar of Trade Marks to extend time for doing any act or taking any proceeding under the Revised Rules 1963, subject to satisfaction of the Registrar on proper justification?
iii) Whether grant of extension of time by the Registrar Trade Marks is discretionary?
iv) How true spirit of any provision can be apprehended, whether it is mandatory or directory?
v) What does term "satisfied" require?
vi) When the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner or may be done other way round?
vii) What is fundamental cannon of interpretation of a statute?

Analysis: i) The stratagem and guiding principle for tendering a notice of opposition is articulated under Rule 30 of the Revised Rules 1963 which robustly sets down the precondition that a notice of opposition to the registration of a trade mark should be given within two months from the date of advertisement of the application for registration in the Journal which shall be on Form TM-55.
ii) A perusal of Rule 76 clearly expounds that, while exercising power to grant the extension of time, the Registrar must be satisfied that the circumstances are such as to justify an extension of time with a further rider that the extension granted shall not exceed a period of more than one month at a time, provided that the total period of such extensions shall not exceed six months against each statutory period prescribed. The exactitudes of the aforesaid rule accentuate that before granting

extension, the Registrar should act with proper application of mind inasmuch as the powers conferred by the Rule do not permit the Registrar to entertain and grant extension in a mechanical or perfunctory manner, rather he should be satisfied that the extension is justified… The jurisdiction and powers to grant extension up to six months period is not an automatic or unstructured exercise but it should be justiciable and rational coupled with the precondition of "satisfaction" of the Registrar before granting any extension. According to the assiduousness of the aforesaid Rule, no extension could be accorded longer than a month at a time which reckons that the extension should have been sought on a monthly basis and after satisfying himself the Registrar could consider the grant of extension or refuse the same.

iii) The Registrar has been vested with the power to grant the extension within a prescribed procedure and parameters that should be adhered to while considering applications for extension. The discretion is not unbridled but it is controlled by the ambiance of rule purposely and due to deviation and noncompliance of it in *stricto sansu*, the other side had rightly invoked the appellate jurisdiction of the High Court.

iv) In order to comprehend the true spirit of any provision, whether it is mandatory or directory, the conception, acumen and stratagem of the Act and the enabling Rules should be considered for proper resolution If we virtually converse in the differentiation and eccentricity flanked by 'mandatory' and 'directory' provisions, then we have to scrutinise the pith and substance and not exclusively the form. Sometimes a provision in the legislation seems to be mandatory, but substantially it is directory and, inversely, sometimes a provision seems to be directory but in quintessence it is found to be mandatory for compliance therefore, for all practical purposes, it is the fundamental nature which counts and should take preference and affinity more than the form. If a provision gives a power as well as a duty, it is mandatory and the enabling text of law and rules should be interpreted as obligatory so that the underlying principle and *raison d'être* is not contravened or flouted.

v) The connotation and import forming the constituents of the word "satisfied" has been used in various laws and interpreted and deciphered in a number of judgments of our own as well as foreign jurisdiction. On close appraisal and scrutiny of numerous judgments, the true meaning and import of this expression is deducible as under:-…

> 4. The word "satisfied" means existence of mental persuasion much higher than mere opinion; a mind not troubled by doubt; 'a mind which has reached a clear conclusion.

vi) Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure, and where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all… If a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

vii) It is a fundamental canon of interpretation and understanding that the statute should be read in its mundane, natural and grammatical meaning in order to give effect with proper construction. If the language of the statute is plain and instantly recognizable then there should be no question of its construction or interpretation by the Court. A construction which diminishes the statute to a futility has to be avoided rather it should be construed as a workable instrument. It is the foremost sense of duty of the Court to figure out the intention of the legislature through word for word meaning and if it admits only one meaning, no further interpretation is required except that meaning which should be put into effect in view of the legal maxims *'absoluta sententia expositore non indiget'* (clear and unambiguous text should be read according to its plain meaning rather than with reference to secondary sources of interpretation) and '*ut res magis valeat quam pereat'* (An enacting provision or a statute has to be so construed to make it effective and operative); *A verbis legis non recedendum est. (*A provision of the law shall not depart or from the words of law, there must be no departure).

Conclusion: i) Notice of opposition to the registration of a trade mark should be given within two months under Rule 30 of Revised Rules 1963.
ii) Registrar of Trade Marks has special jurisdiction to extend time for doing any act or taking any proceeding under Rule 76 but subject to proper application of rational mind, justification and satisfaction of the Registrar.
iii) Power of Registrar Trade Marks is discretionary within a prescribed procedure and parameters that should be adhered to. Such discretion is not unbridled but it is controlled by the ambiance of rule.
iv) As above.
v) The word "satisfied" requires mental persuasion with existence of reasonable ground.
vi) Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure and not otherwise.
vii) The statute should be read in its mundane, natural and grammatical meaning with its plain language.

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18. **Lahore High Court**
Judicial Activism Panel, etc. v. The Federation of Pakistan, etc.
Case No. W. P. No. 26651 of 2023
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC4329.pdf

Facts: This judgment decides upon the issue of enhanced tuition fee and other charges, during a study program by private Medical Colleges.

Issues: i) Whether the repealed and repealing provisions will continue if there is no inconsistency between them?
ii) Whether the tuition fee and other charges can be enhanced during entire program of study?

Analysis: i) In judgment Matli Town Committee v Abdul Majeed and others (1991 SCMR 878) the august Court held that there was no inconsistency between the repealed and repealing provisions, therefore, action taken, liability or obligation accrued, would continue.
ii) The decision or policy of prohibiting the enhancement in tuition fee and other charges are protected. It is, therefore, held that the decision taken by or under the regulation are saved unless the contrary is expressly shown in the repealing Act of 2022. Prohibition against enhancement in the fee or charges, now being part of the Act of 2022, under Section 20(7) cannot even be undone through a regulation.

Conclusion: i) If there is no inconsistency between the repealed and repealing provisions, therefore, action taken, liability or obligation accrued, will continue.
ii) The tuition fee and other charges cannot be enhanced during entire program of study.

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19. **Lahore High Court**
Dawat Saraye v. Federation of Pakistan and others
Writ Petition No.67081 of 2022
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC4338.pdf

Facts: The Commissioner Inland Revenue charged the petitioner further tax under Section 3(1A) and extra tax under Section 3(5) of the Sales Tax Act, 1990.

Issues: i) Whether Section 3(1A) and Section 3(5) of the Sales Tax Act, 1990, are applicable to a person who is exempted under Serial No.53, Table 2 of the 6th Schedule of the Sales Tax Act, 1990 ("Act of 1990") as his supplies are not taxable ?
ii) Whether obtaining registration number and being enrolled on active taxpayer list is mandatory for a person who is not engaged in taxable supplies?

Analysis: i) The emphasized part of the provisions, are not ambiguous as the tax is envisaged where taxable supplies are made to a person who has not obtained registration number or is not on active taxpayer list. The condition of taxable supply being electricity is though fulfilled, but the petitioner being recipient of supply is not required to be registered compulsorily. Phrase "who has not obtained registration number" implies that a person, required to be registered under Section 14(1) of the Act of 1990 or any other provision or law has not obtained registration number, shall be burdened with Further tax. This court is not in agreement with the interpretation by the respondent-Commissioner that a person falling under Section 14(2) of the Act of 1990 would also be caught by the phrase "not obtained registration", for not opting for registration and only way to avoid it is to get registration.
ii) Section 14 of the Act of 1990 deals with registration and requires every person

engaged in making taxable supplies in Pakistan including zero rated supplies to register himself if he falls within the categories noted in subsection (1) as (a) to (f). Subsection (2) of Section 14 of the Act of 1990 envisages an option for a person who is not engaged in making taxable supplies in Pakistan.

Conclusion: i) Section 3(1A) and Section 3(5) of the Sales Tax Act, 1990, are not applicable to a person who is exempted under Serial No.53, Table 2 of the 6th Schedule of the Sales Tax Act, 1990 ("Act of 1990") as his supplies are not taxable.
ii) Subsection (2) of Section 14 of the Act of 1990 envisages an option for a person who is not engaged in making taxable supplies in Pakistan.

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20. **Lahore High Court**
Pir Muhammad Construction Company Private Limited v. Water and Development Authority through its Chairman, Lahore & others
Writ Petition No.25808 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4292.pdf

Facts: Through this writ petition, petitioner has called into question order passed by respondent No.2 / General Manager (Coordination) Power, WAPDA House, whereby letter of acceptance for tender belonging to Chief Engineer (Power) Tarbela Power Station, was cancelled.

Issues: i) Whether issuing Authority of a tender can withdraw/cancel the tender after acceptance of a bid?
ii) Can a right accrued in favor of a person be unilaterally taken away by an authority without involving the said person?
iii) Can a government functionary retract from a contract once its offer has been accepted, even though the contract has become a 'concluded contract'?
iv) Whether actions of executive functionaries be accorded approval by the Superior Courts if the same are besides the law, mandate of the constitution and principle of natural justice?
v) Whether after acceptance of a bid, the issuing authority of a tender can withdraw or cancel it without affording an opportunity of hearing to the aggrieved person?
vi) Whether contractual disputes between private parties and public functionaries are open to scrutiny under the Constitutional jurisdiction?

Analysis: i) As per terms of General Conditions of Tender for Disposal of Unwanted Store, an invitation of a tender would not constitute any liability on the part of the Authority until a Letter of Acceptance was issued. It is nowhere provided that after acceptance of bid, tender could have been cancelled / withdrawn. Respondents have not cited any provision of applicable law or placed any document on record to show that such prerogative was vested with them.
ii) Under the celebrated principle of *locus poenitentiae*, a right was accrued in petitioner's favour, thus, the same could not have been taken away unilaterally by respondents without associating the petitioner.

iii) Law on the subject is very clear that where Government controlled functionaries made a promise which created a right to anyone who believed in it and acted under the same, then such functionaries were precluded from acting detrimental to the rights of such person/citizen… Even otherwise, once an offer has been accepted, a concluded contract has come into being and it is not open in the person who has accepted the offer to retract from the same as provided by the Contract Act, 1872.

iv) It is well settled law with the mandate of the dictums of the superior courts of the country that inaction, slackness and dubious acts of executive functionaries cannot be accorded approval by the superior courts more particularly when suchlike actions on face of it are besides the law, mandate of the constitution and principle of natural justice.

v) The other defect from which the impugned order suffers is that the petitioner was not granted any opportunity of showing cause or of hearing before passing the impugned order, which is against the global principle of natural justice i.e. *"Audi Alteram Parterm"*.

vi) So far as the objection regarding maintainability of instant petition for enforcement of concluded contract is concerned, admittedly the High Court in exercise of its Constitutional jurisdiction is possessed of power to examine the validity of the order in regard to grant of a concluded contract and strike it down on the grounds of *mala fide*, arbitrary exercise of discretionary power, lack of transparency, discrimination and unfairness etc. provided the challenge is made promptly and contentious questions of fact are not involved. It has consistently been held that while routine contractual disputes between private parties and public functionaries are not open to scrutiny under the Constitutional jurisdiction, breaches of such contracts, which do not entail inquiry into or examination of minute or controversial questions of fact can adequately be addressed. In this case, no factual dispute exists between the parties with regard to floating of tender, acceptance of offer and partial payment by petitioner. Needless to say that remedy of Constitutional petition would be permitted to be resorted to in cases involving contract between private persons and State statutory functionary for such remedy was considered to be more efficacious and speedy remedy as compared to civil suit or arbitration proceedings.

Conclusion: i) No, the issuing authority of a tender cannot withdraw or cancel the same if no such term is there in General Conditions of Tender for Disposal of Unwanted Store and also without any legal prerogative.

ii) No, such accrued right in favour of a person, cannot be taken away unilaterally by an Authority without associating the said person under the principle of *locus poenitentiae.*

iii) No, when a concluded contract comes into being upon acceptance of an offer, a government functionary cannot retract from such contract specially when a right has been created in favour of a person.

iv) No, Superior Courts cannot accord approval to inaction, slackness and dubious acts of executive functionaries especially when such actions are prima facie besides

the law, mandate of the constitution and principle of natural justice.
v) No, after acceptance of a bid, the issuing authority of a tender cannot withdraw or cancel the same without extending prior opportunity of showing cause or of hearing on the basis of principle of natural justice i.e. *"Audi Alteram Parterm"*.
vi) High Court can exercise constitutional jurisdiction against contractual disputes of concluded contracts between private parties and public functionaries when no factual dispute exists between the parties on the grounds of *mala fide*, arbitrary exercise of discretionary power, lack of transparency, discrimination and unfairness etc.

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21. **Lahore High Court**
Iqbal Ansari v. The State
Criminal Appeal No.2066/2016
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4322.pdf

Facts: The Appellant has challenged his conviction and sentence through appeal. During appeal, medical board reported that the Appellant suffers from mental disorder and is unfit to face legal proceedings.

Issues: i) Whether the appeal should be decided if reportedly, appellant is unfit to face legal proceedings?
ii) Whether section 465 Cr.P.C. apply only during trial stage?

Analysis: i)…if a convict's appeal is heard while he is of unsound mind, he may be prejudiced and result in a failure of justice… In such situations, the convict would be unable to give appropriate instructions to his lawyer… a convict may be prejudiced if the Appellate Court rules on his appeal while he is of unsound mind because doing so denies him the right to a hearing.
ii) …indicates that it only apply to inquiries or trials. If the issue of the convict's soundness of mind and incapacity arises before the High Court at the appellate stage, since there is no specific provision dealing with that situation, it may, at its discretion, take one of the following courses (i) It may determine the fact of such unsoundness and incapacity itself following the procedure specified in section 465 Cr.P.C…or (ii) it may refer the matter to the Court of Session/Special Court concerned for determination according to the same principles, or (iii) it may direct the Medical Superintendent, PIMH, to form a medical board and seek a report from it. The High Court would decide on the options considering the facts and circumstances of each case.

Conclusion: i) The Appellate Court should postpone the hearing of the appeal when the convict is mentally incapacitated. However, the court may proceed if the case is such that the convict would be acquitted.
ii) Although section 465 Cr.P.C does not apply on appeal proceedings. However, the court cannot act arbitrarily while hearing the appeal and can opt the procedure

provided in section 465 Cr.P.C to determine the mental incapacity of appellant or may refer the matter to court below to determine the same.

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22. **Lahore High Court**
Hashim Raza v. Federation of Pakistan etc.
Writ Petition No. 2528/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4342.pdf

Facts: The Petitioner has challenged the appointment of Respondent No.5 in SMEDA (an autonomous body) under Article 199 of the Constitution and seeks a directive to the Federal Government to consider an extension of his service in accordance with section 12(2) of the Ordinance due to his "exemplary performance."

Issues: i) Whether court can interfere into appointment of senior officer of autonomous body if same has been made without recommendations of Board constituted u/s 6 of ordinance XXXIX of 2002 and also without mentioning his/her tenure?
ii) Whether an employee has vested right in extension of his contract?

Analysis: i) In the present case, SMEDA has no Board in accordance with section 6 of the Ordinance because the six private members have not been nominated. As a result, the Board made no recommendations, and the Federal Government appointed Respondent No.5 without them. The purpose of regulating the appointment process of CEOs in public sector companies is to promote merit and good governance and eschew favouritism and nepotism. Sections 12, 13 and 14 of the Ordinance read with section 7 (xxxvii) thereof and Rule 4(1) and Regulation 16 are mandatory. The Board has an important role in appointing a CEO, and its recommendations are vital. The Impugned Notification gives the impression that it is a routine transfer of an officer (Respondent No.5) awaiting posting in the Establishment Division to SMEDA as its CEO. Moreover, it does not mention his tenure and says the transfer/appointment is "with immediate effect and until further orders." As per section 12(2) of the Ordinance, the CEO's appointment has to be for three years. It is trite that when the law requires a thing to be done in a particular manner, it must be done in that manner and not otherwise. The appointment of Respondent No.5 as the CEO of SMEDA is without lawful authority and of no legal effect…
ii) The Petitioner wishes to be considered for a second term as CEO under section 12(2) of the Ordinance. The Deputy Attorney General states that the Federal Government is not interested in him because of several complaints against him. He has placed on record copies of some of them. Admittedly, the Petitioner has retired after completing his three-year tenure. He has no vested right to claim an extension if the competent authority is not interested owing to legitimate or justifiable reasons. It is also well-settled that an employee cannot seek an extension of his contract in a constitutional petition…

Conclusion: i) The court can interfere into appointment of senior officer of autonomous body if same has been made without recommendations of Board constituted u/s 6 of ordinance XXXIX of 2002 and also without mentioning his/her tenure.
ii) An employee has no vested right to claim an extension in contract if the competent authority is not interested owing to legitimate or justifiable reasons.

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23. **Lahore High Court**
Muhammad Ali Housing Scheme, etc. v. Kamran Latif, etc.
C.R. No.76121 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC4314.pdf

Facts: The respondent no. 01 filed a suit for confirmation of possession through specific performance of agreement to sell which was dismissed. Feeling aggrieved, respondent No.1 preferred appeal there-against and the same was accepted by the Appellate Court while decreeing the suit, hence, this civil revision.

Issues: i) Whether specific performance of an agreement to sell immovable property can be refused to a vendee who has substantially performed his part of obligations under the contract?
ii) Whether a contractual provision for late payment charges or liquidated damages could be refused to be enforced by the District Court in appeal for the reason that the same is repugnant to injunctions of Islam?
iii) What is the scope of a claim for liquidated damages or late payment charges under section 74 of the Contract Act 1872?

Analysis: i) There is legal presumption in view of explanation to section 12 of the Specific Relief Act, 1877 that the breach of contract to transfer an immovable property cannot be adequately relieved by compensation in money. The burden to dislodge the above legal presumption is on the one who avers contrary to it. No doubt the jurisdiction to decree specific performance is discretionary; however, the exercise of such discretion is not arbitrary but reasonable and is guided by the judicial principles. In the suit for specific performance, if plaintiff makes any express averment in the pleadings of his readiness and willingness to perform his part of the contract and deposits the balance sale price as per direction of the Court then it would not be deemed to be his incapability of performing his part of the contract as envisaged under section 24(b) of the Specific Relief Act, 1877 rendering the contract non-enforceable, the suit cannot be dismissed.
ii) It is noteworthy that clause (2) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") provides that no Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. The jurisdiction to declare any law or provision of law repugnant to the injunctions of Islam, as laid in the Holy Quran and the Sunnah of the Holy Prophet, is vested in the Federal Shariat Court under Article 203D of the Constitution whereas Article 203G of the Constitution imposes a bar upon any other

Court or Tribunal including the Supreme Court, except for appeal before the Shariat Appellate Bench of the Supreme Court under Article 203F, to entertain proceedings or to exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Shariat Court. The Appellate Court clearly lacked jurisdiction to declare any provision of the agreement/allotment letter to be repugnant to the injunctions of Islam. Validity and enforceability of any such provision is to be adjudicated on the touchstone of section 74 of the Contract Act…

iii) Section 74 of the Contract Act, 1872 deals with a contract which provides the amount of compensation in the form of penalty or liquidated damages in case of breach. It postulates that in such cases, the party complaining of the breach, whether or not actual damage or loss is proved to have been caused thereby to receive from the party who has broken the contract, reasonable compensation not exceeding the amount so named or as the case may be the penalty stipulated for the breach. This Court, however, finds the amount of compensation specified in clause 15 ibid, to be oppressive and highly penal in the facts and circumstances of instant case which cannot be allowed to the petitioners inasmuch as undisputedly respondent No.1 had paid well in time the first six installments and the delay was in relation to remaining two installments of Rs.489,491/- constituting 25% of the sale consideration for which late payment charges at the rate of Rs.1000/- per day (i.e. Rs.365,000/- per annum) are manifestly extortionate. No other reasonable amount of compensation has been claimed in the written statement and established by the petitioners in the instant case. Since there was no determination by the courts below of reasonable compensation, this Court deems it appropriate to hold the petitioners entitled to compensation in total of Rs.150,000/- for delay in the payment of last two instalments.

Conclusion: i) Suit for specific performance of an agreement to sell immovable property cannot be refused to a vendee (deeming his incapacity) who has pleaded his readiness and willingness to perform his part of contract and deposits balance sale consideration on court direction.

ii) District Court in Appeal lacks jurisdiction to declare any provision of the agreement/allotment letter to be repugnant to the injunctions of Islam. The jurisdiction to declare any law or provision of law repugnant to the injunctions of Islam, as laid in the Holy Quran and the Sunnah of the Holy Prophet, is vested in the Federal Shariat Court under Article 203D of the Constitution

iii) Section 74 of the Contract Act, 1872 deals with a contract which provides the amount of compensation in the form of penalty or liquidated damages in case of breach of any provision of contract. The amount of liquidated damages mentioned in contract arrived between parties can be declared by court as oppressive.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in "The Punjab Transport Department (IT Wing) Employees Service Rules 2018" vide notification no. SOR –III (S&GAD) 1-5/2018.

2. Amendment in “The Chief Minister’s Secretariat Household Staff Rules 2012”, vide notification no. SOR –III (S&GAD) 1-3/2020.
3. Amendment in “The Punjab Motor Vehicle Rules 1968”, vide notification no. SO(P-I) 2-2/23 (RPBW) Government of the Punjab, Transport Department.
4. Amendment in “The Punjab Police Special Branch (Intelligence cadre) Service Rules 2020”, vide notification no. 5575/Ad-VII of Government of the Punjab, Provincial Police Officer.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Zero-Clicks-Is-Google-Abusing-its-Dominant-Position

Zero-Clicks- Is Google Abusing its Dominant Position by Apekshit Kalra

Though Google began as a research project for two Ph.D. Scholars, it is today one of the most valuable companies in the world by a long shot. Along with the dominance enjoyed comes a fiduciary duty to not exploit the dominant position enjoyed by the entity in the relevant market, a duty with whose violation Google has been accused of multiple times by various stakeholders across multiple jurisdictions. One such case is that of Digital News Publishers Association v. Alphabet Inc. & Ors., alleging violations under Section 4 of the Competition Act, 2002 (hereinafter referred to as "The Act"). The informants contended that Google has abused its dominance by unilaterally deciding not to pay the news publishers for the snippets used by such publishers in search. The other contentions are that the publishers are being paid only 51% of what is being spent by the advertisers and that Google is abusing its dominance as a web browser to establish itself in the advertisement market.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Tracing-the-Cognizability-of-Copyright-Infringement

Tracing the Cognizability of Copyright Infringement by Isabel Roy

In the realm of intellectual property, copyright, trademark, and patent infringements are the most common forms of violation. With respect to this, copyright infringements have been a point of contention for the Courts for more than a decade. The issue in the present paper is considering the nature of the offence - whether copyright infringements are cognizable or non-cognizable offences.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Analysing-the-types-of-disputes-in-Corporate-Governance-and-Role-of-ADR-in-Dispute-Resolution

Analysing the types of disputes in Corporate Governance and Role of ADR in Dispute Resolution by Rushank Kumar

Corporate Governance refers to a mechanism that helps in effective and efficient functioning of a company, while maintaining a harmonious relationship between all the stakeholders of a company and protecting the interest of all stakeholders. It laws down the roles and responsibilities of each and every member in the corporation bringing in place a mechanism that ensures the proper and smooth functioning, decision making and planning.

4. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11572-023-09701-8

Reporting Crimes and Arresting Criminals: Citizens' Rights and Responsibilities Under Their Criminal Law by R.A. Duff & S.E.Marshall

Taking as its starting point Miri Gur-Arye's critical discussion of a legal duty to report crime, this paper sketches an idealising conception of a democratic republic whose citizens could be expected to recognise a civic responsibility to report crime, in order to assist the enterprise of a criminal law that is their common law. After explaining why they should recognise such a responsibility, what its scope should be, and how it should be exercised, and noting that that civic responsibility must include a responsibility to report one's own crimes; it discusses whether that civic responsibility could ground at least a limited legal duty to report certain types of crime. It then turns to the question of whether a civic responsibility to assist the criminal law's enterprise of bringing wrongdoers to account could include a responsibility to arrest suspected or known offenders if the police cannot or will not do so—a responsibility to make a citizen's arrest, and the legal power to discharge that responsibility: how far should citizens feel entitled, or duty-bound, thus to 'take the law into their own hands'.

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s10991-023-09343-9

Online Disinformation and Populist Approaches to Freedom of Expression: Between Confrontation and Mimetism by Giuseppe Martinico & Matteo Monti

In this article, we shall explore how digital populists in Italy and the United States approach the 'regulation' of online disinformation in order to understand their approach to constitutions. The field of the measures adopted to combat disinformation seems to us an excellent case study to verify the populists' constitutional approach. In this article, we will focus on the manipulative and instrumental approach that Italian and US digital populists employ with regard to constitutional texts by looking at the relationship between

the instrumental use of freedom of expression clauses by digital populists and the attempts to fight online disinformation by private and public actors.

6. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/concerns-and-considerations-using-generative-artificial-intelligence-part-routine

Concerns and Considerations for Using Generative Artificial Intelligence as Part of Routine Business Operations by Gregory L. Cohen and Romaine C. Marshall

As artificial intelligence and machine learning (collectively "AI") models continue to develop, become more sophisticated, and generate significant media coverage, companies are increasingly considering the integration of AI applications and tools into their routine operations. These powerful language models offer a range of possibilities, from streamlining customer service to automating content generation.

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BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-08-2023 to 31-08-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Commissioner Inland Revenue v. M/s RYK Mills
Civil Petitions No.1842-L & 1843-L of 2022
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1842_l_2022.pdf

Facts: The petitioner seeks leave to appeal against order whereby the Excise Tax References ("ETRs") filed by the petitioner department were dismissed by the High Court.

Issues: i) What is the significance and purpose of a show cause notice?
ii) Whether the principles of natural justice apply for the purposes of issuance of show cause notices?
iii) What is the effect if a specific allegation is not put to the recipient of a show cause?
iv) Whether a fresh or supplementary notice can be issued to provide a more detailed or accurate statement of the issues?
v) Which is the highest authority for factual determination in tax matters?

Analysis: i) A show cause notice is a formal communication from an authority, informing the recipient of an alleged violation or non-compliance with a law, and providing them with an opportunity to respond to the said allegations. Therefore, a show cause notice is an important tool for enforcing the law, and to ensure that the recipient is given a fair and transparent opportunity to present their case before any adverse order affecting their rights and interests is passed.
ii) It embodies the principle of natural justice, which requires that parties to a dispute be given a fair hearing before any decision is made that may affect their rights or interests. The principles of due process and fairness mandate that the recipient of a show cause notice be given adequate time to respond and present their case, that they be given access to relevant evidence and information, and that they be given the opportunity to be heard before any action is taken against them. This ensures that the decision-maker is not biased, that the decision is based on the facts of the case and the relevant law, and that the recipient's rights and interests are protected. There are other principles of natural justice that also apply for the purposes of issuance of show cause notices, including the principle of impartiality, which requires that the decision maker be impartial, and the principle of reasons, which requires that the decision-maker provide reasons for their decision.
iii) When a specific allegation is not put to the recipient, thereby failing to provide the recipient with the opportunity to respond to the same, any adjudication on the said allegation would be against the right of due process and fair trial and therefore, in contravention to Articles 4 and 10A of the Constitution.
iv) Where there has been a significant change in the circumstances or situation that led to the issuance of the initial show cause notice, a fresh or supplementary

show cause notice may be required to address these changes; where the original notice was defective or incomplete, a fresh or supplementary notice would be required to be issued to provide a more detailed or accurate statement of the issues; and where the original notice does not fully address all of the issues or violations that need to be addressed, a fresh or supplementary notice should be issued to cover any outstanding matters. Ultimately, the decision to issue a fresh show cause notice should be predicated on a thorough and careful evaluation of the facts and circumstances of each case, guaranteeing that the principles of due process and fair trial are upheld.

v) It is now settled law that the highest authority for factual determination in tax matters is the Tribunal.

Conclusion: i) A show cause notice is an important tool for enforcing the law, and to ensure that the recipient is given a fair and transparent opportunity to present their case before any adverse order affecting their rights and interests is passed.

ii) The principles of natural justice that also apply for the purposes of issuance of show cause notices.

iii) When a specific allegation is not put to the recipient, any adjudication on the said allegation would be against the right of due process and fair trial.

iv) Where the original notice is defective or incomplete, a fresh or supplementary notice would be required to be issued to provide a more detailed or accurate statement of the issues.

v) The highest authority for factual determination in tax matters is the Tribunal.

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2. **Supreme Court of Pakistan**

The State through Deputy Director Law, Regional Directorate Anti-Narcotics Force, Punjab v. Tasnim Jalal Goraya (deceased) through LRs.

Criminal Review Petition No.05/2020

Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik

https://www.supremecourt.gov.pk/downloads_judgements/crl.r.p._5_2020.pdf

Facts: Through this criminal review petition the petitioner sought review of judgment passed in Criminal Appeal by Supreme Court on the main ground that the instant matter stood dismissed by this Court and thereafter Criminal. Appeal could not have been decided through judgment under review.

Issue: Whether offence committed in the foreign country prior to promulgation of the Control of Narcotic Substances Ordinance of 1995 attracts its provisions and the same aspect once dealt with can be reargued in review jurisdiction?

Analysis: Section 35-C of the Dangerous Drugs Act, 1930 does not envisage foreign conviction, which was for the first time introduced in section 37 of the Ordinance in 1995, hence the offence committed in the USA in the year 1993 could not possibly attract section 37 of the Ordinance of 1995. This aspect has been dealt

with in the judgment under review in great detail and the petitioner cannot be allowed to re-argue the case in review jurisdiction…

Conclusion: The offence committed in the foreign country prior to promulgation of the Control of Narcotic Substances Ordinance of 1995 does not attract its provisions and the same aspect once dealt with can also not be re-argued in review jurisdiction.

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3. **Supreme Court of Pakistan**
Sindh Revenue Board through its Secretary Government of Sindh, Karachi v. M/s Quick Food Industries (Pvt) Limited and another etc.
Civil Petition No. 414 of 2021 etc.
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._414_2021.pdf

Facts: A dispute arose between the parties on the interpretation of the value of taxable services. The Respondents filed the petitions before the High Court challenging inclusion of salaries in the gross amount charged in the levy of sales tax on services. The High Court concluded that the tax is to be levied only on the value of service, and cannot include salaries as they are not part of the service itself. These Civil Petitions impugn judgment passed by the High Court of Sindh, Karachi, along with its subsequent orders.

Issues: i) Whether salaries paid by the service provider to the security and manpower should be included while calculating the value of taxable service for the supply of security and manpower under the Sindh Sales Tax on Services Act, 2011 since it is a part of invoiced amount which shows the gross amount charged by the service provider for the service?
ii) What is purpose of delegated legislation?
iii) Whether tax can be levied through a delegated legislation if it is not leviable under the charging provision of the fiscal statute?

Analysis: i) Upon reviewing provisions of section 3 to 5 & 8 of the Sindh Sales Tax on Services Act, 2011 in conjunction, it becomes evident that the amount of sales tax on services levied is based purely on the value charged by the service provider for the service it renders, which value is determined by the service provider itself, establishing a connection between the consideration paid and the service provided. Moreover, for a service to be taxable, it must be listed in the First Schedule and involve an economic activity conducted as a business, profession, or trade, whether or not for profit. The service is treated under the Act as an economic activity and will not include the activities of the employee to carry out the service. In the provision of a service, some expenses are expenses incurred on behalf of the service recipients which are later reimbursed to the service provider, meaning that these expenses have no nexus with the service or its value. So far as the inclusion of salaries and allowances in the invoice is concerned, it is the Rules that require that the invoices be raised by the service provider to include all

required particulars such as the name, address, SNTN, description, tariff heading and other details of service provided, value exclusive Sindh sales tax, rate of Sindh sales tax, amount of Sindh sales tax, value inclusive of Sindh sales tax, etc. Therefore, the service provider has no choice but to include all of these amounts along with the amount for the value of the service as charged. However, inclusion of all such amounts on the invoice, does not warrant taxation on the total invoiced amount under the Act as the total invoiced amount does not constitute the gross amount charged on services rendered, and goes beyond the scope of tax. Therefore, the sales tax on services can only be levied on consideration paid for service provided or rendered, and salaries paid by the employer to the employees are not part of the service rendered for this purpose, and so are not taxable…

ii) Delegated legislation is intended to enforce the law and advance the purpose of the underlying legislation, without overriding it and while *minutiae* could be filled in, the parent statute could neither be added to nor subtracted from. It is settled law that if a rule goes beyond what the parent statute contemplates, it must yield to the statute.

iii) Especially in tax cases, where a tax could not be levied through a delegated legislation until and unless it was leviable under the charging provision of the fiscal statute. Hence, the scope or value of the tax could not be expanded than what the Act has proscribed through the Rules. So, irrespective of the amendments through which the provisos were omitted, salaries could not be included in the gross amount charged or taxed. Even if the amendments were brought about only to bring the salaries paid to the labour and manpower with the preview of the tax, the same still could not have been allowed being not only beyond the scope of the Act but also being inconsistent with it.

Conclusion: i) The sales tax on services can only be levied on consideration paid for service provided or rendered, and salaries paid by the employer to the employees are not part of the service rendered for this purpose, and so are not taxable. Inclusion of all amounts on the invoice, does not warrant taxation on the total invoiced amount under the Act as the total invoiced amount does not constitute the gross amount charged on services rendered, and goes beyond the scope of tax.

ii) Delegated legislation is intended to enforce the law and advance the purpose of the underlying legislature, without overriding it.

iii) A tax cannot be levied through a delegated legislation until and unless it was leviable under the charging provision of the fiscal statute.

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4. **Supreme Court of Pakistan**
Collector of Customs, Customs House, Lahore and another v. Wasim Radio Traders, Lahore, etc.
Civil Petitions No. 323-L to 326-L of 2014
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._323_l_2014.pdf

Facts: These Civil Petitions for leave to appeal have arisen out of orders passed by Lahore High Court involving a common question of law. The respondents imported various consignments for which they sought clearance under the Customs Act, 1969. The imported goods were assessed on the basis of Valuation Rulings. The respondents disputed the assessment made on the basis of given Valuation Rulings under section 25D of the Act.

Issues: i) Whether the Valuation Rulings issued under Section 25A of the Act are binding?
ii) What is the process in case of any conflict in the customs value?
iii) Whether section 81 of the Act can be invoked where a Valuation Ruling has been issued under section 25A of Act?
iv) Whether section 81 of the Act can be invoked as of right?

Analysis: i) The Valuation Rulings issued under Section 25 of the Act is a notified ruling, which is applicable and binding until revised or rescinded by the competent authority.
ii) Sub-section 2A of section 25A categorically provides that where there is a conflict in the customs value, the Director General Valuation shall determine the applicable customs value.
iii) This section is invoked where the officer of Customs, at the time of checking the goods declaration, is unable to satisfy themselves as to the correctness of assessment of the goods, as the goods require chemical or other testing or further enquiry. Accordingly, this section cannot apply where a valuation ruling has been issued as the valuation ruling represents the declared value for the assessment of the goods or category of goods, which the importer is required to pay. As the Valuation Rulings is a formal decision providing the assessment value of the goods the requirements of section 81 of the Act per se are not invoked. Consequently, where the goods are pre-assessed or capable of assessment, Section 81 does not apply.
iv) Section 81 of the Act cannot be claimed as of right because the conditions stipulated in section 81 of the Act have to be attracted, which means that the custom officer has to find that the goods cannot be assessed and has to conclude that some form of testing or further inquiry is necessary.

Conclusion: i) The Valuation Rulings issued under Section 25A of the Act are binding.
ii) The Director General Valuation shall determine the applicable customs value.
iii) Section 81 of the Act cannot be invoked where a Valuation Ruling has been issued under section 25A of Act.
iv) Section 81 of the Act cannot be claimed as of right.

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5. **Supreme Court of Pakistan**
Commissioner of Income Tax, Companies Zone, Islamabad v. Fauji Foundation Limited
Civil Petition No. 3121 to 3125 of 2021
Mr. Justice Umar Ata Bandial , HCJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3121_2021.pdf

Facts: Petitioner through these Civil Petitions has sought leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, against the judgment dated 18.01.2021, passed by the Islamabad High Court, Islamabad (High Court), whereby Income Tax References No.06 of 2003 and 53 to 55 of 2007 filed by the Petitioner, were dismissed.

Issue: Whether the income from interest on bank deposits should be considered and taxed as income from other sources or as income from business?

Analysis: … Where the dispute relates to determining whether it is business income or income from other sources, the facts have to be duly considered so as to determine the objects of the assessee company, its functions and its memorandum of association or foundation documents. Once the primary business and functions are verified, the business activities need to be assessed to see it in the perspective of the declared objects and functions. Hence, the actual work of the assessee, its tax returns and how it treats its income has to be considered, to determine whether its income is business income or income from other sources… Since the Foundation is a welfare Trust…the Foundation can invest in industrial undertakings or otherwise, and any surplus income from these undertakings are to be utilized for the benefit of the Foundation's beneficiaries. In this context interest from bank deposits is also surplus income, used to carry out the objectives of the Foundation. Hence, it is business income and not income from other sources.

Conclusion: Income from interest on bank deposits will be considered as income from business.

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6. **Supreme Court of Pakistan**
Shamshad Bibi, etc. v. Riasat Ali, etc.
Civil Petition No.1692-L of 2022
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1692_l_2022.pdf

Facts: Through this civil petition the petitioner has sought leave against the order, whereby the High Court allowed the application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 and has remanded the matter to the trial court for recording of additional evidence. The civil revision was also subsequently allowed and the concurrent findings of the two competent courts were set-aside.

Issues: i) What are the eventualities to use the powers by the appellate court under Rule

27 of Order XLI CPC to allow additional evidence?
ii) What is the procedure for taking additional evidence?
iii) Whether power under Order XLI Rule 27 of the CPC is intended to be exercised to fill up lacunas?

Analysis: i) Rule 27 of Order XLI CPC empowers the appellate Court to allow additional evidence to be adduced, whether oral or documentary, after the recording of reasons. This power is circumscribed by three eventualities described in clauses (a) to (c) i.e. if the court, from whose decree the appeal has been preferred, has refused to admit evidence which ought to have been admitted; the appellate court, on being satisfied that the additional evidence was available but could not be produced before the trial court for reasons beyond the control of the party seeking its production; or the appellate court itself requires any such evidence so as to enable it to pronounce a judgment.
ii) Rule 28 of Order XLI describes the procedure for taking additional evidence and provides that the appellate court may either take such evidence or direct the court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence and to send it when taken to the appellate court. Rule 29 of Order XLI further provides that where additional evidence is directed or allowed to be taken, the appellate court shall specify the points to which evidence is to be confined and record in its proceedings the points so specified.
iii) The power under Order XLI Rule 27 of the CPC is not intended to be exercised to fill up lacunas, or to make up any deficiency in the case, nor to provide an opportunity to the party to raise a new plea. The power essentially has to be exercised cautiously and sparingly and not to facilitate an indolent litigant. The court, before exercising its jurisdiction of allowing the recording of additional evidence, must be satisfied that the document sought to be adduced in evidence is not of the nature that could be easily fabricated, tampered or manufactured.

Conclusion: i) The powers of the appellate court under Rule 27 of Order XLI CPC to allow additional evidence must be used into exceptional eventualities as mentioned in analysis portion.
ii) Rule 28 and 29 of Order XLI describes the procedure for taking additional evidence.
iii) Power under Order XLI Rule 27 of the CPC is not intended to be exercised to fill up lacunas.

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7. **Supreme Court of Pakistan**
Mst. Faheeman Begum (deceased) through L.Rs and others v. Islam-ud-Din (deceased) through L.Rs and others
Civil Appeal No.1300 of 2019
Mr. Justice Sardar Tariq Masood, **Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1300_2019.pdf

Facts: This Civil Appeal is filed to challenge the judgment passed by the High Court, in

civil revision whereby the concurrent findings recorded by the lower fora were set aside and the suit of the instant appellants was dismissed.

Issues: i) Whether concurrent findings recorded by the lower fora can be treated as being so sacrosanct or sanctified and cannot be reversed by the High Court in revisional jurisdiction?
ii) Whether High Court can even exercise its suo motu jurisdiction to correct any jurisdictive errors committed by a subordinate Courts?
iii) Whether any party can challenge the legality of the mutation on a vague allegation of fraud when the mutation had been given effect in the revenue record?

Analysis: i) If the concurrent findings recorded by the lower fora are found to be in violation of law, or based on misreading or non-reading of evidence, then they cannot be treated as being so sacrosanct or sanctified that cannot be reversed by the High Court in revisional jurisdiction which is pre-eminently corrective and supervisory in nature.
ii) In fact, the Court in its revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 ("CPC"), can even exercise its suo motu jurisdiction to correct any jurisdictive errors committed by a subordinate Court to ensure strict adherence to the safe administration of justice. The jurisdiction vested in the High Court under Section 115, CPC is to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law, or with material irregularity, or by committing some error of procedure in the course of the trial which affected the ultimate decision. The scope of revisional jurisdiction is restricted to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality in the judgment of the nature which may have a material effect on the result of the case, or if the conclusion drawn therein is perverse or conflicting to the law.
iii) The instant appellant had no locus standi to challenge the legality of the mutation on a vague allegation of fraud when (deceased) had never challenged the same in her life time and the mutation had been given effect in the revenue record.

Conclusion: i) If the concurrent findings recorded by the lower fora are found to be in violation of law, or based on misreading or non-reading of evidence, then they cannot be treated as being so sacrosanct or sanctified and can be reversed by the High Court in revisional jurisdiction.
ii) High Court can even exercise its suo motu jurisdiction to correct any jurisdictive errors committed by a subordinate Courts.
iii) No party can challenge the legality of the mutation on a vague allegation of fraud when (deceased) had never challenged the same in his/her life time and the mutation had been given effect in the revenue record.

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8. **Supreme Court of Pakistan**
Mst. Musarat Parveen v. Muhammad Yousaf and others
Civil Petition No.174-Q of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._174_q_2021.pdf

Facts: The suit filed by the predecessor of respondents No. 1-a to 1-f was decreed by the Trial Court. Application under Section 12 (2) CPC filed by the petitioner for setting aside the judgment and decree was dismissed and the objections filed by the petitioner on the execution were overruled. Being aggrieved, the petitioner filed appeal which was dismissed being time barred. Civil Revision filed by petitioner was also dismissed. Hence this civil petition for leave to appeal has been filed.

Issues: i) Whether power to condone the delay and grant an extension of time under section 5 of the Limitation Act, 1908 is discretionary?
ii) Whether any party can be permitted to choose his own time for the purpose of bringing forth a legal action at his own whim and desire?
iii) Whether law of limitation confer a right or ordains an impediment to enforce an existing right?

Analysis: i) This Court in case of Dr. Syed Sibtain Raza Naqvi Vs. Hydrocarbon Development and others (2012 SCMR 377) held that the two expressions "due diligence" and "good faith" in section 14 of Limitation Act, 1908 do not occur in section 5 of the Limitation Act, 1908 which enjoins only "sufficient cause". The power to condone the delay and grant an extension of time under section 5 of the Limitation Act, 1908 is discretionary.
ii) In the case of Dr. Muhammad Javaid Shafi Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself.
iii) In the case of Muhammad Iftikhar Abbasi Vs. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly

set the law in motion for the redress or remained indolent. In the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others (2022 SCMR 933), it was held by this Court that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact, this law has been premeditated to dissuade the claims which have become stale by efflux of time.

Conclusion: i) The power to condone the delay and grant an extension of time under section 5 of the Limitation Act, 1908 is discretionary.
ii) Any party cannot be permitted to choose his own time for the purpose of bringing forth a legal action at his own whim and desire.
iii) Law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right.

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9. **Supreme Court of Pakistan**
Syeda Ayesha Subhani v. The State, etc.
Criminal Petition No. 588-L of 2023
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._588_l_2023.pdf

Facts: Through this petition, the petitioner/complainant seeks leave to appeal against an order of High Court, whereby the High Court has allowed the post-arrest bail application of the respondent/accused and granted him bail on the statutory ground of delay in the conclusion of the trial. The petitioner prays for setting aside the order of the High Court and cancellation of the bail granted to the respondent.

Issues: i) Whether delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his first bail application on the statutory ground of delay, can be considered a fresh ground?
ii) Which interpretation of a provision of a criminal statute should be preferred when two interpretations are reasonably possible?
iii) What is purpose and objective of the 3rd proviso to Section 497(1), CrPC and when it becomes operative?

Analysis: i) The argument of the learned counsel for the petitioner is that once a bail application of the accused on the statutory ground of delay is dismissed, holding the accused responsible for causing the delay in the conclusion of the trial, his second bail application on the same ground for any subsequent period cannot be entertained. The argument does not appeal to us. Firstly, the entitlement of an accused to post-arrest bail on the statutory ground of delay in the conclusion of the trial is time-based. If the delay exceeds a year for no fault of the accused, in offences punishable other than death, the right of the accused to post-arrest bail ripens. This right continues to ripen for each period of one year starting from the arrest of the accused if he satisfies the court that he is not at fault for the delay in a

particular period of one year unless his case falls within the 4th proviso to Section 497(1), Cr.P.C. Secondly, denying this recurring right to post-arrest bail to the accused would, in our opinion, amount to giving the prosecution a license to delay the conclusion of the trial for an unlimited period of time after the dismissal of the first bail application of the accused on the statutory ground of delay. The accused would, in such an eventuality, be left confined as an under trial prisoner for an unlimited period of time at the mercy of the prosecution to conclude the trial as and when it pleases to do so. Thirdly, the accused shall have no incentive to attend the trial regularly and cooperate in the early conclusion thereof, after the dismissal of his first bail application, if his subsequent orderly conduct cannot entitle him to post-arrest bail despite non-conclusion of the trial for no fault of his in the next one year. Such a situation would be absolutely antithetical to the constitutional scheme of fundamental rights and make a mockery of the rights to liberty, fair trial and dignity of the accused guaranteed under the Constitution…We are, therefore, of the opinion that the delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his bail application on the statutory ground of delay, is to be considered a "fresh ground", not earlier available to him, for entertaining his second bail application, within the meaning and scope of that term as elaborated in Nazir Ahmed.

ii) It is a well-settled principle of interpretation in our jurisdiction that if two interpretations of a provision of a criminal statute are reasonably possible, the one that is favourable to the accused, not the prosecution, should be preferred.

iii) As the statutory right to be released on bail on the ground of delay in the conclusion of the trial flows from the constitutional rights to liberty, fair trial and dignity guaranteed under Articles 9, 10A and 14 of the Constitution of Pakistan, the provisions of the 3rd proviso must be fashioned in a manner that is progressive and expansive of these rights of the accused, who is still under trial, and his guilt being not yet proven, has in his favour the presumption of innocence…The purpose and objective of the 3rd proviso, as observed by this Court in Shakeel Shah, is to ensure that the trial of an accused is conducted expeditiously and that the pre-conviction detention of a person accused of an offence not punishable with death does not extend beyond the period of one year. If the trial in such an offence is not concluded within a period of one year for no fault of the accused, the statutory right to be released on bail ripens in his favour unless his case falls within any of the clauses of the 4th proviso. This right of the accused creates a corresponding duty upon the prosecution to conclude the trial within the specified period of one year. If any act or omission of the accused hinders the conclusion of the trial within a period of one year, no such right will accrue to him and he would not be entitled to be released on bail on the statutory ground of delay in conclusion of the trial. But if after the rejection of his plea for bail on this ground, the accused corrects himself and abstains from doing any such act or omission in the year following such rejection but the prosecution fails to perform its duty in concluding the trial within the specified period of one year, a

fresh right, that is to say, a fresh ground, would accrue in his favour. The 3rd proviso to Section 497, CrPC, thus, becomes operative as and when a period of one year passes but the trial is not concluded for no fault of the accused.

Conclusion: i) Delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his first bail application on the statutory ground of delay, can be considered a fresh ground.
ii) If two interpretations of a provision of a criminal statute are reasonably possible, the one that is favourable to the accused, not the prosecution, should be preferred.
iii) The purpose and objective of the 3rd proviso to Section 497(1), CrPC is to ensure that the trial of an accused is conducted expeditiously and it becomes operative as and when a period of one year passes but the trial is not concluded for no fault of the accused.

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10. **Supreme Court of Pakistan**
Barkhurdar v. The State and Another
Criminal Petition No. 733-L of 2018
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._733_l_2018.pdf

Facts: The learned Trial Court convicted the petitioner under Section 9 (c) of the CNSA, 1997, as ten kilograms poppy plant was recovered from him. The learned High Court vide impugned judgment maintained the conviction and sentence recorded by the learned Trial Court.

Issues: i) What exactly is the substance termed as '*Poast*'?
ii) Whether cultivation of poppy straw on all counts can be considered a criminal act?

Analysis: i) As per definition clause of Control of Narcotics Substances Act, 1997("CNSA") after mowing, all parts of the poppy plant except seeds are considered to be poppy straw. It is only the basket, sack or pouch also known as *'Doda'*, excluding the seeds, which contains narcotic substance and all poppy straw may not necessarily be the '*poast'/doda* because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds.
ii) In common parlance, it has been seen that often stems and leaves of the poppy plants are used as animal food. The plant can reach the height of about 1-5 meters (3-16 feet). The poppy plant is a spontaneous plant and is often seen grown on roadsides. Poppy straw is derived from the plant Papaver somniferum, which has been cultivated in many countries of Europe and Asia for centuries. This has medicinal impact as well, which is largely used as a tonic for wellness of nervous system. The purpose of its cultivation was actually the production of poppy seeds.

The latter is used as a food stuff and as a raw material for manufacturing poppy-seed oil, which is used for making various varnishes, paints and soaps etc.

Conclusion: i) It is clear that '*Poast'* is the name given to that part of a poppy plant which has the shape of a basket, sack or pouch and it contains the seeds of such plant.
ii) Cultivation of poppy straw on all counts, unless it is proved that it is made for the sole purpose of extracting narcotics after a proper method, cannot be considered a criminal act.

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11. **Supreme Court of Pakistan**
Jamaluddin Rabail v. The State
Criminal Petition Nos. 41-K & 42-K OF 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._41_k_2023%20etc.pdf

Facts: Through the instant petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order passed by the learned Single Judge of the learned High Court of Sindh, with a prayer to grant pre-arrest bail (in Criminal Petition No. 41- K/2023) and post-arrest bail (in Criminal Petition No. 42-K/2023) in case registered under Sections 324/148/149 PPC.

Issues: i) Whether plea of consistency is applicable in a case of pre-arrest bail based on post arrest bail already granted to co-accused, particularly when the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings?
ii) Whether liberty of a person could be taken away merely on bald and vague allegations?

Analysis: i) As far as the principle enunciated by this Court regarding the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings is concerned, we have noticed that in this case both the petitioners are ascribed the same role. For the sake of arguments if it is assumed that the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner Jamaluddin because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency. (…) The Courts of this country are not meant to send the people behind the bars rather the purpose of the entire judicial system is to protect the liberty of the citizen against whom baseless accusation has been leveled keeping itself within the four corners of the law. The rational behind this principle would be defeated if on a technical ground a person is sent behind the bars.
ii) Judiciary as the custodian of the fundamental rights has been charged with a duty as a watch dog to see that none of the fundamental rights of the people are

abridged or taken away. This court in a number of cases has held that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.

Conclusions: i) Yes, the plea of consistency is applicable in a case of pre-arrest bail on the basis of post arrest bail already granted to co-accused who is ascribed with similar role, as if the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency.
ii) Liberty of a person cannot be taken away merely on bald and vague allegations.

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12. **Supreme Court of Pakistan**
Munawar Bibi v. The State
Criminal Petition No. 90-K OF 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._90_k_2023.pdf

Facts: The petitioner has assailed the order passed by the Single Judge of the High Court of Sindh, with a prayer to grant pre-arrest bail in case registered under Section 379 PPC.

Issues: i) Whether plea of consistency is applicable in a case of pre-arrest bail based on post arrest bail already granted to co-accused who is ascribed with similar role?
ii) Whether bail can be granted in offences not falling within the prohibitory clause as a rule and refusal is an exception?
iii) Whether the merits of the case can be touched upon by the Court granting pre-arrest bail?

Analysis: i) The co-accused of the petitioner, who was ascribed the similar role, has been granted post-arrest bail by the court of competent jurisdiction. In these circumstances any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing would be only limited up to the arrest of the petitioner because of the reason that soon after her arrest she would be entitled for the concession of post-arrest bail on the plea of consistency.
ii) The maximum punishment provided under the statute for the offence under Section 379 PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail in offences not falling within the prohibitory clause is a rule and refusal is an exception.
iii) It is now established that while granting pre- arrest bail, the merits of the case can be touched upon by the Court.

Conclusions: i) Yes, the plea of consistency is applicable in a case of pre-arrest bail on the basis of post arrest bail already granted to co-accused who is ascribed with similar role.
ii) It is settled law that grant of bail in offences not falling within the prohibitory clause is a rule and refusal is an exception.
iii) Yes, it is now established that while granting pre- arrest bail, the merits of the case can be touched upon by the Court.

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13. **Supreme Court of Pakistan**
Saad Zia v. The State etc.
Criminal Petition No. 150-L of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._150_l_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the learned Single Judge of the learned High Court, with a prayer to grant pre-arrest bail in case under Sections 302/324/148/149 PPC, in the interest of safe administration of criminal justice.

Issues: i) Whether any person nominated in the crime report can be dubbed as an accused?
ii) Whether absconsion can be made a ground to discard the relief sought by any accused?

Analysis: i) This is established principle of law that mere the fact that a person is nominated in the crime report does not dub him as an accused unless and until during the course of investigation the accusation against the said person is found to be correct.
ii) It is settled law that absconsion cannot be viewed as a proof for the offence. Mere absconsion cannot be made a ground to discard the relief sought for as disappearance of a person after the occurrence is but natural if he is involved in a murder case rightly or wrongly.

Conclusion: i) Any person nominated in the crime report cannot be dubbed as an accused.
ii) Absconsion cannot be made a ground to discard the relief sought by any accused.

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14. **Supreme Court of Pakistan**
Zafar Nawaz v. The State and another
Criminal Petition No. 717 of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._717_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by High

Court, with a prayer to grant post-arrest bail in case registered under Section 489-F PPC, in the interest of safe administration of criminal justice.

Issues: i) Whether grant of bail in the offences not falling within the prohibitory clause is a rule and there is any exception?
ii) Whether mere registration of other criminal cases of same nature against an accused disentitles him for the grant of bail?

Analysis: i) It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception.
ii) So far as the argument of the learned Law Officer that other cases of similar nature have been registered against the petitioner is concerned, mere registration of other criminal cases against an accused does not disentitle him for the grant of bail if on merits he has a prima facie case.

Conclusion: i) Grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception.
ii) Mere registration of other criminal cases against an accused does not disentitle him for the grant of bail if on merits he has a prima facie case.

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15. **Supreme Court of Pakistan**
Muhammad Aziz @ Mana v. The State etc.
Criminal Petition No. 62-L OF 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi , Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._62_l_2023.pdf

Facts: Through the instant petition u/A 185(3) of the Constitution, the petitioner has assailed the order passed by the learned Single Judge of the learned Lahore High Court with a prayer to grant pre-arrest bail in case FIR u/s 381/411.

Issue: Whether merits of the case may be touched upon by the Court while deciding pre-arrest bail?

Analysis: It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. Liberty of a person is a precious right which cannot be taken away without exceptional foundations … the possibility cannot be ruled out that the petitioner has been involved in the case by throwing a wider net by the complainant. Mere allegation of causing huge loss is no ground to decline bail to an accused. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court.

Conclusion: Merits of the case may be touched upon while deciding petition for grant of pre-arrest bail.

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16. **Supreme Court of Pakistan**
Abdul Rasheed v. The State and another
Criminal Petition. No. 294-L of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._294_l_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, whilst assailing the order of the learned Lahore High Court, Lahore, the petitioner has prayed for pre-arrest bail in case registered under Section 489-F PPC.

Issues: i) What would be effect of delay in registration of FIR under Section 489-F PPC, particularly when accused claims that he had given cheques in question to complainant on account of guarantee in connection with their joint business?
ii) Whether the absconsion alone can be made basis to decline relief of pre-arrest bail?

Analysis: i) If the complainant does not lodge FIR and remains quiet for three years after dishonoring of the cheques in question, his such conduct prima facie would support the stance of accused that cheques in question were given by him to complainant as a guarantee in connection with their joint business and the same were not meant for repayment of loan or fulfillment of an obligation within the meaning of Section 489-F PPC.
ii) It is settled law that absconsion cannot be viewed as a proof for the offence.

Conclusion: i) In the event of delay in registration of FIR under Section 489-F PPC and counter claim of accused that cheques in question were given by him to complainant on account of guarantee in connection with their joint business, the question of issuing said cheques towards repayment of loan or fulfillment of an obligation within the meaning of Section 489-F PPC can only be resolved by the learned Trial Court after recording of evidence.
ii) The absconsion alone cannot be made basis to decline relief of pre-arrest bail.

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17. **Supreme Court of Pakistan**
Muhammad Aslam v. The State
Criminal Petition No. 789 of 2023.
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._789_2023.pdf

Facts: The petitioner assailed an order passed by the Peshawar High Court, Peshawar, with a prayer to grant post-arrest bail in case FIR for offences under Sections 9(1) 3e, 6e, 9(2) 5-15 of Control of Narcotic Substances Act, 1997.

Issues: Whether the plea of lack of conscious knowledge by an accused passenger regarding the presence of narcotics in a car is justified for grant of post-arrest bail

when both the accused passenger and the co-accused driver belonged to a disciplined force and posted at same place at the relevant time?

Analysis: Nothing could be brought on record by the petitioner to suggest that the Police had any malice to falsely involve him in the present case. During the course of arguments, learned counsel contended that petitioner was merely sitting on the front seat of the car and the narcotics were not in his conscious knowledge. We have noted that the learned High Court has taken note of this argument and has rightly held that the "petitioner and the driver of the vehicle both belong to the disciplined forcethat is Pak Army and at the relevant time both were posted at the same place, therefore, the impugned transaction being a joint venture cannot be overruled at the moment."

Conclusion: The plea of lack of conscious knowledge by an accused passenger regarding the presence of narcotics in a car is not justified for grant of post-arrest bail when both the accused passenger and the co-accused driver belonged to a disciplined force and posted at same place at the relevant time.

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18. **Supreme Court of Pakistan**
Atta Ul Mustafa v The State & another
Criminal Petition No. 596-L of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._596_l_2022.pdf

Facts: The petitioner/accused has been convicted by the trial court in offences under sections 376-II/337-J, PPC. Then he filed his appeal before the High Court which was dismissed. Now, through this constitutional petition, filed under article 185(3), the petitioner has assailed the decision of the High Court.

Issues: i) Whether the courts can solely rely on the testimony of the victim of a sexual assault to convict the accused?
ii) What is the strict condition to rely upon the testimony of victim of sexual offence?
iii) Whether D.N.A, report can be treated as primary evidence?
iv) What is the duty of court, if the story narrated by the sexual offence victim, does not appeal to reason to the mind of a prudent man?

Analysis: i) It is a well settled that the testimony of a victim in cases of sexual offences is vital unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to solely rely on the testimony of the victim of a sexual assault to convict the accused.
ii) The strict condition for relying upon testimony of victim is that the same shall reflect that it is independent, unbiased and straightforward to establish the accusation against the accused and if the court finds it difficult to accept victim's version, it may seek corroboration from some evidence which lends assurance to

victim's version.
iii) The D.N.A, report cannot be treated as primary evidence and can only be relied upon for the purpose of corroboration.
iv) If the story narrated by the sexual offence victim does not appeal to reason to the mind of a prudent man then the court is duty bound to weigh the other materials and evidence on record to come to the conclusion of guilt or otherwise of the accused.

Conclusion: i) The courts can solely rely on the testimony of the victim of a sexual assault to convict the accused.
ii) The strict condition for relying upon testimony of victim is that the same shall reflect that it is independent, unbiased and straightforward to establish the accusation against the accused.
iii) D.N.A, report cannot be treated as primary evidence.
iv) If the story narrated by the sexual offence victim does not appeal to reason to the mind of a prudent man then the court is duty bound to weigh the other materials.

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19. **Supreme Court of Pakistan**
Abdul Rehman v. The State etc.
Criminal Petition No. 611-L of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._611_l_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the Single Judge of the High Court with a prayer to grant pre-arrest bail in the interest of safe administration of criminal justice.

Issues: i) Whether liberty of a person can be taken away merely on bald and vague allegations?
ii) Whether the merits of the case can be touched by the court while granting pre-arrest bail?

Analysis: i) It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.
ii) It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court.

Conclusion: i) Liberty of a person cannot be taken away merely on bald and vague allegations.
ii) The merits of the case can be touched upon by the court while granting pre-arrest bail.

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20. **Supreme Court of Pakistan**
Noman Khaliq v. The State and another
Criminal Petition No. 714 of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._714_2023.pdf

Facts: The petitioner assailed an order passed by the Islamabad High Court, Islamabad, with a prayer to grant post arrest bail in case registered under Section 489-F PPC.

Issues: i) Whether section 489-F PPC can be used as a tool for recovery of amount?
ii) Whether bail can be refused in offences not falling in prohibitory clause and liberty of a person can be taken away?
iii) Whether absconsion of an accused can be viewed as a proof of offence and same can be made ground to discard the relief sought?

Analysis: i) Supreme Court in the case of Abdul Saboor Vs. The State (2022 SCMR 592) has categorically held that Section 489-F of PPC is not a provision which is intended by the Legislature to be used for recovery of an alleged amount, rather for recovery of any amount, civil proceedings provide remedies, *inter alia*, under Order XXXVII of CPC.
ii) It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. [Supreme] Court in a number of cases has held that liberty of a person is a precious right which cannot be taken away without exceptional foundations.
iii) It is settled law that absconsion cannot be viewed as a proof for the offence and the same alone cannot be made a ground to discard the relief sought for.

Conclusion: i) Section 489-F PPC cannot be used as a tool for recovery of amount.
ii) Bail cannot be refused in the offences not falling within the prohibitory clause and liberty of a person is a precious right which cannot be taken away without exceptional foundations.
iii) Absconsion of an accused cannot be viewed as a proof for the offence and the same alone cannot be made a ground to discard the relief sought for.

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21. **Supreme Court of Pakistan**
Ch. Saeed Ahmed Khalil v. The State etc.
Criminal Petition. No. 701 of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._701_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the learned Single Judge of the learned Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case FIR registered under Sections 420/468/471 PPC.

Issues: i) If accused and his family members are nominated by complainant in his supplementary statement recorded after a considerable delay, what may be possible impact thereof at bail stage?
ii) If principal accused has been allowed post-arrest bail in the same case, what would be effect of declining pre-arrest bail to an accused on basis of technical ground?
iii) Whether mere registration of another criminal case of same nature against an accused disentitles him for the grant of bail?

Analysis: i) The nomination of the accused and his other family members by the complainant in his supplementary statement, recorded after lapse of more than three months and eight days of the occurrence, indicates his act of throwing a wider net.
ii) When the principal accused has already been granted post-arrest bail, then Court's order declining pre-arrest bail of accused on technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing would be limited only upto the arrest of the petitioner.
iii) Mere registration of another criminal case of same nature against an accused does not disentitle him for the grant of bail if on merits he has a prima facie case.

Conclusion: i) If the accused and his family members are nominated by complainant in his supplementary statement recorded after a considerable delay, the possibility cannot be ruled out that the complainant has involved the accused in the case by throwing a wider net.
ii) If principal accused has already been granted post-arrest bail and the Court declines pre-arrest bail to accused on technical ground i.e. considerations for pre-arrest bail and after arrest bail are different, then accused would become entitled to post-arrest bail soon after his arrest on the plea of consistency.
iii) Mere registration of another case of similar nature against the accused does not disentitle him for grant of bail.

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22. **Supreme Court of Pakistan**
Telenor Microfinance Bank Limited v. Shamim Bano & others etc.
Civil Petitions No. 329-K to 391-K of 2022
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._329_k_2022.pdf

Facts: These Civil Petitions for leave to appeal are directed against the impugned consolidated judgment of High Court whereby the order passed by the Additional District Judge, in Summary Suit and connected suits was maintained and the Miscellaneous Appeals were dismissed, and another impugned consolidated judgment passed by the High Court whereby the order passed by the Additional District Judge modified to the extent that the plaint was to be filed before the court of plenary jurisdiction rather than the Banking Court.

Issues: i) What is the meaning of "microfinance institution" and "microfinance services"?
ii) Whether the Banking Companies Ordinance and any other law for the time being in force relating to banking companies or financial institutions shall apply to microfinance institutions?
iii) Whether the summary procedure on Negotiable Instruments is meant for the High Court, District Courts and any other Civil Court?
iv) What is negotiable instrument?
v) What is the difference between a promissory note and a bill of exchange?

Analysis: i) According to Clause (i) of Section (2) (definition clause) of the MIO 2001, "microfinance institution" means a company that accepts deposits from the public for the purpose of providing microfinance services, and under clause (j) "microfinance services" means the financial and other related services specified in Section 6, the value of which does not exceed such amount as the State Bank may, from time to time, determine.
ii) Section 3 of the MIO 2001 provides that the provisions of the Ordinance shall be in addition to and, save as hereinafter provided, not in derogation of any other law for the time being in force, and Sub-section (2) explicates that, save as otherwise provided in the Ordinance, the Banking Companies Ordinance and any other law for the time being in force relating to banking companies or financial institutions shall not apply to microfinance institutions licensed under the Ordinance and a microfinance institution shall not be deemed to be a banking company for the purposes of the said Ordinance, the State Bank of Pakistan Act,1956 (XXXIII of 1956), or any other law for the time being in force relating to banking companies.
iii) According to Rule 1 of Order XXXVII, CPC, summary procedure on Negotiable Instruments is meant for the High Court, District Courts and any other Civil Court specially notified in this behalf by the High Court.
iv) A negotiable instrument is a document guaranteeing the payment of a specific amount of money, either on demand, or at a set time, with the payer usually named on the document. It typically contains all the terms pertaining to the debt, such as the principal amount, interest rate, maturity date, date and place of issuance, and issuer's signature.
v) The difference between a promissory note and a bill of exchange is that the latter is transferable and can bind one party to pay a third party that was not involved in its creation.

Conclusion: i) "Microfinance institution" means a company that accepts deposits from the public for the purpose of providing microfinance services, and "microfinance services" means the financial and other related services.
ii) The Banking Companies Ordinance and any other law for the time being in force relating to banking companies or financial institutions shall not apply to microfinance institutions.

iii) According to Rule 1 of Order XXXVII, CPC, summary procedure on Negotiable Instruments is meant for the High Court, District Courts and any other Civil Court specially notified in this behalf by the High Court.
iv) A negotiable instrument is a document guaranteeing the payment of a specific amount of money, either on demand, or at a set time, with the payer usually named on the document.
v) The difference between a promissory note and a bill of exchange is that the latter is transferable and can bind one party to pay a third party that was not involved in its creation.

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23. **Lahore High Court**
Muhammad Ashfaq & others v. Imran Nadeem etc.
C.M. No.41049 of 2023 U/S 12(2) C.P.C.
Mr. Justice Muhammad Ameer Bhatti HCJ
https://sys.lhc.gov.pk/appjudgments/2023LHC4385.pdf

Facts: Respondent no. 01 filed a constitutional petition seeking direction against DG, FDA Faisalabad for disposal of his pending application. The Court issued writ of mandamus. The petitioners have filed instant application under Section 12(2), C.P.C., for setting-aside above said order.

Issue: i) What is meaning of the writ of Mandamus?
ii) Whether a direction issued by High Court to any Authority for taking decision on allegedly pending/undecided application of any applicant empowers him to decide it against law or by overlooking the relevant facts and law?
iii) Whether incorrect decision of authority upon direction of mandamus of High Court, create any right in favour of any party to approach this Court to ask for recalling/setting-aside the order of mandamus?
iv) What will be mode of compliance of Court direction if the application, for disposal of which an order of mandamus has been passed, has already been decided?
v) Whether issuance of direction by High Court regarding disposal of pending application means that application must be decided in favour of petitioner seeking direction for disposal of application?
vi) Whether issuance of direction by High Court for disposal of pending application empowers the authority to exercise jurisdiction not vested in said authority?

Analysis: i) Article 199(1)(a)(i) of the Constitution empowers High Court to issue direction to the authorities working within its territorial jurisdiction who have failed to decide any pending matter and thus have not performed their duties as required by law. High Court can (and must) issue direction to every functionary to do the needful provided that this is done in accordance with law as it is their duty to act fairly, justly and reasonably in the discharge of the said duties.

ii) It is foremost duty rather legal obligation of authority to consider all aspects of the case, which were to be complied with by that Authority in letter and spirit after hearing all the parties. And in that eventuality, the Authority to whom a direction is issued by High Court is under obligation not only to receive all the relevant documents from both the parties but also by applying a judicious mind to decide it in accordance with law...

iii) If an authority makes an incorrect decision, it does not create any right in favour of any party to approach High Court to ask for recalling/setting-aside the order of mandamus, as that concerns only the decision of the pending application which was to be decided in accordance with law. If any illegality has been committed by the Authority while deciding the application by not giving due weight to the documentary evidence produced by the applicants, in such eventuality, the said order is liable to be challenged on the same grounds before an appropriate forum. Concealment of facts may be a good ground to challenge the validity of the order but it cannot be considered a ground for setting-aside the order passed by this Court.

iv) If High Court issues direction for disposal of a pending application, however, in the event, that had already been decided, then informing to the petitioner by sending its earlier order regarding his application, would be enough to the compliance of the order/direction of High Court because this direction did not provide another life to that application if it had already been disposed of/decided by that Authority.

v) Another impression also seen to be taken by the Authority where alleged application had been filed that the decision must be in favour of the applicant as was the case in this instance. It was never the intention of High Court while issuing direction to decide it in favour of the applicant but the only purpose of direction was to point-out to that Authority to perform its duty as required by law. This order was never issued to favour any of the parties. It only demands a resolution of the pending issue within the parameters of law.

vi) If an applicant files the application before an incompetent Authority, meaning an authority out of whose domain lies decision making powers on the said issue, however, upon receiving the direction from High Court that Authority assumes jurisdiction merely on the ground that it had been directed by High Court, which is wrong. It is the duty of any such Authority upon receiving any such direction from High Court to first decide its/his competency about decision making powers regarding the concerned matter and on the basis of that either return application or forward the same to the concerned competent Authority for its decision along with a copy of order of High Court. However, it must be stressed that assumption of jurisdiction on the basis of High Court's direction does not make any such incompetent authority's order in accordance with law even if such a decision arises under misconception that jurisdiction was assumed under direction of High Court.

Conclusion: i) Writ of Mandamus means High court can (and must) issue direction to every functionary to do the needful provided that this is done in accordance with law as it is their duty to act fairly, justly and reasonably in the discharge of the said duties.

ii) A direction issued by High Court to any Authority for taking decision on allegedly pending/undecided application of any applicant does not empower him to decide it against law or by overlooking the relevant facts and law.

iii) If any illegality has been committed by the Authority while deciding the application by not giving due weight to the documentary evidence produced by the applicants, in such eventuality, the said order is liable to be challenged on the same grounds before an appropriate forum but it cannot be considered a ground for setting-aside the order of mandamus.

iv) If High Court issues direction for disposal of alleged pending application, however, in the event, that had already been decided, then informing to the petitioner by sending its earlier order regarding his application, would be enough to the compliance of the order/direction of High Court.

v) Issuance of direction by High Court regarding disposal of pending application does not mean that application must be decided in favour of petitioner seeking direction for disposal of application.

vi) Issuance of direction by High Court for disposal of pending application does not empower the authority to exercise jurisdiction not vested in said authority.

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24. **Lahore High Court**
M/s Honda Atlas Cars (Pakistan) Limited v. Additional Collector, Legal, LTU, Lahore etc.
S.T.R No.93 of 2010
Mr. Justice Shams Mehmood Mirza, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4512.pdf

Facts: This Sales Tax Reference is filed under section 47 of the Sales Tax Act, 1990 to seek the opinion on the certain questions of law which have arisen from the judgment rendered by the Appellate Tribunal, Inland Revenue.

Issues: i) Whether "the replacement parts constitute a distinguishable 'supply' on which tax is required to be charged and deposited, under the law, at the time of supply/replacement"?

ii) Whether the replacement of parts and supply, if treated as distinct transaction would result into imposition of tax twice for one taxable supply?

Analysis: i) The transaction of sale of vehicles is covered by the Sale of Goods Act, 1930. Section 12 thereof acknowledges that warranty forms an integral part of the sale contract…"Supply" means a sale or other transfer of the right to dispose off goods as owner, including such sale or transfer under a hire purchase agreement… the warranty assures the customers of replacement of the defective parts within the agreed period or the mileage free of charge… no separate consideration is charged

for the reason that consideration of such parts formed an integral part of the price of the contract which is received at the time of sale.
ii) It is axiomatic that sales tax charged and paid on the contractual consideration at the time of supply of motor vehicle includes such tax on auto parts to be replaced under the warranty…the cost of warranty replacements is incorporated in the price of the motor vehicle on which sales tax is charged. Absent the consideration in such transaction, it does not fall under the definition of 'supply'…replacement of auto parts under the warranty does not form part of supply of taxable goods.

Conclusion: i) Supply includes the replacement of parts in warranty, forming vital part of the basic contract for sale. Thus, it does not set up distinct supply.
ii) As the sales tax is paid at the entire contractual consideration including the warranty of replacement of parts. Therefore, replacement of parts is not supply of taxable goods hence not separately chargeable to tax.

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25. **Lahore High Court**
M/s Paragon Technologies v. Sui Northern Gas Pipelines Limited and others
W.P. No.4534 of 2023
Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2023LHC4474.pdf

Facts: The petitioner has approached this Court against the decision of the additional district judge upholding the judgment of the trial court which dismissed the application for restraining the respondent from making a demand on the bank guarantee issued on its behalf.

Issues: i) What is the autonomy principle in contract and what is its objective?
ii) What is the exception to the fundamental rule of payment under the bank guarantee independent of any dispute between the contracting parties?
iii) Whether the provisions of the Arbitration Act grant the power to the Court to issue interlocutory relief?
iv) Which tests are applied for the grant of interlocutory injunctions?
v) What are the pre-requisites before entering upon any inquiry into the three-pronged test?
vi) When the balance of convenience becomes an important factor in grant or refusal of interlocutory injunction?
vii) To what extent the court can go into the merits of the case involving complex factual issues in dispute at the interlocutory stage?
viii) Whether the Courts can make findings of fact or construe the provisions of contract between the parties?
ix) Whether the parties can freely enter into an agreement and whether the contract is autonomous from the resolution of any dispute arising in relation to the underlying contract?
x) What will be the effect of frequently granted injunctions in relation to trade and commercial issues?

xi) Whether mere allegations regarding breaches of contractual obligations shall be sufficient for an applicant to succeed in obtaining an interim injunction?
xii) What remedy is available to an aggrieved party against the decision of interim injunction as per the provisions of the Arbitration Act?

Analysis: i) Law is fairly well settled that the fate of an unconditional bank guarantee or a letter of credit being independent contracts is not dependent upon any dispute between the contracting parties and that payment thereunder has to be made if an unconditional undertaking has been made by the issuer. The payment obligation under both the instruments is dependent on documentary demands and the issuer is barred from making any determination of objective facts. This is called the autonomy principle. The premise on which this principle rests is that as between parties to documentary credit transactions a dispute related to the underlying transaction has to be pursued through a separate action for breach of the underlying contract and not by withholding payment under the letter of credit. "*pay first, sue later*" is the core objective underlying the autonomy principle.
ii) The fundamental rule of payment under the bank guarantee independent of any dispute between the contracting parties is excepted only where fraud is alleged as against the beneficiary of the bond/guarantee and the bank has notice of such fraud.
iii) Clause 4 of the Second Schedule of the Arbitration Act grants the power to the Court to issue interim injunctions. It is evident from the reading of the text of section 41 that the grant of injunction by the court in proceedings pending before it shall be governed by the provisions of the Code of Civil Procedure 1908 (the Code) whereas the court retains the power to issue interim injunction on basis of the power contained in the Second Schedule even when the matter has been referred to arbitration and proceedings are pending in that forum.
iv) The three tests applied for grant of interlocutory injunctions are well established in almost all the jurisdictions. These tests require an applicant to demonstrate that (a) there is a prima facie case by which it is meant that the applicant must be able to demonstrate to the satisfaction of the Court that there is a serious question to be tried in the sense that the claim is not frivolous (b) it will suffer irreparable loss and injury in case the relief is denied to it or in other words granting an injunction could cause less harm to the defendant compared to the likely harm the applicant would suffer from the refusal of such injunction, and (c) the balance of inconvenience favours it.
v) While making the determination at the interlocutory stage, the legal nature of the right involved must be central to any consideration of grant of injunction, which is another way of saying that the Courts must take into account the juridical nature of the dispute before entering upon any inquiry into the three tests. Although the guidelines are anchored in tradition and policy, it would be a fallacy to think that their application to cases is anything but uniform.
vi) Where the right asserted by the applicant is disputed or is in doubt, the balance of convenience becomes an important factor in grant or refusal of interlocutory

injunction. Where the decision depends upon the consideration of the preponderance of inconvenience, the onus is upon the applicant to demonstrate that his inconvenience would exceed that of the respondent.

vii) The central question facing the court is the extent to which it can go into the merits of the case involving complex factual issues in dispute at the interlocutory stage to identify which party has the better case particularly where the parties by agreement have agreed to refer the matter to arbitration. The classical model thus postulates that the Court as a matter of principle ought not to delve deep into controversy between the parties to make a forecast about the outcome of the case and that it would be sufficient for the Court to decide that the applicant has put forward a case that is arguable or at least not a frivolous one and after making this determination to move to discover whether the balance of convenience favours the grant of the injunction by striking a balance between the interests of the applicant and that of the beneficiary. In doing so, the Court should bear in mind the extent to which damages are likely to be an adequate remedy and the ability of the other party to pay the same.

viii) The Court, while exercising jurisdiction under section 20 of the Arbitration Act, can only go so far in determination of the so-called prima facie case test as the decision on the dispute falls within the jurisdiction of the arbitrators. It is thus imperative that the Courts must not make findings of fact or construe the provisions of contract between the parties particularly when they have expressly agreed to refer such dispute to arbitration.

ix) The legal principle dictates that the parties under the law must be able to bargain and agree upon the terms of their agreement by creating legal relationships as they desire. This is premised on the faith that both parties will freely come to an agreement that reflects their respective interests. The law has, however, built barriers to unfettered freedom of contract by placing certain limitations which include that the objective of the agreement and the consideration thereof must be lawful. It logically follows that the Courts shall treat the bond as an independent contract which is autonomous from the resolution of any dispute arising in relation to the underlying contract.

x) The policy considerations relate to trade and commercial certainty and the impairment the commercial instruments shall undergo if such injunctions are all too frequently granted. The Courts have granted due recognition to the fact that any restriction, even temporary, on payment under such bonds shall be disruptive of the contractual relationships essential to commerce.

xi) Mere allegations regarding breaches of contractual obligations in the plaint regarding fraud/unfair conduct shall be insufficient for an applicant to succeed in obtaining an interim injunction.

xii) By virtue of section 39 of the Arbitration Act, the decision to grant or refuse interim injunction is not appealable and accordingly the only course available to an aggrieved party is to avail the remedy of revision which in majority of cases would lie before the District Judge/Additional District Judge. Any party aggrieved by the decision of the District/Additional District Judge is required to approach

this Court in the Constitutional jurisdiction. The scope of such jurisdiction just like revision is to correct errors of jurisdiction.

Conclusion: i) The autonomy principle is that as between parties to documentary credit transactions a dispute related to the underlying transaction has to be pursued through a separate action for breach of the underlying contract and not by withholding payment under the letter of credit. "*pay first, sue later*" is the core objective underlying the autonomy principle.

ii) The only exception is where fraud is alleged as against the beneficiary of the bond/guarantee and the bank has notice of such fraud to the fundamental rule of payment under the bank guarantee independent of any dispute between the contracting parties.

iii) Clause 4 of the Second Schedule of the Arbitration Act grants the power to the Court to issue interim injunctions.

iv) The three tests applied for grant of interlocutory injunctions are well established in almost all the jurisdictions.

v) The Courts must take into account the juridical nature of the dispute before entering upon any inquiry into the three tests.

vi) Where the right asserted by the applicant is disputed or is in doubt, the balance of convenience becomes an important factor in grant or refusal of interlocutory injunction.

vii) The Court as a matter of principle ought not to delve deep into controversy between the parties to make a forecast about the outcome of the case.

viii) The Courts must not make findings of fact or construe the provisions of contract between the parties particularly when they have expressly agreed to refer such dispute to arbitration.

ix) The parties can freely enter into an agreement and it logically follows that the Courts shall treat the bond as an independent contract which is autonomous from the resolution of any dispute arising in relation to the underlying contract.

x) The policy considerations relate to trade and commercial certainty and the impairment the commercial instruments shall undergo if such injunctions are all too frequently granted.

xi) Mere allegations regarding breaches of contractual obligations in the plaint regarding fraud/unfair conduct shall be insufficient for an applicant to succeed in obtaining an interim injunction.

xii) The only course available to an aggrieved party is to avail the remedy of revision which in majority of cases would lie before the District Judge/Additional District Judge. Any party aggrieved by the decision of the District/Additional District Judge is required to approach this Court in the Constitutional jurisdiction.

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26. **Lahore High Court**
Tanveer Sarwar v. Government of Punjab and others
Writ Petition No. 63900/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4399.pdf

Facts: Through this Writ Petition the Petitioner has challenged the appointments of 22 officers made in their own pay and scale in the Punjab against various posts made through four notifications.

Issues: i) What does OPS indicate?
ii) What is the meaning of Public Interest Litigation?
iii) What is the principle of locus standi?
iv) Whether there is any exception to principle of locus standi?
v) What is the significance of expression "mala fide"?
vi) What is the nature and scope of writ of quo warranto?
vii) Is there any concept of OPS appointments in PCS Act and the PCS Rules and the same has any legal basis?

Analysis: i) OPS connotes appointing a civil servant against a post higher in scale than his basic pay scale. For example, appointing a BS-19 officer against a BS-20 or a higher position.

ii) Halsbury's Laws of India states that "lexically, the expression 'public interest litigation' means a legal action initiated in a court of law for the enforcement of public or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liability are affected." Dr Faqir Hussain states that "the raison d'être of public interest litigation is to break through the existing legal, technical, and procedural constraints and provide justice, particularly social justice, to a particular individual, class, or community who, on account of any personal deficiency or economic or social deprivation or State oppression are prevented from bringing a claim before the court of law." The courts consider PIL a "part of the process of participative justice" and an extremely important jurisdiction.

iii) In law, "locus standi means the right to bring an action, to be heard in court, or to address the court on a matter before it. Locus standi is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case."

iv) In S.P. Gupta vs President of India and others [1981 Supp. SCC 87: AIR 1982 SC 149)], the Supreme Court of India held that the traditional rule regarding locus standi is that judicial redress is available only to a person who has suffered a legal injury to property, body, mind or reputation as a result of any violation, actual or threatened, of the legal right or legally protected interest. This principle is, however, relaxed where an act or omission of the State or a public authority in violation of the Constitution or the law causes a public wrong or public injury. In such instances, any member of the public acting in good faith, who is not merely a busybody or a meddling interloper, but has sufficient interest in the proceeding, may file an action. (…) there is no legal necessity that the person applying for a writ of quo warranto should be an "aggrieved person" in the literal sense. Further, he is not required to demonstrate that he has a special interest in the matter or to explain which of his legal rights has been infringed. It is enough that the relator is

a member of the public and acts bonafide. This writ is more akin to public interest litigation, in which an individual seeks to remedy a wrong or vindicate a right for himself, for the good of society, or as a matter of principle.

v) The expression "mala fide" has a definite significance in legal phraseology. The same cannot possibly emanate out of fanciful imagination or even apprehensions. There must exist indisputable evidence of an oblique motive. It is a settled law that mala fides must be pleaded with particularity. Vague and general allegations are not acceptable. The court cannot conduct a roving inquiry to "fish out" a case.

vi) in a petition for issuance of a writ of quo warranto the High Court can only grant a declaration as to the person's authority to hold the questioned post but cannot issue a mandamus to restore or reinstate the applicant to office. (…) quo warranto proceedings are inquisitorial rather than adversarial, not only because a relator does not have to be a person aggrieved but also because a person who holds public office without a legal warrant is burdening the public exchequer and causing harm to others who may be entitled to the said office. The High Court can conduct such inquiry as it deems necessary in the facts and circumstances of a particular case, including an examination of the entire relevant record. This exercise can be done suo motu even if the parties concerned do not draw its attention to it. (…) on any such plea, the court must not only determine whether the respondent is holding the office under the order of competent authority, but also whether he is legally qualified for it or to continue to hold it, and whether any statutory provision has been violated in making the appointment. (…) the writ of quo warranto is discretionary, and the High Court is competent to inquire into the motives and conduct of the person challenging public office appointments.

vii) Section 4 of the PCS Act ordains that appointments to the civil service of the province or a civil post in connection with the affairs of the province shall be made in the prescribed manner by the Governor or by a person authorized by him on that behalf. Part-II of the PCS Rules defines the procedure for appointments to posts in the civil service of Punjab by promotion. Part-III and Part-IV deal with initial and ad-hoc appointments, respectively, and Part-V with relaxations. Rule 9 ordains that promotions or transfers to posts in various grades shall be made on the recommendation of the appropriate Committee or Board. Rule 10 states that the Selection Authority shall consider only officers with the prescribed qualifications and meet the conditions stipulated for this purpose. The crux of these provisions is that only the right officer can be posted to a particular position. A BS-19 officer shall be posted only against a BS-19 position and not to a higher one. (…) Rules 10-A, 10-B, and provide for appointments on acting charge, current charge, and officiating basis to deal with various contingencies when a post becomes vacant. (…) It is important to note that the seniority principle is followed in every case, subject to the conditions/criteria outlined in these provisions. The PCS Rules, including Rules 10-A, 10-B and 13, do not allow for appointments on an OPS basis. (…) It is declared that the concept of OPS appointments is alien to law. It violates Articles 4 and 25, the PCS Act and the

PCS Rules. S&GAD's notifications dated 17.05.1982 and 01.05.2000 also declare that it has no legal basis.

Conclusions: i) OPS indicates appointing a civil servant to a post higher in scale than his basic pay scale.
ii) 'Public interest litigation' means a legal action initiated in a court of law for the enforcement of public or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liability are affected and PIL is a "part of the process of participative justice" and an extremely important jurisdiction
iii) "locus standi means the right to bring an action, to be heard in court, or to address the court on a matter before it.
iv) Principle of locus standi is, relaxed where an act or omission of the State or a public authority in violation of the Constitution or the law causes a public wrong or public injury.
v) The expression "mala fide" has a definite significance in legal phraseology. Mala fides must be pleaded with particularity. Vague and general allegations are not acceptable.
vi) In writ of quo warranto the Court can grant a declaration as to the person's authority to hold the public office/questioned post.
vii) The concept of OPS appointments is alien to the law. It violates Articles 4 and 25, the PCS Act and the PCS Rules and it has no legal basis.

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27. **Lahore High Court**
Arshad Ali v. The State etc.
Crl. Misc. No. 2159/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4463.pdf

Facts: Through this application, the Petitioner seeks post-arrest bail in case FIR registered, for an offence under sections 9(1)6(c) of Control of Narcotic Substances Act, 1997.

Issues: i) What are the means used by drug traffickers while transportation of narcotics and contraband psychotropic substances within and beyond borders?
ii) Whether body packing is common way to traffic illicit drugs and body stuffing is similar form of it?
iii) Whether the law enforcement agencies should avoid administering albeit laxatives for retrieval of swallowed drug?
iv) Whether retrieval process of swallowed drugs may take more than one day?

Analysis: i) Drug traffickers transport narcotics and contraband psychotropic substances within and beyond borders through various means. These include concealing the goods in a large vehicle, luggage or clothing. Sometimes they attach the contraband to the outside of their bodies with adhesive tape, glue or straps, especially in places such as between the cheeks of the buttocks or between fat

rolls. Until the early 1990s, other inconspicuous places, such as the soles of cut-out shoes, inside belts, or the rim of a hat, were frequently employed.

ii) Body packing is another common way to traffic illicit drugs with a high street value like heroin. Body packers (referred to as "drug mules") swallow drug packets mostly made with latex sheaths due to their impervious quality. Predominantly, latex material includes the usage of latex gloves fingers, balloons, or multilayered condoms. The body packers take antimotility medicines after swallowing multiple packets to reduce intestinal motility and avoid passing out the drugs before reaching their destination. When they get there, they use laxatives, cathartics, or enemas to retrieve the contraband. The total amount of drug involved represents a supra-lethal dose. The rupture of one or more packets is a risk, resulting in sudden toxicity and overdose. Even if the packets do not burst, osmotic seepage across the latex wrapping may allow small amounts of drug to enter the bloodstream…Body stuffing is similar to body packing. It happens when people about to be apprehended by law enforcement swallow narcotic packets to avoid detection. Sometimes they insert them into the rectum or vagina. Body stuffing usually involves much smaller amounts of drugs than body packing, but overdose is still a hazard because the drugs are typically less securely packaged.

iii) Albeit laxatives help retrieve swallowed drugs, as adumbrated, law enforcement agencies should avoid administering them because, apart from raising legal and ethical issues, they may imperil the accused's life by doing so. They should promptly refer the accused to the hospital.

iv) Offenders with normal vital signs and normothermia may be discharged home after observation up to six hours. However, symptoms suggestive of drug intoxication may necessitate hospitalization for additional monitoring and decontamination. Body packers may need to be hospitalized for several hours or days until all the packets are passed. Individuals who come with serious symptoms or intestinal obstruction require surgical intervention. Some authors consider five days as sufficient time for passage of the drug packets, while others say that the time varies from 27 hours and seven days. Wong et.al. write that body packers who are managed conservatively should be observed in a hospital setting until all packets are evacuated. Packet count can be used to indicate a successful procedure. However, this method may not be reliable for the offenders who are uncooperative and refuse to disclose the exact number of packets in their bodies. Alternatively, passing two or three packet-free stools after continuous bowel irrigation for 12 hours plus negative abdominal radiology may be used as a guide to suggest complete clearance.

Conclusion: i) There are various means used by drug traffickers while transportation of narcotics and contraband psychotropic substances within and beyond borders as mentioned in analysis portion.

ii) Yes, body packing is another common way to traffic illicit drugs.

iii) Yes, the law enforcement agencies should avoid administering albeit laxatives

for retrieval of swallowed drug.
iv)Yes, retrieval process of swallowed drugs may take more than one day.

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28. **Lahore High Court**
Muhammad Aleem Khan etc v. CPO etc.
Crl. Misc. No. 1941/H/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4468.pdf

Facts: Through this application the petitioners have sought remedy against the refusal of copy branch of High Court to provide them copy of the USB containing video footage, which the Court made part of the file for use in that proceeding before the Supreme Court.

Issues: i) What provisions of law define the word "Document" and "Electronic Document"?
ii) Whether a public officer who has custody of public document, is bound to provide copy of the same upon demand?
iii) Whether Lahore High Court copy branch have any defined procedure for the issuance of certified copy of a USB?

Analysis: i) According to Merriam-Webster Dictionary, "document" means: (a) an original or official paper relied on as the basis, proof, or support of something; (b) something (such as a photograph or a recording) that serves as evidence or proof; (c) a writing conveying information (such as financial or historical documents);(d) a material substance (such as a coin or stone) having on it a representation of thoughts by means of some conventional mark or symbol; (e) a computer file containing information input by a computer user and usually created with an application (such as a spreadsheet or word processor)…Article 2(1)(b) of Qanun-e-Shahadat 1984 ("QSO") defines "document" in almost the same words as section 29 PPC though it gives its own Illustrations…Section 2(m) of the Electronic Transactions Ordinance, 2002, also defines "electronic document"… In general parlance, document means any embodiment of any text or image, howsoever recorded, and includes any data, text, images, sound, voice, codes, computer programs, software and/or databases or microfilm or computer generated microfiche or similar device.
ii) Article 87 provides for the issuance of certified copies of public documents. It ordains that every public officer who has the custody of a public document, which any person has a right to inspect, shall give that person a copy thereof on demand, subject to payment of legal fee, if any. It further states that the said officer shall give a written certificate at the foot of such copy that it is a true copy of the document in question, and shall sign it with his name and official title, and also mention the date and affix seal thereto, if authorized. Section 548 Cr.P.C. provides that if any person affected by a judgment or order passed by a criminal court desires to have its copy or of any deposition or other part of the record, it

shall be furnished to him on his application, subject to payment of fees, unless the court for some special reason, thinks fit to deliver it free of cost.
iii) Admittedly, the Lahore High Court Copy Branch does not have any defined procedure for the issuance of a certified copy of a USB. Therefore, seeking support from the law relating to the supply of certified copies of paper documents, it is directed as (a)The data in USB will be provided on an un-editable Compact Disc (CD), ensuring that no changes can be made to the digital copy.(b)A text file shall be inserted in the said Compact Disc containing the particulars, which the Copy Branch Agency stamps on every certified copy of the paper document it issues(c)The authorized officer of the Copy Branch shall give a written certificate in terms of Article 85(3) of QSO under the above table.(d)The applicant shall be liable to pay the cost of the aforesaid certified copy...According to Rule 6 (v) Part-B of Chapter 5 of Volume-V of Rules & Orders of Lahore High Court, Lahore, every application for an attested copy will be entertained subject to deposit of cost in advance as may be fixed by the Hon'ble Chief Justice from time to time.

Conclusion: i) Article 2(1)(b) of Qanun-e-Shahadat 1984 defines "document" in almost the same words as section 29 PPC though it gives its own Illustrations and Section 2(m) of the Electronic Transactions Ordinance, 2002, also defines "electronic document".
ii) Yes, a public officer who has custody of public document is bound to provide copy of the same upon demand, subject to payment of legal fee, if any.
iii) Lahore High Court copy branch does not have any defined procedure for the issuance of certified copy of a USB, however certain directions shall be followed according to law relating to the supply of certified copies of paper documents as mentioned in analysis portion.

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29. **Lahore High Court**
Waseem Ijaz v. Additional District Judge, Lahore & another
WP No. 2729 Of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5127.pdf

Facts: The petitioner, who stood surety on behalf of wife of respondent No. 2 in a petition under section 7 of the Guardian and Wards, 1890, for her appointment as guardian of her two sons subject to furnishing of surety bonds in the sum of Rs. 10 million, has called in question orders passed by Additional District Judge whereby the said court, for non-compliance of its orders, initiated proceedings against the petitioner.

Issues: i) Whether it is necessary for the court to ensure the presence of party for the provision of right of hearing to the party?
ii) What will be status of an adverse order if same is passed without providing right of proper hearing?

iii) Whether constitutional petition is not competent against an interim order?

Analysis: i) It is an inalienable right of a party to be provided a right of hearing which includes his right to be available before the court, for which purpose the court is required to ensure that proper notice has been served to the party requiring him to appear before the court and present his case. The said party is entitled for decision of any legal objection if raised by the said party through a speaking order.
ii) If an adverse order is passed without providing proper hearing such decision suffers from violation of fundamental principle of natural justice which is to be read as part of every statute as held in Hazara (Hill Track) Improvement Trust through Chairman and others vs. Mst. Qaisra Elahi and others that violation of principle of natural justice could be enough to vitiate even most solemn proceedings…
iii) Where an interim order appears to suffer some jurisdictional defect causing prejudice to the rights of a party, High Court under the Article 199 of Constitution is empowered to rectify the same.

Conclusion: i) For ensuring the right of hearing to party the court is required to ensure that proper notice has been served to the party requiring him to appear before the court and present his case.
ii) Violation of principle of natural justice will be enough to vitiate even most solemn proceedings and an adverse order which is passed without providing proper right of hearing will be liable to set aside.
iii) Where an interim order appears to suffer some jurisdictional defect causing prejudice to the rights of a party High Court under the Article 199 of Constitution is empowered to rectify the same.

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30. **Lahore High Court**
Sajjad Ahmad v. The State, etc.
Crl. Misc. No. 25688-B of 2023
Mr. Justice Anwaarul Haq Punnun
https://sys.lhc.gov.pk/appjudgments/2023LHC4421.pdf

Facts: Petitioner had been refused pre-arrest bail by the learned Additional Sessions Judge in case FIR registered under Sections 334/337-A(i)/337-L(2)/34 PPC, as such, he sought same relief through instant petition.

Issues: i) Whether tooth is a bone or is an organ of human body?
ii) Whether *itlaf* of tooth amounts to be *itlaf-i-udw* punishable under Section 334 PPC? If so, what would be impact of Section 337-U PPC while awarding punishment to a convict?

Analysis: i) The ectoderm is one of the primary layers of cells that exist in an embryo and the ectoderm cells differentiate into cells forming a number of external structures including skin, sweat glands, skin sensor receptors and hair follicles. Moreover,

the ectoderm forms the external surfaces of the eyes (cornea and lens), teeth (enamel), mouth, and rectum, as well as the pineal and pituitary glands. Human body is a symmetrically interwoven composite of seventy eight different organs including teeth.

ii) The word "Hurt" mentioned in Sections 332 PPC to 337-Z PPC is defined in Section 332 PPC as that it includes causing pain, harm, disease, infirmity or injury to any person or impairing rendering disable or dismember any organ of the body or a part thereof. Sections 333 PPC and 335 PPC respectively make it clear that dismemberment, amputation and severance of a limb and an organ constitute the offence of *itlaf-i-udw*, whereas destruction or permanent impairment of the functions, power or capacity of an organ of the body constitute offence of *itlaf-i-salahiyyat-i-udw*. The word *itlaf-i-udw* has been used in both the provisions of Section 333 PPC and 334 PPC, whereas Section 337-U PPC merely quantifies the punishment for (i) *itlaf* of a tooth other than a milk tooth, (ii) *itlaf* of a milk tooth, (iii) *itlaf* of twenty or more teeth and (iv) *itlaf* of a milk tooth resulting into impeding the growth of a new tooth.

Conclusion: i) Tooth is not a bone, but it is an ectodermal specialized organ of human body.

ii) *Itlaf* of a tooth is punishable under Section 334 PPC, however, the Court shall consider the explanatory and controlling position of Section 337-U PPC while awarding punishment to a convict.

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31. **Lahore High Court**
Shahid Imran v. The State etc.
Crl. Misc. No. 33583-B/2023
Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2023LHC4435.pdf

Facts: Through this application the petitioner seeks his pre-arrest bail, after having been denied the same relief by the Court of learned Addl. Sessions Judge, due to his alleged involvement in a criminal case registered under Sections 365-B, 376 of the Pakistan Penal Code, 1860.

Issues: i) Whether minors are most vulnerable class of individuals always dealt with distinctly while enacting provisions of law to cater and safeguard their interests.?

ii) What is the definition of "Child"?

iii) Whether the provisions of a treaty automatically incorporated into municipal law of a country or in this regard specific enactment of legislature is necessary?

iv) Whether competence of a girl to enter into a contract of marriage is dependent on attainment of puberty?

v) Whether a minor girl has any option to repudiate the marriage on attaining the puberty?

vi) Whether Federal Shariat Court has the jurisdiction to examine and decide the question regarding any law or provision of law, which is repugnant to the Injunctions of Islam?

vii) Whether Union Council is under a legal obligation to file a formal complaint against person violating the provisions of the Child Marriage Restraint Act, 1929?
viii) Whether prosecutor is under statutory duty to scrutiny the record regarding jurisdiction of special court?
ix) Whether grant of pre-arrest bail being a discretionary relief essentially rooted into equity?

Analysis: i) Under the Domestic and International Laws, the minors, being the most vulnerable class of individuals, have always been dealt with distinctly for substantial and valid reasons while enacting provisions of law to cater and safeguard their interests…the law giving bodies world over have always been taking measures by way of different pieces of legislation in this regard.

ii) For social re-integration of juveniles, the Juvenile Justice System Act, 2018, was enacted which defines child a person who has not attained the age of eighteen years…Certain other enactments have been enforced in Pakistan specifying age of majority for a minor/child as of eighteen years… Moreover, section 10 of the National Database and Registration Authority Ordinance, 2000 also prescribes entitlement of one for issuance of CNIC after attaining age of eighteen years… Reference of Article 1 of the UNCRC on the rights of child would not be out of context, which says that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

iii) The general rule is that the provisions of a treaty are not automatically incorporated into municipal law and a country's legislature must enact law to implement them. In Pakistan, even where such legislation has not been passed, the courts are required to interpret and apply every statute, as far as its language admits, in accordance with the principle of comity of nations and established rules of international law.

iv) Under uncodified Muslim law, which is mainly based upon the opinions of Muslim scholars, the competence of a girl to enter into a contract of marriage is dependent on attainment of puberty. Puberty is presumed at the age of fifteen years. According to "Fatawa Alamgiri", Page-93 of Vol-V, the lowest age of puberty as per their natural signs is 12 years in males and 9 years in females and if signs do not appear, both sexes are held to be adult on the completion of their age of 15 years. After copying out from Fatawa Alamgiri and Hedaya, the deduced principle is that a girl even having not attained puberty, but possessing discretion and sufficient understanding can enter into a contract of marriage, however; for its operation it will be dependent on the consent of the guardian, if there is one, but in the absence of any guardian it will take effect on her attaining of majority and ratifying the marriage contract…

v) According to Paragraph-24 of Muhammadan Law, "When a marriage of a minor is contracted by any guardian other than the father or father's father, the minor has the option to repudiate the marriage on attaining the puberty, technically which is called the "option of puberty" (Khyar-ul-bulugh). After

attaining puberty, right of repudiation of the marriage, in case of a female is lost if she had been informed of the marriage and she fails to repudiate the marriage without reasonable delay.

vi) Under Article 203-D(1) of the Constitution, the Federal Shariat Court has the jurisdiction to, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam. Moreover, under Article 203-GG of the Constitution, such decision of the Federal Shariat Court shall be binding on a High Court and on all Courts subordinate to a High Court

vii) The Union Council under section 9 the Act of 1929, is under a legal obligation to file a formal complaint against the persons liable to be punished, as discussed above, violating the provisions of the Act of 1929 before the Court to create deterrence in the society in general against such abuse of child marriage, yet the glaring shortfall, lapses, negligence and misconduct of state officials can palpably be found in existence somewhere behind the commission of almost all the offences. It may also be pointed out that in most of the cases, after abduction of the minor girls, the delinquents hurriedly maneuver Nikahnamas to use it as a shelter by pleading it the marriage conducted in violation of the Act of 1929, for saving their skin from the punishment of the offence, which they have committed.

viii) The Prosecutor, under Section 9(5) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, on receipt of report under Section 173 Cr.P.C, including a cancellation report or report for discharge of a suspect or an accused, is mandated to scrutinize the same…the procedure contained in the JJSA may be adopted in case of any dispute regarding the age of the abductee/victim. It has been observed that while ignoring investigation on the aspect of age of victim in cases of abduction/marriages alarmingly the Investigation officers usually fail in discharge of their duties in this regard. In this backdrop, in cases of abduction of minor female especially, the Prosecutor, under his statutory obligation, on scrutiny of the report/record has to find out as to whether besides the offence alleged against the accused, he/they have committed any other offence exclusively triable by a special Court and if he comes to a conclusion that the accused prima facie appears to have committed an offence under some other law, it will be quite lawful for him to refer the matter to the relevant department to achieve the object of better coordination amongst various limbs of justice system in line with the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, contained in its preamble so that the proper action may be triggered against the delinquent to bring the wrong doer to book.

ix) When petitioner was also found connected with the commission of offence during the course of investigation. Reasonable grounds thus exist to believe that the petitioner has committed non-bailable offence, the grant of pre-arrest bail being a discretionary relief essentially rooted into equity is only meant for

innocent person involved in the case on account of mala fide or ulterior motive…

Conclusion: i) Yes, minors are most vulnerable class of individuals always dealt with distinctly while enacting provisions of law to cater and safeguard their interests.
ii) A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.
iii) The provisions of a treaty are not automatically incorporated into municipal law and a country's legislature must enact law to implement them but in Pakistan the courts are required to interpret and apply every statute in accordance with the principle of comity of nations even if such legislation was not passed.
iv) Yes, competence of a girl to enter into a contract of marriage is dependent on attainment of puberty.
v) Yes, a minor girl has an option to repudiate the marriage on attaining the puberty in form of "option of puberty" (Khyar-ul-bulugh).
vi) Yes, Federal Shariat Court has the jurisdiction to examine and decide the question regarding any law or provision of law, which is repugnant to the Injunctions of Islam.
vii) Yes, Union Council is under a legal obligation to file a formal complaint against person violating the provisions of the Child Marriage Restraint Act, 1929.
viii) Yes, prosecutor is under statutory duty to scrutinize the record regarding jurisdiction of special court.
ix) Yes, grant of pre-arrest bail being a discretionary relief essentially rooted into equity.

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32. **Lahore High Court**
Muhammad Moosa v. The State and another.
Crl. Misc. No. 2163-B of 2023
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC4390.pdf

Facts: By virtue of instant petition filed under Section 498 Cr.P.C., petitioner has sought pre-arrest bail in case FIR , in respect of offences under Sections 447, 511, 506-B, 148, 149, PPC.

Issues: i) Whether issuance of non-bailable warrants of arrest and declaring the accused person as proclaimed offender is a revisable order in the light of section 439-A, Cr.P.C?
ii) Whether noticeable absconscion loses some of normal rights guaranteed under the law?

Analysis: i) It may not be out of place to mention here that order passed by the learned Magistrate Section 30, qua issuance of non-bailable warrants of arrest and declaring the accuse person as proclaimed offender was a revisable order in the light of section 439-A, Cr.P.C. and the above mentioned order cannot be set aside by the Sessions Court while exercising its powers under section 498, Cr.P.C...It has been well settled by now that if any bail order is recalled under section

497(5), Cr.P.C. and against cancellation/recalling of bail order remedy under section 498, Cr.P.C. is not competent because the same is also revisable order…
ii) It has been well settled proposition of law that noticeable absconscion loses some of normal rights guaranteed under the law.

Conclusion: i) Yes, issuance of non-bailable warrants of arrest and declaring the accused person as proclaimed offender is a revisable order in the light of section 439-A, Cr.P.C. and the said order cannot be set aside by the Sessions Court while exercising its powers under section 498, Cr.P.C
ii) Yes, noticeable absconscion loses some of normal rights guaranteed under the law.

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33. **Lahore High Court**
Mst. Khursheed Begum (deceased) through Legal Heir v. Abdul Wahid Nasim and 3 others
RSA No. 43 of 2014
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC4367.pdf

Facts: The appellant No. 1 instituted a suit claiming that she is actual owner of suit property and she purchased the suit property in the name of her real son as benamidar who has stolen the title documents and managed to sell the suit property to respondent No. 1. Respondent No. 1 filed contesting written statement and also filed suit seeking possession of the suit property. Son of the appellant No. 1 filed third suit seeking declaration in his favour. The trial court dismissed the suit of appellant No. 1 and her son and decreed the suit of respondent No. 1. Mother and son instituted appeals which were dismissed. Hence regular second appeal and civil-revision have been filed.

Issues: i) When limitation period runs in suit for declaration against agreement?
ii) When right to sue accrues to a person against the other for declaration of right vis-à-vis a property?
iii) Whether courts are duty bound to look the limitation irrespective of the fact that limitation has been set up as a defence or not?

Analysis: i) The limitation for such suits is provided in Article 120 of the first schedule of Limitation Act, 1908… The time under above article of the Limitation Act runs from the date when the 'right to sue' accrues.
ii) The words 'right to sue' means that when a person has 'right to seek relief' under the relevant law. In cases titled "Saadat Khan and others vs. Shahid-Ur-Rehman and others" (PLD 2023 Supreme Court 362) and "Mst. Rabia Gula and others vs. Muhammad Janan and others" (2022 SCMR 1009) the provision of Article 120 of the Limitation Act and section 42 of the Specific Relief Act, 1877 are analyzed / dealt in detail and it has been concluded that right to sue accrues to a person against the other for declaration of right vis-à-vis a property when latter actually denies rights or when he is interested to deny in the sense of threat of

denial. The denial when actual it obligates the claimant to bring action, within the period of limitation given in the Limitation Act. When alleged wrongdoer or the one denying the right has done something explicitly to deny the rights by doing overt act that amounts to actual denial for which if the claimant has gained definite knowledge, then plea of threat of denial, cannot revive limitation. In cases of mere threat of denial, each threatened denial gives rise to fresh cause. It is settled that when right to sue arises largely depends upon the circumstances of each case… It is often observed that despite actual denials, giving rise to right to sue, the belated cases are filed on the basis of alleged threat of denial. Generally, at the ends of plaints in addition to the actual denial a sentence is added that 'the cause again accrued just few days ago". This is being done without pleading actual date of threatened denial or any prima facie proof thereof. In some of these cases, mostly the actual denials are through positive act(s) which are self-evident, patent and manifest.

iii) Section 3 of the Limitation Act commands that subject to sections 4 to 25 every suit after the period of limitation prescribed in first schedule has to be dismissed irrespective of the fact if the limitation is set-up as a defence or not. Section 3 ibid imposes duty on the Courts themselves to look into the matter and when from the statement in the plaint it is undoubtful that the suit is time barred then to proceed to reject it. The Judge cannot on equitable grounds enlarge the time provided by the law. Where the question of law of limitation is not a mixed question of law and fact as well as the suit on the face of the record is hit by limitation and when it became apparent or undoubtful to the Court, it becomes incumbent on the Court, whether the limitation is pleaded or not by litigant, to discharge the duty to reject the case.

Conclusion: i) Limitation period runs from the date when the 'right to sue' accrues in suit for declaration against agreement.

ii) Right to sue accrues to a person against the other for declaration of right vis-à-vis a property when latter actually denies rights or when he is interested to deny in the sense of threat of denial.

iii) Courts are duty bound to look the limitation irrespective of the fact that limitation has been set up as a defence or not.

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34. **Lahore High Court**
Nasir Abbas Bhatti v. Abid Hussain, etc.
C.R. No.9463 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC4457.pdf

Facts: The petitioner has assailed the order & decree and judgment whereby suit of the petitioners for specific performance of agreement to sell was dismissed due to non-deposit of remaining sale consideration and appeal preferred there-against was also dismissed.

Issue: Whether transfer of the property which is subject matter of proceedings before Banking Court, absolve a plaintiff seeking specific performance of an agreement, to establish readiness and willingness to perform his part of the agreement?

Analysis: There is no cavil to the proposition that any transfer of the property subject matter of proceedings before a Banking Court are subject to the provisions of section 23 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and principles governing equity of redemption, however, the same does not absolve a plaintiff seeking specific performance of an agreement of his equitable burden to establish readiness and willingness to perform his part of the agreement.

Conclusion: Transfer of the property which is subject matter of proceedings before Banking Court, does not absolve a plaintiff seeking specific performance of an agreement, to establish readiness and willingness to perform his part of the agreement.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in the Punjab Excise, Taxation and Narcotics Control Department Service Rules, 1980, vide notification no. SOR-III(S&GAD) 1-5/2006 (PI)
2. Notification no. SOF (B&P 5-5-/2023(RM) of the Laboratories of Department of Fisheries Punjab
3. Amendment in the Punjab Board Military Police and Baluch Levy Service Rules,2009, vide *notification no. HP-II/9-II/2018(P)*
4. Amendment in the Punjab Weights and Measures (International System) Enforcement Rules,1976, notification no. SOR-(ICI& SD) 1-26/2023
5. Amendments in the Punjab Motor Vehicles Rules, notification no.SO (TR-I) 6-57/2021 (P-XIV)14

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/Statutory-Violations-Of-Contract-Law-And-Their-Categorization-An-Unexplored-Realm

Statutory Violations of Contract Law and Their Categorization: An Unexplored Realm by Aditya Vaid

In order to understand public policy pertaining to contract, we first need to understand the definition of the term 'contract'. A contract is a legally enforceable agreement that governs rights and obligations between the relevant parties. If an agreement is formed wherein the object is deemed unlawful or against the practice of law, then such an agreement is deemed as void by the law as it is against public policy Section 23 of the Indian Contract Act overlaps the freedom of an individual to enter into contracts of their choice. There are some basic elements that are to be mandatorily fulfilled in order for a contract to be enforceable which include the following- Adequate consideration, legality,

capacity, Mutual Consent. The term 'Contract' plays a significant role in the modern-day life. Most modern-day corporations enter into multi-dollar agreements certified by legal practitioners who set the terms and conditions of their deals, making sure that they do not violate public liberty or policy. Through the theme "Public Policy in Relation to Contract law", I seek to conduct my research on how public policy decisions impact contract law. Through the course of this paper, I shall be conducting my research on what agreements are deemed as against public policy, how such agreements are in violation of a penal statue and legality of object while forming the agreement.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Human-trafficking-Or-a-modern-day-slavery

Human trafficking: Or a modern-day slavery by Ananya Tiwari

Ever since contemporary times, human Trafficking has been prevalent. It used to be disguised as devadasis or some other way to justify it. Now, we have democracy and freedom, yet Human Trafficking is a growing problem in our world. Since the known history of humankind, Human Trafficking, slavery and absolute denial of rights, even minimum human substance, were/are prevalent in the name of gods or kings' wishes. In the modern age, with the advent of rationalism and liberalism, it was thought that this menace of humanity would perish and all equal liberated human beings would co-exist in fraternity with human dignity and happiness. However, surprisingly even in the present era, it is modern-day slavery. The earliest form of recognized human Trafficking began with the African trade of enslaved persons. We claim to treat everyone equally, but have we eliminated this evil? No human being is for sale, yet they are robbed of their basic rights and dignity. Innocent people get tangled in this web through coercion, false interpretation or trusting someone they should not have trusted. Trafficking leaves a lot of detrimental scars, especially for children, like long-lasting psychological trauma, substance abuse, suicidal thoughts, sexually transmitted diseases, identity disturbance and confusion.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/responsibility-of-the-corporates-towards-environmental-preservation-protection-and-management

Responsibility of The Corporates Towards Environmental Preservation, Protection, And Management by Ritansha Lakshmi

A corporate must acknowledge the inter-relationship and the interdependency between human beings, nature and other life forms which in true sense are the essence of the well-being of the human race and to take a step forward to preserve and protect the ecosystem it must follow the policies which are in favour of our environment by adapting to the idea of ecocentrism rather anthropocentrism and make decisions or execute lines of action which are beneficial in terms of the objectives and values of the environment preservation, protection and management, regardless of it belonging to the category of polluting or non-polluting, protection of our environment should be the foremost concern of every socially and ethically responsible organization. And the corporate must take steps to make sustainable use of resources, establish a healthy and safe working environment for its workers and the people associated with it, to maintain ecological

balance, take active and positive steps to minimize waste generation, and preserve the environment at every cost.

4. MANUPATRA
https://articles.manupatra.com/article-details/Pre-Trial-Complications-in-CrPC

Pre-Trial Complications in CrPC by Pratham Gupta

The investigation, prosecution, and adjudication of criminal proceedings in India are governed by the Code of Criminal Procedure (CrPC). A criminal case's pre-trial phase is an essential time when many significant choices are taken that could influence how the trial turns out. This research article examines the pre-trial issues that can develop about investigations, arrests, custody, bail, and the gathering of evidence. These issues could have a big impact on the accused, the victims, and the legal system as a whole. For instance, if an investigation or prosecution takes longer than expected, the accused may be held longer than necessary and the fairness of the legal system may be compromised. Bail and custody matters can also be controversial, particularly when the accused is viewed as a flight risk or when there is a chance that evidence will be tampered with. Similar to how witness credibility or evidence admissibility issues can weaken the prosecution's case. Understanding the nature, extent, and opportunity that pre-trial problems under the CrPC bring to the Indian criminal justice system is crucial in this regard.

5. MANUPATRA
https://articles.manupatra.com/article-details/handbook-on-combating-gender-stereotypes

Handbook on Combating Gender Stereotypes by Supreme Court Of India

This Handbook offers guidance on how to avoid utilising harmful gender stereotypes, in particular those about women, in judicial decision making and writing. Each one of us sometimes employ stereotypes in our thoughts, words, and actions. We may rely on stereotypes inadvertently, because stereotypes are often internalised and ingrained in our thinking due to societal, cultural, and environmental conditioning. This can make it difficult to identify and avoid relying on stereotypes. However, challenging and overcoming stereotypes is essential to ensuring an equal, inclusive, and compassionate society. With respect to the judiciary, it is vital that judges not only avoid relying on stereotypes in their decision making and writing, but also actively challenge and dispel harmful stereotypes. If harmful stereotypes are relied on by judges, it can lead to a distortion of the objective and impartial application of the law. This will perpetuate discrimination and exclusion.

6. MANUPATRA
https://articles.manupatra.com/article-details/ligaturestrangulation-mark-on-the-neck-is-it-really-suicidemurder

Ligature/Strangulation Mark on The Neck – Is It Really Suicide/Murder by Anupam S Sharrma

It is often observed that on finding a ligature mark on the neck of a person, the investigating agency would be quick to carry out investigation prima facie treating the

case to be of either homicide or suicide, unmindful of the fact that it could very well also be a case of natural death whereafter a scene of crime might have been meticulously created to simulate suicidal hanging or homicide to falsely implicate other persons due to personal/political rivalry. In fact, it has been observed that postmortem examination primarily concludes the case to be one of suicide or homicide on the basis of position of ligature mark, cyanosis, petechiae and congestion of visceras. As a general rule, in ligature strangulation/suicide, the mark of ligature is positioned approximately horizontally, in contrast to hanging in most cases the mark slopes up to the point of suspension, situated high-up the neck, directed obliquely upwards the line of mandible on both sides of the neck to pass behind the angle of jaw and mastoid process and ending on the back of the scalp, leaving a gap in between the two ends of the ligature mark. In homicidal strangulation/murder, it may either totally encircle the neck or be seen only at the front. The latter situation arises when the ligature is pulled tightly from behind. In such cases, the mark may also be sloping if the ligature is pulled upwards from behind.

7. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/mental-health-and-family-law-understanding-impact-legal-outcomes-and-family-dynamics

Mental Health and Family Law: Understanding the Impact on Legal Outcomes and Family Dynamics by Erika Salerno Shadowens, Jailah D. Emerson

When deciding how to collaboratively raise children, the question of what serves the children's best interests frequently arises and sparks debate within legal contexts surrounding divorce and child custody. This contentious topic can be further complicated when questions about the status of a parent's mental health arise. However, a mental illness diagnosis does not have to result in the loss of one's parental rights.

8. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/reality-artificial-intelligence-family-office-realm

The Reality of Artificial Intelligence in the Family Office Realm by Angelica F. Russell-Johnson,Sarah Kerr Severson

Across industries, professionals are talking about the opportunity and utility of artificial intelligence (AI). In the estate planning and family office realms, two fields that require a distinctly human touch, advisors wonder how can artificial intelligence be leveraged, if at all? Artificial intelligence is the replication of human intelligence by a machine. Generative artificial intelligence (GenAI) takes this one step further by leveraging the power of computers, collected data, and machines to mimic the problem-solving and decision-making capabilities of the human mind. This leap in machine ability can be a powerful tool to streamline work product. Although advisors might be wise to integrate AI into their practices, estate planning and family office professionals should remember that a machine cannot replace the human relationships that we build with our clients.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-09-2023 to 15-09-2023)

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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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Abid Shahid Zuberi, Advocate Supreme Court of Pakistan v. Federation of Pakistan through Secretary, Cabinet Division, Islamabad and others and three other petitions
C.M.A. No. 3932 of 2023 in Constitution Petition No. 14 of 2023 and Constitution Petition Nos. 14 to 17 of 2023
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._3932_2023.pdf

Facts: The Federal Government formed a three member Inquiry Commission through a notification to inquire into the veracity of audio leaks allegedly concerning including the Judiciary. Soon thereafter the Constitution petitions were filed in court challenging the vires of the impugned notification. During the course of hearing, the Federal Government filed recusal application and seeks the recusal of three learned members of the Bench. This judgment decided the recusal application.

Issues: i) What is conflict of interest and whether it is different from bias?
ii) Whether principle of necessity can be invoked in the context of judicial proceedings?
iii) Whether a judge has discretion to recuse from a case if his disqualification is sought?
iv) Whether a judge can perform his legal duty of administering justice in a particular case where either conflict of interest or bias (or both) is alleged against him?

Analysis: i) For this purpose the meaning and scope of the term 'conflict of interest' and its difference, if any, from 'bias' have been examined… The afore-quoted excerpts show that conflict of interest and bias are indeed two distinct grounds on which a party may seek the recusal of a Judge from hearing a case. Whilst conflict of interest is related to the Judge's interest in the subject matter of a particular case, bias is concerned with his state of mind and his feelings towards the parties appearing before him… As noted above, a conflict of interest is related to the subject matter of the litigation. This means that the Judge, whose recusal is being sought, must have a direct pecuniary, proprietary or personal interest in the litigation. A classic example of a Judge having a pecuniary interest in a litigation is Dimes v Grand Junction Canal Proprietors [10 ER 301 (1852) (HL)]. In that case the (then) Lord Chancellor, Lord Cottenham, owned a substantial shareholding in Grand Junction Canal which was an incorporated body. In a suit filed by Grand Junction Canal the Vice-Chancellor granted the relief sought. The appeal came before the Lord Chancellor who affirmed the decision of the Vice-Chancellor. The matter then came before the House of Lords which reversed the decree of the Lord Chancellor and Lord Campbell, in what is now regarded as the

classic formulation on disqualification on the basis of interest… Personal interest has been defined in Halsbury's Laws of England (Volume 61A, 2018)… Apart from pecuniary (financial) interest of a Judge, which has already been ruled out because the same was neither alleged nor pressed, the afore-noted comment in Halsbury's Laws explains that non-pecuniary interests are also included in personal interests. The 'promotion of a cause' has been cited as an example of one such interest. This particular ground was created by the House of Lords in R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2) ([2000] 1 AC 119) for setting aside its earlier decision wherein Lord Hoffman and two other Judges (by a majority of 3:2) had held that Augusto Pinochet, being the former Head of State of Chile, was not entitled to immunity and could be arrested, extradited and prosecuted for his alleged crimes against humanity. In this earlier decision of the House of Lords Amnesty International ("AI") was an intervener and argued in support of the proposition that Pinochet was not entitled to immunity. After the earlier decision was released information came to light that Lord Hoffman was a director of Amnesty International Charity Ltd ("AICL"), a registered charity which undertakes charitable works for AI. As a result, Pinochet lodged a petition in the House of Lords with the prayer that either the earlier decision be set aside or the opinion of Lord Hoffman be discarded. Ultimately, the House of Lords granted the former relief… The principle laid down above by the House of Lords treats the promotion of a cause by a Judge to be in conflict with his constitutional duties… The law is clear that for an interest to attract the disqualification of a Judge from a case, the same needs to be direct and certain.

ii) The rule was explained in the case of Justice Shaukat Ali and this dictum was subsequently quoted with approval by the Court in the cases of Federation of Pakistan Vs. Muhammad Akram Shaikh (PLD 1989 SC 689) and Parvez Musharraf Vs. Nadeem Ahmed (Advocate) (PLD 2014 SC 585). The above passage shows that even when a Judge suffers from a valid disqualification, the rule of necessity permits him to sit on the Bench if his jurisdiction is exclusive or if no substitute is provided by the law in his place.

iii) Whilst the law of the land grants a Judge discretion to recuse from a case if his disqualification is sought, the Holy Quran provides the criteria for guiding the exercise of such discretion… The Holy Quran makes it explicit that believers are expected to uphold the scales of justice even if such a course of action goes against their own interest or that of their parents or relatives. This is because of the higher duty to be impartial and to remain uninfluenced by any interest whilst dispensing justice that is owed by a Muslim to the Almighty. Therefore, there is no rule of Islamic Law requiring a Judge to refrain from administering justice in matters in which his personal interest or that of his relatives is involved. The Judge is nevertheless under the onerous obligation that he must not be swayed by any extraneous considerations when deciding a matter. This duty is also reflected in the Oath of Office taken by a Superior Court Judge: '[t]hat I [Judge] will not allow my personal interest to influence my official conduct or my official decisions' (ref: Third Schedule to the Constitution).

iv) In this respect, Pakistani jurisprudence also leaves it to the discretion of the Judge to decide whether he will be able to perform his legal duty of administering justice in a particular case where either conflict of interest or bias (or both) is alleged against him. Reliance in this regard is placed on Independent Media Corporation (supra) at para 13; Federation of Pakistan Vs. Muhammad Nawaz Sharif (PLD 2009 SC 284) at para 27; Islamic Republic of Pakistan Vs. Abdul Wali Khan (PLD 1976 SC 57) at pg.188. In these cases the following allegations were levelled against the Judges of the Court: i. In Independent Media Corporation (supra) the recusal of Justice Jawwad S. Khawaja was sought on account of his sister-in-law's brother being involved in the case before the Court. ii. In Muhammad Nawaz Sharif (supra) the recusal of Judges who had taken oath under the Provisional Constitution Order, 2007 was sought on the basis that the petitioner had expressed strong reservations against such acts. iii. In Abdul Wali Khan (supra) the recusal of two learned Judges was sought on the ground that they were previously associated with the case being prepared for the banning of the National Awami Party which was headed by the petitioner, Abdul Wali Khan. However, rejecting the contentions of the parties seeking recusal in each of the above cases, the Court observed that it was for the respective Judge(s) to decide whether to continue to sit on the Bench or not.

Conclusion: i) A conflict of interest is related to the subject matter of litigation which must be direct pecuniary, proprietary or personal interest in the litigation and it is different from bias.
ii) Principle of necessity can be invoked in the context of judicial proceedings.
iii) A judge has discretion to recuse from a case if his disqualification is sought.
iv) A judge can perform his legal duty of administering justice in a particular case where either conflict of interest or bias (or both) is alleged against him**.**

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2. **Supreme Court of Pakistan**
The Commissioner of Income Tax v. M/s. Inter Quest Informatics Services
Civil Appeals No. 94 to 106/ 2008 and Civil Appeal No. 550/ 2011
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._94_2008.pdf

Facts: The High Court of Sindh at Karachi decided fourteen income tax references which had been filed by the respondent respectively under section 136 (1) of the Income Tax Ordinance, 1979 and section 133 (1) of the Income Tax Ordinance, 2001. A Divisional Bench of the High Court decided thirteen of these references though a common judgment and one was later on decided, which relied on its earlier judgment.

Issues: i) Which law attends to agreements for the avoidance of double taxation and prevention of fiscal evasion which the Government of Pakistan may enter with other countries?
ii) What is the concept of Royalties under Article 12 of the Tax treaty?

iii) Which country is entitled to tax the payment under the Tax treaty/Convention?

Analysis: i) Section 163 of ITO 1979 (section 107 of ITO 2001) attends to agreements for the avoidance of double taxation and prevention of fiscal evasion which the Government of Pakistan may enter with other countries.

ii) The term 'Royalty' as defined in Article 12 of the Tax treaty is as follows:
Payment of any kind received as consideration for the use of, or the right to use:
i) a patent, trademark or tradename, secret formula or process design or model, or information concerning industrial, commercial or scientific experience.
ii)Industrial, commercial or scientific equipment, cinematograph films and tapes for television and broadcasting; (…) Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. (…) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

iii) The High Court did not abide by the recognized principle of interpretation that the State in which payment is made (under the Convention) is generally entitled to tax such payment, as was reiterated in the case of A. P. Moller v Commissioner of Income Tax. (…)'However, if two reasonable interpretations of Article 8(3) are possible, or if there is any doubt or ambiguity in its interpretation (especially in relation to the expression "profits derived from sources within the other Contracting State") that should be resolved in favour of Pakistan having the right to tax… It is a recognized interpretation that the "source State" is the State in which payment is made, and generally such State is regarded as entitled to tax such payments. Pakistan is clearly the "source State" in the facts and circumstances of the present case since payments are made here by the Pakistani buyers. Thus, the amounts received or receivable in Pakistan by the carriers are "profits derived from sources within" Pakistan and hence can be reasonably regarded as within the taxing right of this country as contemplated by Article 8(3).'

Conclusions: i) Section 163 of ITO 1979 (section 107 of ITO 2001) attends to agreements for the avoidance of double taxation and prevention of fiscal evasion which the Government of Pakistan may enter with other countries.

ii) The term "royalties" as used in Article 12 of the Tax treaty means payments of

any kind received as a consideration for the use of, or the right to use: a) a patent, trademark or tradename, secret formula or process design or model, or information concerning industrial, commercial or scientific experience. b) Industrial, commercial or scientific equipment, cinematograph films and tapes for television and broadcasting;
iii) It is recognized principle of interpretation that the State in which payment is made (under the Convention) is generally entitled to tax such payment.

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3. **Supreme Court of Pakistan**
Imran Ahmad Khan Niazi v. Federation of Pakistan through Secretary, Law and Justice Division, Islamabad and another
Const. P. 21/2022 and C.M.A. 5029/2022
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Ijaz Ul Ahsan, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/const.p._21_2022_15092023.pdf

Facts: Through present Constitution Petition, the petitioner has challenged the amendments made to the National Accountability Ordinance, 1999 by the National Accountability (Amendment) Act, 2022 ("First Amendment") and the National Accountability (Second Amendment) Act, 2022 ("Second Amendment") (collectively referred to as the "2022 Amendments").

Issues: i) Whether acts of corruption and corrupt practices can be challenged under Article 184(3) of Constitution?
ii) Whether Supreme Court has jurisdiction to take cognizance of amendments in the accountability law?
iii) Whether Supreme Court has to consider the antecedents of standing of person who has filed petition under Article 184(3) of Constitution?
iv) Whether Parliament can encroach into the jurisdiction of Judiciary?
v) Whether elected holders of public office are public servant and can be prosecuted before any other fora than accountability Court?
vi) What is effect of raising the minimum threshold of the NAB to 500 million?
vii) What is effect of omission of section 21(g) of the NAB Ordinance?
viii) Whether proviso can nullify the main section?
ix) What is effect of insertion of second proviso to section 25(b) of the NAB Ordinance vide section 14 of the Second amendment in NAB Ordinance?

Analysis: i) By virtue of the Article 184(3), the Court can pass appropriate orders in cases where the enforcement of a Fundamental Right(s) affecting the public at large is involved. It is by now well-established in our jurisprudence that acts of corruption and corrupt practices do infringe the Fundamental Rights of the public and thus meet the test of Article 184(3).
ii) The 2022 Amendments have limited the NAB's jurisdiction thus excluding hundreds of pending references from trial before any forum and have also made the proof of the offence of corruption and corrupt practices significantly harder

for references that satisfy the jurisdictional requirements of Section 4 and Section 5(o) of the NAB Ordinance. We think it would be a legal absurdity to hold that whilst Supreme Court can take cognizance of individual acts of corruption and corrupt practices under Article 184(3) it cannot do so when amendments have been introduced in the accountability law i.e., the NAB Ordinance which exclude the jurisdiction of the NAB to investigate and prosecute holders of public office in two significant respects thereby ex-facie violating Articles 9, 14, 23 and 24 of the Constitution by exonerating the holders of public office from their alleged acts of corruption and corrupt practices by failing to provide a forum for their trial. The 2022 Amendments have therefore rendered the NAB toothless in accomplishing its objective of 'eradicating corruption and corrupt practices and holding accountable all those persons accused of such practices' and have left public property belonging to the people of Pakistan vulnerable to waste and malfeasance by the holders of public office.

iii) Locus standi is not an impediment when Supreme Court is exercising original jurisdiction. Therefore, to dismiss the instant petition solely on the ground that the petitioner did not object to the 2022 Amendments in the National Assembly would result in the Court deciding the question of maintainability on the basis of an irrelevant consideration… It is settled law that when Supreme Court exercises jurisdiction under Article 184(3) of the Constitution it is not concerned with the antecedents or standing of the person who has filed the petition because that person is merely acting as an informant. Instead, the Court favours a substantive approach focusing more on the content of the petition and whether the same crosses the threshold set out in Article 184(3).

iv) The judgments of the Superior Courts indicate that the minimum pecuniary threshold of NAB should be Rs.100 million (except in limited circumstances where offences less than Rs.100 million cannot be prosecuted by any other accountability agency), Section 3 of the Second Amendment has increased this minimum threshold to Rs.500 million. No cogent argument was put forward by learned counsel for the respondent Federation as to why Parliament has fixed a higher amount of Rs.500 million for the NAB to entertain complaints and file corresponding references in the Accountability Courts when the Superior Courts have termed acts of corruption and corrupt practices causing loss to the tune of Rs.100 million as mega scandals. It is accepted that Parliament is empowered to legislate freely within its legislative competence laid down by the Constitution. However, it is also a settled principle of our constitutional dispensation that the three organs of the State i.e., the Legislature, the Executive and the Judiciary perform distinct functions and that one organ of the State cannot encroach into the jurisdiction of another organ.

v) On a careful examination of the provisions of Prevention of Corruption Act, 1947; Pakistan Penal Code, 1860; Income Tax Ordinance, 2001; and Anti-Money Laundering Act, 2010, it becomes clear that the two are applicable only to public servants. Public servant is defined in the PPC in Section 21. Section 2 of the 1947 Act also relies on Section 21 of the PPC to define public servant. Therefore, in

both laws the term 'public servant' has an identical meaning. One example of public servants is given in Article 260 of the Constitution. It may be noticed that under the Constitution persons in the service of Pakistan are those who are holding posts in connection with the affairs of the Federation or Province. As a result, such persons are either dealing with the property of the Federal/Provincial Government or with the pecuniary interests of the Federal/Provincial Government. They, therefore, come within the definition of public servant set out in the PPC and adopted by the 1947 Act and so can be prosecuted under these laws for the offence of corruption and corrupt practices. However, elected holders of public office do not qualify as public servants under the guise of being in the service of Pakistan because Article 260 of the Constitution specifically excludes them from such service. Elected holders of public office are not triable either under the 1947 Act or the PPC for the offence of corruption and corrupt practices… This legal situation also explains why the Holders of Representative Offices (Prevention of Misconduct) Act, 1976 ("1976 Act") was enacted and Holders of Representative Offices (Punishment for Misconduct) Order, 1977 ("1977 Order") was promulgated. Both these laws applied only to holders of representative office i.e., elected holders of public office and subjected them to prosecution for offences similar to those prescribed in the NAB Ordinance. If elected holders of public office can be tried under the 1947 Act and the PPC then there would have been no need to pass the 1976 Act or the 1977 Order since both the 1947 Act and the PPC precede these laws. Once excluded from the jurisdiction of the NAB no other accountability fora can take cognizance of their alleged acts of corruption and corrupt practices.

vi) By amending Section 5(o) of the NAB Ordinance to raise the minimum pecuniary threshold of the NAB to Rs.500 million, Section 3 of the Second Amendment has undone the legislative efforts beginning in 1976 to bring elected holders of public office within the ambit of accountability laws because by virtue of Section 3 elected holders of public office have been granted both retrospective and prospective exemption from accountability laws. Once excluded from the jurisdiction of the NAB no other accountability fora can take cognizance of their alleged acts of corruption and corrupt practices as noted above. Such blanket immunity offends Articles 9, 14, 23 and 24 of the Constitution because it permits and encourages the squandering of public assets and wealth by elected holders of public office as there is no forum for their accountability. The immunity also negates Article 62(1)(f) of the Constitution which mandates that only 'sagacious, righteous, non-profligate, honest and ameen' persons enter Parliament. It also offends the equal treatment command of Article 25 of the Constitution as differential treatment is being meted out to persons in the service of Pakistan than to elected holders of public office. This is because persons in the service of Pakistan can still be prosecuted for the offence of corruption and corrupt practices under the 1947 Act as they fall within the definition of public servants.

vii) It is a common fact that many accused persons being tried under the NAB Ordinance have stashed their wealth and assets abroad in tax havens under

fiduciary instruments. However, after the omission of the section 21(g) of NAB Ordinance, the admissibility of foreign public documents shall be governed by Article 89(5) of the Qanune-Shahadat Order, 1984. It may be observed that the process of admitting foreign public documents under the 1984 Order is protracted and cumbersome because it requires either the production of the original document or a copy which is certified not only by the legal keeper of the document but also by the Embassy of Pakistan. Further, the character of the document needs to be established in accordance with the law of the foreign country. Additionally, foreign private documents would need to be established through the procedure set out in Articles 17 and 79 of the 1984 Order which would require that two attesting witnesses from the foreign country enter personal appearance for proving the execution of the foreign private document. Such a process naturally entails time as the foreign evidence needs to pass through red tape. It therefore defeats the purpose for which Section 21(g) was inserted into the NAB Ordinance i.e., that after State cooperation led to the receipt of relevant foreign evidence the same would be directly admissible in legal proceedings initiated under the NAB Ordinance without fulfilling the onerous conditions of Article 89(5) of the 1984 Order. By deleting Section 21(g) from the NAB Ordinance Section 14 of the First Amendment has made it near impossible for relevant and necessary foreign evidence to be used in the trials of accused persons. It therefore offends the Fundamental Rights of the people to access justice and protect public property from waste and malfeasance.

viii) It is established law that whilst a proviso can qualify or create an exception to the main section it cannot nullify the same.

ix) The second proviso to Section 25(b) of the NAB Ordinance which renders a plea bargain entered into by an accused person inoperative if the accused fails to make the complete payment as approved by the Accountability Court. Despite the benign purposes behind introducing the second proviso to Section 25(b), the actual effect of it is that it nullifies Section 25(b) itself which was inserted in the NAB Ordinance ‘to facilitate early recovery of the ill-gotten wealth through settlement where practicable. Moreover, it is an admitted fact that under the proviso to Section 15(a) of the NAB Ordinance (disqualification to contest elections or to hold public office) an accused person who enters into a plea bargain suffers the same consequences as an accused person who is convicted of the offence of corruption and corrupt practices under Section 9(a). Such consequences are that the accused person either forthwith ceases to hold public office, if any, held by him or further stands disqualified for a period of ten years for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body etc. Therefore, allowing an accused person to renege from his plea bargain would be tantamount to conferring an unlawful benefit on him i.e., he would escape the consequences stipulated in Section 15(a) of the NAB Ordinance.

Conclusion: i) Yes, acts of corruption and corrupt practices can be challenged under Article 184(3) of Constitution.

ii) Supreme Court has jurisdiction to take cognizance of amendments in the accountability law.

iii) When Supreme Court exercises jurisdiction under Article 184(3) of the Constitution it is not concerned with the antecedents or standing of the person who has filed the petition because that person is merely acting as an informant.

iv) The Legislature, the Executive and the Judiciary perform distinct functions and that one organ of the State cannot encroach into the jurisdiction of another organ.

v) Elected holders of public office are not public servant and cannot be prosecuted before any other fora than accountability Court.

vi) Raising of the minimum threshold of the NAB to 500 million excludes the elected holders of public officer from the ambit of accountability laws. Such blanket immunity offends Articles 9, 14, 23, 24, 25 and 62 (1) (f) of the Constitution.

vii) By deletion of Section 21(g) from the NAB Ordinance Section 14 of the First Amendment has made it near impossible for relevant and necessary foreign evidence to be used in the trials of accused persons.

viii) A proviso can qualify or create an exception to the main section it cannot nullify the same.

ix) The second proviso to Section 25(b) of the NAB Ordinance renders a plea bargain entered into by an accused person inoperative if the accused fails to make the complete payment as approved by the Accountability Court. Allowing an accused person to renege from his plea bargain would be tantamount to conferring an unlawful benefit on him i.e., he would escape the consequences stipulated in Section 15(a) of the NAB Ordinance (disqualification to contest elections or to hold public office).

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4. **Supreme Court of Pakistan**
Haji Tooti v. The Federal Board of Revenue, Islamabad & others
Civil Appeal No.24 -Q of 2014 and Civil Appeal No.26 -Q of 2018
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._24_q_2014.pdf

Facts: These two appeals arise under the Customs Act, 1969 and raise the same questions of law, on facts that can broadly be regarded as similar. The appeals are against two separate judgments of the High Court. In first appeal a writ petition filed by the first appellant was dismissed by first judgment. In the other matter, second appeal a tax reference filed by the department was allowed by means of the second judgment.

Issues: i) What is the nature of order made by the officer under section 181 of the Customs Act, 1969?

ii) Whether the interpretation of statute/provision is permissible which makes it

redundant?
iii) What is scope of section 223 of the Customs Act, 1969?

Analysis: i) Firstly, and with respect to the learned High Court, the order made by the concerned officer under s. 181 is not in exercise of quasi-judicial functions. It is in exercise of a statutory power, and is in the nature of an administrative or executive order. Secondly, if the submissions made by learned counsel are accepted that would in effect reduce the second proviso of s. 181 to redundancy. This would be so because any exercise of the statutory power thereby conferred would "interfere" with the power conferred on the officer of customs under the main part. The result would be that the power under the second proviso could never be exercised, i.e., would be made redundant. (…) That is, a notification issued under s. 181 is not some general administrative or executive order, instruction or direction given by the FBR. It is rather the exercise of a specific and separate statutory power conferred under a different provision for a distinct purpose.

ii) It is well settled that redundancy is not to be lightly imputed, and an interpretation that yields such a result is to be avoided if at all possible.

iii) Thirdly, learned counsel have, with respect, misunderstood s. 223. This section is not exclusive to the Act; it is to be found in all fiscal statutes, cast in nearly identical terms. It confers a broad and general power, of an administrative and executive nature, on the FBR (in its capacity as the body at apex of the fiscal hierarchy) to supervise, control and guide the tax authorities in the discharge of their duties and functions under the tax laws. However, some of those powers and duties are of a quasi- judicial nature such as, e.g., those conferred on officers holding an appellate post (Collector (Appeals)) or exercising powers in revision. It would obviously be wrong in principle (and contrary to the well established jurisprudence of this Court and the High Courts) for the FBR to be in a position to influence or affect the proceedings of such authorities. Hence, the proviso. It is not to be regarded as a standalone provision; it makes sense only when read along with the main part of s. 223.

Conclusions: i) Order made by the officer under s. 181 of the Customs Act, 1969 is not in exercise of quasi-judicial functions, rather it is in exercise of a statutory power, and is in the nature of an administrative or executive order.

ii) Yes, any such interpretation which makes the statute/provision redundant, is to be avoided.

iii) Section 223 of the Customs Act, 1969 confers a broad and general power, of an administrative and executive nature, on the FBR to supervise, control and guide the tax authorities in the discharge of their duties and functions under the tax laws.

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5. **Supreme Court of Pakistan**
Zulfiqar Ali Bhatti v. Election Commission of Pakistan and others etc.
Civil Appeal No.142 of 2019, Civil Petition No.1369 of 2019
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._142_2019.pdf

Facts: The appellant and respondent, along with other candidates, contested the Election. The respondent made application for recounting of votes which was dismissed by returning officer and respondent filed petition before Election Commission which was disposed of with direction to approach the appropriate forum. The respondent assailed the said orders before High Court through writ petition which was accepted. The appellant challenged the order of High Court before Supreme Court. Supreme Court suspended the order of High Court and directed the Election Commission to issue the notification of the appellant as a returned candidate, which was issued on the same day. Given the issuance of the said notification, the respondent filed the election petition before the Election Tribunal. However, during the pendency of the election petition, this Court disposed of the appeal of the appellant vide a consent order directing the Returning Officer to recount the votes of the whole constituency and submit a report of the recount to the Election Commission. The returning officer reported tempering with poll record. On the report of fact finding inquiry committee, the Election Commission made order for re-poll. In view of the order of the Election Commission for holding a re-poll in 20 polling stations, the respondent withdrew his election petition, while the appellant challenged this order of the Election Commission in the Islamabad High Court through a writ petition filed under Article 199 of the Constitution as well as in this Court through the present appeal filed under Section 9(5) of the Elections Act. The Islamabad High Court dismissed the writ petition. The appellant filed the petition for leave to appeal against that order of the Islamabad High Court also, in this Court.

Issues: i) What power is entrusted to Election Commission under Article 218(3) of Constitution?
ii) Whether powers of Election Commission provided under section 8(c) of the Elections Act are different from powers mentioned in Article 218(3) of Constitution?
iii) What are the meaning of term "election" and expression "conduct the election" used in Articles 218 & 225 of Constitution?
iv) What are three requisites for bringing election machinery into operation?
v) Whether Election Commission can initiate a roving enquiry to search some illegalities or violations, on bald and vague allegations, in the exercise of its jurisdiction under Section 9(1) of the Elections Act.?
vi) What is nature of enquiry conducted by Election Commission u/s 9 (1) of Election Act and what is effect of not disposing of case within given time u/s 9(1)?

vii) Whether abatement of proceedings of a case u/s 9 by the Election Commission bars the re-agitation before and trial by the Election Tribunal of same grounds?

viii) Whether illegality or violation committed after the consolidation of the final result by the Returning Officer can be said to have materially affected the result of the poll for the purpose of exercise of power u/s 9(1)?

ix) Whether mentioning a wrong or inapplicable provision of law etc. by itself have fatal consequences?

Analysis: i) Article 218(3) of the Constitution entrusts the Election Commission with the duty "to organize and conduct the election", and empowers it, in general terms, "to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against". The power so conferred is restricted to the fulfillment of the duty specified, that is, "to organize and conduct the election".

ii) A bare reading of Section 8(c) of the Elections Act shows that it merely reiterates the power that is vested in the Election Commission under Article 218(3) of the Constitution by substituting the words "make such arrangements" with the words "issue such instructions, exercise such powers and make such consequential orders" that are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law. This reiteration of the power of the Election Commission by a sub-constitutional law is of little legal significance, in view of the conferment of that power already by the supreme law of the land – the Constitution.

iii) The words "election" and "conduct the election", have been used in Articles 218 and 225 of the Constitution in a wide sense to connote the entire election process consisting of several steps starting with the issuance of the election programme and culminating with the declaration of the returned candidate, which include filing of the nomination papers, scrutiny of the nomination papers, withdrawal of the candidates, holding the poll, counting of the votes, consolidation of the result and declaration of the returned candidates, etc. In this wide sense, the process of conducting the election starts with the issuance of the election programme and stands completed on the publication of the names of the returned candidates in the official gazette.

iv) 'Broadly speaking, before an election machinery can be brought into operation, there are three requisites', as said by Justice Fazal Ali, 'which require to be attended to, namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2) there should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections.' On reading the provisions of Part VIII of the Constitution, , in general, Article 222 of the Constitution deals with the first of

these requisites, Articles 218 and 219 with the second, and Article 225 with the third requisite.

v) The Election Commission, under Section 9(1) of the Elections Act, has power to conduct such enquiry as it may deem necessary for its satisfaction about the alleged grave illegalities or violations, in addition to the "facts apparent on the face of the record", but before initiating such inquiry by the Election Commission the facts apparent on the face of the record must prima facie indicate the commission of some grave illegality or violation of the Elections Act or the Rules made thereunder, during the election process. The Election Commission cannot initiate a roving enquiry to search for some illegalities or violations, on bald and vague allegations unsupported by prima facie proof, in the exercise of its jurisdiction under Section 9(1) of the Elections Act.

vi) The enquiry which the Election Commission can conduct under Section 9 (1) of Election Act can only be of a summary nature, notwithstanding the omission of the word "summary" in Section 9(1), as the Election Commission can make an order for re-poll under this Section before the expiration of sixty days after publication of the name of the returned candidate under Section 98 of the Elections Act, not thereafter. Where the Election Commission does not finally dispose of a case initiated under Section 9(1) within the said period, the proceedings stand abated and the election of the returned candidate is deemed to have become final, subject to the decision of the Election Tribunal on the election petition, if any, as per section 9(3) of the Elections Act.

vii) The dismissal of a petition or the abatement of proceedings of a case under Section 9 by the Election Commission does not bar the re-agitation before and trial by the Election Tribunal, of the same grounds of grave illegalities or violations of the Elections Act or the Rules made thereunder.

viii) The grave illegalities or violation of the provisions of the Elections Act or the Rules, the result of the poll at one or more polling stations or in the whole constituency must have been materially affected. Any illegality or violation which does not relate to holding and conducting the poll in the election process, and has thus not affected the result of the poll, cannot form the basis for invoking and exercising the power under Section 9(1) by the Election Commission. The grave illegalities or violations must be such that have materially affected the result of the poll. Although such illegalities or violations may have been committed at any stage of the election process, but not later than the final consolidation of the result of the poll by the Returning Officer under Section 95 of the Elections Act; as any illegality or violation committed after the consolidation of the final result by the Returning Officer cannot be said to have materially affected the result of the poll. It, therefore, does not fall within the scope of the provisions of Section 9(1) of the Elections Act and cannot be a subject of enquiry by the Election. Needless to mention that any fact-finding enquiry or departmental regular enquiry may be got conducted by the Election Commission, in the matter of any illegality or violation committed after the consolidation of the final result to take appropriate

administrative or criminal action against the delinquent election officials, but not for an action under Section 9(1) of the Elections Act.

ix) The mentioning of a wrong or inapplicable provision of law or non-mentioning of the applicable provision of law while exercising a jurisdiction or a power which is otherwise vested in a court, tribunal or authority, does not by itself have fatal consequences.

Conclusion: i) The power conferred under Article 218(3) of Constitution is restricted to the fulfillment of the duty specified, that is, "to organize and conduct the election".

ii) Section 8 (c) of Elections Act merely reiterates the power that is vested in the Election Commission under Article 218(3) of the Constitution.

iii) The words "election" and "conduct the election", have been used in Articles 218 and 225 of the Constitution in a wide sense to connote the entire election process consisting of several steps starting with the issuance of the election programme and culminating with the declaration of the returned candidate.

iv) See above.

v) The Election Commission cannot initiate a roving enquiry to search for some illegalities or violations, on bald and vague allegations unsupported by prima facie proof, in the exercise of its jurisdiction under Section 9(1) of the Elections Act.

vi) The enquiry which the Election Commission can conduct under Section 9 (1) of Election Act can only be of a summary nature, notwithstanding the omission of the word "summary" in Section 9(1). Where the Election Commission does not finally dispose of a case initiated under Section 9(1) within the sixty days, the proceedings stand abated and the election of the returned candidate is deemed to have become final, subject to the decision of the Election Tribunal on the election petition, if any, as per section 9(3) of the Elections Act.

vii) The dismissal of a petition or the abatement of proceedings of a case under Section 9 by the Election Commission does not bar the re-agitation before and trial by the Election Tribunal, of the same grounds of grave illegalities or violations of the Elections Act or the Rules made thereunder.

viii) Any illegality or violation committed after the consolidation of the final result by the Returning Officer cannot be said to have materially affected the result of the poll. It, therefore, does not fall within the scope of the provisions of Section 9(1) of the Elections Act and cannot be a subject of enquiry by the Election.

ix) The mentioning of a wrong or inapplicable provision of law or non-mentioning of the applicable provision of law while exercising a jurisdiction or a power which is otherwise vested in a court, tribunal or authority, does not by itself have fatal consequences.

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6. **Supreme Court of Pakistan**
The Competition Commission of Pakistan and others v. Dalda Foods Limited, Karachi
Civil Appeal No.1692 of 2021
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1692_2021.pdf

Facts: The Appellants have impugned judgment passed by the Islamabad High Court, Islamabad, whereby, the writ petition filed by the Respondent was allowed. Leave was granted to consider the provisions of the Competition Act, 2010 (Act) with reference to the powers of conducting an enquiry.

Issues: i) Whether enquiries and studies which are referred together in Section 37 of the Competition Act 2010 serve distinct functions?
ii) Whether the Competition Commission of Pakistan (CCP) is obligated to communicate its reasons to the undertaking, and if so, whether it is required to justify its decision with supporting material?
iii) Where the Competition Commission of Pakistan (CCP) receives a complaint, in this situation, it is required to first establish the veracity of the complaint to ensure that it is either frivolous or vexatious?
Additional Note
iv) Whether the power of the Competition Commission of Pakistan (CCP) under Section 36 of the Competition Act 2010 to call upon an undertaking to furnish certain information is a "proceeding" within the meaning of this term as used in Section 33 of the Act?

Analysis: i) Although enquiries and studies are referred together in Section 37 of the Act, they serve distinct functions, Enquiry is a process available to the CCP to assess contravention of the Act before it initiates any proceedings under Section 30 of the Act. Whereas, studies, as provided under Section 28(1)(b) of the Act, are conducted to promote competition in all sectors of economic activity and in terms of Section 37(3) of the Act, they are a function which may be outsourced by hiring consultants on contracts, Both enquiry and studies are used as independent tools by the CCP to collect and assess information on market trends and do not constitute an adverse action against the undertaking. There is also a clear difference between the scope of "enquires" and "studies" to be conducted by the Commission under the Act. They cannot be used by the Commission as two alternate modes to ascertain any contravention of the Act before it initiates any specific action against an undertaking. Enquiries are a process available to the Commission to assess any contravention of the Act before it initiates any specific action against an undertaking. However, this is not the object of "studies". Their object is mentioned in Section 28(1)(b): the "studies" are to be conducted 'for promoting competition in all sectors of commercial economic activity', not to initiate any specific action against an undertaking.

ii) The question which arises now is whether the CCP is obligated to communicate its reasons to the undertaking, and if so, whether it is required to justify its decision with supporting material. The respondent argues that the CCP is obligated to inform them of the allegations raised, along with supporting material, and the reasons for conducting an enquiry. The CCP being a regulator must always act in a transparent manner, keeping the undertaking informed of its decisions. However, we have already stated that Section 37 does not in itself result in penal consequences and that the procedure is not a proceeding within the meaning of Section 33. However, the CCP is required to provide the gist of its reasons as recorded in its internal deliberations which led to the decision of initiating such enquiry. This is a minimum requirement for the purposes of transparency and good governance and also facilitates the regulatory process by keeping the undertaking informed.

iii) Where the CCP receives a complaint, in this situation, it is required to first establish the veracity of the complaint to ensure that it is neither frivolous or vexatious and that there are sufficient facts provided in the complaint to necessitate an enquiry, as this is an enquiry prompted by a third person, the complainant. Section 37(2) of the Act requires the CCP to satisfy itself in the first instance before initiating an enquiry such that the mere filing of a complaint does not automatically result in an enquiry rather it requires the CCP to consider the complaint and determine whether it merits an enquiry. For the purposes of this enquiry, the CCP has to satisfy itself that there is sufficient cause to initiate an enquiry and in the course of due process when informing the undertaking of the enquiry, the CCP should disclose the nature of the complaint and the allegations contained therein to the undertaking. Before proceeding with the complaint under Section 37(2) of the Act, the CCP should form a written opinion that the complaint is not frivolous, vexatious or based on insufficient facts or necessitates an enquiry. The Regulations themselves cater to this by requiring, under Regulation 18, the necessary contents that form a complaint and therefore are required for assessing the veracity of a complaint. Regulation 18(2) prescribes that the complaint, reference, or application shall contain a brief statement of facts, a summary of the alleged contravention of the Act, a succinct presentation in support of each contravention, such other particulars as may be specified by the Commission, a schedule listing all documents/affidavits/evidence in support of each of the presentations, and the relief(s) sought.

Additional Note

iv) In view of the above principle, the argument that the power of the Commission under Section 36 of the Act to call upon an undertaking to furnish certain information is a "proceeding" within the meaning of this term as used in Section 33 of the Act, is not sustainable. Section 36 of the Act gives the Commission only one power, that is, to "call upon an undertaking to furnish periodically or as and when required any information concerning the activities of the undertaking". By treating this "power to call information" as a "proceeding" within the meaning of Section 33, we would be conferring upon the Commission a long list of powers

provided in Section 33, which include summoning and enforcing the attendance of any person and requiring the production of any books, accounts or other documents in the custody of an undertaking, etc. and by so doing we would be adding further powers of the Commission in Section 36 of the Act to interfere in the exercise of the fundamental right of the citizens of Pakistan to conduct any lawful trade or business which the Legislature has not provided therein.

Conclusion: i) Enquiries and studies which are referred together in Section 37 of the Competition Act 2010 serve distinct functions.
ii) The Competition Commission of Pakistan (CCP) is obligated to communicate its reasons to the undertaking, and if so, it is required to justify its decision with supporting material.
iii) Where the Competition Commission of Pakistan (CCP) receives a complaint, it is required to first establish the veracity of the complaint to ensure that it is either frivolous or vexatious.

Additional Note

iv) The power of the Competition Commission of Pakistan (CCP) under Section 36 of the Competition Act 2010 to call upon an undertaking to furnish certain information is not a "proceeding" within the meaning of this term as used in Section 33 of the Act.

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7. **Supreme Court of Pakistan**
Commissioner, Rawalpindi/Province of the Punjab etc. v. Naseer Ahmed etc.
Civil Petitions No.1441 to 1449 of 2021
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1441_2021.pdf

Facts: The petitioners sought leave to appeal against a consolidated judgment of the Lahore High Court, whereby the High Court, while accepting the writ petitions of the respondents, had set aside the notifications issued in respect of the acquisition of land owned by the respondents and others.

Issues: (i) Whether the District Collector has lawful authority to issue an addendum to a notification already issued under section 4 of the Land Acquisition Act, 1894?
(ii) Whether an addendum to a notification under section 4 of the Land Acquisition Act, 1894 can be issued after a notification under section 5 or section 17(4) of the Act has been issued?
(iii) What is the legal effect of the issuance of the Addendum Notification on the acquisition proceedings in general?
(iv) What is the legal effect of the issuance of the Addendum Notification on the determination of compensation?

Analysis: (i) The Act neither provides for nor prohibits issuance of an addendum to a notification already issued under Section 4 of the Act. However, as per Section 20 of the Punjab General Clauses Act 1956 (“1956 Act ”); where a power to issue

a notification is conferred under an Act, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions (if any), to add to, amend, vary or rescind any such notification so issued. A similar provision is also contained in Section 21 of the [Federal] General Clauses Act 1897. Therefore, in the absence of any provision in the Act that either expressly or by necessary implication prohibits the issuance of an addendum to a notification issued under Section 4, the District Collector is found to have the lawful authority, by virtue of Section 20 of the 1956 Act, to issue an addendum to the notification issued under Section 4 of the Act, as in the instant case, provided it was issued in the like manner and subject to the like sanctions and conditions under Section 4 of the Act.

(ii)…an addendum or corrigendum to a notification under Section 4 cannot be issued after a notification under Section 5 or Section 17(4) of the Act has been issued pursuant to the said notification under Section 4, though fresh acquisition proceedings can be initiated by issuing a fresh notification under Section 4 of the Act if some more land is needed or likely to be needed later for the same purpose. This is because the next step after the issuance of a notification under Section 4 in an acquisition proceeding, …, is either to issue a notification under Section 5 in the ordinary acquisition process or to issue a notification under Section 17(4) for urgent acquisition of the land. After the issuance of a notification either under Section 5 or under Section 17(4), the same acquisition proceeding cannot revert to the initial stage of issuing a preliminary notification under Section 4 of the Act. An addendum or corrigendum to a notification under Section 4 can thus only be issued before the next step in the acquisition process is undertaken i.e. before the issuance of a notification under Section 5 or under Section 17(4) of the Act.

(iii)…the acquisition process cannot be initiated, formalized and then concluded unless a notification under Section 4 of the Act notifying the complete and final land to be acquired is issued. Hence, it follows that the date of the notification issued under Section 4 will not necessarily be the date of the first notification issued under the said provision, instead, it will be whenever the complete and final land is notified. In instances where addendums or corrigenda to a notification under Section 4 are issued, the indicator of the finality of the land notified would be when, after the issuance of an addendum or corrigendum, the public functionaries move forward with the acquisition proceedings by either issuing a notification under Section 5 or under Section 17(4) of the Act. Therefore, the date of the last addendum or corrigendum issued in relation to the notification under Section 4 of the Act before any step is taken to advance the acquisition proceedings to the next stage, is deemed to be the date of the notification under Section 4 of the Act for the purposes of the acquisition proceedings under the Act. This is because the complete land under the said provision becomes finally notified through the addendum or corrigendum and, after this, the state functionaries take the next step in the acquisition proceedings.

(iv)…the issuance of an addendum notification would also affect the date of the publication of the notification under Section 4 that is referred to in Section 23(1)

of the Act. The provisions of Section 23(1) of the Act prescribe that in determining the amount of compensation to be awarded for the land acquired, the market value of the acquired land at the date of the publication of the notification under Section 4 shall be taken into consideration. Since a notification under Section 4 becomes complete on the date when the complete and final land is notified thereunder, it is the date of the publication of the addendum or the corrigendum, or the last addendum or corrigendum if there are more than one, by virtue of which the complete land is finally notified, that is to be taken as the date of the publication of the notification under Section 4 referred to in Section 23(1) of the Act for the purposes of considering the market value of the acquired land while determining compensation.

Conclusion: (i) The District Collector has lawful authority to issue an addendum to a notification already issued under section 4 of the Land Acquisition Act, 1894.
(ii) An addendum to a notification under section 4 of the Land Acquisition Act, 1894 cannot be issued after a notification under section 5 or section 17(4) of the Act has been issued.
(iii) The date of the last addendum or corrigendum issued in relation to the notification under Section 4 of the Act is deemed to be the date of the notification under Section 4 of the Act for the purposes of the acquisition proceedings under the Act.
(iv) The date of the publication of the addendum notification is to be taken as the date of the publication of the notification under Section 4 referred to in Section 23(1) of the Act for the purposes of considering the market value of the acquired land while determining compensation.

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8. **Supreme Court of Pakistan**
Federal Board of Revenue v. Dewan Salman Fiber Ltd and others
Civil Appeals No.1089 to 1090 of 2015
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1089_2015.pdf

Facts: Through these civil appeals the petitioner sought leave against the impugned judgement of High court against them, whereby company/respondent no.1 had challenged certain exemption notifications which had been issued in respect of sales tax, excise duty and customs duty.

Issues: i) Whether benefit conferred by section 6 of the Protection of Economic Reforms Act, 1992 is to be measured against the definition of economic reforms and whether it can be altered to the disadvantage of the investors?
ii) Whether fiscal regime is the bottom line for a business?
iii) Whether courts of law in a company's tax situation must consider and apply each tax and regime created thereby in its own context?
iv) Whether section 6 of the Protection of Economic Reforms Act, 1992 intended to provide protection to investors as regards fiscal incentives for investment?

v) Whether section 6 of the Protection of Economic Reforms Act, 1992 is surrounded by "penumbra"?

vi) Whether objectives sought to be achieved by the Protection of Economic Reforms Act, 1992 are policy guidelines or general declarations of executive intent?

Analysis: i) The benefit conferred by s.6 of the 1992 Act is to be measured against the definition of "economic reforms". It will be noted that s.6 speaks of "fiscal incentives for investment". The definition of "economic reforms" makes express reference to "fiscal incentives for industrialization". When there is a combined reading of s.2(b) and s. 6, in our view, two points emerge. Firstly, s.6 applied only to those laws, regulations etc. as were announced, promulgated or implemented on and after 07.11.1990. As presently relevant, this meant that it applied to those notifications as were issued on or after the said date. Secondly, s.6 applied only to such notifications as contained time-bound provisions. This is clear not merely from the words "for the term specified therein" as used in the section, but also on an examination of the two notifications specifically listed in the Schedule. One was under the Income Tax Ordinance, 1979, i.e., related to direct taxation whereas the other was under the 1969 Act, i.e., was in respect of an indirect tax. Both had a specific (and the same) period, 01.12.1990 to 30.06.1995, for the setting up of the industry. The notification under the 1969 Act applied also to "expansion or balancing, modernization and replacement of existing units"...If a notification complied with the terms identified in the last preceding para, it came within the scope of s.6. It could not then be "altered to the disadvantage of the investors".

ii) Now it is not at all surprising that a business concern looks at the fiscal regime (both direct and indirect taxation) in which it operates holistically and commercially. For a business it is the bottom line that matters, and when so viewed it will in variably look at the entirety of its tax situation, tending to take and treat it as a whole. Obviously, this would apply equally to any exemptions and /or other tax benefits or advantages that may be in the field.

iii) There may even be specific linkages and overlapping created in the statutes themselves. However, in the end it must be kept in mind that the statutes are discrete and separate. It is therefore not an approach open to a Court of law to take a company's tax situation in its entirety and view it commercially, treating it simply as one whole. Each tax and the regime created thereby (including exemptions and /or other tax benefits and advantages) must be considered and applied in its own context unless some other approach is required or permitted by the terms of the statute itself, whether expressly or by necessary implication.

iv) The foregoing discussion has a direct bearing on how s.6 is to be applied. The section is undoubtedly intended to provide powerful protection to investors as regards fiscal incentives for investment. In the end however, each notification that is sought to be given the cover of s.6 must be shown, in and of itself, to come within the scope thereof. If two or more notifications are so covered, then it may

be permissible to read them together in order to determine whether the fiscal incentives conferred by any one of them are being altered to the disadvantage of the investors.

v) A notification within the scope of s. 6 cannot, by some sort of fiscal adhesion/ cohesion (as it were), pull into the section's orbit that which could not of itself find a place therein. There is, in other words, no "penumbra" surrounding the section.

vi) It must also be remembered that the objectives sought to be achieved by the 1992 Act are not policy guidelines or general declarations of executive intent. The 1992 Act is a statute, which is to be understood and applied in accordance with well established principles of statutory interpretation.

Conclusion: i) Yes**,** benefit conferred by section 6 of the Protection of Economic Reforms Act, 1992 is to be measured against the definition of economic reforms and it cannot be altered to the disadvantage of the investors.

ii) Yes, fiscal regime is the bottom line for a business.

iii) Yes, courts of law in a company's tax situation must consider and apply each tax and regime created thereby in its own context.

iv) Yes, section 6 of the Protection of Economic Reforms Act, 1992 intended to provide protection to investors as regards fiscal incentives for investment.

v) Section 6 of the Protection of Economic Reforms Act, 1992 is not surrounded by "penumbra".

vi) Objectives sought to be achieved by the Protection of Economic Reforms Act, 1992 are not policy guidelines or general declarations of executive intent.

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9. **Supreme Court of Pakistan**
Ex. Col. Muhammad Azad Minhas, Col. Inayatullah Khan and another v. Federation of Pakistan through Secretary Ministry of Defence etc.
Civil Appeal No. 1191 of 2016 and Constitution Petition No. 18 of 2000
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1191_2016.pdf

Facts: The appellant/petitioner filed Constitution Petition before this Court under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973, challenging the validity of their arrest, detention and trial by the Field General Court Martial but the same stood dismissed. They were dismissed from service and to further suffer rigorous imprisonment for two years & four years respectively. Their conviction was also confirmed by the Chief of Army Staff. Both of them filed appeals before the Court of Appeal but the same were also dismissed. Pursuant to the conviction, their membership in the Army Officers Housing Scheme for allotment of a house at the time of retirement along with allotment of plots in Army Welfare Housing Scheme were ordered to be cancelled. Thereafter, the petitioner filed Writ Petition before the High Court which was dismissed. Being aggrieved by the judgment of

the High Court, and filed Civil Petition before this Court wherein leave was granted.

Issues: i) If an act violating any provision of Pakistan Army Act, 1952 is committed by the army personnels, whether the same would be exclusively dealt with by the provisions contained in the aforesaid Act, 1952?
ii) Whether an accused person under the Pakistan Army Act can be convicted for an alternative charge/offence in case the principal charge/offence is not proved?
iii) Whether constitution petitions before the Supreme Court and the High Court are maintainable against any order passed or sentence awarded during a Court Martial or other forums under the Pakistan Army Act, 1952?
iv) Whether an enforceable right becomes unenforceable if petitioner fails to enforce such right within the time stipulated by law?
v) Whether after dismissal from service, the army personnel are still entitled for the privileges?

Analysis: i) The plain reading of the section 2 of Act, 1952, depicts that the persons subject to Pakistan Army Act, 1952, either in any of the capacity as an officer, junior commissioned officer or warrant officer during service at the relevant point of time are subject to Pakistan Army Act, 1952, and whenever an act violating any provision of said enactment is committed by them, the same would be exclusively dealt with by the provisions contained in the aforesaid Pakistan Army Act, 1952. The enactment referred above does not disclose any exception to the general principle that any serving officer of military if found violating the law relating to its discipline would be dealt otherwise except under the Pakistan Army Act, 1952. All the grievances of the appellant/petitioner regarding their apprehension, custody and prosecution before the Field General Court Martial are the steps, which can be taken by the order of the Commanding Officer subject to receipt of tangible information regarding the violation of any provision of Pakistan Army Act, 1952. In Ex. Gunner Muhammad Mushtaq Vs. Ministry of Defence (2015 SCMR 1071), this Court held the custody, trial and conviction of the accused army personnel by the Field General Court Martial to be held in accordance with law. A military officer of either of the rank is under bounden duty to execute momentary obligations assigned or not in order to uphold dignity, reputation, discipline and above all maintain order of the institution in letter and spirit. Any act or omission, which hampers integrity/discipline of the institution would definitely be accountable considering it an act triable under the Army Act.
ii) The concept of alternative charge is not unknown in the sphere of Pakistan Army Act. Sections 111(5) of the Pakistan Army Act and Rules 21(4) and 51(7) & (8) speak about the framing and punishment of an accused under alternative charge/offence. It is now well settled without second thought that if an accused is charged with one offence but from the evidence it appears to have committed a different offence for which he might have been charged under the said provisions of law, he may be convicted for the offence he is found to have committed, although he was not charged with the same. The concept of conviction under

alternative charge in the absence of conviction under the main charge is a well established/recognized principle of criminal justice system as provided in Sections 236 to 240 of the Code of Criminal Procedure. In Jiand Vs. The State (1991 SCMR 1268), this Court held that cumulative effect of Sections 236/237 Cr.P.C. is that if an accused is charged with one offence but from the evidence it appears to have committed an alternative offence for which he might have been charged under the provisions of that section, he may be convicted for an offence which he is shown to have committed, if supported by record, although he was not charged with the same. Even this aspect is not absolute, in absence of any alternative charge he can be convicted for any offence if it covers the ingredients of said offence.

iii) Although powers conferred upon Supreme Court and the High Courts under Articles 184 (3) and 199 of the Constitution are distinct but an aggrieved party, whose fundamental rights have been infringed, can knock the doors of the Court for redressal of its grievances. However, it is also settled that any order passed or sentence awarded during a Court Martial or other forums under the Pakistan Army Act, 1952, is subject to judicial review both by the High Courts and the Supreme Court only on the ground of mala fides including malice in law, without jurisdiction or coram non judice. Before invoking the jurisdiction of this Court or the High Court, the test to pass is strictly confined as to whether the order/sentence passed during Court Martial is suffering from mala fides, without jurisdiction andcoram non judice.

iv) It is established principles that delay defeats equity and equity leans in favour of vigilant. Any person may have an enforceable right but if he fails to enforce such right within the time stipulated by law then the right becomes unenforceable. Law of limitation is not considered a mere formality and is required to be observed being of mandatory nature. Law of laches takes away right of the party to have the right enforced, which otherwise, is enforceable under the law because law requires that one having an enforceable right should seek enforcement whereof within time specified by law. Although as a general principle bar of limitation is not applicable to the proceedings under Article 199 and 184 of the Constitution but insistence is placed on initiating proceedings promptly and within a reasonable time to avoid the question of laches.

v) It is settled that dismissal from service squarely takes away all the perks, privileges and amenity services from an army personnel conferred in lieu of his induction into the Pakistan Army. All these benefits are subject to service and any action contrary to service structure takes away not only perks and privileges rather the privilege of salary, pension, gratuity etc. for which he was otherwise entitled.

Conclusion: i) If an act violating any provision of Pakistan Army Act, 1952 is committed by the army personnel, the same would be exclusively dealt with by the provisions contained in the aforesaid Act, 1952.

ii) An accused person under the Pakistan Army Act can be convicted for an alternative charge/offence in case the principal charge/offence is not proved.

iii) Constitution petitions before the Supreme Court and the High Court are maintainable against any order passed or sentence awarded during a Court Martial or other forums under the Pakistan Army Act, 1952 only on the ground of mala fides including malice in law, without jurisdiction or coram non judice.
iv) Any person may have an enforceable right but if he fails to enforce such right within the time stipulated by law then the right becomes unenforceable.
v) It is settled that dismissal from service squarely takes away all the perks, privileges and amenity services from an army personnel conferred in lieu of his induction into the Pakistan Army.

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10. **Supreme Court of Pakistan**
Federal Public Service Commission through its Chairman, Islamabad and another v. Shiraz Manzoor and others
Civil Petitions Nos.2347 to 2360 of 2022
Mr. Justice Umar Ata Bandial HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2347_2022.pdf

Facts: Through all these petitions, the Federal Public Service Commission has sought leave against the consolidated judgment of the Federal Service Tribunal, Islamabad whereby appeals of the respondents were allowed

Issues: i) Which law regulates and governs the terms and conditions of service of the employees of the Federal Service Tribunal?
ii) Whether promotion or the rules which determine the eligibility criteria for promotion is vested right of an employee and the same can be claimed with retrospective effect?
iii) When formulation and creation of a recruitment policy can be subjected to judicial scrutiny?

Analysis: i) The Tribunal was established under the Federal Service Tribunals Act, 1973 ('FST Act') and the terms and conditions of the service of its employees are regulated and governed under the Civil Servants Act 1973 ('Act of 1973') read with the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 ('Rules of 1973'). (…) The competent authority, in exercise of powers conferred under the Act of 1973 and the Rules of 1973, made rules with the concurrence of the Establishment Division, Finance Division and the Commission, whereby conditions were prescribed regarding the method, qualifications and manner for appointment against various posts, including the post of the 'Reader'. The said rules were notified and published in the official gazette vide SRO No.338(i)/2009 dated 14.4.2009 ('SRO of 2009'). (…) The Act of 1973 read with the rules framed by the competent authority regulate and governs the terms of conditions of service and it includes prescribing the mode of appointment, transfer, posting, eligibility for promotion, seniority etc.
ii) It is settled law that there is no vested right in promotion nor the rules which determine the eligibility criteria for promotion. It is within the exclusive domain

of the competent authority to make rules in order to raise the efficiency of the employees in particular and the service in general. Promotion is neither a vested right nor could it be claimed with retrospective effect. An employee may claim under the relevant law/rules to be considered for promotion when cases of other similarly placed employees are taken up but cannot compel the employer department to fill the promotion post nor to keep it vacant or under consideration.
iii) The competent authority is empowered to prescribe criteria and conditions relating to eligibility for promotion. The formulation and creation of a recruitment policy falls within the exclusive domain of the competent authority, and it cannot be subjected to judicial scrutiny unless it infringes vested rights or is in violation of the law. Every recruitment and selection process formulated by the competent authority is presumed to be regular and aimed at choosing the most suitable person for a given position. The recruitment and selection policy formulated by the competent authority cannot be substituted by a court or tribunal, nor questioned, unless its implementation infringes vested rights or is in violation of the law.

Conclusion: i) The Civil Servants Act 1973 read with the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 and SRO of 2009 regulate and govern the terms and conditions of service of the employees of Federal Service Tribunal.
ii) Promotion and the rules which determine the eligibility criteria for promotion are neither a vested right of an employee nor could it be claimed with retrospective effect.
iii) The formulation and creation of a recruitment policy falls within the exclusive domain of the competent authority, and it cannot be subjected to judicial scrutiny unless it infringes vested rights or is in violation of the law.

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11. **Supreme Court of Pakistan**
Collector of Customs, Peshawar v. M/s New Shinwari Ltd. & another
Civil Petition Nos.5671 and 5672 of 2021
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5671_2021.pdf

Facts: The Collector of Customs has sought leave in both the petitions against the consolidated judgment of the High Court whereby the questions of law proposed through reference applications filed under section 196 of the Customs Act 1969 were answered.

Issues: i) What type of offence falls under section 32 of the Customs Act 1969?
ii) Whether customs authorities can exercise powers in derogation of rules made u/s 219 of the Customs Act 1969?

Analysis: i) Sub-section (1) of Section 32 of the Act of 1969 describes the doing or omitting to do acts in connection with matters of customs, knowing or having reasons to believe to be false, which will constitute an offence under the section. Subsection

(2) and (3) describe two distinct eventualities i.e. where the duties and taxes or charge has not been levied or has been short levied or has been erroneously refunded by reason of some collusion or inadvertence or error or misconstruction, as the case may be. The offence under section 32 of the Act of 1969 is relatable to the duty, taxes or charge which has not been levied or has been short levied or has been erroneously refunded.

ii) The Federal Board of Revenue has framed comprehensive and self-contained rules in exercise of powers conferred under section 219 of the Act of 1969. The rules are explicit and, therefore, they cover almost all aspects of the transit trade between Pakistan and Afghanistan, including the powers and functions of the customs officials. The powers and functions are subject to observance of the said rules which cannot be transgressed by the customs authorities.

Conclusion: i) The offence under section 32 of the Act of 1969 is relatable to the duty, taxes or charge which has not been levied or has been short levied or has been erroneously refunded.

ii) The powers and functions of customs authorities are subject to observance of the rules made u/s 219 of the Customs Act 1969 which cannot be transgressed by the customs authorities.

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12. **Supreme Court of Pakistan**
Government of Pakistan thr. Secretary Interior, etc. v. Zia Ullah Khan and others
Government of Khyber Pakhtunkhwa thr. Chief Secy. Peshawar, etc. v. Zia Ullah Khan and others
Civil Petition No.5633 and 5833 of 2021
Mr. Justice Umar Ata Bandial HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5633_2021.pdf

Facts: The petitioners in both petitions have sought leave against the judgment of the High Court, whereby the proceedings initiated and actions taken by the Prime Minister's Performance, Delivery Unit ('Unit') and Pakistan Citizen's Portal ('Portal') have been declared as unconstitutional.

Issue: Whether Prime Minister's Performance, Delivery Unit or Pakistan Citizen's Portal exercises any power that would amount to prejudicing the rights of the citizens or treated as interference in the executive domain of the province?

Analysis: The Unit and the Portal merely receive complaints and they are automatically transmitted to the concerned authorities for consideration. Neither the Unit nor Portal exercises any power that would amount to prejudicing the rights of the citizens or treated as interference in the executive domain of the province. The transmission of information to the concerned authorities of a province, by no stretch of imagination, can be construed as interference or transgression in its domain. After receiving the information transmitted by the Unit or the Portal as

the case may be, the concerned provincial authorities are expected to consider the same and thereafter proceed in accordance with the law. They are not bound to act in a particular manner nor can any direction or order be passed by the Unit or the Portal.

Conclusion: Neither Prime Minister's Performance, Delivery Unit nor Pakistan Citizen's Portal exercises any power that would amount to prejudicing the rights of the citizens or treated as interference in the executive domain of the province.

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13. **Supreme Court of Pakistan**
Col. (Rtd.) Subh Sadiq Malik v. The State through Chairman, NAB, Islamabad
Criminal Petition No.806 of 2022
Robina Farooq v. The State through Chairman, NAB, Islamabad
Criminal Petition No.689 of 2022
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._806_2022.pdf

Facts: The petitioners were working in the National Accountability Bureau. The High Court, in its judgment, recorded observations regarding the shortcomings and flaws while conducting the proceedings at the stages of investigation and inquiry. The petitioners sought leave being aggrieved due to the strictures recorded by the High Court.

Issue: Whether strictures recorded by a High Court against government servants infringe their right to fair trial hence, not sustainable?

Analysis: Strictures recorded by a High Court against an employed person who is subject to disciplinary proceedings are likely to prejudice the latter's right to a fair trial. The strictures recorded by the High Court in the case in hand are in the nature of condemning the petitioners unheard since they were not served with any notice nor did they have an opportunity to put up a defense. The High Court had highlighted the shortcomings and grave flaws relating to the manner in which the investigations had been conducted. Judicial precaution and propriety required restraint to have been shown by the High Court in recording of observations regarding the conduct, behavior and integrity of the petitioners. The decision whether to proceed against the petitioners should have been left to the competent authority of the Bureau because there was no reason to presume that the latter, after taking into consideration the observations made by the High Court regarding the investigations, would not have acted in accordance with law. The strictures recorded by the High Court against the petitioners, therefore, infringed their right to a fair trial and are thus not sustainable.

Conclusion: Strictures recorded by a High Court against government servants infringe their right to a fair trial hence, not sustainable.

14. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Chenab Zone, RTO, Faisalabad v. M/s Rose Food Industries, Faisalabad & another
Civil Petition No.1345-L of 2021
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1345_l_2021.pdf

Facts: Sales Tax Department after re-examination of record of the respondent passed an order without issuing fresh show cause notice. The appeal of respondent was accepted by the Tax Tribunal holding that issuance of fresh show cause notice was mandatory. The petitioners filed reference under section 47 of the Sales Tax Act, 1990 before the High Court which was dismissed. Now, petitioners have filed leave to appeal under Article 185(3) against the decision of High Court.

Issues: i) Whether issuance of a show cause notice is the most crucial in the context of a fair trial and due process?
ii) Whether principles of fairness and due process are an integral part of the fundamental right guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan?

Analysis: i) The issuance of a show cause notice is the most crucial in the context of a fair trial and due process. It enables a tax payer to precisely know what allegations are to be met, explained and answered to the satisfaction of the adjudication officer. It is the duty of the Department to ensure that a show cause notice is issued after a proper inquiry and investigation. It should be manifest from the contents of the show cause notice that it was issued after ascertaining the facts and the allegations are not vague or ambiguous. The charges or allegations should be specific; otherwise the taxpayer would be prejudiced and denied the right to a fair trial.
ii) The principles of fairness and due process are an integral part of the fundamental right guaranteed under Article 10 A of the Constitution. It guarantees that every person is entitled to a fair trial and due process for determination of rights and obligations.

Conclusion: i) The issuance of a show cause notice is the most crucial in the context of a fair trial and due process.
ii) The principles of fairness and due process are an integral part of the fundamental right guaranteed under Article 10-A of the Constitution.

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15. **Supreme Court of Pakistan**
Director General Central Directorate of Savings. & others v. Abid Hussain and others
Civil Appeal No.23 and 24 of 2017
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._23_2017.pdf

Facts: The National Saving Centre deducted the withholding tax relating to the certificates of the respondents under Income Tax Ordinance, 2001. The respondents filed Writ Petition before the High Court on the grounds that prior to 25th Constitutional Amendment, Kuram Agency was part of Tribal Areas and Income Tax Ordinance had not been extended in Tribal Areas. Their Writ Petition was dismissed, but, their, Intra Court Appeal was allowed. Now, appellants have filed leave to appeal under Article 185(3) against the order of learned High Court.

Issue: Whether it is mandatory statutory obligation of the payers of the profit to deduct tax from the gross amount of the yield or the profit paid to the recipient?

Analysis: Clause (a) of sub-section 1 of section 151 of the Income Tax Ordinance of 2001, inter alia, provides that where a person pays yield on an account, deposit or a certificate under the National Savings Scheme or Post Office Savings Account, then it becomes a mandatory statutory obligation of the payers of the profit to deduct tax at the rate specified in Part III of the First Schedule from the gross amount of the yield or the profit paid to the recipient.

Conclusion: It is mandatory statutory obligation of the payers of the profit to deduct tax from the gross amount of the yield or the profit paid to the recipient.

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16. **Supreme Court of Pakistan**
The State thr. Director A.N.F. Peshawar v. Shereen Shah and another
The State thr. Director A.N.F. Peshawar v. Hanif Gul Jadoon, decd. thr. LRs and others
Force Commander ANF, Peshawar v. Rahim and others
Federal Govt./State through ANF, Peshawar v. Haji Umar Afridi decd. thr. LRs and others
Federal Govt./State through ANF, Peshawar v. Gul Anwar and others
The State thr. Director A.N.F. Peshawar v. Malik Gul Bahadur decd. thr. LRs and others
Civil Petition Nos.388-P, 389-P, 395-P, 396-P, 397-P & 399-P of 2016
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._388_p_2016.pdf

Facts: The Anti-Narcotics Force filed a complaint under the Prevention of Smuggling Act 1977. It was heard by a Special Judge, Customs, Taxation, and Anti-Smuggling. An appeal was preferred before the Special Appellate Court, which was allowed. The Anti-Narcotics Force then approached the High Court for relief under Article 199 of the Constitution. The High Court dismissed the petitions, stating that it couldn't grant a writ because the Special Appellate Court, presided over by a High Court Judge, didn't qualify as a "person" under Article 199(5) of the Constitution.

Issues: i) Who possesses the authority to designate Special Judges and Special Appellate Courts in accordance with the Prevention of Smuggling Act 1977 and delineate their territorial jurisdiction?

ii) Who presides over a Special Appellate Court established under the Act of 1977 and whether such court performs judicial functions as High Court?

iii) What is the status of such Special Appellate Court and how it is different from High Court?

iv) What is the status of Presiding Officer of Special Appellate Court created under the Act of 1977?

v) When writ under Article 199 of the Constitution lies against action of a Judge High Court and against Judgments and orders of Special Appellate Court established under the Act of 1977?

vi) Whether writ under Article 199 of the Constitution lies against orders and judgments of Special Appellate Court established under the Act of 1977?

Analysis: i) …On the other hand, the Federal Government is empowered under section 44 of the Act of 1977 to appoint as many Special Judges as it considers necessary. The place of headquarter of each Special Judge and the latter's territorial limits of jurisdiction are also specified by the Federal Government through a notification. Likewise, the Special Appellate Courts are established by the Federal Government, pursuant to the powers conferred under section 46 of the Act of 1977. The Federal Government has exclusive jurisdiction to specify the place of headquarter and set out its territorial jurisdiction, or specify the class of cases in respect of which each Special Appellate Court shall exercise its jurisdiction. The Special Appellate Court constituted under the Act of 1977 has to be presided over by a person who is a sitting Judge of a High Court. The appointment by the Federal Government is subject to consultation with the Chief Justice of the concerned High Court.

ii) … The Special Appellate Court, established under the Act of 1977, has to be presided over by a Judge of the High Court but it is not a High Court, nor does it perform its judicial functions under the Constitution.

iii) …The Special Appellate Court exercises powers and functions as a special forum and the presiding Judge cannot assume jurisdiction conferred on the High Court. The Special Appellate Court, constituted under the Act of 1977 is, therefore, distinct from the High Court. The former is a creation of a statute while the latter that of the Constitution.

iv) …The jurisdiction, powers and functions of the Special Appellate Court are provided and governed under the Act of 1977. While presiding a Special Appellate Court, the status of its presiding Judge, despite being a sitting Judge of the High Court, is that of a *persona designata* and not as a Judge of the High Court. The presiding Judge of the Special Court is no more than an individual as opposed to a Judge ascertained as a member of the High Court.

v) … It is settled law that the action of a Judge, which relates to the performance of the latter’s duties and functions as a Judge of the High Court, or as a member

thereof, cannot be brought under challenge under Article 199 of the Constitution. Every action of a Judge of a High Court, performing functions and exercising powers and jurisdiction as a *persona designata* are amenable to the jurisdiction of the High Court under Article 199 of the Constitution. The competence of a High Court to issue a writ to a Judge of the High Court in his personal capacity, or where working as a *persona designata* has been affirmed by a larger bench of this Court consisting of thirteen Judges.

vi) …As a corollary, the acts, orders or judgments of the Appellate Court, established under the Act of 1977, are not immune from the jurisdiction of the High Court under Article 199 of the Constitution because its presiding Judge performs judicial functions as *persona designata*.

Conclusion: i) The Federal Government is empowered under the Act of 1977 to appoint Special Judges and establish Special Appellate Courts by appointing sitting Judge of a High Court with consultation of Chief Justice of that High Court. Likewise Federal Government has power to specify their territorial jurisdiction.

ii) A Special Appellate Court under Act of 1977 is presided over by a sitting Judge of High Court and does not performs judicial functions as a High Court.

iii) Special Appellate Court is a special forum being creation of a statute whereas High Court is creation of the Constitution.

iv) Status of its presiding Judge, despite being a sitting Judge of the High Court, is that of a *persona designata* and not as a Judge of the High Court.

v) Writ under Article 199 of the Constitution does not lie against duties and functions of a Judge High Court being member thereof, whereas every action of a Judge of a High Court, performing functions and exercising powers and jurisdiction as a *persona designata* are amenable to the jurisdiction of the High Court under Article 199 of the Constitution.

vi) Yes, the acts, orders or judgments of the Special Appellate Court, established under the Act of 1977, are amenable to the jurisdiction of the High Court under Article 199 of the Constitution.

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17. **Supreme Court of Pakistan**
Mohammad Boota (deceased) through L.Rs., and other v. Mst. Fatima daughter of Gohar Ali and others
Civil Appeal No.419 of 2011, Civil Misc. Application No.1839 of 2011 and Civil Appeal No.1184 of 2019
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._419_2011.pdf

Facts: This judgment decides the issues raised in the titled civil appeals where the matter in issue is common being succession to tenancy in which the respondents claim their share. The respondents did not appear in either appeals, hence, they were proceeded ex-parte.

Issues: i) What are the circumstances in which application of section 20 and 21 of the

Colonization of Government Lands (Punjab) Act, 1912 can be considered by court?

ii) What is history of enactments of sharia law and whether sharia law was enforced in state of Bahawalpur prior from insertion of section 19-A of the Colonization Act, 1912?

iii) Whether succession of Muslims was governed by sharia law even before 1951?

iv) When limitation would run to file a suit for declaration in case where someone was deprived from right of inheritance?

Analysis: i) The Colonization Act is an Act which provides administration of Government land in Punjab and was made applicable to Bahawalpur in the year 1924, as held in Basher Ahmed and others v. Mst. Fatima Bibi (deceased) through LRs and others (2019 SCMR 99). Tenancy rights were granted in terms of Sections 10, 11 and 15 of the Colonization Act subject to the approval of the government, based on the statement of conditions of tenancy (Sections 10 and 11) and on payment of the purchase money (Section.15). Section 20 of the Colonization Act provides for succession to tenancy where the original tenant dies, by giving male lineal descendants priority over all other categories as listed in this section. Section 21 is made applicable where any male tenant, who is not the original tenant dies, succession then devolves as if the tenancy rights were for agricultural land acquired by the original tenants. Section 21 operates after the death of a tenant who inherited from the original tenant, such that succession for tenancy is deemed as if its agricultural land, so either by custom or by sharia law. 10. The applicability of Sections 20 and 21 of the Colonization Act has been considered by this Court in two cases, which have been cited and relied upon by the parties. The first, Mst. Imam Bibi v. Allah Ditta and others (PLD 1989 SC 384) interpreted Section 20 to hold that Imam Bibi could not inherit from her father Nizam Din and that only his son Allah Ditta would inherit the tenancy. As per the judgment Nizam Din died before Section 19-A was inserted in the Colonization Act and became applicable to the State of Bahawalpur. Therefore, in terms of the Imam Bibi case, Section 20 of the Colonization Act applied to cases of succession from the original tenant until the insertion of Section 19-A in the Colonization Act. The second case Umar Din and another v. Mst. Sharifan and another (PLD 1995 SC 686) describes that Muhammad Ibrahim, the original tenant died and his rights devolved upon his three sons in 1948; one of his sons died leaving behind a daughter and a widow, on whom his tenancy rights devolved. The two sons of Muhammad Ibrahim challenged succession in favour of the daughter and the widow and ultimately, the Court ruled that as per Section 21(b) of the Colonization Act, the daughter would inherit, as the tenancy rights were not of the original tenant but from a tenant who had acquired rights from the original tenant. In terms of Section 21(b) of the Colonization Act, the daughter was able to inherit in the tenancy of her father because succession was not from the original tenant and so Section 20 was not applicable. Under Section 21(b) of the Colonization

Act, female legal heirs could inherit based on custom or sharia law, as the case may be.

ii) To appreciate the legal question on the applicability of sharia law, a look at the historical background is relevant. Pakistan gained independence in 1947 and Bahawalpur acceded to Pakistan in October, 1947 by signing the Instrument of Accession.1 Bahawalpur enjoyed a degree of autonomy as a separate state with its own government, legislature and judiciary until 1955 under the Instrument of Accession. In 1955, Bahawalpur merged with West Pakistan under the Establishment of West Pakistan Act, 1955. After the abolition of the one unit scheme in 1970, Bahawalpur became a district of the Punjab and remains the same to-date. So far as the applicability of sharia law, before 1947 (pre-partition) the Act of 1872 declared certain rules, laws and regulations to have the force of law in Punjab under the provisions of Section 25 of the Indian Councils Act, 1861. Section 5 of the Act of 1872 provided that in matters regarding succession, marriage, divorce, dower amongst other personal law matters, the rule of decision was that either a custom was applicable to the parties or in the case of muslims sharia law and in the case of hindus, hindu law… This law recognized the force of custom applicable to parties which was not contrary to justice, equity or good conscience and essentially required parties to establish that a particular custom was applicable to them for decisions on personal law matters. Section 5 of the Act of 1872 was repealed by the Muslim Personal Law Shariat Application Act, 1937 (1937 Shariat Act) which provided that notwithstanding any custom or usage regarding succession, the rule of decision where the parties are muslim shall be based on sharia law. The exception created by way of Section 2 of the 1937 Shariat Act to sharia law was succession relating to agricultural land, meaning that in all other cases succession was governed by sharia law but in cases involving agricultural land customary law prevailed. After 1947 (after partition), the 1948 Shariat Act was promulgated on 15.3.1948 being an Act to provide for the application of sharia law on matters related to personal law, where the parties were muslims. Section 2 provided that notwithstanding any custom or usage to the contrary all questions regarding succession, including succession to agricultural land in cases where parties are muslim shall be decided as per sharia law. In terms of Section 4 of the 1948 Shariat Act, Section 5 of the Act of 1872 was applicable to the extent that it was not in conflict with the 1948 Shariat Act. Therefore, in terms of the 1948 Shariat Act, sharia law prevailed for the purposes of succession where the parties were muslim. The aforementioned Act was amended by the 1951 Shariat Act on 10.03.1951 whereby it clarified through an amendment to Section 2 in the Punjab Act IX of 1948 that the rule of decisions in matters of personal law which included succession was sharia law where the parties were muslims. At the same time on 04.03.1951, the Bahawalpur Muslim Personal Shariat (Application) Act, 1951 was promulgated which made sharia law applicable to muslims in the State of Bahawalpur on matters of personal law including succession were governed by sharia law. Subsequently, the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (1962 Shariat

Act) was promulgated on 31.12.1962 which again made sharia law applicable to muslims in personal law matters. This Act repealed the 1937 Shariat Act, the 1948 Shariat Act and the 1951 Shariat Act. The 1962 Shariat Act was amended by way of West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983 with the insertion of Section 2-A… This section gave finality to the understanding that where the parties were muslim, in the context of succession, only sharia law was applicable. Section 2-A settled the matter to the effect that in matters of inheritance the rule of law shall always be sharia law. In the case of Ghulam Haider and others v. Murad through Legal Representatives and others (PLD 2012 SC 501), this Court while examining the scope, effect and application of Section 2-A of the 1962 Shariat Act held that the purpose of this section was to ensure compliance with sharia law even prior to 1948 so as to put an end to all controversies and litigation in respect of succession prior to the 1948 Shariat Act so as to hold for all times to come that succession will be governed under Section 2-A ibid. As to the applicability of the 1962 Shariat Act, this Court in the cases of Hakim Ali and others v. Barkat Bibi and others (1988 SCMR 293) and Muhammad Yousaf v. Karam Khatoon (2003 SCMR 1535) has held that the Act will apply retrospectively, due to the clear language of Section 2-A. Hence, as per the dicta of this Court, even prior to 1951 (when Section 19-A was inserted in the Colonization Act), sharia law was enforced in the State of Bahawalpur.

iii) In the context of the aforementioned Shariat Application Acts, succession for the purposes of muslims was governed by sharia law even before 1951 unless any custom was established as being consistently prevalent in the area and applicable to the parties. Even Section 5 of the Act of 1872 did not exclude sharia law from applying on personal law matters, provided a custom, not contrary to justice, equity and good conscience was established. The 1948 Shariat Act clarified that muslim personal law was applicable for the purposes of succession notwithstanding any custom meaning that all decisions regarding succession were governed by sharia law. The 1948 Shariat Act was applicable to the State of Bahawalpur where the rule of decision for the purposes of succession was sharia law as has been held in the case Government of Pakistan v. Brig. His Highness Nawab Muhammad Abbas Khan abbasi and others (PLD 1982 SC 367). The significance of the 1948 Shariat Act is that it categorically provides that sharia law shall prevail notwithstanding any custom or usage to the contrary in matters of succession. Hence, without a doubt even prior to 1951, sharia law was applicable to muslims on matters of succession. The issue of the applicability of sharia law prior to 1951 has been examined by this Court in various different decisions. In the case of Muhammad Yousaf v. Karam Khatoon (2003 SCMR 1535) Section 5 of the Act of 1872 was examined in the context of prevailing customs in the State of Bahawalpur and this Court concluded that prior to 1951 if a party were to rely on a particular custom negating sharia law, then the burden was on that party to establish the custom and its applicability to their case because even Section 5 did not exclude sharia law. The Court concluded that the issue of proving the custom was a question of fact based on evidence. In the case of Abdul

Ghafoor and others v. Muhammad Shafi and others (PLD 1985 SC 407) this Court held that Section 2-A of the 1962 Shariat Act was applicable to a period prior to 1948 and the question of retrospectivness was not relevant because the provisions of the section itself state that it was applicable prior to the commencement of the 1948 Shariat Act. Hence, for all intent and purposes after 1948, sharia law was clearly applicable in the State of Bahawalpur on the basis of which the rights of inheritance were to be determined. Therefore, based on the aforesaid, to answer the question raised we find that even prior to March 1951, sharia law was applicable in Bahawalpur to muslims on account of the 1948 Shariat Act which means that even in the presence of a custom or Section 20 of the Colonization Act sharia law will prevail.

iv) Article 120 of the Limitation Act, 1908 deals with the limitation to file a suit for declaration which has been interpreted by this Court in its recent judgment Saadat Khan and others v. Shahid-urRehman and others (PLD 2023 SC 362) where the Court has held that in the cases where brothers deny their sisters their right to inherit, limitation would run from the date of knowledge when the fraud or denial became known to the sisters… However, even to this effect this Court has held in Mst. Gohar Khanum and others v. Mst. Jamila Jan and others (2014 SCMR 801) that where a mutation is erroneously made in favour of a male heir, such mutation would not create title in favour of the male heir if it is contrary to sharia law of inheritance. In another case Shabla and others v. Ms. Jahan Afroz Khilat and others (2020 SCMR 352), this Court has held that no limitation runs against matters involving inheritance rights of a female where she has been defrauded of her right by her family. It has also been held in Khan Muhammad through LRs. and others v. Mst. Khatoon Bibi and others (2017 SCMR 1476) that in cases of inheritance, it is well settled that a claimant becomes a co-owner/cosharer of the property left by the predecessor on his death and the sanction of inheritance mutation is meant for updating the revenue record for fiscal purposes. Where a person has been denied the right of inheritance that would give them cause of action and that no limitation would run against a co-sharer.

Conclusion: i) The circumstances in which application of section 20 and 21 of the Colonization of Government Lands (Punjab) Act, 1912 can be considered by court are mentioned above under analysis No. i.

ii) History of enactments of sharia law is mentioned above under analysis No. ii and sharia law was enforced in state of Bahawalpur prior from insertion of section 19-A of the Colonization Act, 1912.

iii) Succession for the purposes of Muslims was governed by sharia law even before 1951 unless any custom was established as being consistently prevalent in the area and applicable to the parties.

iv) Limitation would run from the date of knowledge when the fraud or denial became known to the party to file a suit for declaration in case where someone was deprived from right of inheritance.

18. **Supreme Court of Pakistan**
Jameel Qadir v. Government of Balochistan, Local Government, Rural Development & Agrovilles Department, Quetta through its Secretary and others
Civil Petitions No.2270 & 2272 OF 2023
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2270_2023.pdf

Facts: These Civil Petitions for leave to appeal are directed against the judgments passed by the High Court whereby the orders passed by the Election Commission of Pakistan ("ECP") were set aside with the direction to the ECP to issue notifications for the returned candidates accordingly.

Issues: i) Whether the decision of the Election Tribunal on an election petition shall be final?
ii) What procedure is to be followed by the Election Tribunal appointed to deal with and decide election petitions?
iii) What is the meaning of the term 'jurisdiction' in the legal parlance?
iv) Whether it is the duty of the Court to decide the question of jurisdiction in case of doubts raised regarding jurisdiction?
v) What is the meaning of expression 'coram non judice'?
vi) When the decision of a Court becomes per incuriam?
vii) What is the purpose of the doctrine of exhaustion of remedies?
viii) What is the meaning of term functus officio?

Analysis: i) Sub-section (2) of Section 41of Balochistan Local Government Act, 2010 articulates that the decision of the Election Tribunal on an election petition shall be final and shall not be called into question in any court or before any other authority. If we look at the parallel and corresponding provision, that is Section 139 of the Elections Act 2017, it also provides that no election shall be called into question except by an election petition filed by a candidate for that election and under Section 140, the composition of the Election Tribunal is laid out for election to an Assembly or the Senate, or in the case of election to a local government.
ii) In Rule 78 of the Balochistan Local Government (Election) Rules, 2013, a detailed procedure is provided which is to be followed by the Election Tribunal appointed to deal with and decide election petitions.
iii) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties. The jurisdiction of every Court is delineated and established to adhere to and pass legal orders. Transgressing or overriding the boundary of its jurisdiction and authority annuls and invalidates the judgments and orders.
iv) It is the prime duty of the Court to decide the question of jurisdiction first in case of doubts raised regarding jurisdiction, and in any such situation it is the

responsibility of the Court to endeavor to resolve the issue of jurisdiction at an early stage of the proceedings.

v) The expression 'coram non judice' means an act done by a court which has no jurisdiction. When the suit is brought in a court without jurisdiction it is said to be coram non judice and any judgment is null and void. When a court of general jurisdiction undertakes to grant a judgment in an action where it has not acquired jurisdiction of parties by voluntary appearance or service of process, the judgment is void and may be disregarded and it is 'coram non judice'.

vi) The decision of a Court becomes per incuriam when it is rendered in ignorance of a statute or a rule having the force of statute.

vii) The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted.

viii) The term functus officio literally denotes 'of no further official authority or legal effect' or 'having performed his office', and is used in the context of an officer who is no longer in office or has fulfilled its purpose. This doctrine has an extensive and pervasive application to both the judicial and quasi-judicial authorities and if such doctrine is considered insignificant, it will lead to disorder, therefore, this should be given credence to bring in decisiveness and certitude to legal proceedings.

Conclusion: i) Sub-section (2) of Section 41 of Balochistan Local Government Act, 2010 articulates that the decision of the Election Tribunal on an election petition shall be final.

ii) In Rule 78 of the Balochistan Local Government (Election) Rules, 2013, a detailed procedure is provided which is to be followed by the Election Tribunal.

iii) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties.

iv) It is the prime duty of the Court to decide the question of jurisdiction first in case of doubts raised regarding jurisdiction.

v) The expression 'coram non judice' means an act done by a court which has no jurisdiction.

vi) The decision of a Court becomes per incuriam when it is rendered in ignorance of a statute or a rule having the force of statute.

vii) The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted.

viii) The term functus officio literally denotes 'of no further official authority or legal effect'.

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19. **Supreme Court of Pakistan**
Market Committee, Multan through its Chairman and another v. Additional Commissioner (Consolidation), Multan and others
Civil Petitions No. 6406 to 6434 of 2021
Mr. Justice Umar Ata Bandial HCJ, **Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._6406_2021.pdf

Facts: The above-titled twenty-nine civil petitions for leave to appeal are directed against the common judgment passed by the High Court, whereby the writ petitions filed by the petitioners were disposed of with certain directions to the Chairman, Market Committee.

Issues: i) What is essential purpose of Punjab Agricultural Produce Markets Ordinance, 1978?
ii) What are the most important duties of the Market Committee?
iii) Whether order passed by the Market Committee and Assistant Commissioner are appealable?
iv) How the expression remand can be defined?
v) Whether High Court can adjudicate disputed facts or controversial issues in the Constitutional jurisdiction?
vi) Whether one who approbates can reprobate?
vii) Whether principle of estoppel lies against Government and public bodies?
viii) What is doctrine of acquiescence?

Analysis: i) The purpose of Punjab Agricultural Produce Markets Ordinance, 1978 (the "1978 Ordinance"), is to provide for the better regulation of purchase and sale of agricultural produce and, for that purpose, to establish markets and make rules for their proper administration. According to Section 3 of this Ordinance, the Government may, by notification, declare its intention of exercising control over the purchase and sale of such agricultural produce and in such area as may be specified in the notification. The purpose and rationale of such notification is to invite objections and suggestions which may be received by the District Coordination Officer within the period as may be specified in the notification; thereafter, under Section 4 of the 1978 Ordinance, the notification of the market area is issued. According to Section 5 of the 1978 Ordinance, subject to such rules as the Government may make in this behalf, the Market Committee concerned shall be the authority to issue licences to the dealers and renew such licences… If we go through the scheme of this Ordinance, its essential purpose is not only to help the growers, but also to regulate the trade of various items of agricultural produce and to give protection to the growers from unscrupulous businessmen and to afford them facilities so that they may obtain a fair price for their produce.
ii) The duty of the Market Committee under Section 9 is to provide facilities for persons visiting it in connection with the purchase, sale, storage weighment, pressing and processing of agricultural produce as the Government may from time to time direct and no broker, weighman, measurer, surveyor, warehouseman, changer, palledar, boriota, tola, tokrewala and rehriwala shall, unless duly

authorized by the licence, carry on his occupation in a notified market area in respect of agriculture produce. In line with Section 21 of the 1978 Ordinance, the market fund may be expended for different purposes as jotted down in Section 21 of the Ordinance which, inter alia, includes the acquisition of land for the establishment of a market, or markets…One of the most important duties of the Market Committee is to set up a market for which it may acquire some site, either for a new Market or for extending an existing market and, in order to achieve this purpose meaningfully, the procedure for acquisition of land is also provided under Section 29 of the 1978 Ordinance. Whereas, in exercise of powers conferred under Section 35 of the 1978 Ordinance, the Governor of Punjab was pleased to make the Punjab Agricultural Produce Markets (General) Rules, 1979, in which the duties and powers of the Chairman and Vice Chairman of the Market Committee, as well as the duties and powers of the Market Committee are provided in Rules 14 and 15, respectively and the Chairman is designated as Chief Executive Officer of the Market Committee.

iii) The niceties of Rule 21, enlighten that an order passed by the Market Committee, other than in a service matter, is appealable to the Assistant Commissioner of the respective notified market area, whereas in Sub-Rule (5) a remedy of preferring Revision is also provided against an order passed in appeal by the Assistant Commissioner to the Commissioner of the division concerned.

iv) The expression "remand" connotes that something has to be done by the lower Court or Authority on the subject of the matter remanded to it.

v) Of course in the Constitutional jurisdiction, the High Court cannot adjudicate disputed facts or controversial issues but can examine the exactitudes of the orders assailed before it and after examining the legality and propriety of the impugned orders passed by lower fora.

vi) According to the maxim "qui approbat nonreprobat", one who approbates cannot reprobate.

vii) Concomitantly, the doctrine of estoppel is based on the maxim "allegans contraria non est audiendus", which means a person alleging contradictory facts should not be heard. The plea of estoppel can be entreated to hold the Government to honor its assurances and undertakings, whether executive or administrative. Public bodies are as much obligated as a private person to live up to the promises made by them. Article 114 of the Qanun-e-Shahdat Order, 1984 defines the doctrine of estoppel, under which when a person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. This tenet is set up on the concept of evenhandedness and fairness with a sole intent to prevent fraud.

viii) The doctrine of acquiescence is founded on a conduct in which, if a person spots another person about to commit an act of infringing his rights who might otherwise have abstained from it and causes him to believe that he assents to its

being committed, he cannot afterwards be heard to complain of the act. Under the Doctrine of Acquiescence, as well as the Legal maxim "Qui non negat, fatetur", which denotes that "silence shows consent" (Barb. [N.Y.] 2B, 35) or alternatively, that "He who does not deny, agrees".

Conclusion: i) Essential purpose of the Ordinance, 1978 is not only to help the growers, but also to regulate the trade of various items of agricultural produce.
ii) The most important duties of the Market Committee is to set up a market for which it may acquire some site, either for a new Market or for extending an existing market and other duties mentioned in the Ordinance, 1978.
iii) An order passed by the Market Committee, other than in a service matter, is appealable to the Assistant Commissioner and revision can be filed to the Commissioner against the order passed in appeal by Assistant Commissioner.
iv) The expression remand means something has to be done by the lower Court or Authority on the subject of the matter remanded to it.
v) High Court cannot adjudicate disputed facts or controversial issues in the Constitutional jurisdiction.
vi) One who approbates cannot reprobate.
vii) Principle of estoppel lies against Government and public bodies.
viii) The doctrine of acquiescence is founded on a conduct in which, if a person spots another person about to commit an act of infringing his rights who might otherwise have abstained from it and causes him to believe that he assents to its being committed.

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20. **Supreme Court of Pakistan**
Commissioner Inland Revenue Zone-IV, Large Taxpayer Unit, Karachi v. M/s Al-Abid Silk Mills Ltd. A-39, Manghopir Road, SITE, Karachi
Civil Appeal No. 1032 of 2018
Mr. Justice Umar Ata Bandial HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1032_2018.pdf

Facts: Pursuant to the report of the Directorate General of Intelligence and Investigation, the Deputy Commissioner Inland Revenue issued a show cause notice to taxpayer calling upon him to explain as to why his claimed input tax against the alleged fake/flying invoices should not be recovered from him along with the default surcharge and additional tax. Said show cause notice was adjudicated against the taxpayer and his successive appeals before the Commissioner Inland Revenue (Appeals) and the Appellate Tribunal Inland Revenue had respectively been dismissed as well, where-after, the taxpayer's raised questions of law in his application under section 47 of the Sales Tax Act, 1990 had been answered by the High Court against the Department. Hence, this appeal.

Issues: i) Who is liable to pay the output tax and who is entitled & eligible to deduct input tax under the Sales Tax Act, 1990?

ii) Who is liable to discharge the burden to prove that the tax, under the Sales Tax Act 1990, has not been paid?

iii) Whether the legislature intended to reverse the onus of proof in matters relating to the levy, charge and payment of the tax under the Sales Tax Act, 1990?

Analysis: i) The expression 'output tax' has been defined in section 2(20) of the Sales Tax Act 1990 in relation to a registered person as a tax levied under the Act ibid on the supply of goods made by the person. The expression 'input tax' has been defined under section 2(14) of the Act ibid in relation to a registered person as, inter alia, meaning the tax levied under the Act ibid on supply of goods to the person. Section 7 of Act ibid describes the mechanism for determination of the tax liability and provides that, subject to the provisions of section 8 of Act ibid, a registered person shall be entitled to deduct input tax paid or payable during the tax period for the purpose of taxable supplies made or to be made from the output tax.

ii) The scheme of the Sales Tax Act, 1990 clearly envisages that the sales tax authorities are essentially obliged and are vested with wide powers to establish that a person is liable to pay any tax/charge having not been levied/paid or has been short levied. The proceedings before the adjudicating authority or the statutory appellate forum under the Act ibid are quasi-judicial in nature. When the department alleges that a registered person is liable to make the payment of tax and the same has not been levied or charged, the former is burdened with a statutory duty to establish before the adjudicating forum, through persuasive and proper evidence, that the allegations are highly probable to be true, rather than being unreliable, false or doubtful.

iii) In some exceptional cases like Section 187 of the Customs Act, 1969 and section 14 of the National Accountability Ordinance, 1999, the legislature in its wisdom has provided for what is known as reverse onus i.e. placing the burden on the person against whom an allegation has been made. However, in the Sales Tax Act, 1990, there is no provision pari materia with aforementioned provisions of the Customs Act, 1969 and the National Accountability Ordinance, 1999.

Conclusion: i) The liability to pay the output tax is that of a supplier and a person who receives a supply of taxable goods is entitled and eligible to deduct input tax paid on the supply of goods.

ii) The burden to prove that the tax under the Sales Tax Act, 1990, has not been paid, is on the sales tax authorities.

iii) The legislature did not intend to reverse the onus of proof in matters relating to the levy, charge and payment of the tax under the Sales Act, 1990.

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21. **Supreme Court of Pakistan**
Dr. Muhammad Saleem v. Government of Baluchistan and Others
Civil Petition No.1532 of 2022
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1532_2022.pdf

Facts: The petitioner has sought leave to appeal against judgment of the Baluchistan Service Tribunal ('Tribunal'). The respondent was transferred from the post of Principal of *Loralai* Medical College ('College') to the post of Professor (B-20) and Head of Ophthalmology Department, *Bolan* Medical College, while the petitioner replaced him as Principal of the College. The respondent filed a departmental appeal which was rejected by the competent authority and he then preferred an appeal before the Tribunal, which was allowed vide the impugned judgment.

Issues: i)What is the scope of judicial interference with the executive function of postings and transfers of government officials?
ii) Whether the posting and transfer by the competent authority made in the public interest is open to judicial review?

Analysis: i) The transfer of a government official from one place or post to another to meet the exigencies of service was within the exclusive domain and competence of the competent authorities of the executive organ of the State and, ordinarily, it is not amenable to interference except in extra ordinary circumstances.
ii) Utmost caution and restraint ought to be exercised in interfering with or encroaching upon the exclusive domain of the executive authorities. The decisions in connection with posting and transfer of government servant's must not be subjected to judicial scrutiny unless a law has been clearly violated or mala fide and malice is established without the need for making an inquiry.

Conclusion: i) The only scope of judicial interference with the executive function of postings and transfers of government officials is when the terms and conditions of service are not adversely affected
ii) The interference of the Tribunal or courts in matters relating to postings and transfers is an encroachment upon the executive domain and in breach of the seminal principle of separation of powers embedded in the Constitution.

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22. **Supreme Court of Pakistan**
Collector of Customs Port Muhammad Bin Qasim, Karachi v. M/s Mia Corporation (Pvt.) Ltd. Islamabad
Civil Appeal No.1080 of 2011 and CMA No.819 of 2019
Mr. Justice Umar Ata Bandial HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1080_2011.pdf

Facts: The respondent filed goods declaration wherein the value was declared. The appropriate officer of customs was not satisfied with the declared value and, therefore, the consignment was provisionally assessed under section 81 of the Customs Act 1969 ("Act of 1969") based on the provisionally assessed value. The final determination was not made by the customs authorities within the time prescribed under section 81 of the Act of 1969 and, therefore, the provisional assessment had become final in terms of sub section 4 ibid. Subsequently, the Directorate of Valuation received a report from M/s SGS regarding the alleged transactional value of the goods imported by the respondent. The latter was, therefore, served with a show cause notice issued under section 32 of the Act of 1969. The show cause notice was adjudicated by the Additional Collector. The appeal preferred by the respondent was allowed. The appellant department filed an appeal before the Appellate Tribunal Customs, Sales Tax and Excise which was dismissed by a Single Member. The reference application filed by the appellant was allowed and the matter was remanded by the High Court to the Tribunal. The latter dismissed the appeal. The reference application filed by the appellant department under section 196 of the Act of 1969 was dismissed by a Division Bench of the High Court. The Collector of Customs assailed the same.

Issues: i) Whether the proceedings under section 32 and the recovery of duty, taxes or charge under the Customs Act 1969 are barred if the provisional assessment becomes final under sections 80 & 81?
ii) What is the principle of interpretation of a fiscal statute qua tax and equity?

Analysis: i) Section 81 empowers the officer of customs to provisionally assess the goods if the assessment is not possible under section 80 for reasons explicitly described in the former provision. Section 81 does not create a right in favor of the importer except that if the final determination is not made within the specified time then the assessment becomes final. The finality of the assessment under section 81 renders it at par with an assessment made under section 80. The finality of assessment under section 81 makes the provisional assessment final and not the declaration made by the importer under section 79. The assessment made under section 80 does not bar subsequent proceedings in connection with the offence under section 32 of the Act of 1969. (…) The answer is in the negative and this is implicit from a combined reading of section 32. Section 32 is a penal section and describes , under clauses a to c , the acts that would constitute as an offence if done in connection with any matter of customs knowing or having reasons to believe that they are false in any material particular. Sub-sections 2, 3 and 4 provide for the mechanism and machinery for recovering the duty, taxes or charge not levied, or short levied or erroneously refunded within the period specified in each eventuality. (…) The finality of assessment , whether under section 80 or section 81, as the case may be, does not preclude invocation of the offence under section 32 , nor proceedings for recovery of duty, taxes or charge that has not been levied, short levied or erroneously refunded within the prescribed time from the relevant date. The finality of assessment under section 80 or section 81, as the

case may be, is distinct from the offence described under section 32 and does not bar the proceedings thereunder, provided they are within the limitation period explicitly specified in the case of each eventuality separately. (…) We, therefore, hold that the finality assessment under section 80 or the provisional assessment under section 81 does not operate as a bar against proceedings relating to the offence described under section 32 of the Act of 1969 nor relating to the recovery of duty, taxes or charge not levied, short levied or erroneously refunded, provided they are within the limitation period prescribed in the case of each eventuality respectively.

ii) It is a settled principle of interpretation of a fiscal statute that tax and equity are strangers.

Conclusions: i) The finality of assessment under section 80 or the provisional assessment under section 81 does not operate as a bar against proceedings relating to the offence described under section 32 of the Act of 1969 nor relating to the recovery of duty, taxes or charge not levied, short levied or erroneously refunded, subject to limitation.

ii) It is a settled principle of interpretation of a fiscal statute that tax and equity are strangers.

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23. **Supreme Court of Pakistan**
Ijaz ul Haq v. Mrs. Maroof Begum Ahmed & others
Civil Appeal No.1121 of 2018
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1121_2018.pdf

Facts: The variant decree drawn by the Islamabad High Court has impelled the plaintiff to appeal before Supreme Court to restore the decree issued to him by the trial Court in his suit for specific performance of the contract.

Issues: i) When suit would be deemed to have been instituted against a defendant who has been impleaded in suit after institution of suit through amended plaint?

ii) Whether a suit for specific performance of the contract would be maintainable against the Attorney/agent when it was not within time to the extent of necessary party (principal/actual owner of property in question)?

iii) How the plaintiff, for decree for specific performance, ought to prove that all the time he had been ready and willing to perform his obligations arising out of the contract?

iv) Whether attorney of plaintiff can appear as witness to depose about readiness and willingness of plaintiff to perform the contract?

Analysis: i) In terms of Section 22 of the Limitation Act, 1908, the suit would, as regards defendant who has not been impleaded in original plaint and has been impleaded as defendant later on through amended plaint, be deemed to have been instituted from the point of time when he/she is so made a party and not from the date of

filing of original plaint.

ii) It is now well recognized that a power of attorney is the creation of the agency whereby the grantor (the principal) authorizes the grantee (the agent) to do the acts specified therein on behalf of the grantor (the principal), which, when executed will be binding on the grantor (the principal) as if done by him. As such, it is ordinarily the function and the duty of an agent in his contractual dealings for his principal to act not only for and on account of his principal, but in the principal's name. It is a general rule that where a contract is made for and on account of the principal and in his name, and the agent has no beneficial interest in the contract, the right of action upon the contract is in the principal alone and the agent neither can sue and be sued upon it. This principal is also embedded in Section 230 of the Contract Act, 1872. We, therefore, are poised to conclude that defendant No.1, as an agent/attorney, acted for and on behalf of defendant No.1-A and thus suit for specific performance of the contract was not maintainable against her, especially when the plaintiff had added defendant No.1-A after the prescribed period of limitation, and secondly, her status in it, at best, could only be regarded as a proper party and, in terms of Section 27 of the Specific Relief Act, 1877, specific performance of the contract also could not be sought against her.

iii) Such a question is a standard feature of the suit seeking a decree for the specific performance of the contract, and the answer to it not only contributes to determine the parties' rights but also provides a base for the Court in exercising its equitable jurisdiction. Determination of the readiness and willingness to perform the obligations emanating from the contract is a calculus for ascertaining the bona fide of the parties. As the initial burden is always on the plaintiff, he must first state in his plaint the facts demonstrating his readiness and willingness to perform his part of the contract and then prove it by producing convincing and reliable evidence. The law governing this aspect of the matter is provided in Form No.47 and 48 in Appendix-A of the First Schedule to the Code of Civil Procedure, 1908. According to para-2 of Form 47, the plaintiff is to state in the plaint that he had applied to the defendants specifically to perform the contract on their part, but the defendants had not done so. Similarly, per para-2 of Form 48, the plaintiff was required to state in his plaint that on such and such date, he tendered an amount to the defendants and demanded a transfer of the property. Thus, in his suit for specific performance, the plaintiff ought to have pleaded and proved his readiness and willingness to perform his obligations under the contract.

iv) There is no doubt that the plaintiff has to prove that he was always ready and willing to perform his obligations in terms of the contract, so it is also necessary for him to go into the witness box and give evidence that he had all along been ready and willing to perform his part of the contract, and would even subject himself to cross-examination on that issue. The plaintiff cannot examine in his place, his Attorney who do not have personal knowledge about his readiness and willingness. His attorney is also irrelevant to the issue because he was neither involved in the negotiations culminated into the contract, nor signed the contract nor was he a witness to it. What is more, readiness and willingness refer to the

state of mind and conduct of the vendee, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore, the Attorney, who has no personal knowledge, cannot give evidence about plaintiff's readiness and willingness to perform the obligations in terms of the contract…

Conclusion: i) The defendant who has not been impleaded in original plaint and has been impleaded as defendant later on through amended plaint, be deemed to have been instituted from the point of time when she was so made a party and not from the date of filing of original plaint.
ii) Suit for specific performance of the contract is not maintainable against the Attorney/agent when it was not within time to the extent of necessary party (principal/actual owner of property in question). Attorney/agent can only be regarded as a proper party and, in terms of Section 27 of the Specific Relief Act, 1877, specific performance of the contract also cannot be sought against attorney/agent.
iii) As the initial burden is always on the plaintiff, he must first state in his plaint the facts demonstrating his readiness and willingness to perform his part of the contract and then prove it by producing convincing and reliable evidence.
iv) The plaintiff cannot examine in his place, his Attorney who do not have personal knowledge about his readiness and willingness.

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24. **Supreme Court of Pakistan**
Sultan Ahmed v. Registrar, Balochistan High Court, Quetta and others
Criminal Appeal No.633 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._633_2019.pdf

Facts: Through this appeal, the appellant challenged the order of the Balochistan High Court, passed in a *suo motu* contempt proceeding. The High Court has, by the said order, convicted the appellant under the Contempt of Court Ordinance 2003 and sentenced him to imprisonment till rising of the court with a fine.

Issues: i) Whether High Court has power to suo moto exercise its Constitutional jurisdiction on the report of District & Sessions Judge?
ii) What is the effect of unqualified apology on requirement of framing of charge in contempt proceedings and on right of fair trial?
iii) Whether dropping the contempt proceedings on unqualified apology of accused is a general rule?
iv) What stature District Judiciary hold in the justice system?
v) What Constitutional safeguard judges of district judiciary have?
vi) What is the duty of a High Courts towards district judiciary?
vii) What is the real purpose of contempt law?
viii) Why it is necessary for district judiciary to have independent security force?
Additional Note

ix) What is the status of a trial judge before a common citizen?
x) Whether criminal proceedings or FIR can be lodged against a judge of district judiciary for acts unrelated to his judicial functions without certain precautions from the executive?
xi) Why mandatory precautions should be suggested to the executive, while dealing with a criminal case in which a judge of the District Judiciary is found to be involved?
xii) Whether it will conduce to the independence of the judiciary if some precautionary measures are ordered to the executive to be observed while taking actions under the criminal law against the judges of District Judiciary?
xiii) What procedure should be adopted by the executive for arrest and criminal proceedings against judges of District Judiciary?

Analysis: i) It is not disputed that the High Court had the jurisdiction to initiate *suo motu* the contempt proceeding against the appellant on the report of the District & Sessions Judge. Numbering the matter as a constitution petition instead of a contempt proceeding is only an error of procedure, which does not affect the jurisdiction of the High Court. Needless to reiterate the well-settled legal position that the mentioning of a wrong or inapplicable provision of law or non-mentioning of the applicable provision of law while exercising the jurisdiction or power which is otherwise vested in a court, tribunal or authority, does not by itself have any fatal consequences.
ii) An unqualified apology tendered by the person accused of having committed the contempt of court necessarily means that he admits his guilt and submits the apology in the realization of the fact that he has done a wrong, for which he repents and seeks forgiveness. In cases where the accused tenders an unqualified apology, there remains no need of framing the charge and recording the evidence. Therefore, the conviction of the appellant by the High Court on the basis of his admission made through submitting an unqualified apology does not in any way offend Article 10-A of the Constitution.
iii) However, this is not an absolute rule to be followed invariably in all cases. The exceptional facts and circumstances of a case may justify departure from this general rule. The courts may, despite the submission of an unqualified apology, convict the accused in the peculiar facts and circumstances of the case and may treat his apology only as a mitigating circumstance to impose a lesser punishment.
iv) It is important to reiterate that the 'District Judiciary is the backbone of our judicial system'…As per the Judicial Statistics of Pakistan of the year 2021, the percentage of the cases handled by the district judiciary is 82% of the total pendency of cases in Pakistan. The district judiciary thus forms the foundational constituent of the justice system.
v) The Constitution protects the constitutional court judges through the power of contempt under Article 204 of the Constitution and through the Supreme Judicial Council established under Article 209 of the Constitution, while it is Article 203

of the Constitution that safeguards the judges of the district judiciary by placing them under the protective umbrella of the High Court of the respective Province.

vi) Although the Supreme Court of Pakistan as the apex court of the country is the custodian of justice as well as of the courts dispensing justice throughout the land, the primary duty to ensure the protection of district judiciary is of the High Courts under whose supervision and control it functions. This duty is inherent in and concomitant with the power to supervise and control vested in the High Courts under Article 203 of the Constitution. In line with this constitutional mandate, the Legislature has conferred upon the High Courts the power to punish a contempt committed in relation to any court of the district judiciary.

vii) Unlike the popular belief that the law of contempt protects the courts and judges, the real purpose of this law, as observed by this Court in *Khalid Masood,* is the protection of the public interest and more importantly public confidence in the justice system. Even though the courts are the creation of the Constitution or the law, their real strength and power base lie in the confidence reposed in them by the public.

viii) However, the administrative autonomy has been somewhat wanting over the years in the area of security of judges. The security and protection of judges is not an internal function of the judiciary but is dependent on and in control of the executive. The district judiciary protects the common people at the grassroots level against the misuse or abuse of executive power by the district administration and police. This check has an inherent potential to create tension between the district judiciary and the district administration and police.

Additional Note

ix) It will not be an overstatement if I say that a trial court judge, for an ordinary common citizen, is the human face of the law. It is, therefore, necessary that the District Judiciary should be honest, fearless and free from any pressure and should be able to achieve the preambular goal of justice by deciding cases only according to the law without being influenced by any external pressure.

x) The questions for me to consider is whether criminal proceedings can be instituted against a judge of the District Judiciary for acts unrelated to his judicial functions, whether an FIR can be recorded against him under section 154 Cr.P.C., and if yes, is it desirable to ask the executive to follow certain precautions while doing so? The sufficient answer to all facets of this question is yes. As to the first two parts of the question, there can be no doubt, and it is well settled that the judicial title does not render its holder immune from responsibility even when the criminal act is committed behind the shield of judicial office. Immunity from criminal liability does not extend to non-judicial acts, and thus, a judge cannot in any way escape criminal liability and can be arrested.

xi) Appraising the above-stated values of our society on a legal principle which states that no one is above the law, no one is below it, and all are equal, it is safe to conclude that it would be injurious to the health of the society if certain mandatory precautions are not suggested to the executive, while dealing with a criminal case in which a judge of the District Judiciary is found to be involved.

xii) As such, here we are faced with a situation of balancing these basic values. There is no settled legal principle which provides us with an answer to what weight is to be assigned to each value and how to balance them; nevertheless, the weighing and balancing of the conflicting values should be: (i) a rational process, manifesting reason, not fiat; (ii) objective, reflecting consensus and shared values of the society, not personal values; (iii) based on traditions or precedents; and (iv) in a manner that it may fit into the general structure of the institutional-government system; and while doing so, the approach should be holistic.

xiii) I am therefore of the view that to maintain a balance between two constitutional values, to wit, preserving the independence of the judiciary and ensuring the prevention of crime while maintaining the rule of law, the guidelines suggested by the High Court fit into the institutional-government system, and it will be tider and safer to order them to be observed with the following modifications:

(i) If a judicial officer of the District Judiciary is to be arrested for some offence, it should be done under intimation to the nominee of the concerned High Court;

(ii) If facts and circumstances necessitate the immediate arrest of a judicial officer of the District Judiciary, a technical or formal arrest may be effected; and the facts of such arrest should be immediately communicated to the nominee of the concerned High Court.

(iii) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the nominee of the concerned High Court;

(iv) Immediate facilities shall be provided to the Judicial Officer of communication with his family members, legal advisers and the District & Sessions Judge of his District;

(v) No statement of a Judicial Officer who is under arrest be recorded, nor any medical tests be conducted except in the presence of the legal adviser of the Judicial Officer concerned or another Judicial Office of equal or higher rank, if available; and

(vi) There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the nominee of the High Court. But the burden would be on the Police/executive to establish the necessity for effecting the physical arrest and handcuffing of the Judicial Officer, and if it is found that the physical arrest and handcuffing of the Judicial Officer was unjustified, the Police Officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and damages as may be summarily determined by the High Court.

The above guidelines oblige each High Court to issue a notification, exercising its powers under Article 203 of the Constitution, for the nomination of a person, not less than the rank/grade of a District & Sessions Judge, who will attend to such criminal proceedings in which a judge of the District Judiciary is found involved,

so as to ensure transparency and fair trial. It is expected that this will be done expeditiously.

Conclusion: i) When no order in constitutional jurisdiction is passed, High Court has the power to initiate suo moto the contempt proceedings on the report of District & Sessions Judge. Numbering the matter as constitutional petition instead of contempt petition is merely a procedural error.

ii) An unqualified apology tendered by the contemnor means admission of guilt thus there remains no need of framing of charge and thus it does not hamper his right of fair trial under Article 10-A of the Constitution.

iii) No, dropping the contempt proceedings upon unqualified apology by accused is not an absolute rule. Such accused may be convicted by the Court despite submission of an unqualified apology in the peculiar facts and circumstances of the case.

iv) The District Judiciary holds the stature of foundational constituent of the justice system for handling 82% of total pendency of cases in Pakistan.

v) Judges of district judiciary are safeguarded under Article 203 of the Constitution by placing them under the protective umbrella of the High Court of the respective Province.

vi) It is the primary duty of High Courts to ensure the protection of district judiciary under whose supervision and control it functions. This duty is inherent in and concomitant with the power to supervise and control vested in the High Courts under Article 203 of the Constitution.

vii) The real purpose of contempt law is the protection of public interest and public confidence in judicial system.

viii) It is necessary for district judiciary to have independent security force in the form of security agency for its judicial, financial and administrative autonomy.

Additional Note

ix) A trial court judge, for an ordinary common citizen, is the human face of the law.

x) Immunity from criminal liability does not extend to non-judicial acts, and thus, a judge cannot in any way escape criminal liability and can be arrested with certain precautions from executive.

xi) Mandatory suggestions to executive while dealing with a criminal case in which a judge of the District Judiciary is found to be involved, are necessary for the health and confidence of the society on district judiciary.

xii) See above in analysis portion.

xiii) See above in analysis portion.

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25. **Supreme Court of Pakistan**
Abdul Nafey v. Muhammad Rafique and others
Civil Petition No. 173-Q of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._173_q_2023.pdf

Facts: Through this petition under Article 185(3) of the Constitution, the petitioner has assailed the judgment passed by the learned High Court of Baluchistan, Quetta whereby the Constitutional Petition filed by the petitioner was dismissed and the order of the learned Election Tribunal/Appellate Authority was upheld.

Issues: i) Whether school record or CNIC ought to be given preference for determination of age of candidate for contesting Election as per Baluchistan Local Government (Election) Rules, 2013?
ii) Whether a statute needs other interpretation when meaning of a statute is clear and in plain language?
iii) Whether a candidate for contesting Election can take benefit of correction of age made after announcement of Election Schedule?

Analysis: i) A bare reading of Section 13 of the Baluchistan Local Government (Election) Rules, 2013, shows that any person whether he is a candidate, a proposer or a seconder must have Computerized National Identity Card to meet the requirements mentioned in the Act & Rules, which means that the credentials of a person on the CNIC would be given preference.
ii) It is settled law that when meaning of a statute is clear and plain language of statute requires no other interpretation then intention of Legislature conveyed through such language has to be given full effect. Plain words must be expounded in their natural and ordinary sense. Intention of the Legislature is primarily to be gathered from language used and attention has to be paid to what has been said and not to that what has not been said.
iii) Learned counsel for the petitioner put much stress on the point that the correction in the CNIC had already been made while the matter was pending before the learned High Court. However, on our specific query, he admitted that he sought correction in the NADRA record after the election schedule had been announced. In this eventuality, a right had accrued in favour of the contesting candidates, which cannot be taken away without any cogent reason. Learned counsel could not convince us as to when on the date of filing of nomination papers the petitioner was not qualified, how can the defect be cured later on.

Conclusion: i) As per Baluchistan Local Government (Election) Rules, 2013, the credentials of a person on the CNIC would be given preference.
ii) A statute does not need any other interpretation when meaning of a statute is clear and in plain language.
iii) A candidate for contesting Election cannot take benefit of correction of age made after announcement of Election Schedule.

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26. **Supreme Court of Pakistan**
Chief Minister through Secretary Government of Punjab, Irrigation Department, Lahore etc. v. Muhammad Afzal Anjum Toor
C.P. No. 2456-L/2022
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Ms. Justice Musarrat Hilai
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2456_l_2022.pdf

Facts: After issuing show cause notice under section 1.8(a) of the Pension Rules 1963, disciplinary proceedings were conducted against respondent and, on recommendation of Investigation Committee, the Competent Authority awarded major penalty of recovery from the respondents' pension. Later, respondent's review petition filed before the Chief Minister Punjab was still pending, when the Punjab Service Tribunal Lahore passed order to allow respondent's appeal, which order is assailed by department through this petition for leave to appeal.

Issue: Whether the disciplinary proceedings, in light of the provisions of Section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006, could be validly initiated against an employee after three years of his retirement?

Analysis: The proviso to Section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 imposes a mandatory obligation on the competent authority to finalize proceedings against a retired employee not later than two years from the date of his retirement. Additionally, Section 20 of the Act ibid explicitly provides that the provisions of the Act ibid shall have an overriding effect contrary to any other law for the time being in force.

Conclusion: Disciplinary proceedings against an employee after three years of the date of his retirement cannot be initiated as it would be a violation of mandatory provision of Section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006.

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27. **Supreme Court of Pakistan**
Cantonment Board Peshawar, Peshawar Cantt thr. Executive Officer & another v. M/s RACO Advertisers & another
Civil Appeal No.1137 of 2014
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1137_2014.pdf

Facts: This civil appeal with leave of this Court is brought to challenge the judgment passed by High Court whereby the writ petition filed by the respondent was disposed of with the direction to the Director Military Lands and Cantonments, Peshawar Region, Peshawar to conduct fresh arbitration and consider the grievance of the respondent No.1 raised in the memo of the writ petition.

Issues: i) Whether literal terms and conditions of arbitration agreement can be set out by

the parties in the arbitration agreement?
ii) Whether the Arbitration Act, 1940 is applicable on arbitration agreement?
iii) What are the grounds on which court can remit the award or can refer any matter to arbitration?
iv) Whether court is duty bound to fix the time within which the arbitrator or umpire shall submit his decision to the Court when award is remitted and what is effect when decision is not submitted within time?
v) What are grounds for setting aside an award?
vi) What are the objectives of non-obstante segment and doctrine of exhaustion of remedies?
vii) Whether law of land is binding and applies across the board to the populaces?
viii) Whether High Court can entertain and adjudicate disputed question of fact in writ jurisdiction?

Analysis: i) The remedy of arbitration elected through the written Agreement by the parties for resolving the dispute is essentially a genus of alternative dispute resolution outside the Courts whereby, rather than engaging in a lengthy lawsuit, the dispute is put to an end through arbitration. The remedy of arbitration by and large is considered efficacious and convenient for settlement of disputes and does not entail the cumbersome rigidities of procedure which timesaving for mending and patching up contractual and commercial disputes in terms of the arbitration clause delineated in the Agreement, including the choice and procedure for the appointment of an Arbitrator. The literal terms and conditions are set out in the arbitration agreement and the rationale of an arbitration agreement is more cost effective and expeditious than the pace of trial and decision of ordinary civil suits. The incidence of a dispute is rudimentary between the parties before embarking upon the remedy opted for the resolution of dispute(s) through arbitration agreement.
ii) To conduct arbitration in terms of the Agreement, recourse was to be made through the Arbitration Act which is the law of the land applicable for arbitration agreements.
iii) At this juncture, Section 16 of the Arbitration Act is also quite relevant which provides that the Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, and such matters cannot be separated without affecting the determination of the matters referred; or (b) where the award is so indefinite as to be incapable of execution; or (c) where an objection to the legality of the award is apparent upon the face of it.
iv) In the same parlance, sub-section (2) provides that where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court; Provided that any time so fixed may be extended by subsequent order of the Court; and according to sub-section (3) an

award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed. Whereas under Section 19, where an award has become void under sub-section (3) of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

v) The niceties of Section 30 of the Arbitration Act explicate that an award shall not be set aside except on the ground(s) (a) that an arbitrator or umpire has misconducted himself or the proceedings; (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35; or (c) that an award has been improperly procured or is otherwise invalid.

vi) Compliant with the objective of the non-obstante segment set in motion under Section 32 of the Arbitration Act, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in the Arbitration Act; and under the exactitudes of Section 33, any party to an arbitration agreement, or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined, may apply to the Court for decision. The doctrine of exhaustion of remedies prevents a litigant from seeking a remedy in a new court or jurisdiction until all claims or remedies have been exhausted (i.e. pursued as fully as possible) in the original one, and this doctrine was originally created on the principles of comity.

vii) The turn of phrase “law of the land” is in fact an intact body of binding and effective laws made applicable in any country or jurisdiction. The hegemony of law is that no man is above the law, and every man is subject to the law of the land and the Courts. Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) envisages that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen wherever he may be, and of every other person for the time being within Pakistan and, at the same time, Article 25 of the Constitution accentuates that all citizens are equal before law and are entitled to equal protection of law. The Latin phrase “lex terrae” alludes to the "law of the land" which is serviceable and in effect in any country and applies across the board to the populaces; this encompasses all laws, rules and regulations which everyone is bound to follow including due process, fair trial and unbiased legal process. Whereas another Latin phrase “legem terrae” denotes that things should be done according to the law of the land and also connotes that each and every one should adhere to the laws and be dealt with fair and square and the legal proceedings should be conducted in accordance with the law.

viii) It is a well settled exposition of law that disputed questions of fact cannot be entertained and adjudicated in writ jurisdiction. The learned High Court in the impugned judgment observed that it cannot assume the task of recording evidence

regarding what amount was collected by the Cantonment Board during the period under dispute in the constitutional jurisdiction, but despite that the High Court remanded the case in writ jurisdiction for de novo arbitration. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy.

Conclusion: i) Literal terms and conditions of arbitration agreement can be set out by the parties in the arbitration agreement.
ii) The Arbitration Act, 1940 is applicable on arbitration agreement.
iii) Section 16 of the Arbitration Act, 1940 provides that Court can from time to time remit the award or refer any matter to arbitration. Grounds are mentioned above in analysis No. iii.
iv) Court is duty bound to fix the time within which the arbitrator or umpire shall submit his decision to the Court when award is remitted and if decision is not submitted within time, award becomes void.
v) Section 30 of the Arbitration Act, 1940 provides the grounds for setting aside an award as mentioned above under analysis No. v.
vi) The objective of the non-obstante segment set in motion under Section 32 of the Arbitration Act, 1940 is that no suit shall lie on any ground otherwise than as provided in the Arbitration Act and the doctrine of exhaustion of remedies prevents a litigant from seeking a remedy in a new court or jurisdiction until all claims or remedies have been exhausted.
vii) Law of land is binding and applies across the board to the populaces.
viii) High Court cannot entertain and adjudicate disputed question of fact in writ jurisdiction.

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28. **Supreme Court of Pakistan**
Muhammad Suleman v. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others
Civil Petition No. 4424 of 2021
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, **Mr. Justice Athar Minallah**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4424_2021.pdf

Facts: The notification declaring petitioner ineligible for regularization by the competent authority was assailed by invoking the jurisdiction of the Peshawar High Court. It is a leave against judgment of the Peshawar High Court whereby the constitutional petition was dismissed.

Issue: Whether an appointment, not made through a competitive transparent process by the Principal of a college and not by the Government can be regularized?

Analysis: Appointments of any nature, whether initial or ad hoc, permanent or temporary, if made in violation of the principle of transparency and competitive process, inter alia, without inviting applications from the public is in violation of the

Constitution and are, therefore, void. Selecting a qualified, eligible and most deserving person is a sacred trust which is to be discharged honestly and fairly in a just and transparent manner and in the best interest of the public.

Conclusion: Any appointment made in violation of principle of transparency and competitive process is not eligible for regularization.

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29. **Supreme Court of Pakistan**
Hayat Muhammad thr. LRs v. Muhammad Riaz
Civil Appeal No. 1551 of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1551_2017.pdf

Facts: The predecessor of the appellants filed a suit for cancellation of gift mutation. The suit was decreed by the trial court and the appeal filed by the respondent was dismissed. A civil revision filed by the respondent before the High Court was allowed. The judgments of both courts were set aside and the suit of the appellants was dismissed by means of the judgment impugned, hence, this appeal.

Issues: i) What are prerequisites of a valid gift and when it comes into existence?
ii) Who is competent to make a valid gift under Muhammadan law?
iii) What is a precondition for revocation of a gift?

Analysis: i) "Gift" is defined in section 138 of the Muhammadan Law as: "A hiba or gift is a transfer of property, made immediately, and without any exchange, by one person to another, and accepted by or on behalf of the latter." The prerequisites of a valid gift are: (a) offer by the donor; (b) its acceptance by the donee; and (c) the delivery of possession. A valid gift comes into existence as soon as the three ingredients are completed…
ii) Under Muhammadan Law, any Muslim can make a valid gift of movable or immovable property orally, however, it may be reduced into writing as proof.
iii) The precondition for revocation of a gift as provided by section 167 of the Muhammadan Law is that it can only be revoked before delivery of possession. It implies that despite declaration of gift by the donor and its acceptance by the donee, the donor may change its mind and may not complete the gift by not delivering the possession.

Conclusion: i) The prerequisites of a valid gift are: (a) offer by the donor; (b) its acceptance by the donee; and (c) the delivery of possession and a valid gift comes into existence as soon as the three ingredients are completed.
ii) Under Muhammadan law, every Muslim is competent to make a valid gift of movable or immovable property.
iii) The precondition for revocation of a gift as provided by section 167 of the Muhammadan law is that it can only be revoked before delivery of possession.

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30. **Lahore High Court**
Coca Cola Beverages Pakistan Ltd. v. Ghulam Abbas etc.
W.P. No. 22538 of 2022.
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC4544.pdf

Facts: Through this petition the petitioner-company assailed the order of the learned full bench NIRC, Lahore whereby the Grievance Petition of the respondent No.1 was accepted which was dismissed by the National Industrial Relations Commission (NIRC).

Issues: i) Whether mere rendering a piece of evidence, as primary in nature, does stand proof of the fact that guilt of a person has been proved?
ii) Whether CCTV footage can be relied upon without fulfillment of the required criteria?
iii) Where the person who prepared or retrieved the CCTV footage from the computer has not been produced in evidence whether it can be said that the allegation against the guilty employee has been proved?
iv) If proceeding initiated against an employee pursuant to Show Cause Notice are subsequently dropped whether the Inquiry Officer can submit any report in that regard?
v) Whether non-production of the Resolution of Board of Directors of the petitioner-company, authorizing the person to appear on behalf of the petitioner-company dilutes the case of the petitioner-company?
vi) Whether anybody can be allowed to be lynched on the whims of the employer without proving the guilt?

Analysis: i) Mere rendering a piece of evidence, as primary in nature, does not stand proof of the fact that guilt of a person has been proved rather for the purpose the prosecution-complainant is bound to prove the allegation(s).
ii) If the authenticity of the CCTV footage, being relied upon by the petitioner-company, is considered in the light of the afore-referred judgments of the Hon'ble Supreme Court of Pakistan, there leaves no ambiguity that without fulfillment of the required criteria, the same could not be relied upon to hold respondent No.1 guilty.
iii) The person who prepared or retrieved the CCTV footage from the computer has also not been produced in evidence, thus, it cannot be said that the petitioner-company proved the allegation against respondent No.1.
iv) It is very ironical to note that though the proceedings initiated against respondent No.1 on account of absence from duty through Show Cause Notice, dated 28.08.2012, were dropped but submission of two independent reports (Exh.P-17 and Exh.R-18) by the Inquiry Officer qua the proceedings started against respondent No.1 pursuant to Show Cause Notices, dated 08.08.2012 and 28.08.2012, stands proof of the fact that the inquiry proceedings against respondent No.1 were not conducted in a fair, transparent and impartial manner. If

proceedings initiated against respondent No.1, pursuant to Show Cause Notice, dated 28.08.2012, were subsequently dropped by the petitioner-company as to how the Inquiry Officer could submit any report in that regard.
v) Non-production of the Resolution of Board of Directors of the petitioner-company, authorizing the person to appear on behalf of the petitioner-company before the learned Single Bench, NIRC, dilutes the case of the petitioner-company.
vi) This Court has least sympathy with a person who is involved in any incident qua disturbing law and order situation in a concern but at the same time nobody can be allowed to be lynched on the whims of the employer without proving the guilt.

Conclusion: i) Mere rendering a piece of evidence, as primary in nature, does not stand proof of the fact that guilt of a person has been proved.
ii) CCTV footage cannot be relied upon without fulfillment of the required criteria.
iii) The person who prepared or retrieved the CCTV footage from the computer has not been produced in evidence, it cannot be said that the allegation against the guilty employee has been proved.
iv) If proceeding initiated against an employee pursuant to Show Cause Notice are subsequently dropped, the Inquiry Officer cannot submit any report in that regard.
v) Non-production of the Resolution of Board of Directors of the petitioner-company, authorizing the person to appear on behalf of the petitioner-company dilutes the case of the petitioner-company.
vi) Nobody can be allowed to be lynched on the whims of the employer without proving the guilt.

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31. **Lahore High Court**
Shehzad v. The State etc.
Criminal Misc. No.34710-B of 2023
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2023LHC4526.pdf

Facts: The petitioner seeks post arrest bail in case FIR registered for offence under Section 9(1)3C of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether non-submission of challan to the court in time makes the case of the accused one of further inquiry?
ii) Whether mere registration of criminal cases against the accused or his conviction is a fact sufficient to disentitle him to the grant of post arrest bail?

Analysis: i) Viable expeditious proceedings in the case are also a requirement of fair trial. In this case, it prima facie, seems that right of fair trial guaranteed by the Constitution stands infringed because of apparently willful abstaining from submission of challan to the Court in time. It prima facie, stinks mala fide on the part of concerned officials which makes this case one of further inquiry into

petitioner's guilt.

ii) It is unfortunately a growing phenomenon in our police culture that subordinate police officials book the persons having previous criminal record in narcotic cases by fabricating false evidence only to make the campaign or 'crackdown' ordered by the superior officers against the addicts or peddlers, successful that practice cannot at all be endorsed and encouraged. Order in the society is to be maintained and the crime is to be curbed by ensuring untainted justice for all… Learned Prosecutor has argued with vehemence the previous criminal record and his alleged conviction in two of the criminal cases yet as the petitioner has reasonably made out his case one of further inquiry into his guilt, mere registration of criminal cases against the petitioner and even his conviction in two of the referred cases is not a fact sufficient to disentitle him to the grant of post arrest bail.

Conclusion: i) Non submission of challan to the court in time makes the case of the accused one of further inquiry to grant the bail.

ii) Mere registration of criminal cases against the accused or even his conviction is not a fact sufficient to disentitle him to the grant of post arrest bail.

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32. **Lahore High Court**
Fatima Noon v. Zia-ul-Haq Noon & others
Writ Petition No.12264 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4556.pdf

Facts: Petitioners assailed orders passed by Civil Judge and Additional District Judge whereby petitioners' applications under Order I Rule 10 CPC and under Order VI Rule 17 CPC were concurrently dismissed.

Issue: Whether the revenue officials can be impleaded as necessary party in every civil case regarding attestation of mutation?

Analysis: Undeniably, impleading the revenue officials in every case is not a rule of universal application rather depends upon the peculiar facts and circumstances of each case. If the Court finds that impleadment of revenue functionaries is necessary for just decision, it can pass appropriate orders. They can also be summoned by either side or if considered necessary even as Court witnesses. It is notable that when connivance of the revenue officials with the defendant(s) in attesting any mutation is alleged in civil suit, the Province of the Punjab as well as the revenue officials against whom the connivance for attestation of the mutation is alleged, are the necessary party because no valid adjudication can be carried out and no finding can be recorded against them in their absence.

Conclusion: The revenue officials cannot be impleaded as necessary party in every civil case regarding attestation of mutation.

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33. **Lahore High Court**
Mst. Shamim Akhtar v. Ex-officio Justice of Peace, etc.
Writ Petition No. 37138/2023
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC4575.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has challenged the vires of order passed by the Ex-Officio Justice of Peace, whereby upon her petition under Section 22-A Cr.P.C. seeking registration of criminal case against the proposed accused, the said Court referred the matter to the CPO, for addressing her grievance.

Issues: i) Whether Ex-officio Justice of Peace vested with authority to refer the matter to CPO for addressing the grievance of the petitioner?
ii) Whether police officials being proposed accused can be given premium of inquiry prior to registration of case?
iii)Whether police has authority to ascertain the veracity of information disclosing commission of cognizable offence prior to registration of case?

Analysis: i) Ex-officio Justice of Peace vested with no authority to refer the matter to CPO, for addressing the grievance of the petitioner; that while dealing with the application U/S 22-A Cr.P.C. Ex Officio Justice of Peace is duty bound to pass a direction either for registration of case or its dismissal…
ii) Merely for the reasons that the proposed accused are police officials, they cannot be given premium of inquiry prior to registration of case…
iii) The context in which the word 'shall' used in Section 154 Cr.P.C. leads to an irresistible conclusion that the police has no authority/ discretion whatsoever to ascertain the veracity of information disclosing commission of cognizable offence prior to registration of case…

Conclusion: i) Ex-officio Justice of Peace vested with no authority to refer the matter to CPO for addressing the grievance of the petitioner.
ii) Police officials being proposed accused cannot be given premium of inquiry prior to registration of case.
iii) Police has no authority to ascertain the veracity of information disclosing commission of cognizable offence prior to registration of case.

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34. **Lahore High Court**
Sumaira v. The State etc.
Writ Petition No. 75596/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4535.pdf

Facts: Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks quashing of proceedings of the investigation wherein local police found that it was not a gang rape and

substituted section 375-A PPC with section 371-B PPC and a direction to the Respondents to reinvestigate the case in accordance with the law, i.e., section 9 of the Anti-Rape Act.

Issues: i) Whether the Anti-Rape Act is a remedial social statute and how it is to be interpreted?
ii) Whether Section 9 of the Anti-Rape Act is mandatory in nature?

Analysis: i) The Anti-Rape Act is a remedial social statute. If there is any doubt in the cases of remedial laws, it is resolved in favour of the class of persons for whose benefit the statute is enacted. The Anti-Rape Act aims to effectively deal with the rape and sexual abuse crimes mentioned in its Schedules committed against women and children. The courts must interpret the Anti-Rape Act liberally and purposively.
ii) Section 9 of the Anti-Rape Act provides a special procedure for investigating Scheduled Offences. The Anti-Rape Act is a special legislation that would prevail over any regular law on the subjects it addresses. Parliament has used the word "shall" in every sub-section therefore, this word connotes that the provision is obligatory.

Conclusion: i) The Anti-Rape Act is a remedial social statute and the courts must interpret the Anti-Rape Act liberally and purposively.
ii) Section 9 of the Anti-Rape Act is mandatory in nature.

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35. **Lahore High Court**
Imran Hameed etc. v. The State etc.
Criminal Misc. No.5151/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4565.pdf

Facts: A criminal case was registered with allegations that the Qadianis had built a worship place consisting of a room with a minaret, which is an architectural feature and a religious symbol important to Islam and it is an insult to the religious feelings of the Muslim population of the locality and a perpetual source of pain and anguish for them. Since the Petitioners are managing the affairs of that worship place, they are liable under the law. The Petitioners have applied for pre-arrest bail in that case by this application under section 498 Cr.P.C.

Issues: i) Whether section 298-B forbids the members of the Qadiani Group or the Lahori Group from using epithets, descriptions and titles designated for certain holy personages etc?
ii) Whether matter should be referred to a larger bench when there are conflicting views of two benches of equal strength?
iii) How the term "continuous crime" can be defined?
iv) Whether prosecution is bound to prove that the accused possessed mens rea when he committed the act which caused the actus reus to prove the offence?

Analysis: i) Section 298-B forbids the members of the Qadiani Group or the Lahori Group (who call themselves Ahmadis) from using epithets, descriptions and titles designated for certain holy personages. It also prohibits them from referring to, naming or calling their place of worship as Masjid, or by oral or written words or by visible representation referring to the call to prayers as "Azan" or reciting it like Muslims. Section 298-C criminalizes public propagation of the Qadiani/Ahmadi religion by any member of that community posing himself as Muslim or referring to his faith as Islam, thereby outraging the religious sensitivities of Muslims.

ii) It is settled law that when there are conflicting views of two Benches of equal strength, the matter should be referred to a larger Bench.

iii) A research article defines "continuous crime" as that specific form of legal unity of offence in which a crime is committed through multiple actions or inactions at different times based on a unique criminal intent and against a unique passive subject. Thus, to qualify as a continuous offence, a penal act must meet the following conditions: "the presence of a unit of a passive subject, the unit of an active subject, the performance of multiple actions or inactions that represent the contents of the same crime, at different periods of time and, last but not least, the condition that these actions or inactions be performed with a unique criminal intent ... The continuous form of legal unity of offence necessitates thoroughly examining each element of its content as a whole (as a unique crime) and of every deed that enters into its composition (as the plurality of acts)." The scholar further states that the causal relationship must be proven or follow from the very materiality of the deed, depending on the classification of the crime into one of the categories: material and formal crimes; or crimes of danger and violence…According to some authorities, there are two types of continuing offences: (a) crimes in which some acts material and essential to the crime occur in one area or province and some in another, (b) crimes in which all of the elements required for its completion may have occurred in a single place, but the violation of the law is deemed to be continuing due to the very nature of the offence committed. Examples of the first class are malversation and abduction, and libel is an example of the second category when a libelous matter is published or circulated from one place to another. The crime of jailbreak may also be included in the second class. The act of the escaped prisoner is a continuous or series of acts initiated by a single impulse and operated by an uninterruptible force, regardless of how long it lasts. It may not be correct to say that once a convict has escaped from the place of his confinement, the crime is consummated because as long as he continues to evade the service of his sentence, he is deemed to continue committing the crime, and may be arrested without a warrant, at any location where he may be found.

iv) It is a settled principle that the prosecution must prove that the accused possessed mens rea when he committed the act which caused the actus reus. However, as the case of Fagan explained, where an actus reus may be brought

about by a continuing action, it is sufficient that the accused had mens rea during its continuance, albeit he did not have mens rea at its inception.

Conclusion: i) Section 298-B forbids the members of the Qadiani Group or the Lahori Group from using epithets, descriptions and titles designated for certain holy personages etc.
ii) When there are conflicting views of two Benches of equal strength, the matter should be referred to a larger Bench.
iii) To qualify as a continuous offence, a penal act must meet the following conditions: "the presence of a unit of a passive subject, the unit of an active subject, the performance of multiple actions or inactions that represent the contents of the same crime, at different periods of time and, last but not least, the condition that these actions or inactions be performed with a unique criminal intent.
iv) Prosecution is bound to prove that the accused possessed mens rea when he committed the act which caused the actus reus to prove the offence.

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36. **Lahore High Court**
Ghulam Rasool and two others v. The State etc.
Crl. Misc. No.47626-B/2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC4560.pdf

Facts: A petition for grant of pre-arrest bail and a petition for grant of post arrest bail was filed in a case arising out of one and same F.I.R. registered under Sections: 302, 148, 149 PPC.

Issues: i) Whether in the cases falling in the prohibition contained in Section 497 Cr.P.C., grant of bail to a woman is a rule and refusal is an exception?
ii) Whether bail can be withheld as advance punishment?
iii) Whether it is better to err in granting bail than to err in refusal?
iv) Whether insistence of the Investigating Officer/police for arrest of accused is itself sufficient to reflect malafide on part of prosecution and accused in such circumstances is not required to produce any other evidence to prove the same?

Analysis: i) It is well settled that even in the cases falling in the prohibition contained in Section 497 Cr.P.C., grant of bail to a woman is a rule and refusal is an exception.
ii) It is trite law that bail cannot be withheld as advance punishment. Even otherwise bail is a procedural relief i.e. mere change of custody from State to surety and has no bearing on ultimate fate of the case.
iii) Liberty of a person is a precious right which has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. By now it is also well settled that it is better to err in granting bail than to err in refusal because ultimate conviction and sentence can repair the wrong resulted by a mistaken relief of bail.
iv) Insistence of the Investigating Officer/police for arrest of accused is itself sufficient to reflect malafide on part of prosecution and accused in such

circumstances is not required to produce any other evidence to prove the same.

Conclusion: i) In the cases falling in the prohibition contained in Section 497 Cr.P.C., grant of bail to a woman is a rule and refusal is an exception.
ii) Bail cannot be withheld as advance punishment.
iii) It is better to err in granting bail than to err in refusal.
iv) Insistence of the Investigating Officer/police for arrest of accused is itself sufficient to reflect malafide on part of prosecution and accused in such circumstances is not required to produce any other evidence to prove the same.

LATEST LEGISLATION / AMENDMENTS

1. Proviso to Rule 19 sub-rule (1) clause (f) of The Punjab Drug Rules, 2007 is substituted vide Notification No.SO (DC) 2-/2021.
2. Paras 2 & 3 of Schedule-V of The Punjab Police Special Branch (Intelligence Cadre) Service Rules, 2020 has been amended vide *Notification No.5575/Ad-VII.*
3. The Punjab Holy Quran (Printing and Recording) Rules, 2011 have been made and notified vide Notification No. (IBM)1-1/2010.
4. The Punjab Revenue Authority Employees (Appointment and Condition of Service) Rules, 2023 have been made and notified vide Notification No. SO(TAX)5-55/2020.
5. Serial numbers 92, 132, 137, 149, 150, 152 and 158 in schedule of the Punjab special Education Department (Directorate General of Special Education, Punjab) Service Rules, 2021 have been amended.
6. Amendments in Rule 1, sub-rule (1), in the schedule in the column number 1, after serial number 12-A and after serial number 20 of the Punjab Information Department Service Rules 1977 have been made.
7. Declaration of State Bank of Pakistan as "Collecting Agent" for class of persons in given column for the purpose of collection of tax and deposit into Government treasury under the Punjab Sales Tax on Services Act, 2012 and rules made thereunder vide notification of Punjab Revenue Authority, Finance Department No.PRA.32-24/2022/561 dated 05.07.2023.
8. Re-organization of all Enforcement Ranges/Units at PRA (Headquarters) Operations), Lahore, vide Notification No. PRA/Order 06/2017. Vol (V)/310.
9. Amendments have been made at serial number 13 in column number (4), at serial number 22 in column number 2 & 4, at serial number 24 in column number, at serial number 37 & 69 of second schedule of the Punjab Sales Tax on Services Act, 2012.
10. Declaration of mauzas Dandian, Rasool Pur, Khair Din Pur, Bukanwal, Jada, Qadian and Karolwar as urban areas vide Notification No.1788-2023/1206-ST(I).
11. Amendments in the part-II- clause 4, 8 and sub-clause 15, part-III clause 18 to 20, Annexure 0I & Annexure V of the Punjab Safe Cities Authority (PSCA)

Service Regulations, 2017 have been made vide Notification No. 6982/Legal/PSCA/23.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/THE-EVOLUTION-OF-JURISPRUDENCE-BEHIND-DUE-PROCESS-OF-LAW

The Evolution of Jurisprudence "Behind Due Process of Law" by Nandu Dangi

The word 'jurisprudence' is derived from the combination of two Latin words 'Juris' and 'Prudentia'. The word 'Juris' means law while the word Prudencia means knowledge. Thus the literal meaning of Jurisprudence is 'knowledge of the law'. In reality, it is not just knowledge of the law but systematic knowledge of the law that is why 'Salmond' has described jurisprudence as the 'Science of Law'. Here 'Science' means the systematic study of the subject. According to Moyle, the ultimate goal of jurisprudence is generally the same as that of any other science. This is the reason why jurisprudence is called a precise and systematic study of the principles of law. Fitzgerald considers jurisprudence as the science of law as a special kind of investigation or investigation. The purpose of this research is to determine the basic principles of law and the legal system. But the nature of this investigation is abstract, general, and theoretical. Jurisprudence and legal theory have been used in similar meanings and sometimes in unequal senses. The word 'jurisprudence' has been used in the title of the books of jurisprudence by Pound, Patton, Dias, and Salmond, while the title of the books of Friedman and Finch 'Legal principle'. Prima facie, from the use of two different meanings, it appears that the meaning and scope of both are different. This appears to be due to the approaches to analysis, description, and formulation of the method. In the Anglo-Saxon countries and British colonies, the meaning of jurisprudence has been taken to mean a special type of analytical study which presents the study of the status quo legal system based on rationality. This can be considered the tradition of Bentham, Austin, and Kelsen. This study is purely logical and empirical, its task is to ensure stability and legal justice. It ignores the objectives of the method.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/INCOMING-AND-OUTGOING-PARTNERS-IN-A-FIRM

Incoming and Outgoing Partners in A Firm by Stuti Kushwaha

The Partnership is so-called a contract that has been defined under Section 4 of the Indian Partnership Act 1932. Under this section, a partnership can be defined as a contract between 2 or more authorized persons according to their will. Understanding that there will be profit sharing between the partners and investing their capital, skills, and money in the business. There may be other general categories to distinguish between

the partners but Incoming and Outgoing Partners are the two basic categories that define the types of partners in a Partnership Firm.

3. MANUPATRA

https://articles.manupatra.com/article-details/AN-ANALYSIS-OF-PREVENTION-OF-MONEY-LAUNDERING-ACT

An Analysis of Prevention of Money Laundering Act by Hritik Verma

A law that prohibits money laundering and makes provisions for the seizure of assets obtained via money laundering, including those implicated in it, as well as anything related to or incidental to it. A strategy or process used to disguise the origin, source, location, position, and mobility of a crime or to give a legal picture of the crime's proceeds is money laundering, which is the act of hiding the crime's proceeds and merging them into the legitimate financial system. The financial sector's erosion has a detrimental impact on the economy. Various areas, including money demand, growth, income distribution, etc., are impacted by money laundering. This article clarifies the rulings rendered in the situations of money laundering that are discussed. Additionally, the actions made to combat the issue of money laundering.

4. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/liquidated-damages-disproportionate-to-actual-damages-deemed-unenforceable

Liquidated Damages Disproportionate to Actual Damages Deemed Unenforceable by John Mark Goodman

Construction contacts often include provisions that provide for pre-determined or "liquidated" damages in the event of a breach. Such provisions can provide certainty to the parties as to the consequences of a breach and can simplify the task of proving up damages at trial. However, as one contractor found out recently, courts may refuse to enforce liquidated damages provisions if the amount specified is disproportionate to the actual damages (see Smart Construction & Remodeling v. Suchy, 2023 WL 5525071 (Minn. Ct. App. August 28, 2023). Smart Construction involved a contract to repair a home in exchange for insurance proceeds. In negotiating the cost of repairs with the insurance company, the contractor submitted an estimate showing that it would receive 10% overhead and 10% profit on the job. After the contractor had reached agreement with the insurance company, the owner elected to forego the repairs. The contractor sued the owner for breach. The contract provided that in the event of a breach by the owner, the contractor would be entitled to 30% of the contract value as liquidated damages. The jury found that the owner breached the contract and awarded the contractor 30% liquidated damages.

5. THE YALE LAW JOURNAL
https://www.yalelawjournal.org/article/separation-of-powers-avoidance

Separation-of-Powers Avoidance by Z. Payvand Ahdout

When federal judges are called on to adjudicate separation-of-powers disputes, they are not mere arbiters of the separation of powers. By resolving a case (or declining to), federal courts are participants in the separation of powers. Stemming from this idea, this Article introduces the concept of separation-of-powers avoidance. Judges employ familiar techniques to avoid compelling high-level coordinate-branch officials to act. Undertaking an original review of cases ranging from executive privilege to Congress's subpoena power to congressional standing, this Article documents and models separation-of-powers avoidance. It explores how courts have dug a protective moat around the separation of powers through trans-doctrinal principles that can, if taken beyond the courtroom, distort the interpretation of the separation of powers. From constitutional rights to statutory interpretation, scholarship has recognized that judicial expositions of legal principles are not necessarily coterminous with underlying law. This Article extends that insight to the structural Constitution. It then theorizes this form of avoidance as a phenomenon reflecting uniquely judicial considerations. Finally, it offers normative prescriptions for the resolution of separation-of-powers conflict outside of federal courts. Separation-of-powers doctrine refracted through the lens of avoidance should not be taken outside of the courtroom. Bilateral negotiations between Congress and the President should not incorporate this form of doctrine, and both public and legal discourse should adjust to account for avoidance's distortionary effects on the structural Constitution.

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FORTNIGHTLY CASE LAW BULLETIN

(16-09-2023 to 30-09-2023)

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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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Muhammad Hanif v. The State
Criminal Appeal No.528 of 2019 in Jail Petition No. 327of 2018
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Munib Akhtar. Mr. Justice Sayyed Mazahar Ali Akbar Naqvi,
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._528_2019.pdf

Facts: Criminal appeal, by leave of the Court, is directed against the impugned judgment of learned Division Bench of Lahore High Court, passed in Capital Sentence Reference and Criminal Appeal whereby the conviction of the appellant under section 302(b), 324, 186, 353, PPC read with section 7 Anti-Terrorism Act, 1997 awarded by the Special Judge, Anti-Terrorism Court, was upheld but his sentence of death under section 302(b) PPC and under section 7 Anti-Terrorism Act,1997 was converted into imprisonment for life.

Issues: i) What nature of cases can be entertained under The Anti-Terrorism Act?
ii) Whether accused can be charged for an offence, if the same is committed in one series of acts forming one and the same transaction?
iii) Whether conviction could be recorded on the basis of ocular account only?
iv) In case of contradiction between ocular account and distance mentioned in site plan, which one would have precedence over the other?
v) What is the purpose of making site plan and what is the evidentiary value of the site plan?
vi) What is the litmus test to evaluate the veracity of the prosecution witnesses of ocular account?
vii) What is the rule of thumb when there is contradiction in between the ocular account and medical evidence qua the number of injuries?

Analysis: i) The preamble of The Anti-Terrorism Act has broadly classified jurisdiction to entertain cases relating to (a) terrorism, (b) sectarian violence and for speedy trial of (c) heinous offences and for matters connected therewith and incidental thereto. Section 6 of the Anti-Terrorism Act, 1997 has defined and categorized cases falling within the definition of terrorism.
ii) Although the petitioner has committed the crime at two different places commencing from the court premises and finally when he reached in front of Rana Abdul Sittar Tea-stall which is at distance of 1 ½ kilometers it would be presumed one and the same transaction as per the spirit of law. As the act of the petitioner was in continuation till its conclusion and this aspect is fully covered by provision of section 235 Cr.P.C.
iii) The evidence of prosecution witnesses of the ocular account if found reliable, the same is sufficient to record conviction without any other corroborative piece of evidence.
iv) It is established that the statement of prosecution witnesses of the ocular account if contradictory to site plan it would have precedent over the distance mentioned in the site plan.

v) Even otherwise, site plan is not a substantive piece of evidence having no legal sanctity. The purpose behind the preparation of site plan is to explain or give a glimpse of the occurrence in black and white enabling the concerned to appreciate the facts of the case in a more rational way.

vi) The litmus test to evaluate the veracity of the prosecution witnesses of ocular account depends being independent, reliable, trustworthy and confidence inspiring.

vii) The evidence of the expert is only confirmative in nature. If there is contradiction in between the ocular account and medical evidence qua the number of injuries, the rule of thumb is that the preference would be given to the ocular account as the statement of prosecution witnesses of ocular account is always placed at a higher pedestal as compare to the medical evidence. The rationale behind such strict construction of the rule of thumb is that firstly, expert evidence is confirmatory in nature based upon opinion of an expert which can be influenced by so many factors (a) lack of expertise (b) lack of knowledge (c) defective technique (d) variation in observation (e) lack of coordination with subordinate staff and possibility of obliging concession extended in favour of either of the party due to extraneous consideration.

Conclusions: i) The cases relating to (a) terrorism, (b) sectarian violence and for speedy trial of (c) heinous offences and for matters connected therewith and incidental thereto can be entertained under The Anti-Terrorism Act.

ii) Yes, if the series of incident qua the occurrence relates to one and the same transaction then the same is fully covered by provision of section 235 Cr.P.C.

iii) The evidence of prosecution witnesses of the ocular account if found reliable, the same is sufficient to record conviction without any other corroborative piece of evidence.

iv) The statement of prosecution witnesses of the ocular account if contradictory to site plan then ocular account would have precedent over the distance mentioned in the site plan.

v) The purpose behind the preparation of site plan is to explain or give a glimpse of the occurrence enabling the concerned to appreciate the facts of the case in a more rational way and the same is not a substantive piece of evidence.

vi) The litmus test to evaluate the veracity of the prosecution witnesses of ocular account depends on being independent, reliable, trustworthy and confidence inspiring.

vii) The rule of thumb in case of contradiction between the ocular account and medical evidence qua the number of injuries is that the preference would be given to the ocular account.

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2. **Supreme Court of Pakistan**
Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad v. Mr. Fazal-e-Subhan & other and other respondents
Civil Petitions No. 2314, 2317, 2318 of 2022 and C.M.A.863-P, 866-P & 869-P/2022 in C.Ps. NIL of 2022
Mr. Justice Munib Akhtar, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2314_2022.pdf

Facts: These Civil Petitions for leave to appeal are directed against the judgment passed by the Peshawar High Court whereby the writ petitions were allowed and the decision of the Parliamentary Committee was set aside with the directions to the Federal Government to implement the recommendations of the Judicial Commission of Pakistan and issue the notification for the appointment of Additional Judges of the Peshawar High Court.

Issues: i) Whether decision of the Supreme Court is binding on all other courts in Pakistan?
ii) What procedure for appointment of Judges is provided under Article 175A of the Constitution by means of the Commission?
iii) What is procedure of Judicial Commission for appointment of judges of Superior Courts under JCP Rules, 2010?
iv) What is the procedure of Parliamentary Committee for appointment of judges of superior courts under PC Rules, 2010?
v) Whether Chief Justice of respective court has authority to initiate and send nominations for appointment against vacancy of a Judge to the Chairman of the Commission?
vi) Whether Parliamentary Committee has power to act as an appellate forum for the Commission, or has any authority to remand the nomination for reconsideration to the Commission?
vii) What is principle of interpretation of the Constitution?
viii) Whether seniority or length of service solely is to be considered for promotion or elevation to the particular post?
ix) Whether Parliamentary Committee can review the majority decision or recommendation rendered by the Judicial Commission?
x) Whether Parliamentary Committee can be considered an ineffectual or superfluous corpus?
xi) Whether Judicial Commission and Parliamentary Committee can be considered adversarial constitutional bodies?
xii) How doctrine of Stare Decisis can be defined?
xiii) What is value of doctrine of precedents vis-à-vis stare decisis in judicial system of Pakistan?

Analysis: i) The exactitudes of Article 189 of the Constitution command that 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. Reference to the case of Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483) is somewhat pertinent in which it was concluded by this Court that where the Supreme Court deliberately, and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan. It cannot be treated as mere obiter dictum. It was further held that even obiter dictum enjoys a highly respected position as if "it contains a definite expression of the court's view on a legal principle or the meaning of law".

ii) The procedure for appointment of Judges is provided under Article 175A of the Constitution by means of the Commission. In pith and substance, the aforesaid Article articulates a collegium for the appointment of Judges of the Supreme Court, appointment of the Chief Justice and Judges of a High Court, and the Chief Justice and judges of Federal Shariat Court. According to the niceties of sub-article (8), the Commission by majority of its total membership nominates to the Committee the person for each vacancy of a judge. Whereas subarticle (9) establishes the collegium referred to as the Committee and, in view of sub-article (12), the Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed. It is further enumerated that the Committee, for reasons to be recorded, may not confirm the nomination by a three-fourth majority of its total membership, and, if a nomination is not confirmed by the Committee, it shall forward its decision with reasons so recorded to the Commission through the Prime Minister and, thereafter, the Commission shall send another nomination.

iii) In exercise of the powers conferred by sub-article (4) of Article 175A of the Constitution, the Commission vide S.R.O.122(KE)/2010, framed the Judicial Commission of Pakistan Rules, 2010 ("JCP Rules"). According to Rule 3, for each anticipated or actual vacancy of a Judge in the Supreme Court, or the Chief Justice of the Federal Shariat Court, or the Chief Justice of a High Court, the Chief Justice of Pakistan shall initiate nominations in the Commission for appointment against such vacancy and, according to sub-rule (2), for each anticipated or actual vacancy of a Judge in the Federal Shariat Court or Judge in the High Court, the Chief Justice of the respective Court shall initiate and send the nomination for appointment against such vacancy to the Chairman for convening a meeting of the Commission. Compliant with Rule 4, the proceedings of the Commission are to be regulated by the Chairman and the proceedings of the Commission shall be conducted under Rule 5 and whenever a nomination is received under Rule 3, the Chairman shall call a meeting of the Commission on the date, time and place determined by him and notified by the Secretary to each member. While in sub-rule 2 of Rule 5, the Commission may call for any information or record required by it from any person or authority for the purposes of carrying out its functions and, under Sub-rule 3, the nominations made by the Commission are forwarded to the Committee. Under Rule 6, the Chairman may

constitute one or more committees of members for such purpose as may be deemed necessary.

iv) Pursuant to the powers conferred by sub-article (17) of Article 175A of the Constitution, the Committee vide S.R.O.11(1)/2011, dated 06.01.2011, also framed the Parliamentary Committee on Judges Appointment in the Superior Courts Rules 2010 ("PC Rules"). Consistent with Rule 3, the Committee has the powers to summon or invite any person or call for any information or record required by it from any person or authority for the purpose of carrying out its functions and may also call the person nominated for a judicial vacancy for an interview. According to the functions of the Committee enumerated under Rule 4, the nomination received by the Secretary from the Commission shall be placed before the Chairman for calling a meeting of the Committee and, as per sub-rule (2) of Rule 4, the Committee, after considering the nomination, may confirm the nominee by a majority of its total membership within fourteen days of the receipt of the nomination, failing which the nomination shall be deemed to have been confirmed. However, under sub-rule (3) of Rule 4, it is further explicated that the Committee, for reasons to be recorded, may not confirm the nomination by a three-fourth majority of its total membership within the said period and, according to sub-rule (4), the Committee in case of non-confirmation shall forward its decision with reasons to the Commission through the Prime Minister for sending another nomination.

v) The learned Addl. AGP raised an argument that the hon'ble Chief Justice of Pakistan ("HCJP"), acting as the Chairman of the Commission, cannot initiate the nomination, rather it is the power of the Commission as a whole; and initiating the process of appointment at the sole discretion of the HCJP is violative of the principles of natural justice. The Rules framed by the Commission and the Committee pursuant to Article 175A of the Constitution (the "Rules") are both very much in field and have never been challenged before any forum. In exercise of the powers delegated under the aforesaid Rules, the HCJP has the authority to initiate nominations in the Commission for the appointment for each anticipated or actual vacancy of a Judge in the Supreme Court, or the Chief Justice of the Federal Shariat Court, or the Chief Justice of a High Court; and for each anticipated or actual vacancy of a Judge in the Federal Shariat Court or Judge in the High Court, the Chief Justice of the respective Court shall initiate and send nominations for appointment against such vacancy to the Chairman of the Commission, the HCJP, for convening a meeting of the Commission. The argument is misconceived in view of the existing Rules framed under Article 175A of the Constitution.

vi) A reading of Article 175A of the Constitution makes it abundantly clear that two different limbs have been created to examine and scrutinize the nominations of judges for appointment in the superior Courts, but it is apparent that the Committee is neither vested with any role to act as an appellate forum for the Commission, nor does the Committee have any right or authority to remand the nomination for reconsideration to the Commission. The role of the Committee is

confined to the confirmation, or non-confirmation, of the name nominated and, in case the nomination is not confirmed, the reasons thereof shall be sent to the Commission for sending another nomination. Here the Committee remanded the matter to the Commission for fresh consideration due to the alleged seniority issue, which exercise of powers by the Committee is alien to Article 175A of the Constitution. The independence of the Judiciary is a basic principle of constitutional governance in Pakistan… The role and powers assigned to the Commission and Committee in the Constitution as two of the most important limbs of the judicial appointment process is also to be vetted under the doctrine of harmonious interpretation which is akin to the notion of an extensive approach within the basic structure and constitutional scheme.

vii) It is a well settled exposition of law that a written constitution is, in essence, a form of statute which needs to be interpreted liberally. It is also a well settled principle of interpretation that the Constitution has to be read holistically as an organic document which contemplates the trichotomy of powers between the three organs of the State, namely, the Legislature, the Executive, and the Judiciary. The doctrine of pith and substance lays much emphasis on comprehending and figuring out the exact characteristics of constitutional provisions. The concept of purposive interpretation places an obligation upon the Courts to interpret the statute or the Constitution keeping in mind the purposefulness for which the provision in question was legislated with a dynamic and result oriented approach rather than construing it in a restrictive or stringent sense. According to Salmond's Jurisprudence, interpretation or construction is the process by which the courts seek to ascertain the meaning or intention of the legislature through the medium of the authoritative forms in which it is expressed. The interpretation of the Constitution becomes more important when there is a need to harmonize it with the democratic principles of the State.

viii) In view of the fact that the elevation of District Judges corresponds with and reckons from the service cadre, therefore for all practical purposes, the guiding principle as accentuated and envisioned in the civil servant structure may be contemplated to appreciate the phraseology of seniority-cum-fitness and/or seniority-cum-merit. In fact, the seniority system is fundamentally an arrangement which acknowledges and corroborates the length of service for consideration of the dossier by the Departmental Promotion Committee or Selection Board under Civil Service for promotion or any other progression. However, while considering the eligibility for promotion or progression, the predominant factor is not solely seniority, instead it is always coupled with fitness and/or merit. Seniority or length of service is not considered a solitary benchmark or standard, in fact competence, antecedents and credentials are also predominant components for progression to the particular post. In the normal course of things, fitness comes first and seniority is given weightage when merit and ability are more or less equivalent among the contenders. One view is that meritocracy is a system in which talented and hardworking personnel are chosen for promotions based on achievements and not because of their seniority or length of service. In the case of

Muhammad Amjad versus Director General, Quetta Development Authority and another (2022 SCMR 797 = 2022 PLC(CS) 594), it was held that the promotion is not a vested right, but it depends on the eligibility as well as fitness of the candidate. The concept of eligibility implies a qualification to be appointed or promoted, whereas determination of fitness encompasses a person's competence to be chosen or selected for appointment or promotion subject to the availability of post on which the credentials and antecedents of person could be examined for examining his merits and worthiness for promotion. In the case of State of Mysore versus Syed Mahamood and others (AIR 1968 SC 1113), it was held that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. But these are not the only modes for deciding whether promotion is to be granted or not.

ix) The majority decision or recommendation rendered by this Commission cannot be made subject to review by the Committee whose dominion and province of expertise is entirely different. The Commission and Committee are both obligated and duty-bound to act within the spheres of their dominions and command. The realm of powers and jurisdiction of the Commission within the framework of the collegium is to evaluate the professional caliber, judicial skill, legal acumen, personal conduct and suitability of the nominees, which terminus cannot be trespassed or encroached on by the Committee under the region of its powers… The Committee cannot make their decision on the basis of minority views expressed during discussion but in totality; the majority discussion must be considered and in case of a variance of opinion, the Committee should provide independent reasoning and the decision should not be based on guesswork or picking and choosing the points from the gist of discussion recorded in the minutes of meeting of the Commission. Under the mandate of Article 175A of the Constitution, the Committee may confirm or may not confirm the candidate with reasons, but there is no power vested in the Committee to call upon the Commission to reconsider the nominations… The threshold of professional skills, calibre, competence, legal acumen, antecedents and over-all suitability of the nominees were considered by the Commission through a collegium of experts in the discipline of law which could not be overturned by the Committee in a perfunctory and unreasonable manner which would frustrate the very purpose of the Commission and render it redundant.

x) At the same time, we are sanguine and mindful that the Committee cannot be considered an ineffectual or superfluous corpus, rather it has the capability and competence to complement value added role in bringing forth judicial appointments by taking into consideration material which is different from and may not have been available to the Commission. The Committee may examine and gauge the antecedents, such as character, moral and or financial integrity and can reach an independent decision on the basis of factual data, if any, collected by them and which was not before the Commission, and communicate its

independent reasoning in order to avoid any controversial appointment.

xi) A rational demarcation of roles of two constitutional bodies cannot be considered adversarial or on the warpath. Quite the opposite, the object of both bodies is to ensure the appointment of the most suitable and deserving persons as Judges of superior Courts. In the Munir Hussain Bhatti case (supra), this Court laid out the basic elements and fundamentals required to be considered for the appointment of judges, namely acumen, antecedents, caliber, competence, conduct, integrity and suitability.

xii) The doctrine of Stare Decisis is a Latin term that connotes "let the decision stand" or "to stand by things decided". Similarly, the Latin maxim Stare decisis et non quieta movere means 'to stand by things decided and not to disturb settled points'. This represents an elementary canon of law that Courts and judges should honor the decisions of prior cases on the subject matter which maintains harmony, uniformity and renders the task of interpretation more practicable and reasonable while adhering to it for resolving a lis based on analogous facts. The terminology "vertical stare decisis" explicates that the decisions of higher courts should take precedence over the decisions of lower courts which is intensely embedded in the American legal system. Whereas the concept of "horizontal stare decisis" provides that prior decisions made by courts at a particular appellate level should provide some precedent for cases heard by courts of the same appellate level, however horizontal stare decisis is generally seen to be less forceful as compared to vertical stare decisis.

xiii) The doctrine of binding precedent has the excellence of fostering and disseminating firmness and uniformity and also supports the development of law. The doctrine of stare decisis is to be adhered to as long as an authoritative pronouncement holds the field, until and unless the dictates of compelling circumstances fortified by rationale justify the exigency of a fresh look for judicial review which has not been done so far for revisiting the dicta laid down in the case of Munir Hussain Bhatti case (supra) which has binding effect under the doctrine of binding precedent. No doubt according to the hierarchical façade and veneer of our judicial system, the dominant consideration is that the law declared by this Court should be certain, translucent and rational, as most of the decisions not only constitute a determination of rights of the parties, but also set down a declaration of law in service being a binding principle in future cases as a valuable tool of development in the jurisprudence of law… At this juncture, we cannot ignore the doctrine of precedents vis-à-vis stare decisis, since both have fundamental values engrained in our judicial system to ensure an objective of certitude and firmness. Judicial consistency advocates and encourages the confidence in the judicial system and to achieve this consistency, the Courts have evolved the aforesaid rules and principles which are grounded in public policy.

Conclusion: i) Decision of the Supreme Court to the extent that it decides a question of law or is based upon or enunciates a principle of law, is binding on all other courts in Pakistan.

ii) Procedure for appointment of Judges is provided under Article 175A of the Constitution by means of the Commission as mentioned above in analysis No. ii.
iii) Procedure of Judicial Commission for appointment of judges of superior courts under JCP Rules, 2010 is mentioned above in analysis No. iii.
iv) Procedure of Parliamentary Committee for appointment of judges of Superior Courts under PC Rules, 2010 is mentioned above in analysis No. iv.
v) The Chief Justice of respective court has authority to initiate and send nominations for appointment against vacancy of a Judge to the Chairman of the Judicial Commission.
vi) Parliamentary Committee has no power to act as an appellate forum for the Commission, or has any authority to remand the nomination for reconsideration to the Commission.
vii) Constitution needs to be interpreted liberally and be read holistically as an organic document.
viii) Seniority or length of service solely is not to be considered for promotion or elevation to the particular post but competence, antecedents and credentials are also predominant components.
ix) Parliamentary Committee cannot review the majority decision or recommendation rendered by the Judicial Commission.
x) Parliamentary Committee cannot be considered an ineffectual or superfluous corpus.
xi) Judicial Commission and Parliamentary Committee cannot be considered adversarial constitutional bodies and the object of both bodies is to ensure the appointment of the most suitable and deserving persons as Judges of superior Courts.
xii) The doctrine of Stare Decisis is a Latin term that connotes "let the decision stand" or "to stand by things decided". It may be vertical stare decisis or horizontal stare decisis.
xiii) The doctrine of precedents vis-à-vis stare decisis have fundamental values engrained in judicial system of Pakistan to ensure an objective of certitude and firmness and it cannot be ignored.

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3. **Supreme Court of Pakistan**
Pakistan Railways through its Chief Executive Officer/Senior General Manager, Lahore & another v. Muhammad Aslam
Civil Petition No.3501 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/c.p._3501_2021.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by the Federal Service Tribunal, whereby, the appeal filed by the instant respondent was accepted and the impugned order was set aside with the direction to the petitioner-department to permit the respondent to continue his service as Guard Grade-I on the analogy of the similarly placed official absorbed as Guard Grade-I.

Issues: i) Whether the power of rescission remains with the relevant authorities to undo the action till a decisive step is taken or as long as certain rights are not created or the action was found to be patently illegal?
ii) Whether the right to sue survives except the right to sue which is closely associated with the individual or is a personal right of action?

Analysis: i) It is a well settled exposition of law that the power of rescission remains with the relevant authorities to undo the action till a decisive step is taken or as long as certain rights are not created or the action was found to be patently illegal.
ii) According to the Latin legal maxim "actio personalis moritur cum persona" the personal right to an action dies with the person. There are certain categories of legal proceedings or lawsuits in which the right to sue is personal and does not survive or pass on to the legal representatives and, as a consequence thereof, the proceedings are abated. In case of survival of cause of action, according to the genres of the lis, the legal representatives may be impleaded to continue the suit or other legal proceedings for which the relevant provisions are mentioned under Order XXII, Rule 1, C.P.C, i.e. that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives, and further modalities are mentioned in succeeding rules such as how to implead the legal heirs in case of death of one of several plaintiffs or the sole plaintiff and in case of death of one of several defendants or of the sole defendant. By and large, the right to sue survives except the right to sue which is closely associated with the individual or is a personal right of action.

Conclusion: i) The power of rescission remains with the relevant authorities to undo the action till a decisive step is taken or as long as certain rights are not created or the action was found to be patently illegal.
ii) The right to sue survives except the right to sue which is closely associated with the individual or is a personal right of action.

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4. **Supreme Court of Pakistan**
Chief Secretary, Govt. of Balochistan and others v. Masood Ahmed and another
Civil Appeals No.40-Q of 2018
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._40_q_2018.pdf

Facts: Through this civil appeal the Provincial Government through its Chief Secretary sought leave against the impugned judgement of Service Tribunal, being aggrieved with the specific observations/directions issued to them.

Issues: i) Whether re-joining the department is a condition precedent for a deputationist for his consideration for promotion by the Board?
ii) Whether creation of a new post for the purpose of proforma promotion is a policy decision and the Service Tribunal(s) can exercise such executive authority?

Analysis: i) The Government of Balochistan has framed the Balochistan Province Civil Servants Deputation Policy ("Deputation Policy"), Para 4(iii) whereof stipulates that "a deputationist shall not be promoted in absentia in his parent department, if he becomes due during the period of his deputation unless he rejoins." As per the Deputation Policy, re-joining the department is a condition precedent for a deputationist for his consideration for promotion by the Board.

ii) Under section 5(1) of the Service Tribunals Act, 1973, the Tribunal on an appeal of an aggrieved person, is empowered to confirm, set-aside, vary, or modify the order appealed against. The power of the Tribunal has been enshrined in the Act; thus, it cannot go beyond what the law states. Creation of a post is a policy decision, based upon the requirements of a department and involves economic factors, which is the sole discretion and executive authority to be exercised by the Government alone. The Tribunal cannot assign to itself such executive function, nor can it grant relief not provided under the law. It is supposed to apply the law in its true letter and spirit.

Conclusion: i) Yes**,** re-joining the department is a condition precedent for a deputationist for his consideration for promotion by the Board.

ii) Yes, creation of a new post for the purpose of proforma promotion is a policy decision and the Service Tribunal(s) cannot exercise such executive authority.

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5. **Supreme Court of Pakistan**
Parina Haresh and 19 others v. The Govt. of Balochistan and 16 others
Civil Petition No. 178-Q of 2023
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._178_q_2023.pdf

Facts: The procedure for filling posts in BPS 1 to 14 in the Agriculture and Cooperatives Department, Government of Balochistan (GoB) is challenged before the court.

Issue: What would be the procedure for the initial recruitment of candidates in BPS 1 to 15 when no mechanism for tests and interviews is provided in Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 (the AP&T Rules)?

Analysis: The AP&T Rules do not specify any objective selection procedure, criteria, mechanism, or guidelines for a particular post, nor do they provide the procedure and/or method to be adopted for the purpose of assessing the competence, ability, technical skills, behaviour, and strength of the candidates through the tests and interviews, if so conducted, in order to put the right person in the right job which is of utmost importance. However, if any vacant post(s) is/are urgently required to be filled, the GoB may requisition the posts to the Commission as provided by Rule 3(1)(b) of the BPSC Functions of 2023 Rules or may engage the services of a reputable institution having a faculty and expertise in human resources, preferably a statutory institution such as the Institution of Business Administration, Karachi ("IBA") for the purpose of conducting tests and

interviews. While doing so, the GoB must evolve a yardstick approach for selection of such an institution. As there is no set procedure for the purpose of making papers, checking of answer papers by person(s) competent to do so, and conducting tests and interviews, therefore, the Committee may continue to perform its functions only with regard to inviting applications through publication, the scrutiny process, and shortlisting of the eligible candidates for their appearance in the tests and interviews by following the applicable rules. Besides, the process of requisitioning the posts, if any, to the Commission or any other reputable institution, be routed through the already notified Committee. The Committee must strictly observe the quota reserved under the law, rules, and policy for regions/districts/union councils, wards, minorities, women, persons with disabilities, etc., notwithstanding anything contained in Rules 15 and 16 of the AP&T Rules. After completion of the entire selection process and compiling of the result received from the testing authority/institution, it is the responsibility of the Committee(s) to recommend candidates for their appointments to the competent authorities. Rule 4 of the AP&T Rules prescribes the authorities competent to make such appointments. However, the GoB is required to address all the stated issues by suitably amending the AP&T Rules so as to promote and guarantee selection of candidates on merits, in order to appoint persons who are best qualified.

Conclusion: See above.

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6. **Supreme Court of Pakistan**
Sanaullah Sani v. Secretary Education Schools etc.
Civil Petition No.1276 of 2020
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1276_2020.pdf

Facts: This petition is by a retired government teacher seeking leave to appeal against the judgment of the Service Tribunal upholding the punishment imposed on him on the culmination of the disciplinary proceedings.

Issues: i) What is show cause notice?
ii) What are the essential elements of show cause notice as per law?
iii) What will be the effect if essential elements of show cause notice are not complied with?

Analysis: i) Various provisions of the PEEDA suggests that a show cause notice is not an accusation made or information given in abstract but an accusation made against an employee in respect of an act committed or omitted, cognizable thereunder.
ii) The law intends that a show cause notice must conform to at least seven essential elements, and these include: (a) it should be in writing and should be worded appropriately; (b) it should clearly state the nature of the charge(s), date, and place of the commission or omission of acts, along with apportionment of responsibility; (c) it should clearly quote the clause of the PEEDA under which

the delinquent is liable to be punished; (d) it should also indicate the proposed penalty in case the charge is proved; (e) it should specify the time and date within which the employee should submit his explanation in writing. It is also preferable to add in the show cause notice that if no written explanation is received from the accused within the prescribed date, the enquiry will be conducted ex-parte; (f) it should be issued under the signature of the competent authority and (g) it should contain the time, date and place of the inquiry and the name of the inquiry officer.
iii) Strict compliance of the essential elements of show cause notice is vital so that the principle of natural justice is not violated. It is thus emphasised that the charges made in the show cause notice should not be vague. All the acts of commission or omission constituting the charge, and also forming the ground for proceeding against the employee, should be clearly specified because otherwise, it will be difficult for an employee, even by projecting his imagination, to discover all the facts and circumstances that may be in the contemplation of the competent authority to be established against him, and thus, it will not only frustrate the requirement of giving him a reasonable opportunity to put up a defence but also amount to a violation of his fundamental right to a fair trial.

Conclusion: i) Show cause notice is an accusation made against an employee in respect of an act committed or omitted, cognizable thereunder.
ii) See the clause ii in analysis portion.
iii) If essential elements of show cause notice are not complied with, it will not only frustrate the requirement of giving a reasonable opportunity to put up a defence but also amount to a violation of the fundamental right to a fair trial.

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7. **Supreme Court of Pakistan**
Muhammad Yaseen and another v. Province of Sindh through its Secretary Education and Literacy Department Govt. of Sindh at Karachi and others
Civil Petitions No.903, 904, 905, 906 & 907 of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._903_2023.pdf

Facts: These civil petitions are brought to challenge the consolidated judgment passed by the High Court whereby the constitution petitions were dismissed mainly on the ground that the petitioners have failed to prove that their appointments were made through the competitive process and their documents were also not found to be genuine.

Issues: i) Whether it is the obligation of the concerned authority to provide right of audience before any prejudicial action is taken against the delinquent?
ii) What is vested right?
iii) Whether it is a principle of law that an order once passed becomes irrevocable and a past and closed transaction?

Analysis: i) Right of audience is a fundamental right enshrined under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973. The doctrine of natural justice is grounded on the astuteness and clear-sightedness of affording a right of audience before any prejudicial action is taken, therefore it is an inescapable obligation of all judicial, quasi-judicial and administrative authorities to ensure justice according to the sagacity of the law.

ii) By and large, a vested right is a right that is unqualifiedly secured and is not conditional on any particular event or set of circumstances. In fact, it is a right independent of any contingency or eventuality which may arise from a contract, statute or by operation of law.

iii) The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken, but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order, however, in this case, nothing was articulated to the effect that the petitioners managed their appointments letters due to any fraud or misrepresentation.

Conclusion: i) It is the obligation of the concerned authority to provide right of audience before any prejudicial action is taken against the delinquent.

ii) A vested right is a right that is unqualifiedly secured and is not conditional on any particular event or set of circumstances.

iii) It is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction.

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8. **Supreme Court of Pakistan**
Noor Din deceased through LRs v Pervaiz Akhtar & others
Civil Appeal No.130 of 2016
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._130_2016.pdf

Facts: The respondents/plaintiffs filed a suit for declaration wherein they claimed the inheritance from the legacy of their predecessor in interest. Their suit was dismissed, but, appeal was allowed by the district court. The appellants/defendants filed civil revision that was dismissed by the High Court. Now, appellants filed the leave to appeal under Article 185(3) of The Constitution of Islamic Republic of Pakistan, 1973 against the decision of High Court.

Issues: i) When does succession open in Islamic Law of inheritance?

ii) Whether wrong mutation confers any right in property?

iii) What are legal implications if possession of inheritance property is held by an heir?

iv) Under what circumstances law of limitation shall be relevant in case of claim of inheritance property?

Analysis: i) Under the Islamic Law of inheritance, as soon as an owner dies, succession to his property opens.
ii) The law is well settled that wrong mutation confers no right in property as revenue record is maintained only for fiscal purpose and such mutation would not create title in accordance with Sharia Law of Inheritance.
iii) The heir in possession has to be considered to be in constructive possession of the property on behalf of all the heirs in spite of his exclusive possession, e.g., the possession of the brothers would be taken to be the possession of their sisters, unless there was an express repudiation of the claims of the sisters in favour of brothers and in order to relinquish or transfer her interest in the property, there has to be a positive and affirmative act
iv) The law of limitation would be relevant when the conduct of the claimant demonstrates acquiescence and particularly when third party interest is created in the inherited property.

Conclusion: i) As soon as an owner dies, succession to his property opens.
ii) Wrong mutation confers no right in property.
iii) The heir in possession has to be considered to be in constructive possession of the property on behalf of all the heirs in spite of his exclusive possession.
iv) The law of limitation would be relevant when the conduct of the claimant demonstrates acquiescence.

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9. **Lahore High Court**
The State v. Muswar Hussain Shah etc.
Criminal Revision No.57693/2023
Ms. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC4674.pdf

Facts: Through this criminal revision, Prosecutor General, Punjab called in question validity of an order passed by learned Judge, Anti Terrorism Court, whereby, only two days physical remand of accused persons was granted.

Issue: Whether grant of remand for less than fifteen days at one time by the Anti Terrorism Court is violative of the provisions of Section 21-E of the Anti Terrorism Act, 1997?

Analysis: The word "may" used in the aforementioned section is of pivotal importance. Ordinarily, the use of expression "may" is considered to be a permissive or enabling sense… The provision of said section directly relates to curtailing liberty of an accused. It is well settled by now that where two interpretations of law are possible, the interpretation beneficial to the accused should be preferred… Power to grant physical remand of an accused for not less than fifteen days at one time to the Court is discretionary and not mandatory in nature. It is in exclusive domain of the Court dealing with such request to grant remand for a period which it feels necessary keeping in view facts and circumstances of each case…

Conclusion: Physical remand of an accused cannot be granted in routine. A duty is bestowed upon a Court dealing with such request of remand to protect fundamental rights of life and liberty of a person enshrined in the Constitution of Islamic Republic of Pakistan, 1973. Thus, the impugned order of granting remand is not violative of section 21-E of the Act ibid.

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10. **Lahore High Court**
Muhammad Farrukh etc. v. The State etc.
Criminal Appeal No.68886 of 2019
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC4624.pdf

Facts: Through this criminal appeal the appellants assailed the vires of judgment passed by learned Judge Anti-Terrorism Court-I, Lahore whereby in a trial held in case/F.I.R registered under Section 365-A PPC, the appellants were convicted and sentenced.

Issues: i) Whether discovery of fact regarding place of abduction which is not known to anyone, has any legal significance and admissible under Article 40 of QSO, 1984?
ii) Whether the data emanated from automated information system and collected through modern devices and techniques, can legitimately be brought on record in terms of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984?
iii) Whether holding of identification parade is essential in an abduction incident?
iv) Whether non-corroboration from identification test parade gets significance only if there is a doubt qua the involvement of the accused?
v) When an accused is tried by a Judge Anti-Terrorism Court for a scheduled offence, whether the conviction under the Anti-Terrorism Act becomes uncalled for?

Analysis: i) The same set of witnesses coupled with the Investigating Officer deposed about the disclosure of appellants made immediately after their arrest about the place of abduction. Indeed in pursuance of the afore-mentioned disclosure of appellants, the police was successful in getting recovered the abductee. We feel a pressing need to lay emphasis that the afore-mentioned discovery of fact which was not known to anyone, thus had legal significance and admissible under Article 40 of QSO, 1984.
ii) Furthermore, the data so tendered above since emanated from automated information system and collected through modern devices and techniques, thus was legitimately brought on record in terms of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984. Living in a technological era and well conversant with the prevailing menace of false depositions, the Courts can legitimately use data generated through modern devices for ascertaining the truth of a fact through the enabling provisions of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984.
iii) Holding of identification parade is not essential in an abduction incident.
iv) Non-corroboration from identification test parade gets significance only if

there is a doubt qua the involvement of the accused.
v) As far as the conviction and sentence of the appellants under Section 7 (e) of the Anti-Terrorism Act, 1997 is concerned, it is now settled that when an accused is tried by a Judge Anti-Terrorism Court for a scheduled offence, then the conviction under the Anti-Terrorism Act becomes uncalled for.

Conclusion: i) Discovery of fact regarding place of abduction which is not known to anyone, has legal significance and admissible under Article 40 of QSO, 1984.
ii) The data emanated from automated information system and collected through modern devices and techniques, can legitimately be brought on record in terms of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984.
iii) Holding of identification parade is not essential in an abduction incident.
iv) Non-corroboration from identification test parade gets significance only if there is a doubt qua the involvement of the accused.
v) When an accused is tried by a Judge Anti-Terrorism Court for a scheduled offence, then the conviction under the Anti-Terrorism Act becomes uncalled for.

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11. **Lahore High Court**
Faysal Bank Ltd. v. M/s Usman Enterprises & another
FAO No.75308 of 2019
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC4596.pdf

Facts: The appellant called into question vires of an order passed by Banking Court, Lahore whereby plaint of appellant's suit for recovery along with cost of funds and mark-up etc., was returned by invoking the provisions of Order VII Rule 10 CPC for its presentation before the proper forum.

Issues: (i) What is the difference between an exclusive jurisdiction clause and a non-exclusive jurisdiction clause in a contract?
(ii) Whether parties to a contract can invest or divest a court of its jurisdiction through their mutual agreement or consent?

Analysis: (i) A contract may contain an *exclusive jurisdiction clause* or *a non-exclusive jurisdiction clause.* Traditionally, a clear cut distinction could be traced out in common law jurisdictions between an *exclusive jurisdiction clause* and a *non-exclusive jurisdiction clause.* Under a traditional *exclusive jurisdiction clause* the parties to a contract agree that disputes arising out of the contract will be decided exclusively by the court chosen by the parties while under a traditional *non-exclusive jurisdiction clause* parties to a contract agree that a particular court or courts will be having the jurisdiction to decide a matter pertaining to the contract however such a clause meant a preferable jurisdiction meaning thereby that jurisdiction of other courts was not ousted altogether. In the modern contracts this clear cut traditional distinction between an *exclusive jurisdiction clause* and a *non-exclusive jurisdiction clause* has faded away with the passage of time dueto multiple factors including increasing use and growing litigation

in relation to such clauses, more sophistication in drafting contracts and a variation in interpretation of these clauses specially a *non-exclusive jurisdiction clauses* by courts of different jurisdictions. This scenario has led to situations where sometimes a *non-exclusive jurisdiction clause* gives rise to same effects as that of an exclusive *jurisdiction clause*. In such a scenario the traditional distinction between these clauses seems to be an illusory one. Nevertheless, a distinction can be drawn and ascertained on the basis of the content and scope of the contractual bargain of the parties to a contract. This brings the matter of a *non-exclusive jurisdiction clause* in the domain of inference from other clauses of such an agreement as well as construction of a specific agreement on case to case basis by ascertaining the real intent of the parties regarding choice of forum.

(ii) …the parties by their agreement or consent can neither invest Court with a jurisdiction where it does not exist in law nor can the parties divest a Court of its jurisdiction by such methodology. Where more than one Court has jurisdiction in the matter, the parties can make choice by their agreement or consent for conferment of jurisdiction upon one Court to the exclusion of other and agreement in such behalf in normal circumstances is binding upon parties thereto. Such choice of forum by agreement is not contrary to the mandate of Section 28 of the Contract Act, 1872. However, the condition precedent to make a choice by the parties through an agreement is thus that the Court or the Tribunal so chosen has the jurisdiction under the law. When question arises as to the nature of jurisdiction agreed to between the parties, the Court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case.

Conclusion: (i) In the modern contracts, the traditional clear cut distinction between an *exclusive jurisdiction clause* and a *non-exclusive jurisdiction clause* has faded away and the distinction is to be inferred from other clauses of an agreement as well as construction of a specific agreement on case to case basis by ascertaining the real intent of the parties regarding choice of forum.

(ii) Parties to a contract cannot invest or divest a court of its jurisdiction through their mutual agreement or consent.

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12. **Lahore High Court**
Shaista Jamil v. Daraz and another
Criminal Appeal No. 559/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4659.pdf

Facts: Through this criminal appeal the appellant assailed the order of the District Consumer Court, whereby, the presiding officer rejected the claimed of the appellant under Order VII Rule 11 of CPC filed under section 25 of the Punjab Consumer Protection Act 2005.

Issues: i) Whether sections 23 (1) and 32 (2) of the Punjab Consumer Protection Act 2005 establish civil penalties?
ii) Whether a District Consumer Court established under the Punjab Consumer Protection Act 2005 is a special court with both civil and criminal jurisdictions?
iii) Whether the Code of Civil Procedure applies to the proceedings before the District Consumer Court?

Analysis: i) Section 23(1) empowers the Authority to impose fines for certain infractions of the Act. Section 32(1) states that when a manufacturer violates sections 4 to 8, 11, 13, 14, 16, 18 to 22, he shall be punished with imprisonment up to two years or with a fine up to a hundred thousand rupees or with both, in addition to damages or compensation as may be determined by the Consumer Court. Thus, it creates statutory offences. Section 30(2) states that where a defendant or a claimant fails or omits to comply with the Consumer Court's order, he would be punished with imprisonment and a fine. Applying the principles laid down in Kennedy's case, in my opinion, sections 23(1) and 32(2) of the Punjab Act establish civil penalties. Section 32(2) of the Punjab Act is analogous to section 27 of India's repealed Consumer Protection Act of 1986 and section 72 of the Consumer Protection Act of 2019 presently in force. In view of the above, it is reasonable to conclude that section 32(2) of the Punjab Act does not stricto sensu constitute a statutory offence but serves as a tool for the execution of the Consumer Court's orders.
ii) A Consumer Court established under the Punjab Act is a special court with both civil and criminal jurisdictions. However, it is not a civil court in the sense of the Code of Civil Procedure 1908 because a petition, claim or complaint brought before it is not treated as a suit or plaint, and it does not pass a decree. Similarly, it cannot be termed a pure criminal court because of its limited criminal provisions. This indicates the uniqueness of the Consumer Court and its proceedings. For this reason, the Legislature thought it necessary to enact section 30(4) to clarify that every proceeding before the Consumer Court shall be deemed a judicial proceeding. The draftsman has interchangeably used the terms "claim" and "complaint" throughout the Punjab Act without considering that they have different legal meanings. It is, however, important to point out that he has not used them in the sense contemplated by the Code of Criminal Procedure 1898. This view finds support by the fact that Part VIII of the Punjab Act, which deals with proceedings before the Consumer Court, is titled "Disposal of Claims and Establishment of Consumer Courts." This Part begins with section 25 and is also captioned as "filing of claims." Furthermore, sections 25 to 31 deal with the civil rather than a criminal remedy.
iii) Since section 30(3) of the Punjab Act grants the Consumer Court some specific powers that civil courts have under the CPC, the remainder are excluded by necessary implication. The following Latin legal maxims lend support to this interpretation: (i) Expressio unius est exclusio alterius (the express mention of one thing is the exclusion of the other) and (ii) Expressum facit cessare tacitum (what is expressed makes what is implied silent). The law in our country is well recognized that unless there is a specific provision to the contrary in any special

or local law, the ordinary rules of procedure apply. The Code of Civil Procedure applies to the proceedings before the Consumer Court to the extent specified in section 30(3) of the Punjab Act. Nevertheless, it may also adopt its general principles insofar as they advance the interests of justice.

Conclusion: i) Sections 23 (1) and 32 (2) of the Punjab Consumer Protection Act 2005 establish civil penalties.
ii) A District Consumer Court established under the Punjab Consumer Protection Act 2005 is a special court with both civil and criminal jurisdictions.
iii) The Code of Civil Procedure applies to the proceedings before the District Consumer Court to the extent specified in section 30(3) of the Punjab Consumer Protection Act 2005.

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13. **Lahore High Court**
Ummaira Saleem v. Federation of Pakistan and others
Writ Petition No. 2901 of 2023
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2023LHC4642.pdf

Facts: Through this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner supplicated for production of her husband from alleged illegal detention of respondents and also seeking direction to the respondents for disclosure of the charge, if pending against the detenue, in terms of Rule 23 and 24 of the Pakistan Army Act Rules, 1957.

Issues: i) Whether a High Court may pass any order in respect of any person who is subject to any law pertaining to the Armed Forces with regard to any action taken under such law?
ii) Whether a writ of Habeas corpus for production of an army official is maintainable if he is in lawful custody of Military Authorities?

Analysis: i) The scope of constitutional jurisdiction under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973 is very limited. Article 8(3) of the Constitution extends protection to any law relating to members of the armed forces including the Pakistan Army Act, 1952.
ii) A writ of Habeas corpus is only maintainable if a person is detained without lawful authority in an unlawful manner. Army official would be considered to be in lawful custody of military in a lawful manner if he is being investigated under Section 2(1)(d) of the Army Act, 1952.

Conclusion: i) Under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973, a High Court cannot pass any order in respect of any person who is subject to any law pertaining to the Armed Forces with regard to any action taken under such law.
ii) A writ of Habeas corpus for production of an army official is not maintainable if he is in lawful custody of Military Authorities.

14. **Lahore High Court**
Mst. Nasreen Bibi v. District Police Officer etc.
W.P No. 6566 of 2023
Mr. Justice Muhammad Tariq Nadeem.
https://sys.lhc.gov.pk/appjudgments/2023LHC4601.pdf

Facts: Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 491, Cr.P.C., the petitioner has supplicated for the recovery of her real sons from the illegal and unlawful custody of respondents No.2 and 3.

Issues: i) What steps must be taken to curb down the illegal practice of police officials qua the arrest and production of accused before Area Magistrate?
ii) What is the relevant law with respect to maintaining a case diary?
iii) How a proper mechanism can be framed in light of guidelines provided by law regarding record of case diary?

Analysis: i) The Hon'ble Court issued following directions:- i) The arrest of a person be incorporated forthwith in computerized as well as manual *roznamcha* with date and time; ii) A *Rapat* should be written regarding the exit and return of an accused from the police station for any purpose; iii) The entries in manual *roznamcha* be made through ball-point; iv) The application for the physical or judicial remand before the learned Area Magistrate should only be entertained when the date and time of arrest has been mentioned in that; v) Police file/ case diaries should be retained at police station and the fact of taking these out from police station for the purpose of investigation or any other purpose and their return should be incorporated in the *roznamcha* (register No. 2).
ii) The Rules 25.53, 25.54 and 25.55 of Police Rules, 1934 and section 172 of Criminal Procedure Code made it clear that case diary should be written in the light of Form 25.54 (1) of Police Rules, 1934, each sheet shall be numbered and stamped with the stamp of police station, two carbon copies shall be made by the Investigating Officer, number and date of each case diary shall be recorded on the reverse of F.I.R and original case diary shall be dispatched without any unnecessary delay to the Inspector or other Superior Officer at headquarter.
iii) To frame proper mechanism, the F.I.R number and serial number of case diary should be mentioned at the bottom of each page of case diary (*Zimini*). There should be case diary register published by police department with serial number, allocated to police stations in District, which should be duly signed by the SHO at the time of issuance of case diaries papers. Serial numbers of case diaries should be mentioned on the reverse of FIR alongwith entry of the same in *Roznamcha*. The remand paper should be in format as mentioned in police rules and same should reflect the serial number of case diary about the arrest of accused by the Investigating Officer. The interim as well as final report under section 173

Cr.P.C., submitted by police should also indicate the serial numbers of papers used for the purpose of case diary by the Investigating Officer. Copy of record of case diary should be sent to the *Mohafiz* Office concerned within 24 hours.

Conclusion: i) Detailed directions have been discussed in clause i of analysis to curb down the illegal arrest of accused persons.
ii) The Rules 25.53, 25.54 and 25.55 of Police Rules, 1934, as well as section 172 of Criminal Procedure Code are relevant provisions of law with respect to maintaining a case diary.
iii) See the clause iii in analysis.

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15. **Lahore High Court**
Nazeer Ahmad v. Muhammad Sadiq (deceased) through L.Rs. and 2 others
C. R. No. 174 / 2017
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC4648.pdf

Facts: This Civil Revision is directed against the impugned Judgment & Decree passed by Additional District Judge, whereby, the Judgment & Decree passed by Civil Judge, Toba Tek Singh was reversed.

Issues: i) What is the nature of act performed by Patwari while recording entry in Roznamcha?
ii) Whether recording of a transaction regarding change of rights by the Patwari at the behest of an acquirer in Roznamcha does constitute an admission on behalf of seller?
iii) Whether the recorded entry in Roznamcha is a public document and is admissible per se?
iv) Whether the transaction recorded in Roznamcha and mutation are required to be independently proved?

Analysis: i) Thus, an entry recorded in Roznamcha is merely a ministerial act performed by the Patwari which is incorporated in the register of mutations culminating into an order of passing of mutation under Section 42(6) of the Act by the Revenue Officer.
ii) Therefore, an act of recording of a transaction regarding change of rights by the Patwari at the behest of an acquirer in Roznamcha does not constitute an admission of the transaction on the part of seller as argued by learned counsel of the Petitioner.
iii) In Haq Nawaz case (supra), it was held that a recorded entry in Roznamcha is a public document and is admissible per se. However, in the said case, the vendor had confessed of selling the same property to both the contesting parties and while discovering the truth, the Court held that in terms of Rule 3.79 and 3.80 of the Land Record Manual, Roznamcha was maintained by Patwari in the discharge of his official duties and as such, by virtue of Article 85 of the Qanun-e-Shahadat

Order, 1984 (the "QSO"), it was a public document which was per se admissible. However, importantly, the recorded report in Roznamcha therein was not alleged to have been fraudulently entered. If the transaction incorporated in Roznamcha is under challenge, the presumption attached thereto stands rebutted and it is required to be proved as any other private document.

iv) It is now well settled that in case of a challenge to the transaction and the mutation, both the transaction and the mutation would be required to be independently proved. As the mutation itself is not an instrument of title, therefore, a mutation in the light of specific denial by the owner does not have probative value as the presumption stands rebutted. Similarly, entries recorded in Roznamcha if not proved to have been made at the instance of the vendor or to have been signed by him carry no evidentiary value. (…) Although Roznamcha maintained by Patwari during the course of performance of his official duty is admissible yet if report contains particulars of a private transaction, it is required to be independently proved and reference to recorded transaction of Roznamcha on the mutation sheet did not constitute any evidence of the same. Even the report of Roznamcha is required to be proved by producing Roznamcha itself and examination of the maker of the report. After analyzing a number of precedents, the Court with reference to Haq Nawaz case (supra) observed that no presumption of truth was attached to a note contained in Roznamcha unless the maker was examined and that to hold that an entry in Roznamcha amounts to a sale will be laying down a hazardous proposition of law inasmuch as that fate of land holdings will be at the mercy of a Patwari.

Conclusion: i) An entry recorded in Roznamcha is merely a ministerial act performed by the Patwari.

ii) Recording of a transaction regarding change of rights by the Patwari at the behest of an acquirer in Roznamcha does not constitute an admission of the transaction on the part of seller.

iii) A recorded entry in Roznamcha is a public document and is admissible per se. However, if the transaction incorporated in Roznamcha is challenged, the presumption attached thereto stands rebutted and it is required to be proved as any other private document.

iv) In case of a challenge to the transaction and the mutation, both the transaction and the mutation would be required to be independently proved.

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16. **Lahore High Court**
Qari Muhammad Qasim v. Mirza Rehmat Ullah and 02 others
W. P. No. 20915 / 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC4579.pdf

Facts: This constitutional Petition seeks modification in the impugned Order & Memo of Cost passed by Special Judge Rent, and Judgment & Memo of Cost passed by

Additional District Judge, to the extent of conditions imposed upon the Petitioner while allowing his Ejectment Petition.

Issues: i) What will be the fate of leave to contest where oral tenancy is denied?
ii) What is the main object of the Punjab Rented Premises Act, 2009?
iii) What is the purpose and scope of the establishment of Rent Tribunals under the Punjab Rented Premises Act, 2009?
iv) Whether an agreement after the execution of a tenancy agreement, in respect of premises and for a matter not provided under the tenancy agreement, affect the relationship of landlord and tenant?

Analysis: i) As a normal rule, where oral tenancy is denied, leave to contest is allowed to determine the relationship of landlord and tenant along with ancillary disputed questions of law and fact through recording of evidence.
ii) The Punjab Rented Premises Act, 2009 has been promulgated to regulate the relationship of landlord and tenant with respect to rented premises and for providing an expeditious and cost-effective mechanism for settlement of their disputes.
iii) The Rent Tribunal established under Section 16 of the Punjab Rented Premises Act, 2009 exercises exclusive jurisdiction within the ambit and scope of the Punjab Rented Premises Act, 2009 which is limited regarding determination of disputes between the landlord and the tenant emanating from lease agreements with respect to the rented premises. Therefore, unless the relationship of landlord and tenant is not established vis-à-vis the rented premises, the Rent Tribunal cannot assume jurisdiction to determine any other disputed question between the parties qua the rented premises such as the determination of rights and title.
iv) The limited jurisdiction extended to the Rent Tribunal under the Punjab Rented Premises Act, 2009 is fortified by Section 10 of the Act which specifically stipulates that an agreement to sell or any other agreement entered into between the landlord and the tenant, after the execution of a tenancy agreement, in respect of premises and for a matter other than a matter provided under the tenancy agreement, shall not affect the relationship of landlord and tenant unless the tenancy is revoked through a written agreement entered before the Rent Registrar in accordance with the provisions of Section 5 of the Punjab Rented Premises Act, 2009.

Conclusion: i) As a normal rule, where oral tenancy is denied, leave to contest is allowed to determine the relationship of landlord and tenant.
ii) The Punjab Rented Premises Act, 2009 has been promulgated to regulate the relationship of landlord and tenant with respect to rented premises and for providing an expeditious and cost-effective mechanism for settlement of their disputes.
iii) The Rent Tribunal exercises exclusive jurisdiction within the ambit and scope of the Act which is limited regarding determination of disputes between the

landlord and the tenant emanating from lease agreements with respect to the rented premises.

iv) An agreement after the execution of a tenancy agreement in respect of premises and for a matter not provided under the tenancy agreement, shall not affect the relationship of landlord and tenant unless the tenancy is revoked through a written agreement entered before the Rent Registrar in accordance with the provisions of Section 5 of the Punjab Rented Premises Act, 2009.

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17. **Lahore High Court**
Parvez Elahi v. Additional Sessions Judge and 3 others
Criminal Misc. No.40242-M of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC4588.pdf

Facts: The petitioner has challenged order passed by Additional Sessions Judge under section 561-A of the Code of Criminal Procedure, 1898, whereby, the revision petition filed by the State has been allowed and order passed by the Judicial Magistrate Section 30 refusing the physical remand of the petitioner in case/FIR registered under section 420, 468, 471, 161, 162/34 PPC read with section 5(2) of Prevention of Corruption Act, 1947, with Anti-Corruption Establishment has been set aside.

Issues: i) Whether order of Magistrate for refusing physical remand is a judicial order and amenable to revisional jurisdiction?

ii) Whether Special Judge Anti-Corruption only has power to pass an order in revision against order of Magistrate for refusing physical remand in case FIR registered under section 5(2) of Prevention of Corruption Act, 1947?

Analysis: i) As far as the contention of learned counsel for the petitioner that the order of learned Magistrate, whereby, he refused to allow physical remand, being executive order, is not amenable to revisional jurisdiction is concerned. This aspect of the matter has already been considered by this Court in several cases, including cases titled "Abdul Waheed Versus Additional Sessions Judge And Others" (2017 MLD 1319), "Zawar Hussain Versus The State And 3 Others" (2009 P.Cr. L.J 705), "Misbah-Ul-Hassan Versus The State And 3 Others" (2005 P Cr. L J 1709) and "Riaz Ul Haq And Another Versus Muhammad Naveed And Another" (2005 YLR 805). This Court has already settled that an order passed by the learned Magistrate refusing remand is a judicial function and under section 435 of the Code, the Court superior to the one refusing remand can exercise jurisdiction of revision… This aspect was also examined in Writ Petition No. 3780 of 2010 titled "Muhammad Aslam, etc. Vs. The State, etc." in which this Court has observed that the order for refusal of remand is outcome of judicial function and when the Court of Sessions comes to the conclusion that any illegality or irregularity is committed, revisional jurisdiction u/s 435 read with Section 439-A of the Code can be exercised.

ii) The main question raised before this Court, also a reason of admission of this

petition, is that only "Special Judge" appointed in terms of section 3 of the Act of 1958 has power to pass an order in revision… The section 6(1) of the Act of 1958 provides that in course of trial the provisions of the Code shall apply to the "proceedings" in the Court of "Special Judge". The question remained before me if the word 'proceedings' in the above section is used in wider sense to cover the cases of remand and its revision or if it is used in narrower sense just to cover the cases when the matter is brought before the "Special Judge" in the shape of complaint or through report by the police or concerned agency. Word "proceedings" is not defined in the Act of 1958, however, Code has defined the word "judicial proceeding" under section 4 (m) of the Code… As per above definition "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath. Section 4 of the Act of 1958 further provides that a "Special Judge" shall have jurisdiction, in the given territorial limits, upon receiving a complaint of facts which constitutes such offence or upon a report in writing of such facts made by any police officer. The word 'proceedings' sometime is given wider meanings to cover the remaining steps towards progress of a case but when section 6 of the Act of 1958 is read with the heading of the section, in its context and in the light of surrounding provisions, it appears that legislature intended to give restricted meaning to the word "proceedings"… I am of the firm opinion that the learned Court of Sessions can decide a revision petition arising out of the order of refusal of physical remand.

Conclusion: i) Order of Magistrate for refusing physical remand is a judicial order and amenable to revisional jurisdiction.

ii) Special Judge Anti-Corruption has no power to pass an order in revision against order of Magistrate for refusing physical remand in case FIR registered under section 5(2) of Prevention of Corruption Act, 1947.

LATEST LEGISLATION / AMENDMENTS

1. Amendments in the Punjab Communication & Works Department (Engineering Posts Qualifications & Conditions for Recruitment) Rules, 1985 in the schedule in column no 4,6 and 7 via notification No. SOR-III (S&GAD) 1-11/2020(A).
2. The Punjab Central Business District Development Authority under the Punjab Central Business District Development Authority Act 2021, approve the detailed master plan under "Urban Regeneration plan of Walton Airport Project" consisting of Walton Strip and Bab-e-Pakistan vide notification no. PCBDDA/TECH/7-4/ 2023.
3. Notification No. SOTAX(E&T)3-3/2022 is issued by the excise, taxation and Narcotics Control Department regarding the extension of the valuation lists prepared on the basis of valuation tables.
4. Amendment made in the Punjab Fiscal Order, 2017 in Sr. No. 2(1)(c)(d) through notification No.SO (E&M)2-3/2018(E-R).

5. Exemption of tax at the rate of 95% in respect of all motor vehicles propelled on a road entirely by electric power except the motor vehicles paying lump sum tax, w.e.f. 01.07.2023 to 30.06.2025 vide notification No. SO(E&M)1-101/2018.
6. Amendments have been made in the schedule at serial no.1 in column no. 7 in the Punjab Public Health Engineering Department Service Rules, 1975.
7. Amendments have been made in the Punjab Sales Tax on Services Act 2012 in the second schedule at serial no.s 13, 22,24,37 and 69.
8. Governor of the Punjab in exercise of powers conferred under clause (h) of section 2 of the Punjab Animal Health Act, 2019 designate the Director General (Extension), Livestock and Dairy Development, Punjab as Chief Veterinary Officer vide Notification No. SO(I&C)/L&DD/1,147/23(FMD)146 of 2023.
9. Governor of the Punjab in exercise of powers conferred under the Punjab Animal Health Act, 2019 declare composition of the Royal JW Buffalo Farm as disease free area subject to health certificate in case of movement of an animal and regular checking at exit points.
10. Amendments have been made in rule 12 vide notification welfare No.23730/W-III in the Police (Award of Compensation) Rules, 1989.
11. Amendments have been made in the second schedule for para 9 in Punjab Motor Vehicle Rules, 1969 vide notification no. SO(E&M) 2-213/2020(LHC).
12. Amendments in the schedule at serial no. 11 in column no.3, column no. 4, serial no. 18 in column no. 3, 5, 6, 7 and 10 of the Directorate General Protocol Punjab, Service Rules, 2005 have been made vide notification no. SOR-III(S&GAD)1-12/2004(P).
13. The Punjab Primary & Secondary Healthcare Department (Strategic Management Unit) Employees Service Rules, 2023 have been made vide notification no. SOR-III(S&GAD)1-26/2021.
14. In exercise of the powers conferred by the Anti-Rape (Investigation & Trial) Act, 2021, the federal Government, in consultation with the Chief Justice of the Lahore High Court Lahore designate special courts to exercise jurisdiction under the said Act.

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/Challenges-and-Remedies-to-WTO-Dispute-Settlement

Challenges and Remedies to WTO Dispute Settlement **by Ipsita Aparajita Padhi**

World Trade Organisation is a non-governmental body functioning at an international level. It basically furnishes the instructions and protocols for international commerce. Based on some already accorded rules as well as principles, binding governments run and manage their trade and trade policies.

General Agreement on Tariffs and Trade popularly known as GATT was replaced by the World Trade Organisation in order to assist in revamping and reconstructing the World economy after the fallout of World War Two. At the beginning, it comprised of mediation by working parties of the trade diplomats, which however over a period paved way to rule based adjudication of independent authority at an increasing rate. Positive consensus was the ideology on which it functioned which conveyed that any party can turn down any part of the action. The major lacunae were it being quite steady and hence was easily prone to getting deadlocked that ultimately boosted the participants to divert it completely in order to find bilateral or unilateral agreements that generally didn't pay attention to the interests of the third party which resulted in creating more complications.

2. MANUPATRA
https://articles.manupatra.com/article-details/ADMISSIBILITY-OF-ELECTRONIC-EVIDENCE-UNDER-THE-INDIAN-EVIDENCE-ACT-1872

Admissibility of Electronic Evidence Under the Indian Evidence Act, 1872 by Astha Jain

With the advent of internet revolution, the Indian legal system incorporated technology into its proceedings through the Amendment Act of 2000 to the Indian Evidence Act, 1872.[1] The amendment was introduced to add Section 65A & 65B to the act, keeping the concerns regarding the authenticity of electronic records intact and to ensure their adaptability in courtrooms. The admissibility of electronic evidence in Indian courts, since then have been a topic of extensive discussion, one of the reasons for which is the prevailing ambiguity in provisions incorporated thereunder.

The classification of electronic evidence as a secondary category of acceptable evidence in court has sparked several important questions surrounding its admissibility. One significant query is whether Section 65B is mandatory for the admissibility of electronic evidence, and at what stage the production of the certificate should ideally take place. Should the certificate be presented after the evidence is submitted in court or when it is referred to during legal proceedings? Moreover, the validity of the evidence and the applicability of different methods in civil and criminal cases have remained uncertain.

3. HUMAN RIGHTS LAW REVIEW
https://academic.oup.com/hrlr/article/23/4/ngad023/7280083?searchresult=1

A New Theoretical Model of the Right to Environment and its Practical Advantages by Azadeh Chalabi

Despite significant developments at the national, regional and international levels, to recognise the right to environment as a human right, this right is still under-theorised and contested. The challenge of giving a clear substance to such a standalone right is one that must urgently be taken up. Drawing on the NIC theory, this article develops a new model of the right to environment to serve three purposes: first, to shed light on the nature, scope and content of this right; second, to illustrate that this right can be considered as existing on three levels: individual, collective and global; and third, to explore the logical relationships between this right and already recognised human rights. This new model brings about various advantages at different levels. In particular, it

allows for guiding practice for a range of actors from NGOs, human rights commissions and judges to governments and the UN human rights bodies.

4. ASIAN JOURNAL OF LAW AND SOCIETY
https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/automating-intervention-in-chinese-justice-smart-courts-and-supervision-reform/8658661A69458B43E1FD4933FAB4F039

Automating Intervention in Chinese Justice: Smart Courts and Supervision Reform by Straton Papagianneas

This article examines how smart courts enhance the reform of judicial responsibility and the "trial supervision and management" mechanism. It holds that smart courts, while meant to provide better judicial services and improve access to justice, have the additional goal of enhancing the restructuring of accountability and power structures. It argues that automation and digitization help institutionalize and codify political supervision. Smart courts help resolve tension between the two opposing requirements of Chinese courts to maintain legal rationality and independent adjudication on the one hand, and the need for flexibility to allow intervention on the other. This article provides an account of the automation of "trial supervision and management" and explores the role of technology in enhancing political intervention in China's legal system. This investigation draws on internal court reports and central and local judicial documents, supplemented with a review of Chinese empirical scholarship.

5. MANUPATRA
https://articles.manupatra.com/article-details/Rehabilitation-of-victims-of-Domestic-Violence

Rehabilitation of victims of Domestic Violence by Astha Jain

In the depths of societal norms, violence against women persists as a haunting reality. While the United Nations bravely defines 'violence against women,' a universally accepted definition of 'violence' itself remains elusive. Yet, one truth stands firm - it inflicts physical, sexual, or psychological harm, leaving deep scars etched in the soul. The United Nations' unwavering stance identifies any gender-based violence causing suffering or harm to women, whether in public or private life, as an abhorrent act. A startling study by the World Health Organization reveals that approximately 736 million women worldwide have experienced 'intimate partner violence,' 'non-partner sexual violence,' or both, at least once in their lifetime. In India, specifically, 30% of women report experiencing domestic violence since the age of 15. The consistent rise in spousal violence incidents in India from 2006 to 2019 reflects the urgency for change. Together, let us shed light on the plight of domestic violence victims and embrace the path of rehabilitation. By advocating for compassion, support, and a brighter future, we can heal wounds and empower those affected to rise above the shadows of violence.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-10-2023 to 15-10-2023)

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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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Chairman, Sarhad Development Authority PM, Peshawar and another v. Tafoor-ur-Rehman etc.
Civil Petitions No.2594, 2816, 2817 and 2987 of 2020
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2594_2020.pdf

Facts: Through these civil petitions the petitioners assailed the judgment of Peshawar High Court on the ground that the amount of compensation reflects the market value of the property acquired. The calculation of the additional amount under Section 28 of the KP Land Acquisition Act, 1894 **("Act")** bears nexus to the market value and not to the compulsory acquisition charges, therefore, the calculation envisaged by the impugned judgment is erroneous.

Issue: Whether the award of a sum of 15% of market value of the property compulsorily acquired by the state to the owners thereof falls within the meaning of the expression compensation or not?

Analysis: The meaning of the word "compensation" in the context of the Land Acquisition Act, 1894 includes many factors for assessing the market value of the property acquired. These factors as already noted are contained in Section 23(1) of the Act which have been elaborated from time to time by judgments of this Court. It is appreciated that the right to acquire, hold and dispose of property subject to the Constitution and any reasonable restriction imposed by law in the public interest is a fundamental right of every citizen under Article 23 of the Constitution. Article 24(1) of the Constitution guarantees that no person shall be deprived of his property save in accordance with law. The Constitution envisages compensation for private property that is compulsorily acquired by the State for a public purpose. Clearly compulsory acquisition of property means that it is being involuntarily forfeited from the owner thereof in favour of the State for a public purpose. Such involuntary deprivation of property itself is a crucial factor in the calculation of compensation to be awarded in consideration of such taking. The language of Section 23(2) of the Act addresses this aspect of the case squarely and awards an amount of 15% of the market value of the land as compensation for the said property being acquired compulsorily. In this respect the factors for determination of market under Section 23(1) of the Act have no application. Their only relevance is the ascertainment of market value upon which a 15% amount thereof is added to compensate the owner of the property for the forcible loss of his private property.

Conclusion: The award of a sum of 15% of market value of the property compulsorily acquired by the state to the owners thereof falls within the meaning of the expression compensation.

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2. **Supreme Court of Pakistan**
Federal Govt. of Pakistan thr, M/o. Defence Rawalpindi and another v. Mst. Zakia Begum and others, and other Petitions.
C.R.P.446/2022 IN C.A.2150/2019 etc.
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._446_2022.pdf

Facts: Through these review petitions appellant set forth their grievance against the judgment passed by this Court regarding observations of increase in value of acquired land to the amount that the High Court has ordered for the reason that the original value as determined by the Collector and the Referee Court was based on revenue classifications which have no relevance for the purposes of calculating compensation.

Issues: i) Whether acquisition in small parcels, awarding compensation based on revenue classifications to such parcels of land is to the disadvantage of the landowners?
ii) Whether calculation of potential value of acquired land can be left upon the discretionary assessment of courts?

Analysis: i) When land is acquired in small parcels, awarding compensation based on revenue classifications to small parcels of land is to the disadvantage of the landowners, because it undermines the potential value of the large parcels of land acquired for a single project. Consequently, the uniform valuation for the entire land acquired for the project possesses justification.
ii) The calculation of potential value of acquired land by a Court of law starting from the referee Court up to Supreme Court cannot be left to their discretionary assessment. There must be guidelines framed by the competent legislative or regulatory bodies for determining the potential value of the land acquired for various types of public purpose projects.

Conclusion: i) Yes**,** acquisition in small parcels, awarding compensation based on revenue classifications to such parcels of land is to the disadvantage of the landowners.
ii) Calculation of potential value of acquired land cannot be left upon the discretionary assessment of courts; instead, guidelines should be established by competent legislative or regulatory bodies to determine it.

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3. **Supreme Court of Pakistan**
Munir Husain and others v. Riffat Shamim and others
Civil Review Petition No. 557 of 2022 in Civil Petition No. 3842 of 2022
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p.557_2022_02sept2023.pdf

Facts: The paternal uncles and aunts of respondent no. 02 challenged her paternity after about 17 years and did so after the death of her father. This Court had declined to

grant leave to appeal and had upheld the judgment of the Islamabad High Court, hence, this review petition.

Issue: Whether mere filing of review petition operates as stay?

Analysis: The judgment of the High Court has been not implemented and petitioners continue to retain possession of property. The petitioners continue to be in open defiance not only of the judgment of the High Court but also of this Court while respondent no. 02 remains deprived of her inheritance. The mere filing of a review petition does not operate as stay…

Conclusion: Mere filing of a review petition does not operate as stay.

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4. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Zone-I, RTO, Peshawar and another v. Ajmal Ali Shiraz M/s Shiraz Restaurant, Peshawar
Civil Review Petition No. 426 of 2022 in Civil Appeal No. 51 of 2020
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._426_2022_02sept2023.pdf

Facts: In civil appeal it was contended that the order amending the assessment was passed by the Deputy Commissioner, Inland Revenue, who was not authorized to amend the assessment. The order passed in civil appeal has now sought to be reviewed on the ground that the Deputy Commissioner was delegated powers to amend the assessment vide an order issued by the Commissioner Inland Revenue.

Issue: Whether the order passed by Commissioner Inland Revenue delegates power of amendment of assessment of Commissioner to Deputy Commissioner when it is not referring section 122 of ITO, 2001 with regard to amendment of assessment and neither same has been gazetted nor available on website of FBR?

Analysis: The order which is claimed to delegate the power of Commissioner Inland Revenue to amend the assessment to deputy Commissioner does not refer to section 122 of the Ordinance with regard to amendment of assessment nor is it so stated under column No. 4 of the Table pertaining to Jurisdiction… All notifications/orders should be gazetted and also displayed on the website of the FBR to facilitate the officers of the FBR, tax practitioners and taxpayers. We enquired from the learned counsel whether the said order has been gazetted and were informed that it was not. We then enquired whether that said order is available on the website of the Federal Board of Revenue ('FBR') and were told that it was not. The said order does not delegate the statutory power of the Commissioner to Deputy Commissioners and also does not grant such specific authorization…

Conclusion: The order passed by Commissioner Inland Revenue does not delegate power of amendment of assessment of Commissioner to Deputy Commissioner when it is not referring section 122 of ITO, 2001 with regard to amendment of assessment and neither same has been gazetted nor available on website of FBR.

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5. **Supreme Court of Pakistan**
Ghansham Das v. Government of Khyber Pakhtunkhwa through Chief Secretary, Pakistan Forest Institute, Peshawar and others
Civil Petitions No. 546 of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._546_2021.pdf

Facts: Through this petition, filed under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 the petitioner has challenged the judgment of the Service Tribunal, whereby the service appeal filed by the petitioner under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 was dismissed.

Issues: i) What is the role of deputation in government department?
ii) What is the maximum period of deputation as per ESTA Code?
iii) Whether the period of deputation has to be defined specifically and the officer automatically relieved from his office duties?
iv) Whether the order of the competent authority can be questioned regarding the period of deputation?
v) Whether the period of deputation can be curtailed or extended by the Competent Authority?

Analysis: i) Deputation within a government department holds a significant role, necessitating recruitment under exceptional circumstances when there is a lack of expertise within the department in the relevant subject or field. In such situations, the prescribed procedure outlined in Rule 20-A of the Civil Servants (Appointment, Promotion, and Transfer) Rules, 1973, must be adhered to.
ii) It is imperative to emphasize that deputation should not entail an indefinite period of service but should conform to the specified duration for the deputation. The normal period of deputation is three years and the concerned officer has to report back after completion of his three years period unless it has been extended to further two years and the maximum period is five years in terms of Serial No.27 (iv) of ESTA Code Volume-1 (Civil Establishment Code), whereby both the borrowing and lending organization should ensure immediate repatriation of the deputationist.
iii) The period of deputation has to be defined specifically and after expiry of the said period, the officer should automatically be relieved from his office duties unless his period has been extended.
iv) The deputationist by no stretch of the imagination and in the absence of any specific provision of law can ask to serve the total period of deputation and he can be repatriated being a deputationist by the Competent Authority in the interest of

exigency of service as and when so desired and such order of the competent authority cannot be questioned. The Civil Servants Act, 1973 and the rules made there-under as well as ESTACODE are silent about the fact that a deputationist must serve his entire period of deputation and this omission seems deliberate enabling the Competent Authority to utilize the service of an employee in the manner as it may deem fit and proper.

v) The period of deputation can at best be equated to that of an expression of the maximum period which can be curtailed or extended by the Competent Authority and no legal or vested rights whatsoever are available to a deputationist to serve his entire period of deputation in the borrowing Department.

Conclusion: i) Deputation within a government department holds a significant role, necessitating recruitment under exceptional circumstances when there is a lack of expertise within the department in the relevant subject or field.

ii) The maximum period is five years in terms of Serial No.27 (iv) of ESTA Code Volume-1 (Civil Establishment Code).

iii) The period of deputation has to be defined specifically and the officer automatically relieved from his office duties.

iv) The deputationist by no stretch of the imagination and in the absence of any specific provision of law can ask to serve the total period of deputation and he can be repatriated being a deputationist by the Competent Authority in the interest of exigency of service as and when so desired and such order of the competent authority cannot be questioned.

v) The period of deputation can be curtailed or extended by the Competent Authority.

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6. **Supreme Court of Pakistan**
Allah Dewayo Shahani v. The State through Prosecutor General, Sindh.
Criminal Petition No.52-K of 2023
Mr. Justice Munib Akhtar, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._52_k_2023.pdf

Facts: Through this criminal petition leave to appeal is directed against the impugned order passed by the High Court in Criminal Bail Application, whereby the petitioner was declined post arrest bail in FIR lodged under Sections 302, 324, 114, 147, 148 & 149 PPC.

Issues: i) Whether contradiction between the role attributed to the accused person and postmortem report can be relied as sole ground for enlargement on bail?

ii) Whether police report is binding being ipse dixit at bail stage?

iii) Whether every member of an unlawful assembly stands accountable for committing the crime in prosecution of common object?

iv) Whether demeanor of each of the members of the unlawful assembly is relevant for deciding the question of common object?

v) Whether in criminal cases including bail matters each case has its own peculiar

facts which are to be considered according to the facts and circumstances of each case?

Analysis: i) When the injury attributed to the accused person was on the right palm, but according to the postmortem report the said injury is shown at the wrist, and it is urged that it is a case of further inquiry, but Supreme court do not rely on a sole ground for the enlargement on bail when the ocular account is assigning a specific role to the petitioner...

ii) It is a well settled exposition of law that the police report is not binding being ipse dixit, and therefore merely an assertion at bail stage without proof or opinion…

iii) Section 149, PPC envisages that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence…According to Section 141 PPC, an assembly of five or more persons is designated an unlawful assembly for a common object of the persons composing that assembly. No doubt that the common object of the assembly must be one of the five objects mentioned in Section 141 PPC which can be gathered from the milieu of the assembly including the arms used by them and the behavior of the assembly at the scene of crime, but it is quite noticeable from the language used in Section 149 PPC which makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence.

iv) In order to decide the question of common object of an unlawful assembly, the demeanor of each of the members of the said assembly is relevant for consideration of the court during trial.

v) In criminal cases, including bail matters, each case has its own peculiar facts which are to be considered according to the facts and circumstances of each case.

Conclusion: i) The contradiction between the role attributed to the accused person and postmortem report cannot be relied as sole ground for enlargement on bail.

ii) The police report is not binding being ipse dixit at bail stage without proof or opinion.

iii)Yes, every member of an unlawful assembly stands accountable for committing the crime in prosecution of common object.

iv)Yes, demeanor of each of the members of the unlawful assembly is relevant for deciding the question of common object.

v) Yes, in criminal cases including bail matters each case has its own peculiar facts which are to be considered according to the facts and circumstances of each case.

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7. **Supreme Court of Pakistan**
Said Nabi v. Ajmal Khan and another
Criminal Petition No.104-P of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._104_p_2023.pdf

Facts: Through the instant petition the petitioner has assailed the order passed by the learned Single Judge of the High Court, with a prayer to grant post-arrest bail in case registered vide FIR under Sections 302/324/427/148/149/337-A(ii)/337-F(ii) PPC.

Issue: Whether at bail stage in a murder case, absconsion of an accused can be considered in isolation to keep the accused behind the bars?

Analysis: After having gone through the impugned judgments passed by the learned two courts below, we are of the view that the only allegation against the petitioner that remains in the field is that he remained absconder for five years. No doubt that abscondence does constitute a relevant factor when examining question of bail as it is held by [Supreme] Court in The State Vs. Malik Mukhtar Ahmed Awan (1991 SCMR 322) but this aspect has been subsequently dealt by [Supreme] Court and it was held that the same has not to be considered in isolation to keep a person behind the bars for an indefinite period. It is settled by [Supreme] Court that a person who is named in a murder case, rightly or wrongly, if becomes fugitive from law, his conduct is but natural. Reliance is placed on Rasool Muhammad Vs. Asal Muhammad (PLJ 1995 SC 477). This aspect was further elaborated by [Supreme] Court in another judgment reported as Muhammad Tasaweer Vs. Hafiz Zulkarnain (PLD 2009 SC 53). We have been informed that nothing incriminating has been recovered from the possession or at the pointation of the petitioner. The only distinguishing feature, which was in field was nothing but the absconsion of the petitioner, which has already been elaborated above. In these circumstances, coupled with the fact that the case of the petitioner is at par with the co-accused, since acquitted, the petitioner has made out a case for concession of bail.

Conclusion: The absconsion of accused cannot be considered in isolation at bail stage because a person who is named in a murder case, rightly or wrongly, if becomes fugitive from law, his conduct is but natural.

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8. **Supreme Court of Pakistan**
Naveed Sattar v. The State etc.
Criminal Petition No. 317-L of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi ,
Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._317_l_2023.pdf

Facts: Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, order of declining bail has been assailed.

Issue: Whether Call Data Record (CDR) can be treated as a conclusive piece of evidence to connect the petitioner with the commission of the crime?

Analysis: … The identification parade was conducted after petitioner's nomination by the complainant and in such circumstances, prima facie the sanctity of such test identification parade is open for determination. So far as the CDR is concerned … in absence of any concrete material the CDR is not a conclusive piece of evidence to ascertain the guilt or otherwise of an accused particularly when photographs allegedly connecting the petitioner with the commission of the crime are never sent for forensic examination.

Conclusion: CDR is not a conclusive piece of incriminating evidence and it always requires corroboration.

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9. Supreme Court of Pakistan
Manzar Abbas, Farhan Nazar. v. District Police Officer, Sargodha, etc.
Civil Petition NO. 3041, 3105 of 2020
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3041_2020.pdf

Facts: Through these petitions under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order passed by the Punjab Service Tribunal, wherein dismissal from service of the petitioners has been upheld.

Issue: Whether acquittal in criminal case precludes departmental proceedings initiated on the same charge?

Analysis: Acquittal in criminal trial does not serve as an embargo against disciplinary proceedings, and that departmental and criminal proceedings may proceed concurrently, and that result of one does not impinge upon the other. Nonetheless an acquittal in criminal case may be considered during disciplinary proceedings but cannot be the sole determining factor in deciding the fate of the disciplinary proceedings. **…** The overall conduct including abuse of official position is to be considered. The gravity of all actions stands independently of the outcome of the criminal proceedings. The principles of accountability and the rule of law must be upheld to preserve the sanctity of the legal system. Thus, response in the form of disciplinary action may be justified and essential to deter similar conduct in the future.

Conclusion: Acquittal in criminal trial does not preclude disciplinary proceedings initiated on same charge. However, facts and gravity of misconduct is to be considered in every case independently.

10. **Supreme Court of Pakistan**
Saif-ur-Rehman v. Ijaz and another
C.A.1573/2017
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1573_2017.pdf

Facts: This appeal, by leave of the Court, has been filed against the judgment of the Peshawar High Court, whereby civil revision filed by the appellant was dismissed and the orders of the first appellate court as well as of the executing court issuing warrant of possession against the appellant were upheld.

Issues: i) Whether defendant in the case resulting in its dismissal possesses the legal status to be recognized as a decree-holder to initiate execution proceedings?
ii) Whether it is necessary that a decree-holder should be a party to the decree?
iii) Executing Court cannot go beyond the decree. Is there any exception to this rule?
iv) What are the revisional powers of High Court?

Analysis: i) The decree actually connotes the conclusive determination of the rights of the parties with regard to all or any of the matters in controversy in the suit. The word "parties" has been used rather than plaintiff or defendant. It clearly means that a decree may determine the rights of the plaintiff(s) or the defendant(s). When the decree determines certain rights to which the defendant(s) is/are held entitled, then in such a case the defendant(s) would also be included in the definition of "decree holder". The words 'decree holder" cannot, therefore, be restrained to the persons who have stood on the pane of plaintiffs during proceedings of the case. Such a narrow interpretation would compel repetition of adjudication in Courts of law and parties would be litigating for declaration of such rights which are already settled and declared by the Courts. In this fast-paced modern era, neither the Courts nor the parties can indulge in the luxury of engaging in multiple rounds of litigation to establish or revise rights that have already been declared. When the Courts once declare some right after a due process and find it-enforceable and such a decision gets finality then all the people entitled under such a decree would fall in the definition of "decree-holder" to file an application for execution under Order XXI, Rule 10, C.P.C. regardless of the fact whether they stood on the pane of the plaintiffs or the panel of the defendants. Thus, the "decree-holder" would mean a person who is entitled to enforcement of a right under a decree.
ii) A long ago, in Vythilinga Pandarasannadhi v. the Board of Control, (AIR 1932 Madras 193), a somewhat similar question came for consideration before the Madras High Court. In that case, a stranger party (Board of Control) sought execution of a decree whereupon the appellant before the Madras High Court raised the objection that it was not a party to the decree, it was a creation of the decree itself; therefore, it cannot be termed as decree-holder and as such cannot execute the decree. The Madras High Court overruled the said objection while

observing that a decree-holder need not be a party to the decree. It is enough if the decree confers some right enforceable under the decree upon some persons mentioned in it. (…) This implies that not only the defendants but also even strangers upon whom certain rights have been conferred through the decree can seek the enforcement/execution of the decree.

iii) The law on the subject is so settled in the terms that an executing Court cannot go behind a decree but must execute it as it stands. (…) Nonetheless, there are some exceptions to the above settled rule where-under an executing Court cannot look beyond the decree or look into the judgment, which are as follows:

i) the executing Court can look into the question of whether the decree or part thereof is executable or in-executable and if for any reason the decree has become in-executable, the executing Court is empowered to declare so and if a part of the decree is in-executable and that part is severable from other part(s) of the decree then the executing Court is empowered to refuse the execution of the in-executable part of the decree and may proceed with the execution of the rest of the decree. (Tauqeer Ahmad Qureshi v. Additional District Judge (PLD 2009 Supreme Court 760);

ii) the executing Court can look into the judgment in order to find the exact property when the decree is silent regarding what property was the subject matter of execution (Allah Ditta v. Ahmed Ali Shah (2003 SCMR 1202); and

iii) The executability of a decree can be questioned by the executing court if it is satisfied that (a) the decree is a nullity in the eyes of the law, (b) it has been passed by a Court having no jurisdiction (c) the execution of the decree will not infringe the legal rights of the decree-holder, if refused to be executed or (d) the decree has been passed in violation of any provision of law. (Fakir Abdullah v. Government of Sindh (PLD 2001 Supreme Court 131)

iv) The revisional jurisdiction of High Court is meant to rectify; to obviate, forefend and stave off the exercise of jurisdictional errors/defects and the illegalities and/or material irregularity committed by the subordinate Courts.

Conclusions: i) Yes, when the decree determines certain rights to which the defendant(s) is/are held entitled, then in such a case the defendant(s) would also be included in the definition of "decree holder".

ii) A decree-holder need not be a party to the decree. It is enough if the decree confers some right enforceable under the decree upon some persons mentioned in it.

iii) No, a person despite having been declared as lawful owner of suit property cannot seek possession thereof when decree sought to be executed does not provide for it.

iv) See above

v) The revisional jurisdiction of High Court is meant to rectify; to obviate, forefend and stave off the exercise of jurisdictional errors/defects and the

illegalities and/or material irregularity committed by the subordinate Courts.

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11. **Supreme Court of Pakistan**
Sohail Akhtar v. The State
Rahul Naazir v. Sohail Akhtar etc.
Jail Petition No.345/2017 and Criminal Petition No. 465/2017
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._345_2017.pdf

Facts: The petitioner was tried by the Additional Sessions Judge for offences under Sections 302/34/324/337-D, PPC and he was convicted and sentence to death as Ta'zir etc. Aggrieved of his conviction and sentence, the petitioner filed a criminal appeal before the High Court, whereas the trial Court transmitted murder reference. The appeal filed by the petitioner was dismissed with modification in his sentence from death to imprisonment for life and Murder Reference was answered in the negative. Being aggrieved of the above decision, the petitioner has filed Jail Petition against his conviction, whereas the complainant has moved Criminal Petition for enhancement of sentence.

Issue: Whether recovery of crime empties secured from the place of occurrence which was dispatched to the Forensic Science Laboratory after arrest of the accused can be termed as inconsequential?

Analysis: The High Court through the impugned judgment has rightly termed the recovery as inconsequential keeping in view the fact that crime empties secured from the place of occurrence were dispatched to the Forensic Science Laboratory after arrest of the petitioner…

Conclusion: Recovery of crime empties secured from the place of occurrence which was dispatched to the Forensic Science Laboratory after arrest of the accused can be termed as inconsequential.

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12. **Supreme Court of Pakistan**
The State through Advocate General KPH, Peshawar v. Saadat Khan and another
Criminal Petition No.54-P of 2012
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._54_p_2012.pdf

Facts: Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner/State has challenged the judgment passed by the Peshawar High Court, whereby Criminal Appeal filed by the respondent, was allowed; judgment of trial Court was set aside and the respondent was acquitted of the charge.

Issues: i) Whether the material contradictions in the statements of the complainant as well as the prosecution witnesses are fatal to the prosecution case?
ii) Whether an adverse inference against the prosecution can be drawn where the prosecution has abandoned the eyes witnesses?

Analysis: i) It transpires from the record that there are material contradictions in the statements of the complainant as well as the prosecution witnesses which are fatal to the prosecution case.
ii) Two independent witnesses have been abandoned, thus an adverse inference has to be drawn against the prosecution.

Conclusion: i) The material contradictions in the statements of the complainant as well as the prosecution witnesses are fatal to the prosecution case.
ii) An adverse inference against the prosecution can be drawn where the prosecution has abandoned the eyes witnesses.

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13. **Supreme Court of Pakistan**
Meeru Khan v. Mst. Naheed Aziz Siddiqui & others
Civil Petition No.609 of 20 20
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._609_2020.pdf

Facts: By means of this Civil Petition for leave to appeal, the petitioner has impugned the Order rendered by the learned High Court of Sindh, which was considered to be time barred and dismissed along with pending applications.

Issue: Whether, question as to limitation may arise if time is accorded by the Court for making the deficiency good under section 149, CPC and can technically a lis be disposed off in such situation on ground of limitation?

Analysis: It is discernible from Section 149, CPC that it expounds an exception to the set of guidelines and rules encompassed under Sections 4 and 6 of the Court Fees Act, 1870. The power of the Court conferred under Section 149 is somewhat transient in nature and enunciates an interim measure only; it does not, however, invest any power to exempt the payment of the requisite court fee altogether. The exercise of this discretion by the Court at any stage is, as a general rule, expected to be exercised in favour of the litigant on presenting plausible reasons which may include bona fide mistake in the calculation of the court fee; unavailability of the court fee stamps; or any other good cause or circumstances beyond control, for allowing time to make up the deficiency of court fee stamps on a case to case basis. The discretion can only be exercised where the Court is satisfied that sufficient grounds are made out for non -payment of the court fee in the first instance. It is worth reiterating that this power is always subject to the discretion of the Court in appropriate and fit cases and the litigant cannot claim the exercise of this discretion as of right or privilege in every case. A generous or easygoing view cannot be taken to cover up a premeditated strive or endeavour to avoid the

payment of requisite court fee perfunctorily. The expression "at any stage" alluded to in Section 149 accentuates that the deficiency, if any, on account of court fee can be ordered to be made good by the Appellate Court at any stage of proceedings in appeal. The provision delineated under Order VII, Rule 11 and Section 149 , CPC have to be read collectively and in unison. In case of deficiency in the court fee, the Court cannot dismiss the suit or appeal without pinpointing the inadequacy of court fee and then fixing a timeline for payment. After compliance of the order within the stipulated timeframe, it shall have the same force and effect as if the court fee had been paid in the first instance. On the face of it, Section 149 relates to the sanction of time for the payment of court fee in the beginning, while Section 148 is germane to the enlargement of time where any period is fixed or granted by the Court for any act prescribed or allowed by the CPC, and allows the Court to, in its discretion, from time to time, enlarge such period even where the period originally fixed or granted may have expired. It goes without saying that when time is allowed or extended by the Court for the payment of the requisite court fee, such order cannot be recalled unless it formally reviewed. The policy of the law with the gateway of a beneficial provision is not intended to penalize or victimize the litigant on account of a deficiency in court fees. By no stretch of imagination have the laws vis-à-vis court fees and valuation of suits been envisioned to make available an apparatus to the parties under litigation to circumvent the decisiveness of the lis on merits or to elongate the life of the lis by raising objections as to court fees and valuation of the suit; therefore it is also an obligation of the Court simultaneously that, while admitting or registering the plaint or appeal, it should check whether the requisite court fee has been paid or not and, in case of deficiency or filing application under Section 149 CPC, pass necessary orders for compliance without keeping the application pending for an unlimited period of time. The function of the Court is to do substantial justice between the parties after providing an ample opportunity of hearing which is one of the most significant components and elements of a fair trial. The procedure is mere machinery and its object is to facilitate, not obstruct, the administration of justice. The CPC should, therefore, be considered liberally and should not be allowed to undermine substantial justice.

Conclusion: see above in analysis clause.

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14. **Lahore High Court**
Asif Ali v. The State and another
Criminal Appeal No.1503/2023
Tauseef v. The State and another
Criminal Appeal No.1574/2023
Muhammad Waqar Adil v. Tauseef and another
Criminal Revision No.3600/2023
The State v. Asif Ali
Murder Reference No.42/203
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC4812.pdf

Facts: This single judgment will dispose of appeals filed by appellants against their convictions & sentences and Criminal Revision filed by complainant for enhancement of sentence as well as compensation amount and Murder Reference sent by trial court, as all the matters have arisen out of one and the same judgment passed by trial court.

Issues: i) Whether evidence of last seen requires strong corroboration?
ii) Whether mere CDR without voice transcript is useful for the prosecution case?

Analysis: i) Evidence of last-seen being weakest type of evidence requires strong corroboration; in this regard, case of "ALTAF HUSSAIN versus FAKHAR HUSSAIN and another" (PLJ 2008 SC 687) can be safely referred.
ii) Mere CDR without voice transcript, is of no avail to the prosecution; in this regard, case of "Mst. Saima Noreen vs The State and another" (2022 LHC 8798) can be referred.

Conclusion: i) Evidence of last-seen being weakest type of evidence requires strong corroboration.
ii) Mere CDR without voice transcript, is of no avail to the prosecution.

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15. **Lahore High Court**
Faisal v. The State
Criminal Appeal No.66322-J/2019
The State v. Faisal
Murder Reference No.194/2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC4882.pdf

Facts: This single judgment will dispose of criminal appeal filed by appellant against his conviction and sentence and murder reference sent by trial court, as both the matters have arisen out of one and the same judgment passed by Addl. Sessions Judge/trial court.

Issues: i) Whether any statement or application subsequently given or moved by complainant to police can be treated as first information under Section 154 Cr.P.C.?

ii) Whether the FIR which is registered with unexplained delay loses its value?
iii) Whether the witness who introduces dishonest improvement or omission for strengthening the case, can be relied?
iv) Whether medical evidence is mere supportive/confirmatory type of evidence?
v) When substantive evidence has been discarded, whether then motive becomes immaterial for conviction?
vi) When ocular account has been disbelieved, then abscondance is of any help to the case of prosecution?

Analysis: i) The very first narration regarding the occurrence got recorded by complainant to police official is practically first information under Section 154 Cr.P.C., whereas any statement or application subsequently given or moved to police is statement under Section 161 Cr.P.C. Hence, in peculiar facts and circumstances of this case, statement got recorded by complainant to police at the spot is as a matter of fact "first information" which has been suppressed by the prosecution and not brought on record whereas application moved by the complainant at the most can be termed as "statement under Section 161 Cr.P.C." and cannot be treated as "first information under Section 154 Cr.P.C."

ii) Aforementioned state of affairs clearly reflects that when police station was just 01-k.m. away from the spot, police came at the spot just after 20 minutes of the occurrence, accompanied the injured to hospital, obtained MLC also, in spite of recording statement of complainant at the spot of occurrence as well as conducting preliminary investigation did not register the case till 02.08.2015, then case has been registered with unexplained delay which further reflects that this time has been consumed for deliberation, consultation, concoction and tailoring false story after engaging and procuring witnesses and thereafter case has been registered through F.I.R. on the basis of application. Therefore, F.I.R. which is always considered as "cornerstone" has lost its value in the case and superstructure i.e. case of prosecution erected on the basis of this F.I.R. is bound to fall like house of cards.

iii) Complainant after introducing dishonest improvements and omissions filed complaint with much delay and while appearing as witness, made dishonest improvements and deliberate omissions for strengthening the case. Similarly, the eye witness also introduced dishonest improvements as well as intentional omissions in his statement before the Court. By now it is well settled that witness who introduces dishonest improvement or omission for strengthening the case, cannot be relied.

iv) So far as medical evidence is concerned, it is trite law that medical evidence is mere supportive/confirmatory type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury.

v) Motive cuts both the ways, it can also be a reason for false implication, even otherwise, when substantive evidence has been discarded, then motive becomes immaterial for conviction.

vi) It is important to mention here that abscondance is not proof of the charge. Furthermore, when ocular account has been disbelieved, then abscondance is of no help to the case of prosecution.

Conclusion: i) Any statement or application subsequently given or moved by complainant to police cannot be treated as first information under Section 154 Cr.P.C.
ii) The FIR which is registered with unexplained delay loses its value.
iii) The witness who introduces dishonest improvement or omission for strengthening the case, cannot be relied.
iv) Yes, medical evidence is mere supportive/confirmatory type of evidence.
v) When substantive evidence has been discarded, then motive becomes immaterial for conviction.
vi) When ocular account has been disbelieved, then abscondance is of no help to the case of prosecution.

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16. **Lahore High Court**
Ch. Zafar Muhammad Iqbal v. Mst. Kausar Parveen and others
R.F.A. No.9388 of 2020
Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC4770.pdf

Facts: The appellant instituted a suit for recovery of damages on the basis of malicious prosecution, against the respondents by maintaining that defendants/ respondents filed miscellaneous applications by creating fictitious, fabricated and bogus occurrence and the respondents got lodged case FIR against the appellant. The learned trial Court vide ex-parte judgment and decree dismissed suit of the appellant. Hence, the instant appeal has been filed.

Issues: i) Whether every criminal prosecution/inquiry which ends in the clearing of opponent is per-se entitle the opponent to file a suit for compensation?
ii) What are necessary conditions to prove the case of malicious prosecution?
iii) How term prosecution can be defined for actionable for tort?
iv) Whether jealousy and grudges amount to reasonable cause to prove malicious prosecution?
v) How term malice can be defined to prove malicious prosecution?

Analysis: i) It is, by now, a settled law that every criminal prosecution/inquiry which ends in the clearing of opponent will not per-se entitle the opponent to file a suit for compensation. Successful proceedings initiated under this law required that the original proceedings must have been malicious and without cause. There is no cavil to the fact that every person in the society had a right to set in motion Government and Judicial machinery for protection of his rights but said person should not infringe the corresponding rights of others by instituting improper legal proceedings in order to harass by unjustified litigation.
ii) In a reported case titled Muhammad Akram v. Mst. Farman Bibi (PLD 1990 SupremeCourt 28), Hon'ble Supreme Court has reckoned conditions that have to

exist for an action for malicious prosecution to be successful. The first two of these conditions are required for the issue of maintainability whereas the remaining three are to be proved; furthermore, the said conditions must exist conjointly. These conditions are as follows: • i) That the plaintiff was prosecuted by the defendant; • That the prosecution ended in plaintiff's failure; • That the defendant acted without reasonable and probable cause; • That the defendant was actuated by malice; • That the proceeding had inferred with plaintiff's liberty and had also affected her reputation; and finally • That the plaintiff had suffered damages.

iii) Touching to the first requirement that is the initiation of the criminal prosecution. Black's Law Dictionary defines the term 'prosecution' as "a criminal proceeding in which an accused person is tried". A prosecution exists where criminal charge is made before a judicial officer or tribunal. A malicious prosecution is an abuse of the process of the Court by wrongfully setting the law in motion on a criminal charge. To be actionable as a tort, the prosecution must have been malicious and terminated in favour of the plaintiff. The mere filing of a complaint before the police authorities on the basis of allegation was not a "legal wrong".

iv) Another ingredient is to see that whether the initiation of the prosecution was with a reasonable and probable cause. The circumstances between the parties are to be taken into consideration in order to determine the state of mind of the prosecutor and the defendant. However, jealousy and grudges held by defendants against plaintiffs will not amount to reasonable cause.

v) The next and striking ingredient for the action for compensation is that the criminal prosecution should have been initiated with malice. Black's Law Dictionary has defined the term 'malice' as wrongful intention. The term 'malice' has been elaborated and defined in the authoritative judgment reported as, Abdul Rasheed v. State Bank of Pakistan (PLD 1970 Karachi 344)… The term 'malicious prosecution' is defined in Black's Law Dictionary as "The institution of a criminal or civil proceeding for an improper purpose and without probable cause. In a case reported as Muhammad Yousaf v. Abdul Qayyum (PLD 2016 SC 478), the Apex Court of the country has defined malicious prosecution as "a tort which provides redress to those who have been prosecuted 'without reasonable cause' and with 'malice'....".

Conclusion: i) Every criminal prosecution/inquiry which ends in the clearing of opponent is not per-se entitle the opponent to file a suit for compensation.

ii) Necessary conditions to prove the case of malicious prosecution are mentioned under analysis No. ii.

iii) The term 'prosecution' as "a criminal proceeding in which an accused person is tried" and to be actionable as a tort, the prosecution must have been malicious and terminated in favour of the plaintiff.

iv) Jealousy and grudges do not amount to reasonable cause to prove malicious prosecution.

v) The term 'malice' means a wrongful intention and institution of a criminal or civil proceeding for an improper purpose and without probable cause.

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17. **Lahore High Court**
Raza Khan. v Malik Muhammad Munir, etc.
R.F.A.No.42140 of 2022.
Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC4942.pdf

Facts: Through this regular first appeal, the petitioner has challenged the vires of judgment and decree passed by trial court while dismissing the suit of the appellant for want of evidence invoking jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908.

Issues: i) What are the powers of Court under Rule 1(1), 1(2) of Order XVII, Code of Civil Procedure, 1908?
ii) Under what circumstances, the court must invoke jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908?

Analysis: i) Under Rule 1(1) of Order XVII, Code of Civil Procedure, 1908, the trial Court has been vested with powers to adjourn the case on showing sufficient cause by either of the party and from time to time adjourn the hearing of the suit and Rule 1(2) of the said Order empowers the Court seized of the matter to fix a day for further hearing of the suit subject to costs occasion by the adjournment.
ii) Where last opportunity to produce evidence is granted and the party has been warned of consequences, the court must invoke jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908 and enforce its order unfailingly and unscrupulously without exception.

Conclusion: i) The trial Court has been vested with powers to adjourn the case on showing sufficient cause and to fix a day for further hearing of the suit subject to costs.
ii) The court must invoke jurisdiction under Order XVII, Rule 3 Code of Civil Procedure, 1908 where last opportunity is granted and the party has been warned of consequences.

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18. **Lahore High Court**
Muhammad Yasin v. Muhammad Ismail etc.
Civil Revision No.62703 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC4763.pdf

Facts: The petitioner instituted a suit for declaration, cancellation of documents and perpetual injunction against respondents/defendants, plaint whereof was rejected by the learned trial Court under Order VII, Rule 11(d) of Code of Civil Procedure, 1908. Appeal against the said order was dismissed vide impugned judgment and decree; hence, the instant revision petition.

Issues: i) Whether Order VII, Rule 11 of the Code of Civil Procedure, essentially requires the Court to reject the plaint without recording evidence if it simply appears from its contents to be barred by limitation?
ii) Whether the expression 'barred by any law' includes the law of limitation?
iii) Is Order VII, Rule 11, C.P.C., is an exhaustive provision of law?

Analysis: i) The question of limitation being a mixed question of law and facts ought to have been decided after recording evidence. However, no evidence is required to be recorded where plain reading of the plaint clarifies that the suit is patently barred by limitation. Only relevant facts need to be looked into for deciding an application under Order VII, Rule 11 of C.P.C., are the averments in the plaint and other material available on record, which on its own strength is legally sufficient to completely refute the claim of plaintiff.
ii) The bar of limitation is traceable to the Limitation Act, therefore, the expression 'barred by any law' includes the law of limitation. The clause (d) of Order VII, rule 11 of C.P.C., is applicable where the suit is time-barred.
iii) A suit may be specifically barred by law under the vivid terms of clause (d) of Rule 11, Order VII of the Code of Civil Procedure, 1908, but even in a case where a suit is not permitted by necessary implication of law in the sense that a positive prohibition can be spelt out of legal provisions, the Court has got an inherent jurisdiction to reject the plaint at any stage of trial and in such a situation formalities should be avoided to reject it.

Conclusion: i) The mandate of law as contained in Order VII, Rule 11 of the Code of Civil Procedure, essentially requires the Court to reject the plaint without recording evidence, which from its contents appears to be barred by limitation.
ii) The expression 'barred by any law' includes the law of limitation.
iii) Order VII, Rule 11 of C.P.C., is not an exhaustive provision of law.

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19. **Lahore High Court**
Bilawal Hussain v Mst. Farzana Kausar
Civil Revision No.63085 of 2019
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC4958.pdf

Facts: The petitioner/defendant has filed the Civil Revision under section 115 of C.P.C, against the decision of lower courts wherein, suit of plaintiff/respondent for possession through specific performance of an agreement to sell with permanent injunction was decreed against petitioner/defendant and his appeal against the decision of the trial court was dismissed.

Issues: i) Whether non- appearance of main witness attracts the adverse presumption of Article 129(g) of the Qanun-e-Shahadat Order, 1984?
ii) Under what circumstances, High Court can undo the concurrent findings of the lower courts**?**

Analysis: i) The non-appearance of the main witness attracts Article 129(g) of the Qanun-e-Shahadat Order, 1984 as the best evidence has been withheld arising out adverse presumption that if the said witness would have appeared in the witness box, he would not have stood and successful after facing the cross examination.
ii) High Court has been vested with authority and ample power to undo the concurrent findings of lower courts when both have failed to adjudicate upon the matter by appreciating law on the subject and misread the evidence.

Conclusion: i) The non-appearance of the main witness attracts the adverse presumption of Article 129(g) of the Qanun-e-Shahadat Order, 1984.
ii) High Court can undo the concurrent findings of the lower courts when both have failed in appreciation of law and misread the evidence.

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20. **Lahore High Court**
Faqir Syed Anwar Ud Din (deceased) through L.Rs. v. Syed Raza Haider and others
R.S.A. No.68 of 2017
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC4964.pdf

Facts: Through this appeal and connected appeal the appellants assailed the judgments and decrees passed by learned courts below whereby suit against the appellants were decreed by the trial court and their appeals were dismissed by the appellate court.

Issues: i) Whether beneficiary is under heavy burden to prove the valid execution of the general power of attorney and other sale transactions where the principal is of unsound mind?
ii) Where subsequent vendee conducted no inquiry whatsoever with regards to title of the property, whether he would be deemed to have purchased property for value, in good faith and without notice of original contract?
iii) Whether the concurrent findings, on facts, can be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908?

Analysis: i) All the P.Ws. deposed that Mst. Yasmin Begum was of unsound mind before contracting marriage and all the transactions regarding the transfer of property were made while she was suffering from mental illness and being of an unsound mind and was unable to manage herself and that all the transactions germane to transfer of her property were outcome of fraud. The beneficiary was under heavy burden to discharge the onus that all the transactions were performed with free will and consent of the principal but in the present case, it has been established by the respondent No.1 that Mst. Yasmin Begum was not in a position to manage her property. The appellants produced only solitary witness and the said D.W. did not

depose a single word regarding the factum that at the time of execution of general power of attorney, Mst. Yasmin Begum was not suffering from mental infirmity and she was of sound mind at that time. It has been established on record that Mst. Yasmin Begum was suffering from epileptic disease from her childhood and was not in a position to manage her property or form a rational judgment as to effect of any contract on her interest. The deceased predecessor of the appellants being beneficiary was under heavy burden to prove the valid execution of the general power of attorney and other sale transactions but he failed in doing so.

ii) So far the claim of the appellant in connected appeal with regards to bona fide purchaser without notice is concerned, it is observed that protection under section 27(b) of the Specific Relief Act, 1877 is not available to him, because simple denial was not sufficient to discharge the onus, rather he should have proved good faith and lack of knowledge after reasonable care. It is a settled law that where subsequent vendee conducted no inquiry whatsoever with regards to title of the property in question, he would not be deemed to have purchased property in question for value, in good faith and without notice of original contract.

iii) Pursuant to above, both the learned Courts have evaluated evidence in true perspective and have reached to a just conclusion, concurrently; as such the concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908.

Conclusion: i) Beneficiary is under heavy burden to prove the valid execution of the general power of attorney and other sale transactions where the principal is of unsound mind.

ii) Where subsequent vendee conducted no inquiry whatsoever with regards to title of the property, he would not be deemed to have purchased property for value, in good faith and without notice of original contract.

iii) The concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908.

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21. **Lahore High Court**
Qadeer Ahmad Toor v. Mushtaq Ahmad and others
Civil Revision No. 63332 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC4952.pdf

Facts: The petitioner instituted a suit for declaration with possession through partition along with permanent injunction against the respondents The learned trial Court vide impugned judgment and decree dismissed suit of the petitioner. The appeal preferred by the petitioner against the said judgment and decree was also dismissed vide impugned judgment and decree by the learned appellate Court; hence, the instant revision petition.

Issues: i) Whether it is obligatory in all cases to state particulars with dates and items necessary in the pleadings?
ii) Whether it is necessary to provide the description of the property in the plaint where the subject matter of the suit is immovable property?
iii) Whether the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis: i) Order VI, Rule 4 of the Code of Civil Procedure, 1908 provides that, 'in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items necessary) shall be stated in the pleadings.' However, the petitioner could not plead and prove by leading confidence inspiring and trustworthy evidence to prove the alleged fraud.
ii) Besides, the petitioner could not describe the detail of property allegedly owned by him, which was necessary and essential as required by Order VII, Rule 3, Code of Civil Procedure, 1908, which reads: -
'Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers.'
iii) It is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion (..) The impugned judgments and decrees do not suffer from any infirmity, rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908

Conclusions: i) Yes, it is necessary in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence to state its particulars with dates and items necessary in the pleadings.
ii) Yes, where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it.
iii) Yes, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908 unless the impugned judgments and decrees suffer from any infirmity or the law on the subject has not rightly been construed and appreciated.

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22. **Lahore High Court**
The State v. Ali Akbar etc.
Crl. Revision No. 56169 of 2023
Ms. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC4710.pdf

Facts: Through the instant Criminal Revision the petitioner has challenged the legality

and validity of the order passed by the learned Judge, Anti-Terrorism Court, whereby the request of the investigating officer for grant of 20-days physical remand of respondent No.1 was turned down and he was sent to judicial lockup for 14-days.

Issues: i) Whether remand is to be granted mechanically at the request of the police?
ii) Whether sub-section (2) of Section 21- E of the Anti-Terrorism Act, 1997 does authorize the police to ask for police custody for a further period after the expiry of the first physical remand for not less than 15 days and more than 30 days?
iii) If one case is registered against the accused in which, during the investigation, it is found that he has committed more than one offence, whether it will be treated as one investigation?
iv) Whether for each offence in a case/FIR, a separate police remand can be granted?

Analysis: i) It is an established principle of law that remand is not to be granted mechanically at the request of the police; instead, the Magistrate is expected to perform its duty after judicious application of mind.
ii) The mandate of Sub-section (1) of Section 21-E of the AntiTerrorism Act, 1997 is that when it is not possible to complete the investigation within 24 hours, then it is the duty of the Police to produce the accused before the court. Police cannot detain any person in their custody beyond that period. Sub-Section (1) says that if the accused is produced before the court, then the court can give a remand to the police for investigation not less than 15 days and not more than 30 days. But the proviso of Sub-section (2) of Section 21- E of the Anti-Terrorism Act, 1997 does not authorize the police to ask for police custody for a further period after the expiry of the first physical remand for not less than 15 days and more than 30 days. Instead, it gives discretion to the court if further evidence may be available and no bodily harm has been or will be caused to the accused; the court can authorize the detention of the accused person in custody of police for a period to the court's satisfaction. The whole purpose is that the accused should not be detained for more than 24 hours, and subject to the expiry of the first police remand, it can be extended up to 90 as the case may be. Therefore, the reading of sub-Section 2 with the proviso of Section 21-E of the Anti-Terrorism Act, 1997, clearly transpires that the incumbent should be, in fact, under the detention of police for investigation for the period to the court's satisfaction.
iii) It is relevant to mention here that if one case is registered against the accused in which, during the investigation, it is found that he has committed more than one offence, then it will be treated as one investigation.
iv) For each offence, a separate police remand cannot be granted. If that is permitted, then the police can go on adding some crime or the other of a severe nature at various stages and seek further detention in police custody repeatedly.

Conclusion: i) Remand is not to be granted mechanically at the request of the police; instead, the Magistrate is expected to perform its duty after judicious application of mind.

ii) Sub-section (2) of Section 21- E of the Anti-Terrorism Act, 1997 does not authorize the police to ask for police custody for a further period after the expiry of the first physical remand for not less than 15 days and more than 30 days. Instead, it gives discretion to the court if further evidence may be available and no bodily harm has been or will be caused to the accused; the court can authorize the detention of the accused person in custody of police for a period to the court's satisfaction.

iii) If one case is registered against the accused in which, during the investigation, it is found that he has committed more than one offence, then it will be treated as one investigation.

iv) For each offence in a case/FIR, a separate police remand cannot be granted.

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23. **Lahore High Court**
Mansha Ali v. The State, etc.,
Crl. Rev. No.64149 of 2023,
Miss. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural.
https://sys.lhc.gov.pk/appjudgments/2023LHC4873.pdf

Facts: Through the instant Criminal Revision filed under Sections 435/439-A of Cr.P.C., read with section 561-A of Cr.P.C., the petitioner has impugned the order passed by the learned Administrative Judge Anti-Terrorism Courts, whereby the request of the investigating officer for physical remand of the petitioner in case FIR registered under Section 427, 324, 186, 353, 148, 149 P.P.C., 7-ATA and Section 35 LDA was accepted allowing physical remand of petitioner for 14-days.

Issues: i) What is the mandate of Section 21-E of Anti-Terrorism Act, 1997, regarding passing the order of initial remand?

ii) What is the mandate of Section 21-E of Anti-Terrorism Act, 1997, regarding passing the order of second remand?

Analysis: i) As mandated in Section 21-E of Anti-Terrorism Act, 1997, the order of remand, either judicial custody or police custody, shall not be passed mechanically. Since such detention deprives the personal liberty guaranteed under Article 10 (2) of the Constitution of the Islamic Republic of Pakistan, therefore, while passing an order of remand, the learned Administrative Judge Anti-Terrorism Courts must apply his mind to the entries in the police file, representation of the accused, and other facts and circumstances.

ii) There cannot be any detention in police custody only for the reason that more offences, either severe or otherwise, are added during later stages of the investigation. If the collection of evidence was completed on record after the expiry of the initial period of physical custody in connection with the case investigation, then physical remand would be declined. Otherwise, the Court can remand him to such custody during the second period as provided under Section 21-E (2) of Anti-Terrorism Act, 1997.

Conclusion: i) As per mandate of Section 21-E of Anti-Terrorism Act, 1997, the Administrative Judge Anti-Terrorism Courts will pass the order of remand only on the satisfaction that such remand is justified.
ii) The proviso of Section 21-E (2) of the Anti-Terrorism Act, 1997 gives discretion to the court that if further evidence may be available and no bodily harm has been or will be caused to the accused, the court can authorize the detention of the accused person in custody of police for a period to the court's satisfaction.

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24. **Lahore High Court**
Usman Ali Maqbool v. The State & another
Crl.Misc.No.47792-B of 2023
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC4918.pdf

Facts: Petitioner seeks post-arrest bail in case FIR registered under Sections 302,324,337-F (v) & 34 PPC.

Issues: i) When after the registration of a cross-version case accused is entitled to relief of bail?
ii) Whether ipse-dixit of police could be considered for granting post arrest bail to accused?
iii) Whether video clips have any legal admissibility and can be taken into consideration even at bail stage?

Analysis: i) The procedural relief of bail is generally granted in cases of two versions in the absence of some extraordinary circumstances, more importantly when the counter stance of the accused about the same incident is supported by some record and investigation. The courts lean in favour of extending the concession of post-arrest bail to an accused in cases of cross-version on the premise that in such like cases it is always in fitness of things to leave the question of initiation of aggression to the trial court where it can best be decided after in-depth analysis of the evidence.
ii) Before dilating upon the second ground of declaration of innocence pronounced in favour of petitioner by the police, it is deemed appropriate firstly to observe here that in routine ipse-dixit of the police without evaluating the supporting reasoning is not considered sufficient for the grant of post-arrest bail in a homicide case. Such opinion in favour of an accused can still be used for enlarging him on post-arrest bail if it is based on some confidence inspiring material by examining it on the touchstone of tentative assessment. The courts are not oblivious of the fact that vested interests, defective investigations and dishonest opinions have eroded and polluted the investigation process of criminal cases in our country. At the same time, the vengeance of litigants prompts them to grill some innocent persons along with actual offenders in criminal cases and fair police investigation is the only tool left for lifting veil from the actual facts.

iii) In the instant case, it is observed from record that petitioner was declared innocent on the basis of visuals of incident captured in CCTV camera installed adjacent to the crime scene. These visuals were also forwarded to PFSA and it was reported that the clips are free from editing and tampering. Needless to mention here that such video clips have legal admissibility in consonance with Articles 46-A & 164 of Qanun-e- Shahadat Order, 1984, thus can be taken into consideration even at bail stage.

Conclusions: i) The procedural relief of bail is generally granted in cases of two versions in the absence of some extraordinary circumstances, more importantly when the counter stance of the accused about the same incident is supported by some record and investigation.

ii) Ipse-dixit of police in favour of an accused can be used for granting post-arrest bail if it is based on some confidence inspiring material by examining it on the touchstone of tentative assessment.

iii) Video clips can be taken into consideration at bail stage being legally admissible in consonance with articles 46-A and 164 of Qanun-e-shahadat order 1984

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25. **Lahore High Court**
Muhammad Zahid Saleem v. Secretary, Government of Punjab etc.,
Writ Petition No. 66980 of 2017,
Mr. Justice Abid Aziz Sheikh.
https://sys.lhc.gov.pk/appjudgments/2023LHC4923.pdf

Facts: Through this constitutional petition, the petitioner impugned four orders including the order declining his representation for grant of pensionary benefits against the post of "Assistant Finance" (BS-16), the order withdrawing his promotion as "Assistant" (BS-11), the Corrigendum modifying his retirement to the effect of mentioning his retirement against the post of "Senior Clerk" and the order holding him eligible to get his pensionary benefits of "Senior Clerk". The petitioner has also sought his pensionary benefits against the post of "Assistant Finance"(BS-16).

Issue: If the promotion order is passed by competent authority in absence of allegations of fraud, misrepresentation or use of illegal means on part of the promotee in promotion proceedings, whether such promotion order can be withdrawn and promotee may be deprived of his pensionary benefits at belated stage mere on basis of defective departmental proceedings?

Analysis: When there are no allegations of fraud, misrepresentation or use of illegal means on part of the promotee in promotion proceedings and promotion order is also passed by the Competent Authority, then such promotion order is protected under the principles of "vested right", "past & closed transaction" and "*locus poenitentiae*".

Conclusion: If the promotion order is passed by competent authority in absence of allegations of fraud, misrepresentation or fault on part of the employee in promotion proceedings, then promotion order cannot be withdrawn at belated stage merely on basis of defective departmental proceedings.

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26. **Lahore High Court**
Hamza Sugar Mills Ltd. & others v. Federation of Pakistan & others
I.C.A No.61692 of 2021
Mr. Justice Shahid Karim, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC4778.pdf

Facts: The challenges were made primarily to the Price Control and Prevention of Profiteering & Hoarding Order, 2021 issued under the powers conferred on the Federal Government by Sections 3 and 4 of Price Control and Prevention of Profiteering and Hoarding Act, 1977. In addition to the above, the Schedule to the 1977 Act has also been substituted. Under Section 3(b) of the 2021 Order in respect of the commodities specified in Part II of the Schedule to the 1977 Act (which include sugar) the business of determining price of sugar stands allocated to the Secretary, Ministry of National Food Security and Research who is authorized to exercise the powers of the Controller General under the 2021 Order. This litigation includes a number of Intra Court Appeals arising out of a judgment passed by a learned Single Judge of this Court as well as constitutional petitions which were filed on a subsequent time and raised a common issue of law.

Issues: i) What is primary purpose of Article 151 of the Constitution?
ii) Whether subject of price control and fixation of price of essential commodities inhere in entry 13 in Part II, Fourth Schedule of Constitution?
iii) What is underlying theme of Entry 13 in Part II, Fourth Schedule of Constitution?
iv) Whether the field of "food" is within legislative competence of Provincial Assembly or Parliament and when it becomes inter-provincial matter?
v) Whether the intention of Article 151 of Constitution is to have uniformity in prices across all Provinces?
vi) Whether Price Control and Prevention of Profiteering and Hoarding Act, 1977 is existing law and could have been adapted for purposes of Province of Punjab?

Analysis: i) Article 151 of Constitution relates to Inter-Provincial trade and clearly states that the trade, commerce and intercourse throughout Pakistan shall be free. This is the essential and primary purpose of Article 151 and it cannot be extended to encapsulate powers which are not envisaged and which do not reside in either the Federal Government or a Provincial Government. By clause 3, a Provincial Assembly and a Provincial Government has been enjoined from making any law or taking any executive action prohibiting or restricting the entry into or the export from the Province of goods of any class or description and by paragraph

(b) of clause 3, a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former goods or which, in the case of goods manufactured or produced outside the Province discriminates between goods manufactured or produced in any area in Pakistan and similar goods manufactured or produced in any other area in Pakistan.

ii) It is not correct that subject of price control and fixation of prices of essential commodities to inhere in Entry 13 as the subject matter of this Entry is essentially regarding Inter-Provincial matters and has direct nexus with Article 151 of the Constitution…

iii) Entry 13 reads "inter-provincial matters and coordination". At first blush it seems that the Entry targets matters which arise amongst Provinces and which require resolution by a neutral arbiter. There may be a wide variety of matters on which the Provinces may have a falling out and lest those matter get out of hand, the Federal Government may intervene which, by Entry 13, is its constitutional duty. But the underlying theme of Entry 13 is for an inter-provincial matter to arise in order to clothe the Federal Government the power to step in. That is, one Province shall have to raise a grievance against another which then gives rise to an inter-provincial matter. The Parliament may enact a law to deal with such a situation but it cannot, under a misplaced notion, have a legislative blank check to encroach upon Provinces' primary powers to legislate on a field of activity.

iv) The statutory wording makes it clear that the field of 'food' is within the legislative competence of a Provincial Assembly. By necessary implication therefore, the price control of foods as an essential commodity is also within the Province's competence. This flows from the holding of superior Courts as well. There can be no contention that if only a Provincial Assembly can legislate upon the subject matter of 'food', all ancillary matters including price control would be included in the broad power so conferred. The Parliament cannot arrogate to itself the power of price control in the guise of Entry 13 (which is an entry having unspecific contours) while a specific subject-matter lies within the power of a Provincial Assembly. If this were allowed to the Parliament, the entire edifice of federalism and provincial autonomy will have dissipated. It can only transition into an inter-provincial matter if another Province raises serious objections to it on plea that the price affects businesses adversely in that Province. Apart from this, the subject-matter of food and its allied matters such as price fixation remain within the armoury of powers of a Provincial Assembly.

v) To have uniformity in prices across all Provinces is not the intention of Article 151 nor is there any such power conferred upon the Parliament by virtue of Entry 13. In a given situation, the manufacturers and producers of essential commodities in the Province of Punjab may not be dealing with their commodities for export to other Provinces. Can it conceivably be held that the Parliament would still have the power to regulate the prices of commodities which do not have any Inter Provincial connotation. The answer is clearly in the negative and what is conceived by Article 151 of the Constitution is to prohibit making of laws which

constrict the freedom of trade, commerce or intercourse between one Province and another. By Article 151, the power of the Provinces and the Provincial Governments is limited and they cannot make laws which prohibit or restrict the entry into or export from the Province of goods of any class or description.

vi) In fact the 1977 Act is clearly not an existing law under the 1973 Constitution and could not have been adapted for the purposes of Province of Punjab. That is why perhaps it was allowed to lapse as a binding law at the end of its life. In the meantime the Province promulgated the Punjab Prevention of Speculation in Essential Commodities Act, 2021 as well which was done to provide for prevention of speculation in essential commodities to curb artificial price hike and profiteering in the best public interest. Once again, this was done under the powers conferred upon the Province of Punjab by the Constitution. The Province of Punjab also brought in the Punjab Prevention of Hoarding Act, 2020 to provide for the prevention of hoarding in respect of scheduled articles.

Conclusion: i) Primary purpose of Article 151 of Constitution is that the trade, commerce and intercourse throughout Pakistan shall be free.

ii) Subject of price control and fixation of prices of essential commodities does not inhere in Entry 13 as the subject matter of this Entry is essentially regarding Inter-Provincial matters and has direct nexus with Article 151 of the Constitution.

iii) The underlying theme of Entry 13 is for an inter-provincial matter to arise in order to clothe the Federal Government the power to step in. That is, one Province shall have to raise a grievance against another which then gives rise to an inter-provincial matter.

iv) The field of "food" is within legislative competence of Provincial Assembly. It can only transition into an inter-provincial matter if another Province raises serious objections to it on plea that the price affects businesses adversely in that Province. Apart from this, the subject-matter of food and its allied matters such as price fixation remain within the armoury of powers of a Provincial Assembly.

v) It is not the intention of Article 151 of Constitution to have uniformity in prices across all Provinces.

vi) Price Control and Prevention of Profiteering and Hoarding Act, 1977 is not existing law and could not have been adapted for purposes of Province of Punjab.

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27. **Lahore High Court**

Commissioner Inland Revenue, Lahore Bench, Lahore v. Unique Cycle Industry.

STR No.72126/2022 etc.

Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez

https://sys.lhc.gov.pk/appjudgments/2023LHC4896.pdf

Facts: Through this Sales Tax Reference along with other Applications the applicant assailed the order of the Appellate Tribunal Inland Revenue Lahore (Appellate Tribunal) in connection with the observations that the conditions (i) & (ii) of SRO 670(1)/2013 are independent of each other.

Issues: i) Whether Input-Output Co-efficient Organization (IOCO) certificate is only one of the mode(s) for determination of input/put ratios for claiming or extending the privilege of zero-rating facility under SRO No.670(1)/2013?
ii) Whether subject matter conditions of SRO 670(1)/2013 exist and operate independent of each other?
iii) Whether reading of SRO No.670 (1)/2013 in bits and pieces would contravene the intent and purpose of statutory instrument?

Analysis: i) IOCO certificate is only one of the mode(s) for determination of input/put ratios. It implies that factum of determination of input/put ratios is the fundamental-cum-primary condition for claiming or extending the privilege of zero- rating facility under SRO No.670(1)/2013. It is evident from perusal of sub-clause (b) of condition (ii) of SRO No.670(1)/2013 that requirement of determination of input/output ratios would be deemed fulfilled if Commissioner had approved the declaration of input/put ratios or determination thereof is otherwise available in terms of the alternatives provided in sub-clause (b). And if Commissioner was not satisfied with alternatives available or IOCO certificate was not readily available, sub-clause (c) provides transitory/stop- gap arrangement…
ii) Subject matter conditions have had to be read and construed jointly. If condition (ii) is treated as separate and independent then the requirement of determination of input/output ratios, if not achieved otherwise, had to be carried out in the light of IOCO certificate, which appears to be penultimate / conclusive method of determination of input/out ratios for the purposes of extending benefit of SRO No.670(1)/2013. Sub-clause (c) of condition (ii) merely provided transitory deferment of the determination of input/ output ratios, which sub-clause does not conclusively provide for the effect of non-availability of IOCO certificate. And reading or treating non- provisioning of certificate, after lapse of temporarily extended period, per se as extinguishment of the requirement of determination of input/output ratios in terms of condition (i) is offensive to the scope, purpose and existence of SRO No.670(1)/2013. Condition (i) is primary condition for seeking benefit under SRO No.670(1)/2013 and condition (ii) is ancillary thereto, a subordinate condition. Declaring condition (ii) as mutually exclusive would imply redundancy of condition (i) which is unwarranted.
iii) Reading of SRO No.670(1)/2013 in bits and pieces would contravene the intent and purpose of statutory instrument, which purpose is grant of concession but subject to scrutiny qua determination of input/output ratios of the manufacturer.

Conclusion: i) Yes, Input-Output Co-efficient Organization (IOCO) certificate is only one of the mode(s) for determination of input/put ratios for claiming or extending the privilege of zero-rating facility under SRO No.670(1)/2013.

ii) The subject matter and conditions of SRO 670(1)/2013 do not exist and operate independent of each other.
iii) Yes, reading of SRO No.670 (1)/2013 in bits and pieces would contravene the intent and purpose of statutory instrument.

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28. **Lahore High Court**
National Bank of Pakistan v. Brite Chemicals, etc.
R.F.A. No.1538/2015
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC4910.pdf

Facts: Through this Regular First Appeal, legality of judgment is challenged, whereby suit for recovery of overdue finance, instituted by Financial Institution was decreed with costs of suit to the extent of some respondents and suit against other respondents was dismissed.

Issue: Whether cost of funds can be declined on the premises that suit was instituted under Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 but at the time of decree the applicable law was Financial Institutions (Recovery of Finances) Ordinance, 2001 and whether retrospective effect to section 3 of the Ordinance, 2001 can be given?

Analysis: … the effect of section 3 of Ordinance of 2001 is to be considered while appreciating the scope, mandate and effect of section 29 of the Ordinance of 2001. In terms of sub-section (2) of section 29 of Ordinance, 2001, no decree can lawfully be passed under the Act, 1997 with respect to mark- up-based finance and only interest-bearing- loans can be decreed under section 15 of Act of 1997. Hence, if at all decree had to be passed regarding mark-up-based finance, in all possibility, it had to be under Ordinance of 2001. Section 29 is the bridge for dealing with adjudication of claims of mark-up-based finances under the provisions of Ordinance of 2001, notwithstanding institution of suits under provisions of Act of 1997.

Conclusion: See above in analysis clause.

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29. **Lahore High Court**
The Commissioner Inland Revenue, RTO, Lyalpur Zone, Faisalabad v. M/s M.M Enterprises (Munir Ahmad), Faisalabad
ITR No.77156/2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muhammad Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC4903.pdf

Facts: This and connected Income Tax Reference Applications are directed against orders of Appellate Tribunal Inland Revenue Lahore.

Issue: Whether those traders of yarn, who claim and intend to take advantage of proviso to 45A of Part IV, second Schedule, are entitled to claim benefit of withholding tax deductions under clause (a) of sub-section (1) of section 153 of the Ordinance of 2001?

Analysis: Answer is inherently provided in the proviso to 45A of Part IV, second Schedule of the Ordinance of 2001. No deduction of withholding of tax under clauses (a) and (b) of sub-section (1) of section 153 of the Ordinance of 2001 is permissible. This restraint imposed specifically excludes incidence of withholding tax deductions under clause (a) of sub-section (1) of section 153 of the Ordinance of 2001. Since no deduction was permissible therefore no question of classification of such deduction as final tax, in terms of sub-section (3) of Ordinance, 2001 arises…

Conclusion: The restraint imposed under proviso to clause 45A of Part IV of second Schedule, specifically excludes incidence of withholding tax deductions under clause (a) of sub-section (1) of section 153 of the Ordinance of 2001.

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30. **Lahore High Court**
Muhammad Adnan v. The State
Cr. Appeal No.206 of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC4839.pdf

Facts: Through the instant appeal, the appellant challenged conviction and sentence awarded to him by the learned Addl. Sessions Judge, vide judgment in case FIR registered u/s 9 (c) of the Control of Narcotic Substances Act, 1997, whereby he was convicted u/s 9 (c) of the CNSA, 1997 and sentenced to rigorous imprisonment for six years and six months alongwith fine of Rs.30,000/-, in default thereof, to further undergo six months simple imprisonment.

Issues: i) Under what two components/limbs prosecution is duty bound to prove a case under Control of Narcotic Substance Act, 1997?
ii) To what extent the accused can be convicted keeping in view the principle of proof of safe custody and transmission of sample parcels and the case property?

Analysis: i) A case under the Control of Narcotic Substances Act, 1997 contains two components/limbs i.e. firstly, the prosecution is bound to establish the safe custody and safe transmission from the place of recovery of seized drug by the police, including separation of representative parcel(s) of the seized drug and its despatch to the testing laboratory and secondly, the chain of custody of the parcel(s) containing the 'case property' is also pivotal, and the prosecution is also supposed to prove its safe custody as far as the same remained with the police and then despatched to the trial Court as a 'case property' intact, and any break in the chain of custody or lapse in the control of possession of the sample(s) containing

case property causes doubt on its safe custody and safe transmission to the Court of law.

ii) Meaning thereby that an important link is missing regarding the safe custody of the 'case property' and we have reached to an irresistible conclusion that the prosecution remained failed to prove its case to the extent of parcels containing the 'case property'. Hence, in all eventualities the narcotic containing the 'case property' cannot be used against the appellant. So, he cannot be held guilty of the quantity i.e. 3011 grams of charas and as such conviction and sentence awarded to him by the learned trial Court u/s 9 (c) of the Act ibid cannot be allowed to stand, rather he would be convicted and sentenced to the extent of samples consisting of 54/54 grams and 51 grams (total 159 grams), which were received in the Punjab Forensic Science Agency (PFSA) and the same were tested as positive through report Ex-PG. Therefore, the appellant is held responsible for having only to the extent of three 'sample parcels' weighing 156 grams in his possession.

Conclusion: i) Prosecution is duty bound to prove a narcotic case under two components/limbs i.e. firstly safe custody and safe transmission of the seized drug and secondly chain of safe custody of parcels.

ii) In narcotic case an accused cannot be held responsible for narcotic containing the case property, safe custody of which has not been proved by the prosecution and thus accused is responsible only for possessing sample parcels, safe custody and transmission of which has otherwise been proved.

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31. **Lahore High Court**
Muhammad Akram v. The State etc.
Crl. Misc. No. 20609-B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4974.pdf

Facts: Through this application under section 497 Cr.P.C., the Petitioner seeks post-arrest bail in case registered for offences under sections 376 & 292 PPC.

Issues: i) What are relevant provisions of Cr.P.C. for collecting medical evidence regarding offences of rape etc.?

ii) Whether victim of rape can be asked question in cross-examination and any other evidence can be led about her alleged "general immoral character" to impeach her credibility?

iii) Whether two-finger virginity test for medico-legal examination of a victim of rape is permissible under law?

Analysis: i) In Pakistan, under section 164-A of the Code of Criminal Procedure 1898, the victim is required to undergo a medical examination as a part of the investigation relating to an offence committing rape, unnatural offence or sexual abuse or any attempt thereof. Section 164-B Cr.P.C. stipulates that DNA samples, where practicable, shall be collected from the victim with their consent or with the

approval of their natural or legal guardian and from the accused during the medical examination and sent to a forensic laboratory at the earliest for analysis. All the reports with the doctor's opinion are then used in the court along with the oral testimony of the doctor. However, the courts in our country have also denounced the virginity test.

ii) In Atif Zareef, the Supreme Court observed that the courts had been allowing opinion evidence of medical experts based on two-finger tests, presumably under Article 151(4) of the Qanun-eShahadat, 1984 ("QSO") [section 155(4) of the erstwhile Evidence Act, 1872] which provided that "when a man is prosecuted for rape or an attempt to ravish, it may be shown that the victim was of generally immoral character to impeach her credibility." However, the Federal Shariat Court declared that provision repugnant to the Injunctions of Islam, and then the Criminal Law Amendment (Offences Relating to Rape) Act, 2016 omitted it. A subsequent enactment, section 12(3) of the Punjab Witness Protection Act, 2018, specifically ordains that the court shall forbid a question relating to the past sexual behavior of a victim. Article 146 of QSO also obligates the court to disallow any indecent or scandalous questions unless they relate to the fact-in-issue. The cumulative effect of all these provisions is that putting questions to a rape victim in cross-examination and leading any other evidence about her alleged "general immoral character" to impeach her credibility is prohibited.

iii) Parliament has enacted the Anti-Rape (Investigation and Trial) Act (XXX of 2021) to accord statutory recognition to the dicta in Atif Zareef and Sadaf Aziz cases. Section 13(1) thereof expressly prohibits two-finger virginity testing for the medico legal examination of a victim and adds that no probative value shall be attached to it. Section 13(2) states that any evidence that the victim is generally immoral shall be inadmissible in relation to scheduled offences.

Conclusion: i) Provisions of sections 164-A & 164-B of Cr.P.C. relate to collection of medical evidence regarding offences of rape, unnatural offence or sexual abuse or any attempt thereof.

ii) Putting questions to a rape victim in cross-examination and leading any other evidence about her alleged "general immoral character" to impeach her credibility is prohibited.

iii) Two-finger virginity test for medico-legal examination of a victim of rape is prohibited under section 13(1) of Anti-Rape (Investigation and Trial) Act (XXX of 2021).

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32. **Lahore High Court**
Muhammad Azhar Abbasi and Masood Ahmad Abbasi v. Municipal Corporation and others
Writ Petition No. 3222 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC4723.pdf

Facts: The Petitioners have filed petition under Article 199 of the Constitution of Islamic

Republic of Pakistan, 1973 with prayer that the Respondents be directed to pay current and future arrears and retainership/professional fee of the petitioners till they avail duties of the petitioners as legal advisors.

Issue: Whether mere recommendation/nomination of Administrator Municipal Corporation for appointment of a legal advisor, without compliance of Rule 4 of the Punjab Local Government Legal Advisors Rules, 2003, creates any vested right?

Analysis: As per requirement of Rule 4(1) of the Punjab Local Government Legal Advisors Rules, 2003, a local government, desirous to engage a legal advisor on regular basis, shall invite applications through advertisement at least in two national daily newspapers. The candidates as per Rule 4(2) of the Rules ibid are advised to address their applications to the local government concerned and also to forward a copy thereof alongwith annexure to the Government of the Punjab in the Law & Parliamentary Affairs Department. In terms of Rule 4(3) of the Rules ibid, the local government concerned shall forward all applications of the candidates alongwith its recommendations to Government of the Punjab, which are placed before the Selection Committee constituted under Rule 4(4) of the Rules ibid. Further, Rule 4(5) of the Rules ibid provides that the committee shall approve the name of advocate to be appointed as legal advisor as well as the remuneration to be paid to him. Thereafter, the said approved advocate by the committee is appointed by the local government concerned on the terms and conditions fixed by the Government of the Punjab. The letter for appointment of legal advisor issued by the Secretary, Government of Punjab, Law & Parliamentary Department, Lahore, is generally sent after the acceptance of the offer letter by the candidate, which legally binds the final communication between the organization and employee confirming the offer made by the employer as accepted by the candidate.

Conclusion: Mere recommendation/nomination of Administrator Municipal Corporation for appointment of a Legal Advisor, without compliance of Rule 4 of the Punjab Local Government Legal Advisors Rules, 2003, does not create any vested right.

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33. **Lahore High Court**
Saleem Akhtar Kiyani and others v. Province of Punjab and others
W.P.No.1106 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC4732.pdf

Facts: The Petitioners through this writ Petition under Article 199 of the Constitution have prayed that a writ of certioraris be issued declaring the acts, deeds, designs and motives by CDA in so far as they contemplate of creating a new site adjacent to the existing one to use the same by the respondent for dumping garbage, waste and stash from the area of ICT, Islamabad as being illegal, unlawful, violative of

law, oppressive to the lawful rights of petitioners and other residents of the vicinity under Article 4, 9, 14 and 15 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issue: i) When a proponent of a project shall commence construction or operation as per Punjab Environmental Protection Act, 1997?
ii) What is the statutory requirement regarding maintenance of register, under section 7 of Punjab Environmental Protection Act, 1997?
iii) Whether Federal Government does have the authority to sanction an Act which has a direct negative impact on the ecology and environment?

Analysis: i) Perusal of Section 12 of the Act explains that no proponent of a project shall commence construction or operation unless he has filed with the Federal Agency an Initial Environmental Examination or, where the projects is likely to cause an adverse environmental effect, an Environmental Impact assessment, and approval from Federal Agency has to be obtained.
ii) As per Section 7 ibid the EPA shall maintain Registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in sub-section 3 ibid.
iii) Even the Federal Government does not have the authority to sanction an Act which is not supported by statutory dispensation and has a direct negative impact on the ecology and environment in which future generations of the people of Pakistan have an overriding and inherent interest."

Conclusion: i) No proponent of a project shall commence construction or operation unless he has filed with the Federal Agency an Initial Environmental Examination under Section 12 of the Punjab Environmental Protection Act, 1997.
ii) As per Section 7 of the ACT EPA shall maintain Registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon
iii) Federal Government does not have the authority to sanction an Act which is not supported by statutory dispensation and has a direct negative impact on the ecology and environment.

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34. **Lahore High Court**
Syed Ali Kazmi. v Government of Punjab and others.
Writ Petition No. 319 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC4856.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged a quasi-judicial order passed by the Respondent No.2 pursuant to directions issued in writ petition. The Petitioner has also challenged letter whereby his application for reinstatement in service was dismissed.

Issues: i) Whether any contract employee has vested right to claim regularization?
ii) Under what circumstances, court can interfere into policy?
ii) Whether constitutional petition under Article 199 of the Constitution is maintainable when employment is on contract?

Analysis: i) A temporary/contract/project employee has no vested right to claim regularization. The direction for regularization, absorption or permanent continuance cannot be issued unless the employee claiming regularization has been appointed in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant posts
ii) It is not in the domain of the Courts to embark upon an inquiry as to whether a particular policy is wise and acceptable or whether better policy could be drafted. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Constitution.
iii) Where employment is on contract, there is a relationship of master and servant and in such like cases the constitutional petition under Article 199 of the Constitution is not maintainable.

Conclusion: i) A temporary/contract/project employee has no vested right to claim regularization.
ii) The Court can only interfere if the policy framed is absolutely capricious and totally arbitrary, offending the basic requirement of the Constitution.
iii) When there is a relationship of master and servant then the constitutional petition under Article 199 of the Constitution is not maintainable.

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35. **Lahore High Court**
Dr. Aftab Hassan Minhas v. National Council for Homeopathy etc.,
Writ Petition No. 2362 of 2017,
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2023LHC4805.pdf

Facts: The Petitioner filed petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 praying to set aside orders of competent authority and appellate authority respectively passed to the effect of his dismissal from service as well as to the effect of dismissing his consequent appeal preferred under the Regulation 33 of the NCH (Staff) Regulations, 1987.

Issue: What is the limitation period to file an appeal against the order of dismissal from service under the Regulation 33 of the NCH (Staff) Regulations, 1987?

Analysis: The Regulations of the NCH (Staff) Regulations, 1987 provide right of appeal against penalty imposed and the Regulation 33 (2) of the NCH (Staff) Regulations, 1987 requires that every appeal should be submitted within a period of 28 days of the communication of the order appealed against.

Conclusion: The limitation to file an appeal against the order of dismissal from service, according to the Regulation 33 (2) of the NCH (Staff) Regulations, 1987, is 28 days from the communication of order of dismissal.

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36. **Lahore High Court**
Ghulam Shabbir v. Mst. Tanzeela Nusrat etc.
Writ Petition No.2669 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC4866.pdf

Facts: The petitioner through instant petition under Article 199 of the Constitution of the Constitution calls in question the order passed by the Additional District Judge, whereby while dismissing civil revision of the petitioner, order passed by the learned Civil Judge, was affirmed.

Issues: i) Whether a decree can be executed against surety? If yes, then to what extent?
ii) Whether High Court can interfere with the concurrent findings of courts on facts, if so, under what circumstances?

Analysis: i) When a person becomes surety for performance of any decree or its part, or restitution of any property taken in execution of decree or payment of any money under an order of the Court in any suit or proceedings, the decree can be executed against him, to the extent for which surety has rendered himself personally liable in the manners provided therein. (…) It is settled law that decree can also be executed against a surety.
ii) When a factual controversy had been settled by the two courts below, unless and until there were compelling reasons shown for mis-reading and non-reading of evidence in the findings arrived at by courts below or there was a visible irregularity while deciding the dispute, this Court cannot interfere with that finding. (…) This Court is also not ordinarily inclined to interfere with the findings of fact recorded by the learned Courts below, particularly when they are not shown to be contrary to record or arbitrary or whimsical.

Conclusions: i) Yes, the decree can be executed against the surety but only to the extent for which surety has rendered himself personally liable in the manners provided therein.
ii) The high Court cannot interfere with the concurrent findings unless and until there were compelling reasons shown for mis-reading and non-reading of evidence in the findings arrived at by courts below or there was a visible irregularity while deciding the dispute.

37. **Lahore High Court**
Mst. Saidan, etc. v. Muhammad Yousaf, etc.
Civil Revision No.270-D of 1997
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC4826.pdf

Facts: Through this Civil Revision, concurrent judgments and decrees of learned Courts below were challenged, whereby, the suit of the respondents/plaintiffs for declaration was decreed with some modification.

Issues: i) What is the impact of section 19-A of the Colonization of the Government Lands Act, 1912, if succession opened out on the termination of the interest of a female tenant?
ii) Whether section 4 of the Muslim Family Laws Ordinance, 1961 has retrospective affect?

Analysis: i) The rules of succession contained in clauses "a", "b", & "c" of Section 20 of the Colonization of the Government Lands Act, 1912 provide that a widow inherits the tenancy under Section 20(b) in the absence of male lineal and is subject to the condition that she will hold the estate only till she remarries or dies or otherwise losses her right under the provisions of the Act, 1912. Meaning thereby, the estate being conferred on her is only limited one and the character of this limited estate is to be determined only by the statute. Whereas, in presence of widow, daughters will not inherit the tenancy rights and they will only succeed under Clause "c" when neither any male lineal descendants are available nor any widow is survived at the time of opening of succession of tenancy rights…Section 20 of the Act, 1912, governs the succession to the tenancy rights of the original tenant whereas, Section 21 of the Act, 1912, contained the rule of successions of the tenant who inherited the same from the original tenant … Section 19-A is incorporated through the Colonization of Government Lands (Punjab) amendment Act No.III of 1951...The newly inserted Section 19-A, the provisos to which are couched in practically, the same language as Section 3 of the West Punjab Muslim Personal Law (Shariat) Application Act, 1948, but the same has also brought a few minor changes in the course of succession in cases formerly governed by clause (b) of Section 21 of the Act, 1912. One of these changes is that, whereas, formerly if succession opened out on the termination of the interest of a female tenant, the tenancy rights were deemed to be agricultural land acquired by the original tenant, after the insertion of Section 19-A, such tenancy rights are deemed to be the property of the last male owner who may or may not have been the original tenant.
ii) Under the Islamic Sharia, predeceased children are not entitled to any inheritance as only the survivors to a deceased are entitled to inheritance. In the year 1961, the Muslim Family Laws Ordinance, 1961 was promulgated …wherein section 4 was introduced, by virtue of which, legal heirs of pre-

deceased son or daughter of propositus would be entitled to inheritance on re-opening of the succession… the grandchildren are entitled to receive share equal to the share of their mother or father in view of section 4 of the Ordinance, 1961 irrespective of the fact their mother or father died before or after the promulgation of the Ordinance, 1961 and the only condition is that the succession should be open after the promulgation of the Ordinance, 1961.

Conclusion: i) After the insertion of Section 19-A of law ibid, tenancy rights are deemed to be the property of the last male owner who may or may not have been the original tenant.
ii) Section 4 of the Muslim Family Laws Ordinance, 1961 applies where succession is opened after the promulgation of the Ordinance ibid.

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38. **Lahore High Court**
M/s Computer Tips & another v. Province of Punjab & 03 others
M/s Kingly Solutions (Pvt) Limited v. Province of Punjab & 02 others
Writ Petition No. 28679 / 2023, 33077 / 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC4741.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, petitioners have sought direction to direct the respondents to release the entire contract price of all subject contracts to the petitioners.

Issue: Whether a party is entitled for payment after execution of successful contract?

Analysis: A party is entitled for payment after successful conclusion of the executed contracts in terms of Rule 62 of the Punjab Procurement Rules, 2014 within the time given in the conditions of the contract which shall not exceed thirty days.

Conclusion: A party is entitled for payment after execution of successful contract.

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39. **Lahore High Court**
Muhammad Tariq Sahi v. Government of Punjab, etc.
W. P. No. 81499 / 2022
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC4985.pdf

Facts: It is the case of the Petitioner that due to non-issuance of explosive license on time, some of the lease period was wasted in which the Petitioner could not obtain lawful benefits. Accordingly, the Petitioner was constrained to file an application under Rule 185-A(2) of the Punjab Mining Concession Rules, 2002 (the "Rules") seeking extension in the lease period. The said application was entertained by Respondent No. 1 in terms of his revisional powers under the aforesaid Rule. The request of the Petitioner was conditionally allowed through the impugned Order.

Issue: Whether the contractor is entitled for extension in the lease period subject to payment of advance proportionate bid money at the time of grant of lease or at the rate of newly fixed reserve price?

Analysis: When a contractor bids for a mining contract, he caters for all potential impediments in the execution of the contract if declared successful and submits his bid, accordingly. Notwithstanding the same Rule 222 of the Rules is available for certain unforeseen or extraordinary circumstances to cater for lost period of lease. The term "proportionate bid money" employed in Rule 222 of the Rules relates to bid money at which the bidder was granted the mining lease. However, the term "proportionate bid money" employed in Rule 228 of the Rules relates to prevalent reserve price of new bid for the reason that due to afflux of time, the prices have increased and cannot be deemed to remain static. Even otherwise, it is now well entrenched in our jurisprudence that public properties are required to be auctioned at the best possible price to avoid any financial loss to the exchequer. The finding was squarely in line with the reasoning of the Supreme Court of Pakistan and in accordance with the mandate of Rule 228 of the Rules. As such, the lease period was rightly extended subject to payment of advance proportionate bid money at the rate of newly fixed reserve price of the block.

Conclusion: The contractor is entitled for extension in the lease period subject to payment of advance proportionate bid money at the rate of newly fixed reserve price.

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40. **Lahore High Court**
Kamran Saeed v. Additional District Judge etc.
W.P No. 15564/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC4682.pdf

Facts: The contest between the petitioner and the respondent is regarding permanent custody of the minor. The petitioner filed a guardian petition which was allowed keeping in view the preference of the minor and also chalked out a comprehensive visitation schedule, enabling the respondent to meet the minor. This order was challenged by the respondent by preferring appeal and the same was allowed. Comprehensive meeting schedule chalked out by the learned Guardian Judge was held to be applicable to the petitioner, mutatis mutandis, as noncustodial parent, hence, this constitutional petition.

Issues: i) Whether preference of the minor can be the sole criterion for the determination of his/her permanent custody?
ii) How the preference of minor is analyzed by the court?

Analysis: i) If the minor is old enough, his/ her opinion, rather to be precise, intelligent preference does matter in deciding the custody. However, it is imperative to note that the word used in Section 17 of the Guardians and Wards Act, 1890 in considering preference of the minor is "may" and not "shall". In case reported as

"Mst. Aisha v. Manzoor Hussain and others" (PLD 1985 SC 436) the Supreme Court of Pakistan held that the minor is not the best judge for his/her own welfare and his/her choice will only be considered if it is in the best interest of the minor. Therefore, it is for the Guardian Court to carefully determine as to how much preference and importance should be given to the choice of the minor.

ii) Section 17 of the Guardians and Wards Act, 1890 contemplates as to how to analyze the minor's preference. The Court must consider the age and maturity of the child and also the reason for the preference while analyzing the preference. The preference is sometimes based on as to how a minor feel at the moment when the preference is given, changes in his/her life or a reaction to something, for instance, being disciplined by the custodial parent.

Conclusion: i) Preference of the minor cannot be the sole criterion for the determination of his/her permanent custody.

ii) As per section 17 of the Guardians and Wards Act, 1890, court must consider the age and maturity of the child and also the reason for the preference while analyzing the preference.

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41. **Lahore High Court**
Muhammad Waqas v. Executing Court, etc.
Writ Petition No.25771 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC4846.pdf

Facts: Respondents instituted a suit against the petitioner which was ex-parte decreed, where-after execution proceedings were initiated by the respondents. After sometime respondent No.3 got recorded her statement that she does not want to proceed with the execution petition and the matter was consigned to the record. However, subsequently, the execution proceedings were restored. Then after issuing warrant of attachment of the property of the petitioner, auction schedule was chalked out while calculating the decretal amount till the year 2035. Respondent No.3 purchased the said property by adjusting the amount of maintenance. The petitioner assailed order by way of filing an application under Section 12(2) of the Code of Civil Procedure, 1908. The application of the petitioner was dismissed by the Executing Court, against which the petitioner filed a revision petition that was also dismissed vide judgment. Hence, this constitutional petition.

Issues: i) Which remedy is available to the minor in case of failure to pay maintenance?

ii) What is the purpose of maintenance?

iii) What if the needs of the minor or the financial resources of the father may undergo change?

iv) What if regular maintenance is not paid despite being decreed?

v) Whether the maintenance of a time period which is yet to arrive can be considered as arrears?

vi) Whether the executing court is empowered to confirm an auction that was not conducted in accordance with the just and equitable principles?

vii) Whether the Family Court is bound by the procedural technicalities of the CPC?

viii) Whether High Court can rectify wrongly mentioned provision of law and mould the relief claimed in order to ensure justice?

Analysis: i) Failure to pay maintenance may constrain a minor, through a guardian/mother, to have recourse to institution of suit and that is usually decreed and certain amount is determined and awarded by the Courts, along with annual increase.

ii) The purpose is to maintain a minor by provision of the necessities of life such as food, clothing and education etc., which necessarily implies that the same are to be fulfilled as and when the same arise.

iii) One cannot lose sight of the fact that the needs of the minor as well as the financial resources of the father may undergo change. Any such change may be brought before the Court for the refixation and re-determination of the maintenance as held in case reported as "Samia Anwar and another v. Nasir Hussain and 2 others" (2022 MLD 731).

iv) If regular maintenance is not paid despite being decreed, the same becomes arrears of maintenance that can be enforced through different modes adopted for the execution of the decree. Thus, it is the failure of the father to make payment of maintenance for a particular period which renders the same recoverable as arrears. As further explication, maintenance is a debt which becomes due when a minor is not maintained at a particular period and it is passage of that time period coupled with the failure to pay the decretal amount, which transforms the said obligation into arrears.

v) This necessarily implies that arrears are with respect to the past period and maintenance for a future period cannot be notionally deemed as arrears as it is the crucial aspect of failure to make payment of maintenance decreed that transforms the same into arrears. Maintenance of a time period which is yet to arrive cannot be considered as arrears as the fundamental and pivotal condition of failure to maintain cannot be anticipated in advance inasmuch as there is every likelihood that the father fulfils his obligation to maintain the minor when said obligation arises in future. Therefore, the notional conversion of future maintenance of a future period into arrears of decretal amount cannot be countenanced, under the law.

vi) It is imperative to note that even the inappropriate conduct on part of the petitioner does not empower the Executing Court to confirm an auction that was not conducted in accordance with the just and equitable principles. This is more so when the decree has been executed for future maintenance that was neither due nor permissible under the law.

vii) The Family Court is not bound by the procedural technicalities of the CPC as envisaged by Section 17 of the Act, 1964. The Family Court is vested with the power to formulate its own procedure.

viii) Needless to mention that wrong mentioning of a provision of law makes no difference if the order or the proceedings challenged are nullity in the eye of law and High Court in its supervisory jurisdiction can rectify such an error and mould the relief claimed in order to ensure justice.

Conclusion: i) Failure to pay maintenance may constrain a minor, through a guardian/mother, to have recourse to institution of suit.
ii) The purpose is to maintain a minor by provision of the necessities of life such as food, clothing and education etc.
iii) Any such change may be brought before the Court for the refixation and re-determination of the maintenance.
iv) If regular maintenance is not paid despite being decreed, the same becomes arrears of maintenance that can be enforced through different modes adopted for the execution of the decree.
v) Maintenance of a time period which is yet to arrive cannot be considered as arrears.
vi) The executing court is not empowered to confirm an auction that was not conducted in accordance with the just and equitable principles.
vii) The Family Court is not bound by the procedural technicalities of the CPC as envisaged by Section 17 of the Act, 1964.
viii) High Court can rectify wrongly mentioned provision of law and mould the relief claimed in order to ensure justice.

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42. **Lahore High Court**
Hira Masood v. Additional District Judge etc.,
Writ Petition No.35641/2019,
Mr. Justice Anwaar Hussain.
https://sys.lhc.gov.pk/appjudgments/2023LHC4933.pdf

Facts: The petitioner's suit for recovery of dowry articles was partially decreed, while her others suit for recovery of maintenance and dower was also decreed against the Respondent. Both parties preferred appeals. Through consolidated judgment and decree, the appeal of the petitioner was dismissed while the appeal preferred by the respondent was partially allowed in terms that the suit of the petitioner to the extent of dower and gold ornaments was dismissed, while findings to the extent of maintenance were maintained. Hence, the present constitutional petition.

Issues: i) What is the significance of columns No.13 to 16 of the *nikahnama* regarding Dower?
ii) What is the scope of Section 10 of the Muslim Family Courts Ordinance, 1961?
iii) How mode of payment of dower is determined?
iv) Who has to prove that the obligation of Dower has been discharged?

Analysis: i) The entry in column No. 13 of the *nikahnama* is to contain the amount of dower, the entry in column No.14 envisages the break-up of dower spelled out by

virtue of entry under column No. 13 into prompt and deferred, whereas entry in column No. 15 may contain anything given or paid out of the amount envisaged under entry in column no. 13 or in addition thereto forming as part of the dower overall. Therefore, anything other than an amount, forming part of dower overall and incorporated under columns No. 15 and/or 16 has also to contain the time and mode of payment and giving of the same by husband to wife.

ii) Section 10 of the Muslim Family Courts Ordinance, 1961, contemplates that if no details about the mode of payment of dower are specified in the *nikahnama* or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

iii) It is only the deferred dower that becomes due upon certain exigencies, such as death and divorce, whereas once the mode of payment of some part of dower is settled by way of declaring it as prompt in Column No.15, the obligation to pay prompt dower needs to be clearly mentioned as having been paid at the time of *nikah* or left payable on demand of the wife.

iv) The burden to prove the discharge of obligation of dower is on the husband. Said burden can be discharged through an act on part of the wife like execution of an affidavit having received the dower or producing the witness in whose presence said obligation was discharged and not by relying on the entry against Column No.15 of the *nikahnama* having been crossed off.

Conclusion: i) The entries in columns No.13 to 16 together become 'dower overall'.

ii) Section 10 of the Muslim Family Courts Ordinance, 1961, deals with the situation when mode of payment of dower is not specified in the *Nikahnama.*

iii) The mode of payment of whole or some part of dower is settled by way of declaring it as prompt or deferred or payable on demand in Column No.15 of *Nikahnama.*

iv)The burden to prove that obligation of Dower has been discharged is on the husband.

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43. **Lahore High Court**
Muhammad Nawaz v. Additional District Judge, etc.
W.P. No.65227 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC4878.pdf

Facts: The petitioner has assailed the order passed by the Senior Civil Judge (Family Division), whereby application of the petitioner seeking permission to produce additional evidence was dismissed as well as the judgment passed by the learned Additional District Judge whereby appeal there-against was also dismissed.

Issues: i) What are the principles governing the exercise of discretion by the Family Court?

ii) Whether the Family Court can grant the permission to produce the document at the belated stage of the case?

Analysis: i) It is well settled that a purposive rather than literal approach to the interpretation is to be adopted while interpreting provisions of the Family Courts Act, 1964, therefore, an interpretation which advances purpose of the Act is to be preferred over an interpretation which defeats its object. It cannot be lost sight of that a special forum of the Family Court has been created by the legislature for expeditious settlement and disposal of disputes relating to marriage and family affairs, as manifest from preamble of the Act. Section 12A of the Act has specified a period within which such cases have to be disposed of by a Family Court. It is a quasi-judicial forum which can draw and follow its own procedure provided such procedure is not against the principles of fair hearing and trial.
ii) Permission for belated filing and production of a document in evidence cannot be granted as a matter of routine. The discretion should be exercised by the Family Court through a speaking order keeping in view the facts and circumstances in each case.

Conclusion: i) Family Courts have been created by the legislature for expeditious settlement and disposal of family disputes. It is a quasi-judicial forum which can draw and follow its own procedure provided such procedure is not against the principles of fair hearing and trial.
ii) Family Court cannot grant the permission to produce the document at the belated stage of the case as a matter of routine.

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44. **Lahore High Court**
Sarwar Taj v. Government of the Punjab etc.
Writ Petition No.56980 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC4991.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Petitioner has prayed that the respondents may kindly be directed to decide the application of the petitioner to allow him to devour/eat poison in the prescribed manner before the audience and the expertise in the said field for the benefit of public at large.

Issues: i) Whether a direction in the nature of mandamus can be issued where there is no provision in law conferring authority upon Government or the District Administration to do a particular act, direction of which is sought for?
ii) Whether a Court can issue the direction which carries potential risk of commission of any offence in the statute book?
iii) Whether a relief which is prohibition, constituting offence and also a perpetuate anarchy in the field of drugs may be allowed?

Analysis: i) A writ in the nature of mandamus in terms of Article 199(1)(a)(i) of the Constitution of Islamic Republic of Pakistan, 1973 visualizes issuance of direction, inter alia, to a person performing functions in connections with affairs of the Federation, a Province or a Local Government to do what law requires him

to do... It is well settled that the exercise of jurisdiction under Article 199 of the Constitution is discretionary. The Petitioner failed to point out any provision in law conferring authority upon Government of the Punjab or the District Administration to grant the permission in such like set of circumstances as asserted by petitioner.

ii) Although attempt to commit suicide has been decriminalized with effect from 28th December 2022 when the offence under section 325 of the Pakistan Penal Code, 1860 („PPC") was omitted through Criminal Laws (Amendment) Act, 2022 (Act XXXVII of 2022), however, the offence of negligent conduct with respect to poisonous substance, as prescribed in section 284 of the PPC, remains on the statute book. Hurt caused by corrosive substance, as prescribed in section 336A of the PPC, is another offence. In the statutory explanation, "corrosive substance" for the said offence has been defined to include poison. This Court cannot issue the direction sought where the same carries potential risk of commission of any offence in the statute book.

iii) Schedule II of the Drug Regulatory Authority of Pakistan Act, 2012 („DRAP Act") specifies prohibitions which constitute offences punishable under Schedule III, as mandated by Section 27 of that Act. What the petitioner seeks in relief in the instant case is surely a public representation of his act of consumption of a substance that he believes would not cause his death but may cure and recover cancer patients. The relief sought by the petitioner, if allowed, is not only likely to be in violation of these prohibitions constituting offences but perpetuate anarchy in the field of drugs. The Poisons Act, 1919 has been enacted to regulate importation, possession and sale of poisons. Section 4 of that legislation confers power upon the Provincial Government to regulate possession of any specified poison in any local area and in that regard, it also prescribes an offence punishable with imprisonment. Section 5 of the said Act draws a presumption that any substance specified as poison in a rule framed under section 8 of the Poisons Act is deemed to be a poison for the purpose of that Act. Additionally, storage, use in drugs and labelling of poisonous substances is regulated by the Drugs Act, 1976 and rule 20 of the Punjab Drug Rules, 2007. Issuance of the direction prayed for may also have the effect of undermining the role and authority of the regulator under the aforementioned laws.

Conclusion: i) Direction in the nature of mandamus cannot be issued in absence of express provision of law conferring authority upon Government or the District Administration to do a particular act, direction of which is sought for.

ii) Any direction which carries a potential risk of commission of any offence cannot be granted.

iii) A relief which is prohibited and perpetuate anarchy in the field of drugs cannot be allowed.

LATEST LEGISLATION/AMENDMENTS

1. Through Official Secret (Amendment) Act, 2023, sections 2, 3, 3A, 4, 5, 9, 12 are amended whereas sections 6A, 12A & 16 are inserted in Official Secrets Act, 1923 vide Notification No. F. 9(38)/2023-Legis.
2. Through Pakistan Army (Amendment) Act, 2023, sections 2, 8, 17, 91, 92, 126, 176, , 176A & 176C, are amended and sections 10, 18, & 176D are substituted whereas sections 1, 26A, 26B, 55A, 55B, 55C, 175A to 175E, 176AA & 176E are inserted in the Pakistan Army Act, 1952 vide Notification No. F. 9(30)/2023-Legis.
3. Through the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2023, preamble and sections 2, 4, 6, 8, 11, 20, 24, 27, 29, 37 are amended and sections 13, 26, 29A, 30A, are substituted whereas sections 20A, 20B, 30B, & 39A are inserted in Pakistan Electronic Media Regulatory Authority Ordinance, 2002 vide Notification No. F. 22(25)/2023-Legis.
4. Through the Press Council of Pakistan (Amendment), Act, 2023, section 8 of Press Council of Pakistan Ordinance, 2002 has been amended vide Notification No. F. 9(41)/2023-Legis.
5. Through the Trade Marks (Amendment) Act, 2023, sections 2, 7, 9, 10, 11, 14, 17, 24, 33, 47, 48, 51, 53 to 60, 62 to 67, 70, 73, 77, 78, 80, 93, 95, 96, 105, 111, 114, 116, 117, 118, 122, 124 to 126, 129, 132 & First and second Schedule are amended whereas section 10A & chapter XA are inserted in The Trade Marks Ordinance, 2001 (XIX of 200) vide Notification No. F. 9(17)/2023-Legis.
6. Through the Pakistan International Airline Corporation (conversion) (Amendment) Bill, 2023, sections 2, & 4 are amended in the Pakistan International Airline Corporation (conversion) Act, 2016 vide Notification No. F. 22(45)/2023-Legis.
7. The Trade Dispute Resolution Act, 2023 has been enacted vide Notification No. F. 22(30)/2023-Legis.
8. The National Anti-Money Laundering and Counter Financing of Terrorism Authority Act, 2023 has been enacted vide Notification No. F. 9(48)/2023-Legis.
9. Vide the Emigration (Amendment) Act, 2023, section 15 of the Emigration Ordinance, 1979 has been amended vide Notification No. F. 9(10)/2023-Legis.
10. Through the Zakat and Ushr (Amendment) Act, 2023, section 2, 13 & 22 of the Zakat and Ushr Ordinance, 1980 have been amended vide Notification No. F. 9(40)/2023-Legis.
11. Vide the Gas (Theft Control and Recovery) (Amendment) Act, 2023, section 3 of the Gas (Theft Control and Recovery) Act, 2016 has been amended Notification No. F. 9(39)/2023-Legis.
12. The Pakistan General Cosmetics Act, 2023 has been enacted vide Notification No. F. 24(68)/2023-Legis.

13. Through the Elections (Second Amendment) Act, 2023, sections 2, 12, 15, 18, 19, 20, 55, 57, 59 to 61, 68, 76, 79, 83, 86, 90, 93, 95, 96, 99, 105, 107 to110, 118, 122, 127, 130, 132, 133, 140, 144, 148, 155, 158, 167, 170 to 172, 184, 190A, 203, 208, 211, 219, 230, 231and Form C of the Elections Act, 2017 have been amended vide Notification No. F. 22(58)/2020-Legis.
14. The Pakistan Airports Authority Act, 2023 has been enacted vide Notification No. F. 22(46)/2021-Legis.
15. Through the Pakistan Nursing Council (Amendment) Act, 2023, section 7 of the Pakistan Nursing Council Act, 1973 vide Notification No. F. 24(66)/2023-Legis.
16. Through the Cantonment (Amendment) Act, 2023, sections 2, 3, 41, 51 to 53, 56, 57, 60 to 68, 71, 73, 74, 75 to 77, 79 to 82, 84, 87, 89, 90 to 92, 99, 101 103, 116, 118 to 120, 124, 125, 139, 141, 150, 159, 167, 184, 185, 186, 192, 193, 196, 202, 204, 205, 209, 210, 213 to 216, 226, 232, 236, 240, 249, 255, 259, 277, 280, 282, 283, 284, 286, 286B, and Schedule I have been amended, sections 43B, 61, 62, 63, 90 and Schedule II are substituted, sections15 to 151, 18, 19, 34, 35 are omitted whereas sections 8A, 19A to 19U, 89A, 92A, 178AA, 179A, 185A, 268A, 281A, 292A and Chapter IIA are inserted in the Cantonment Act, 1924 (II of 1924) vide Notification No. F. 22(33)/2022-Legis.
17. The Pakistan Sovereign Wealth Fund Act, 2023 has been enacted vide Notification No. F. 9(37)/2023-Legis.
18. The Pakistan Civil Aviation Act, 2023 has been enacted vide Notification No. F. 22(47))/2021-Legis.
19. The Pakistan Air Safety Investigation Act, 2023 has been enacted vide Notification No. F. 9(34)/2023-Legis..
20. The Gun and Country Act, 2023 has been enacted vide Notification No. F. 9(46)/2023-Legis..
21. The National Logistics Corporation Act, 2023 has been enacted vide Notification No. F. 9(47)/2023-Legis.
22. Through the Price Control and Preventions of Profiteering and Hoarding (Amendment) Act, 2023, section 6A is inserted in the Price Control and Preventions of Profiteering and Hoarding Act, 1977 vide Notification No. F. 9(53)/2023-Legis..
23. Through the Board of Investment (amendment) Act, 2023, Chapter IIA is inserted in the Board of Investment Ordinance, 2001 vide Notification No. SOR-III(S&GAD)1-11/2022.
24. In exercise of the powers conferred under section 23 of the Punjab Civil Servants Act, 1974, amendments in the Punjab Information and Culture Department Rules, 1977 have been made at serial number 03, after serial number 6D & 11 in the Schedule vide Notification No. SOR-III(S&GAD)1-11/2022.
25. In the exercise of powers conferred under section 23 of the Punjab Civil Servants Act, 1974, the Home Department (Foreign National's Security

Wing) Employees Service Rules 2023 have been made vide Notification No. SOR-III(S&GAD) 1-35/2021.

26. In exercise of the powers conferred under section 23 of the Punjab Civil Servants Act, 1974, amendments have been made at serial no. 06 to 09 in schedule in the Punjab Government VIP Flight (Technical Posts) Recruitment Rules 2015 vide Notification No. SOR-III(S&GAD) 2-32/2000(P).
27. In exercise of the powers conferred under section 23 of the Punjab Civil Servants Act, 1974, amendment has been made at serial no. 05 in the schedule in the Punjab Agriculture Department (Research Wing) Service Rules, 1980 vide Notification No. SOR-III(S&GAD) 1-9/2023.

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/Non-Obstante-Provisions-in-Statutes

Non-Obstante Provisions in Statutes by Ashwini Panwar and Nipun Dwivedi

Legislations are intended to address issues involving specific subject matter. A right granted under one legislation may be affected by the provisions of another legislation. A logical question that follows is - which provision would prevail? The obvious answer is that the legislation dealing with the specific subject matter should prevail over general legislation.

2. MANUPATRA

https://articles.manupatra.com/article-details/Supreme-Court-Can-Dispense-with-Cooling-Period-In-Mutual-Consent-Divorce

Supreme Court Can Dispense with 'Cooling Period' In Mutual Consent Divorce by Nyaaya

Divorce is an emotionally and legally difficult experience. It takes on many forms, one of which is divorce by mutual consent, where the couple mutually agrees to dissolve the marriage without assigning blame to either spouse. This form of divorce is relatively easier to navigate and follows a shorter procedural span. However, in objective terms, this too can be a lengthy and complicated process.A recent Supreme Court judgement grappled with this issue under the current laws on divorce and introduced two significant changes. One, irretrievable breakdown of marriage is now recognised as a ground for divorce and second, couples seeking divorce under Hindu Law no longer need to undergo the mandatory 6 months "cooling period".

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Medical-Negligence-Civil-and-Criminal-Liability

Medical Negligence: Civil and Criminal Liability by Nyaaya

Medical Negligence is misconduct by a medical professional that leads to harm or injury to the patient. Medical professionals have a duty of care toward their patients. If a medical professional fails to perform their duty of care to the level they are required to maintain, it is considered Medical Negligence.

4. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/trespassers-how-protect-your-farm-against-unwelcome-strangers

Trespassers? How to Protect Your Farm Against Unwelcome Strangers by Jane Francis Nowell , Clifford P. Parson

Such unauthorized entry could include media news teams filming farm operations, environmental activists seeking to identify violations of various water quality or waste management rules, animal rights advocates attempting to observe or document livestock conditions inside your operation, protesters opposed to the construction or operation of livestock farms, or simply curiosity seekers trying to view a farming operation up close. Intruders may range from self-appointed "river keepers" or foreign media looking for a hot story about American farming or livestock operations to a cheapskate looking to dump garbage or trash without paying required fees. No matter the reason, whether harmless in purpose or not, there are bio-security reasons for preventing unauthorized entry onto a farm, regulatory enforcement, and public relations reasons for not allowing someone to gather information from your operation without your permission. Understanding the risk of an uninvited person and preparing for your reaction is essential for a farm owner.

5. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/chat-caution-growing-data-privacy-compliance-and-litigation-risk-chatbots

Chat with Caution: The Growing Data Privacy Compliance and Litigation Risk of Chatbots by Melanie A. Conroy , Kathleen M. Hamann , Ariel Pardee

In a new wave of privacy litigation, plaintiffs have recently filed dozens of class action lawsuits in state and federal courts, primarily in California, seeking damages for alleged "wiretapping" by companies with public-facing websites. The complaints assert a common theory: that website owners using chatbot functions to engage with customers are violating state wiretapping laws by recording chats and giving service providers access to them, which plaintiffs label "illegal eavesdropping."Chatbot wiretapping complaints seek substantial damages from defendants and assert new theories that would dramatically expand the application of state wiretapping laws to customer support

functions on business websites.Although there are compelling reasons why courts should decline to extend wiretapping liability to these contexts, early motions to dismiss have met mixed outcomes. As a result, businesses that use chatbot functions to support customers now face a high-risk litigation environment, with inconsistent court rulings to date, uncertain legal holdings ahead, significant statutory damages exposure, and a rapid uptick in plaintiff activity.

6. LEGALVISION

https://legalvision.com.au/real-estate-agency-agreement/

What to Include in a Real Estate Agency Agreement by Phoebe Chester

An Agency Agreement is the foundation of a successful working relationship between real estate agents and clients looking to sell their property. This agreement outlines the terms and conditions of your collaboration and sets the stage for a transparent, efficient, and legally sound transaction. The specific components required in an Agency Agreement will change depending on the state or territory you operate in. This article discusses the essential features of all Agency Agreements in Australia.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-10-2023 to 31-10-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Muhammad Zubair Choudhary & others, Haroon Qadir & others, Akhtar Saeed Medical & Dental College, Rafay Tariq & others v. Pakistan Medical & Dental Council & others
Civil Petitions No.2916, 3219, 2757-L & 3063-L of 2019
Mr. Justice Umar Ata Badial, Mr. Justice Ijaz Ul Ahsan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2916_2019.pdf

Facts: Through these petitions, the petitioners have assailed judgments of learned Division Benches of the High Court which has dismissed their prayer to allow them to fill the seats which have been left vacant after conclusion of the admissions process and lapse of the admissions deadline set by the Pakistan Medical and Dental Council.

Issues: i) Whether any student can be given admission against vacant seats or against vacant seats left after passing of the admissions deadline or whose MDCAT result fall below the cut-off threshold?
ii) Whether the practice of granting extensions to medical and dental colleges after the expiry of the admission deadline allowed by the PM&DC/PMC can be continued?

Analysis: i) No admission against vacant seats left by "drop-out" students (defined under Regulation 2(d) of the 2018 Regulations) or against vacant seats left after passing of the admissions deadline set by the PM&DC/PMC should be allowed under any circumstances whatsoever. It must also be ensured that no student whose aggregate scores and MDCAT results fall below the cut-off threshold, assigned by the PM&DC/PMC for that academic year, is admitted into any medical or dental colleges. This should be done regardless of the number of vacant seats at medical or dental colleges or any other circumstances going to surplus seats across the country.
ii) The practice of granting extensions to medical and dental colleges after the expiry of the admission deadline allowed by the PM&DC/PMC must be discontinued forthwith. Imparting medical and dental education is not a business and must not be motivated by a desire for profit maximization.

Conclusion: i) No student can be given admission against vacant seats or against vacant seats left after passing of the admissions deadline or whose MDCAT result fall below the cut-off threshold.
ii) The practice of granting extensions to medical and dental colleges after the expiry of the admission deadline allowed by the PM&DC/PMC must be discontinued forthwith.

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2. **Supreme Court of Pakistan**
Mukhtar Ahmad Ali v. The Registrar, Supreme Court of Pakistan, Islamabad and another.
Civil Petition No.3532/2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3532_2023.pdf
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3532_2023_additional_note.pdf

Facts: Through this petition, the petitioner stated that as a citizen of Pakistan it was his fundamental right bestowed by Article 19A of the Constitution of the Islamic Republic of Pakistan to receive the information which he had sought from the Supreme Court and also relied upon the Right of Access to Information Act, 2017.

Issues: i) Whether the Registrar of the Supreme Court can be given the authority to initiate litigation on behalf of Supreme Court?
ii) How the Supreme Court is defined in the Constitution?
iii) Whether Additional Attorney-General can appear on behalf of Supreme Court against the mandate of the Constitution of Pakistan?
iv) Whether the Information Act applies only to public bodies excluding Supreme Court?
v) Whether Supreme Court is excluded from the purview of Article 19A of the Constitution and any information of public importance can be sought?
vi) Whether access to information is no longer a discretion granted through occasional benevolence?
vii) Whether access to information secures the well-being of people with added benefit of introspection by promoting self-accountability of institutions?
viii) Whether Article 19A of the Constitution envisages the placing of reasonable restrictions on the provision of information?
Additional Note
ix) Whether expression 'subject to regulation and reasonable restrictions' in Article 19A of Constitution confer competence upon the legislature to abridge constitutionally guaranteed right by granting out right or indiscriminate exclusion to a public entity?
x) Whether Supreme Court is expressly excluded from definition of public bodies as per spirit of The Information Act 2017?
xi) Whether right of access to information is bulwark against corruption and corrupt practices?
xii) Whether Supreme Court can refuse any request of access to information and proactive disclosure of information is implicit in the fundamental rights?

Analysis: i) The Supreme Court Rules, 1980 provide that the Registrar is the 'executive head of the office and shall exercise such powers as assigned to him'. The Rules do not grant to the Registrar the specific power to initiate litigation and though the Chief Justice may assign 'any function required by the Rules to be performed by

the Registrar', the Rules do not require, nor envisage, initiating litigation. Therefore, the Registrar could not be given this responsibility nor could he undertake it.

ii) Article 176 of the Constitution of the Islamic Republic of Pakistan, defines the Supreme Court as the Chief Justice and Judges of the Supreme Court…

iii) The learned AAG is employed by the office of the AG. The AG attends to the matters of the Federal Government under Article 100(3) of the Constitution of the Islamic Republic of Pakistan, which is part of the Executive and mandated to be separate from the Judiciary under Article 175(3) ...

iv) The Information Act 2017 applies only to public bodies as defined in its section 2(ix) and this definition does not include the Supreme Court. And, though the Act is applicable to 'court, tribunal, commission or board under the Federal law', the Supreme Court is established under the Constitution, and not under a Federal law, nor is the Supreme Court a public body of the Federal Government to which the Act does apply.

v) The Supreme Court is not excluded from the purview of Article 19A of the Constitution, and information of 'public importance' can be sought there under. It now needs consideration as to what constitutes public importance. The phrase 'public importance' is mentioned in a number of places in the Constitution but it does not define it. The phrase however has been interpreted by Supreme Court in the case of Manzoor Elahi v Federation of Pakistan. The phrase public importance with particular reference to Fundamental Rights was dilated upon in the case of Benazir Bhutto v Federation of Pakistan.

vi) What previously may have been on a need-to-know basis Article 19A of the Constitution has transformed it to a right-to-know. The burden has shifted from those seeking information to those who want to conceal it. Access to information is no longer a discretion granted through occasional benevolence, but is now after Article 19A was inserted into the Constitution through section 7 of the Constitution (Eighteenth Amendment) Act, 2010, a fundamental right available with every Pakistani which right may be invoked under Article 19A of the Constitution...

vii) Access to information thus secures the well-being of the people, which is what the nation aspires towards as stated in the Principles of Policy set out in the Constitution of the Islamic Republic of Pakistan under Article 38(a). Transparency brings with it the added benefit of introspection, which benefits institutions by promoting self-accountability. Article 19A stipulates that information be provided subject to regulation and reasonable restrictions imposed by law. However, there is no law which attends to the Supreme Court in this regard nor has the Supreme Court itself made any regulations. Needless to state that if a law is enacted and/or regulations made, requests for information would be attended to in accordance there with and in accordance with Article 19A.

viii) Article 19A envisages the placing of reasonable restrictions on the provision of information, but refusing to provide information is to be justified by the person, authority or institution withholding it.

Additional Note

ix) Article 19A of the Constitution guarantees to every citizen the fundamental right of having access to information in all matters of public importance. The exercise of this right is subject to regulation and reasonable restrictions imposed by law. The expression 'subject to regulation and reasonable restrictions' does not and cannot confer competence upon the legislature to abridge, impair, restrict or curtail the scope of the constitutionally guaranteed right by granting outright or indiscriminate exclusion to a public entity. The right under Article 19A is related to access to information in all matters of public importance, including information regarding public bodies…It is noted that Article 8 of the Constitution unambiguously declares a law to be void in so far it is inconsistent with the rights conferred under Chapter I. It further expressly bars the State from making any law which takes away or abridges the fundamental rights or has been made in contravention of the explicit command. The State has been defined in Article 7 and it, inter alia, includes the Majlis-e-Shoora (Parliament) and the legislatures of the respective Provinces.

x) A plain reading of the Right of Access to Information Act 2017 shows, prima facie, that the Supreme Court has not been expressly excluded from the definition of 'public bodies' under section 2 (ix) ibid. The definition of the expression 'public body' in sections 2(i) and 2(h) of the Sindh Transparency and Right to Information Act 2019 and the Punjab Transparency and Right to Information Act 2013, respectively, includes the High Courts in both the Provinces to be amenable to the right to access law.

xi) The right of access to information is a bulwark against corruption and corrupt practices. It enables the citizen to know how they are being served and how the resources that belong to them are being utilized and spent. It empowers the citizens and promotes democratic values and participatory governance.

xii) It is also presumed that the Supreme Court would be enforcing the principles that it enunciates for others to follow more rigorously in its own administrative affairs. There is no reason for the Supreme Court to refuse a request of access to information unless it falls within the exceptions described under the Act of 2017.The reluctance and refusal justifiably leads to giving rise to suspicions and adverse perceptions, thus eroding the independence of the judiciary... Proactive disclosure of information is implicit in the fundamental right guaranteed under Article 19A of the Constitution. Transparency, openness and enforcement of the right guaranteed under Article 19A are the tenets of public confidence and an independent judiciary.

Conclusion: i) The Registrar of the Supreme Court cannot be given the authority to initiate litigation on behalf of Supreme Court.

ii) Supreme Court is defined as the Chief Justice and Judges of the Supreme Court as per Article 176 of the Constitution of the Islamic Republic of Pakistan.

iii) Additional Attorney-General cannot appeare on behalf of Supreme Court as mandated by the Constitution of Pakistan under Article 100(3) for being part of the Executive.

iv)Yes, the Information Act applies only to public bodies excluding Supreme Court.

v) The Supreme Court is not excluded from the purview of Article 19A of the Constitution and any information of public importance can be sought thereunder.

vi) The access to information is no longer a discretion granted through occasional benevolence.

vii) Yes, access to information secures the well-being of people with added benefit of introspection by promoting self-accountability of institutions.

viii) Yes, Article 19A of the Constitution envisages the placing of reasonable restrictions on the provision of information but subject to certain lawful justifications for refusal the same.

Additional Note

ix) The expression 'subject to regulation and reasonable restrictions' in Article 19A of Constitution does not and cannot confer competence upon the legislature to abridge, impair, restrict or curtail the scope of the constitutionally guaranteed right by granting outright or indiscriminate exclusion to a public entity.

x) The Supreme Court has not been expressly excluded from definition of public bodies as per spirit of The Information Act 2017.

xi) Yes, the right of access to information is bulwark against corruption and corrupt practices.

xii) The Supreme Court can refuse any request of access to information if it falls within the exceptions of The Information Act 2017 and proactive disclosure of information is implicit in the fundamental rights guaranteed under Article 19A of the Constitution.

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3. **Supreme Court of Pakistan**
Sundas v. Khyber Medical University thr. V.C. Peshawar & others
Civil Petitions No. 1354, 355 &1447 of 2020
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1354_2020.pdf

Facts: The petitioners failed to pass the examinations in four chances and thus they had become ineligible to continue their medical studies under the Regulations of 2013. Before their respective registrations were revoked by the University, the petitioners invoked the jurisdiction vested in the civil courts by filing separate suits. It was on the basis of injunctive orders that the petitioners were allowed to pursue their studies in violation of the binding regulations of the regulator. The University subsequently issued notifications whereby the registrations of the petitioners were cancelled in accordance with the Regulations of 2013. The notifications were challenged before the High Court through constitutional petitions which were dismissed through the consolidated impugned judgment.

Issues: i) Whether the regulations relating to academic bodies and related policies are open to judicial review?
ii) Whether the compassion and hardship can be relevant considerations to grant any relief in breach of the law in favour of a litigant?
iii) Whether every citizen has right to choose the pursuit of a profession or trade?

Analysis: i) It is settled law that courts are required to exercise utmost restraint in matters relating to policies, discipline and other academic affairs of educational institutions. Refusing to interfere is a rule and deviation therefrom is an exception which can only be justified on the basis of clear and undisputed violation of the law. The reluctance of the courts to interfere with academic affairs is based on the foundational principle that the academicians and educational institutions are the best judges because formulating policies and eligibility criteria falls within their exclusive domain. The standards prescribed and set out in the regulations relating to academic bodies, determination of eligibility to pursue studies and other related policies are generally not open to judicial review unless they can be clearly shown to contravene the law or to be shockingly unreasonable or perverse.
ii) It is the duty of every court to implement the enforced laws and to decide the disputes in accordance therewith, rather than on the basis of compassion. The courts cannot grant any relief in breach of the law nor create a right in favour of a litigant which the latter does not possess by or under the law. Compassion and hardship cannot be relevant considerations when there is no scope for it in the relevant laws.
iii) Every citizen is unquestionably entitled and enjoys a right to choose the pursuit of a profession or trade but such a right is not absolute. The regulating authority may set minimum standards in the context of exercising the right in order to safeguard the interests and welfare of the public.

Conclusion: i) The regulations relating to academic bodies and related policies are generally not open to judicial review unless they can be clearly shown to contravene the law or to be shockingly unreasonable or perverse.
ii) The courts cannot grant any relief in breach of the law nor create a right in favour of a litigant. Compassion and hardship cannot be relevant considerations when there is no scope for it in the relevant laws.
iii) Every citizen is unquestionably entitled and enjoys a right to choose the pursuit of a profession or trade but such a right is not absolute.

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4. **Supreme Court of Pakistan**
Jamshed Ali Shah v. Irshad Hussain Shah and others.
Civil Petition No. 1751-L of 2021
Mr. Justice Umar Ata Bandial CJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1751_l_2021.pdf

Facts: Through this petition for leave to appeal, the petitioner has assailed the order

passed by a learned single Judge of the Lahore High Court, by which Civil Revision filed by him was dismissed.

Issue: When concurrent findings of fora below can be interfered with?

Analysis: The findings of the trial Court, appellate Court as well as High Court being based on sound and convincing reasoning, found to be in accordance with law and we are in complete agreement with them. All aspects of the matter, either legal or factual, were duly considered and appreciated. Neither any irregularity or infirmity nor any misreading and non-reading has been found by us which could persuade us to interfere in the concurrent findings.

Conclusion: The concurrent findings of fora below either legal or factual cannot be disturbed, when there is neither any irregularity or infirmity nor any misreading and non-reading in it.

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5. **Supreme Court of Pakistan**
Ghulam Mustafa Lund. v National Accountability Bureau through its Chairman, Islamabad and others.
Petition No.1303 of 2020
Mr. Justice Umar Ata Bandial, CJ, Mrs. Justice Ayesha A. Malik,
Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1303_2020.pdf

Facts: The petitioner was released on the plea of voluntary return. The respondents sent him notice for deposit of additional amount on the direction of Accountability Court. He challenged the said notice before the High Court through Writ Petition that was dismissed. Now, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has impugned the judgment of High Court.

Issues: i) What is the plea of voluntary return as defined in section 25(a) of NAO?
ii) What are the rules for construction and interpretation of the statutes?
iii) What is the role and power of Accountability Court in voluntary return proceedings?
iv) Whether Chairman NAB has authority to re-value or re-assess the liability of an accused already approved by him under the voluntary return or to again initiate an inquiry for the same allegations?
v) What is the meaning of the word “voluntary” as used in section 25(a) of the National Accountability Ordinance, 1999?

Analysis: i) Plea of "voluntary return" is available to a person under inquiry or even before inquiry but before authorization of investigation against him, to come forward to discharge his liability by making a voluntary return of the amount due against him. A voluntary return settlement, as a concept, is structured around and dependent upon the volition of the person who wishes to settle voluntary return,

therefore, constitutes (i) an offer of a holder of public office or any other person to make a voluntary return of the assets acquired or gains made by him in the course, or as a consequence, of any offence under the Ordinance (ii) acceptance of that offer by the Chairman NAB (iii) determination of the amount due from such person by the Chairman NAB and (iv) deposit by such person with the NAB of the amount so determined.

ii) In construction and interpretation of the Statutes, the Court has first to look at the language of the law and interpret the same in accordance with the ordinary meaning and usage of the words. The context in which the said words have been used by the legislature as is evident from the language of the provisions itself can also be considered without adding to or subtracting anything from the same. In case of lack of clarity, as a second step, the Court may look for the intent and purpose of the Lawmaker in using particular language and words as is evident from the language of the Statute.

iii) Accountability Court has got no role, power, or authority to direct or supervise the voluntary return proceedings. It is only the Chairman NAB (or his delegate u/s 34-A of NAO, if any) who is competent to accept the offer of voluntary return and determine or fix the liability of an accused thereunder.

iv) Chairman NAB has authority to re-value or re-assess the liability of an accused already approved by him under the voluntary return or to again initiate an inquiry for the same allegations. However, there are certain situations, under which he is empowered to do so. When he is satisfied that the accused has failed in fulfilling his statutory obligation at the time of making an offer which had led to his discharge, then the NAB would be at liberty to proceed under NAO and the earlier concluded voluntary return will not be an impediment in prosecuting the accused.

(v) Voluntary means that there is no question of any duress, coercion or threat to be imposed by any officer of the NAB upon the person, who is under an 'inquiry', so as to extract a commitment of the 'voluntary return', stipulated under section 25(a). It is simply an 'offer' made by the person concerned, which if 'accepted', by NAB, would constitute a valid contract. The consideration of which is the return of the illegal gains made by the person to the NAB and finally to the respective department of the Government.

Conclusion: i) A voluntary return settlement, as a concept, is structured around and dependent upon the volition of the person who wishes to settle.

ii) In construction and interpretation of the Statutes, the Court has first to look at the language of the law and interpret the same in accordance with the ordinary meaning and usage of the words.

iii) Accountability Court has got no role, power, or authority to direct or supervise the voluntary return proceedings.

iv) Chairman NAB has authority to re-value or re-assess the liability of an accused already approved by him under the voluntary return or to again initiate an inquiry for the same allegations.

(v) Voluntary means that there is no question of any duress, coercion or threat to be imposed by any officer of the NAB upon the person, who is under an inquiry.

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6. **Supreme Court of Pakistan**
Muslim Commercial Bank Limited v. Muhammad Anwar Mandokhel etc.
Civil Appeal No. 377 of 2014
Mr. Justice Sardar Tariq Masod, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._377_2014.pdf

Facts: This appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 is directed against the judgment passed by the High Court whereby a constitution petition filed by the appellant under Article 199 of Constitution was dismissed and the orders of the Labour Appellate Tribunal and the Labour Court were upheld.

Issues: i) Whether a Provincial Labour Court has the competence and jurisdiction to adjudicate upon trans-provincial issues?
ii) Whether a provincial legislature can legislate with regard to the establishments and industries functioning at the trans-provincial level?
iii) Why the Industrial Relations Act, 2012 was promulgated?
iv) What is the main purpose of National Industrial Relations Commission?
v) Which remedy was available to the workers during the interregnum period when no Industrial Relations Law was holding the field?
vi) Whether the Labour Laws are the procedural laws having retrospective effect?
vii) Whether the Industrial Relation Act, 2012 has retrospective effect?
viii) Whether all the decisions rendered by the Labour Court, during the interregnum period, are null and void in the eyes of law?
ix) Whether there are two different forums at provincial and federal level having jurisdiction to deal with industrial disputes?

Analysis: i) It is not the nature of the dispute, particularly, unfair labour practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the NIRC. Once it is established through any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive in nature and of overriding and superimposing effects over the Provincial Labour Court for resolving industrial disputes, including unfair labour practices, etc., related to such employers with establishments, branches, or industrial units in multiple provinces. Therefore, in such like cases recourse has to be made by the aggrieved party to the NIRC and not to the Provincial Labour Court.
ii) In this regard, Article 141 of the Constitution sets out the territorial jurisdiction of the Parliament as well as the Provincial Assembly in the words that "subject to the Constitution, Majhs-e-Shoora (Parliament) may make laws (including laws

having extraterritorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof. From the above provision of the Constitution, it is abundantly clear that the Parliament has extra-territorial authority to legislate, but the Provincial Legislature has no legislative competence to legislate a law regulating the establishments and industries functioning at the trans-provincial level.

iii) The Industrial Relations Act, 2012 was promulgated to consolidate and rationalize the law relating to the formation of trade unions, and the improvement of relations between employers and workmen in the Islamabad Capital Territory and trans-provincial establishments and industry.

iv) The main function of the NIRC, inter alia, is to adjudicate and determine an industrial dispute in the Islamabad Capital Territory and trans-provincial to which a trade union or a federation of such trade union is a party and which is not confined to matters of purely local nature and any other industrial dispute which is, in the opinion of the Government, of national importance and is referred to it by that Government. Similarly, the NIRC is also empowered, on the application of a party or of its own motion, to withdraw from a Labour Court of Province any application, proceedings, or appeal relating to unfair labour practice, which falls within its jurisdiction {S .57 (2) (b)}.

v) During the interregnum period with effect from 01.05.2010, when no Industrial Relations Law was holding the field, the workers had a remedy under the ordinary laws prevailing at that time, because, in the absence of a special law, the ordinary/general laws came forward to fill in the vacuum, the IRO 2012 does not destroy any existing right, rather by means of Section 33 thereof, all the existing rights stood preserved and protected, as such, it cannot be said that it affects any right or obligation created by other laws, including any provincial law.

vi) The Labour Laws provide the procedure and mechanism for the resolution of disputes, registration of Trade Unions, and establishment of Forum for the redressal of grievances of the labourers as well as employers, therefore, it is mainly a procedural law and in the light of the well-settled principles of interpretation of Statutes, the procedural law has retrospective effect unless the contrary is provided expressly or impliedly.

vii) The IRA, 2012 would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist and the workers of the establishments/industries functioning in the Islamabad Capital Territory or carrying on business in more than one province shall be governed by the Federal legislation i.e. IRO 2012; whereas, the workers of establishments/industries functioning or carrying on business only within the territorial limits of a province shall be governed by the concerned provincial legislations.

viii) Such decisions can be extended protection by applying the de facto doctrine it has been held that the Labour Court, being a creature of the Act of 2008, remained functional until the Act of 2008 remained in force and when the Act of 2008 repealed itself on 30.04.2010, the Labour Court also ceased to exist from such date. The grievance petitions filed by the appellants were pending in the

Labour Court on 30.04,2010 and their status remained that of a pending proceeding. From Ol.05.2010, NIRC was deemed to be constituted to hear grievance petitions and thus, the only forum provided in the law to hear and decide the grievance petitions from 01.05.2010 was NIRC.

ix) Moreover, after a comprehensive analysis of the new labour laws, both provincial and Federal, it may be confidently concluded that two parallel forums have been created; one operates at the provincial level, while the other is a federal-level entity known as the National Industrial Relations Commission (NIRC). Both these forums have jurisdiction to deal with industrial disputes, unfair labour practices and other allied matters, either attributable to the employer or the workers/workmen, however, the Federal Law has drawn a clear demarcation line of the jurisdiction of these two different forums i.e. Labour Courts in the Provinces and the other NIRC, at the Federal Level.

Conclusion: i) Provincial Labour Court has not the competence and jurisdiction to adjudicate upon trans-provincial issues.

ii) The Provincial Legislature has no legislative competence to legislate a law regulating the establishments and industries functioning at the trans-provincial level.

iii) See above in the analysis clause.

iv) The main function of the NIRC, inter alia, is to adjudicate and determine an industrial dispute in the Islamabad Capital Territory and trans-provincial to which a trade union or a federation of such trade union is a party.

v) During the interregnum period with effect from 01.05.2010, when no Industrial Relations Law was holding the field, the workers had a remedy under the ordinary laws prevailing at that time.

vi) Labour Laws are the procedural laws and in the light of the well-settled principles of interpretation of Statutes, the procedural law has retrospective effect unless the contrary is provided expressly or impliedly.

vii) The IRA, 2012 would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist.

viii) Such decisions can be extended protection by applying the de facto doctrine it has been held that the Labour Court, being a creature of the Act of 2008, remained functional until the Act of 2008 remained in force and when the Act of 2008 repealed itself on 30.04.2010.

ix) There are two different forums at provincial and federal level having jurisdiction to deal with industrial disputes, however, the Federal Law has drawn a clear demarcation line of the jurisdiction of these two different forums i.e. Labour Courts in the Provinces and the other NIRC, at the Federal Level.

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7. **Supreme Court of Pakistan**
Hasham Khan (deceased) through LRs. v. Waheed Ahmed
Civil Appeal No. 170 & 171 of 2017
Mr. Justice Sardar Tariq Masood, **Mr. Justice Amin-Ud-Din Khan**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._170_2017.pdf

Facts: The respondent-plaintiff instituted two separate suits of preemption to preempt the sale of land in favour of appellants on the basis that the plaintiff is co-owner in the suit land. The trial court decreed both the suits. Appeals preferred by the appellant were dismissed and same was the fate of the Civil Revisions filed by the appellant. Hence, these appeals with the leave of the Court have been preferred.

Issues: i) Whether a person who is required to prove a fact fails when against his oral assertion, other side makes oral assertion on oath?
ii) Whether "all the entries" in the Register Record of Rights/Jamabandi carry presumption of correctness in terms of s.52 of Punjab Land Revenue Act 1964?
iii) What is procedure concerning mutation of ownership or occupancy rights, inclusive of voluntary partition to make requisite entries into the mutation register when mutation is duly reported?

Analysis: i) We have noticed that when a person is required under the law to prove a fact pleaded by him and his oral assertion is challenged in the cross-examination and then the other side comes against it in the witness-box and after oath rebuts the same, the result is that the person required to prove the fact fails, when against an oral assertion the oral assertion is made by the other side.
ii) The pivotal question in this regard is, whether "all the entries" in the Register Record of Rights/Jamabandi carry presumption of correctness in terms of s.52 of Punjab Land Revenue Act 1964? Before proceeding to answer this question, it would be relevant to restate the relevant law and procedure as to the entries in Register of Record of Rights are incorporated and after crossing what threshold they qualify for the presumption of correctness as stated above… It may be noted that s. 52 of the Punjab Land Revenue Act 1967 confers presumption of correctness in favour of entries in records-of-rights and periodical records only when they are made as per law… While interpreting this provision, Lahore High Court in the judgement reported as "Pervez Alam Khan vs. Muhammad Mukhtar Khan" (2001 CLC 1489) while relying on the judgement of this court reported as "Shad Muhammad v. Khan Poor" (PLD 1986 SC 91) correctly held that presumption of correctness is attached only to the column of ownership and of possession of record of right and no such presumption is attached to the column of Lagan. In the same line, it is incrementally held that the same is the correct law for the entries made in Khana Kafiyat of Register of Record of Rights/Jamabadi. Whenever, a party relies on this Column, they will have to prove the incorporated statement/entry through independent evidence.
iii) According to Rule 7.1 of the Land Record Manual, in accordance with sections 33(3) and 34 of the Land Revenue Act, the mutation register serves as the repository for recording various acquisitions of rights or interests in land, be it as a landowner, assignee, or occupancy tenant. Nonetheless, it's imperative to note that the mutation register is distinct from the record-of-rights and consequently does not benefit from the legal presumption of truthfulness commonly associated with the latter. For the procedure concerning mutations of ownership or

occupancy rights, inclusive of voluntary partitions, the Patwari is obligated to make requisite entries into the mutation register once such mutations are duly reported to him by the transferee. In accordance with Rule 7.2 of the Land Record Manual, when a mutation case is registered, the Patwari is required to annotate the relevant jamabandi entry with the mutation's serial number and type, initially in pencil. Upon approval of the mutation, the notation is to be made permanent in red ink. Similarly, serial numbers of fard badar entries are to be noted, and to distinguish them from regular mutations, the term "badar" should be appended. Under Rule 7.56 of the Land Record Manual, Tehsildars and Naib-Tehsildars are mandated to prioritise estates for which new detailed jamabandis are to be created. Mutations with final orders passed up to 15th June, or any later date authorised by the Director of Land Records, must be incorporated into the jamabandi. The objective is to ensure all mutations up to that specified date are duly entered in the register and attested accordingly. In accordance with Rule 7.60 of the Land Record Manual, the field Kanungo is required to check and attest 100% of the Periodical Records during July and August. The focus is to ensure that mutations finalised by June 30th, or any other approved date, have been accurately reflected. On the other hand, under Rule 7.62, the Tehsildar or Naib-Tehsildar must validate a minimum of 25% of the khatauni and khewat holdings as well as 25% of the mutations linked to the jamabandis, executing these checks on site and in the presence of the respective right-holders. It may be noted that Register Haqdaran Zameen/Jamabandi form has 10 columns. It is prepared after every four years. The name of owners is mentioned in Column No. 3. The owners can transfer a property through mutation. During the four years transfer of property through mutation continues by the persons mentioned as owners in Column No. 3. Every entry of mutation is endorsed in this document. The person who intends to acquire rights in the property mentioned in the ownership column of this document is required to report the matter to the Patwari Halqa concerned who records events in his Roznamcha and the Roznamcha is maintained serial-wise and a date of event is mentioned on each Roznamcha. After recording the event in the Roznamcha the Patwari enters a mutation on the basis of the Roznamcha. After recording mutation the reference of mutation number is made in this document with a pencil and after the attestation of the mutation the noting of pencil is replaced with noting through red ink. This practice continues for four years and on 30th June after every four years all the mutations attested during the said four years are implemented in Column of ownership and the mutation number mentioned through red ink in Column No. 10 are replaced with black ink which remains there for four years and same are removed after completion of four years. If the existing owner sells whole of his property, his name is removed, otherwise, the share he sells to that extent the new owner becomes owner to the extent of purchase of share in the column of ownership. Same is the procedure of correction of revenue record through Fard Badar.

Conclusion: i) A person who is required to prove a fact fails when against his oral assertion,

other side makes oral assertion on oath.
ii) All the entries in the Register Record of Rights/Jamabandi carry presumption of correctness in terms of S.52 of Punjab Land Revenue Act 1964 only when they are made as per law.
iii) Procedure concerning mutation of ownership or occupancy rights, inclusive of voluntary partition to make requisite entries into the mutation register when mutation is duly reported is mentioned above in analysis No. iii.

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8. **Supreme Court of Pakistan**
Haji Shinkai v. Abdul Shakoor & others.
Civil Appeal No.23-Q of 2017
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._23_q_2017.pdf

Facts: The appellant has filed this civil appeal being discontent with the decree drawn up under Section 96 of the Code of Civil Procedure, 1908 following the judgment of the High Court with further prayer that the decree issued to him in his suit by the Trial Court be restored.

Issues: i) What is the scheme of arbitration provided under the Arbitration Act, 1940?
ii) Does Section 31 of the Arbitration Act, 1940, solely define jurisdiction and regulate the forum?
iii) Whether main object of Sections 32 and 33 of the Arbitration Act, 1940 is to expedite and simplify arbitration proceedings and to obtain finality?
iv) Whether the scope of the expression "effect of the award" employed in Section 32 of the Arbitration Act, 1940 is wide enough to cover a suit for enforcement of an award?
v) Whether in case of denial of arbitration agreement by a party regarding its existence, suit for enforcement of an award is expressly prohibited?
vi) Whether it is a settled principle that when an award without intervention of the Court is accepted and acted upon by the parties, same can be based to file a suit by either party relying on the same?
vii) Whether, in an incompetent suit, relief may be moulded, and the plaintiff can be awarded that relief, which he did not even, prayed for, and in which he was not interested?

Analysis: i) In regard to arbitration without the intervention of the Court, the Arbitration Act, 1940 lays down the procedure for the successive stages from the commencement of the arbitration to the passing of a decree in terms of the award. Sections 8 to 12 provide for the appointment or removal by Court of arbitrators or umpire in some instances. Section 13 confers certain powers on them. The award is required to be signed by the arbitrators or umpire, and notice in writing to the parties of the making of the award is enjoined by Section 14(1). If any party so desires, the arbitrators or umpire are directed by Section 14(2) to file the award in Court and to give notice to the parties of such filing. The power of the Court to

modify the award or to remit it is dealt with in Sections 15 and 16. If the Court sees no cause to set aside an award or remit it, it shall, under Section 17, proceed to pronounce judgment according to it, after the time for making an application to set aside has expired or if such application has been made, after refusing it. Upon the judgment so pronounced a decree shall follow...

ii) Section 31 lays down certain rules and imposes certain restrictions as to the Court to which applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings may be made or in which an award may be filed. Sub-Section (2) of Section 31 provides, inter alia, that all questions regarding the validity, effect or existence of an award shall be decided by the Court in which the award has been, or may be, filed and by no other Court. There can be no doubt that Section 31 merely regulates the forum, and it only defines the jurisdiction...

iii) Turning to Sections 32 and 33, it must be observed that while Section 33 provides for an application by a person desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined, Section 32 makes it a condition that no suit shall lie for a decision upon the existence, effect or validity of an arbitration agreement or award. It is thus clear that the main object of these provisions of the Arbitration Act, 1940 is to expedite and simplify arbitration proceedings and to obtain finality.

iv) It may be noted that it is now well settled that the expression "effect of the award" employed in Section 32 of the Arbitration Act, 1940 is wide enough to cover a suit for enforcement of an award.

v) When the defendants, on the other hand, denied the arbitration agreement and maintained that the award was invalid and inoperative. Upon these pleadings, it is manifest that the said suit raised the question as to the existence, effect or validity of the award and such a suit is expressly prohibited by Section 32 of the Arbitration Act,1940. It would be apposite to state here that if the plaintiff wanted to enforce the award, the proper procedure for him would have been first to get the award to be made a rule of the Court and then to enforce or execute the decree which might be passed on the basis of the award. He could not resort to the procedure of filing a separate suit in disregard of the special procedure provided in the Arbitration Act, 1940...

vi) Where the parties accept an award made in arbitration out of the Court, and it is acted upon voluntarily, and a suit is after that sought to be filed by one of the parties, then the objection that the suit, in terms of Section 32 of the Arbitration Act, 1940 is not maintainable, cannot be allowed to be raised.

vii) When the High Court, taking into account the assertion made by defendant in his written statement that he had only obtained a loan of certain amount from the plaintiff, modified the decree of the Trial Court and held that the plaintiff was entitled to the recovery of the amount from defendant subject to deposit of court fee within one month. The plaintiff neither sought this relief in his plaint nor was it the subject matter of issue, which was to the effect "whether the plaintiff is

entitled to the relief claimed for?". So, it could not be granted, particularly when it was found that the suit was not maintainable…

Conclusion: i) See analysis portion…
ii) Yes, section 31 of the Arbitration Act, 1940 merely regulates the forum, and it only defines the jurisdiction.
iii) Yes, the main object of Sections 32 and 33 of the Arbitration Act, 1940 is to expedite and simplify arbitration proceedings and to obtain finality.
iv) Yes, the scope of the expression "effect of the award" employed in Section 32 of the Arbitration Act, 1940 is wide enough to cover a suit for enforcement of an award.
v) Yes, in case of denial of arbitration agreement by a party regarding its existence, the suit for enforcement of an award is expressly prohibited under Section 32 of the Arbitration Act,1940.
vi) Yes, it is a settled principle that when an award without intervention of the Court is accepted and acted upon by the parties, same can be based to file a suit by either party relying on the same.
vii) In an incompetent suit, relief cannot be moulded, and the plaintiff cannot be awarded that relief, which he did not even, prayed for, and in which he was not interested.

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9. **Supreme Court of Pakistan**
Ammad Yousaf v. The State and another
Criminal Petition No. 225 of 2023
Mr. Justice Ijaz Ul Ahsan, Mr. Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._225_2023.pdf

Facts: The Executive Magistrate considered that the alleged views on national television against the armed forces constituted serious cognizable offences and sought permission from the Deputy Commissioner to register an FIR. The DC sought guidance from the Chief Commissioner, who through a letter, obtained permission from the Secretary, Ministry of Interior and conveyed the same to the Magistrate who registered an FIR under sections 120-B, 121-A, 124, 131, 153, 153-A, 505, 506, 201, and 109/34 of PPC against main accused and other unknown persons. The petitioner was subsequently implicated in the case during the investigation. Before the Trial Court could frame the charge, the petitioner filed an application under section 265-D of the Code, requested for his acquittal which was dismissed by the Trial Court. A Criminal Revision filed thereagainst the petitioner was dismissed by the Islamabad High Court, Islamabad, hence, this petition for leave to appeal.

Issues: i) Whether exercise of the inherent powers is mandatory in nature?
ii) What is charge? Which aspects are to be considered by the court before framing of charge?
iii) At which stage trial court can acquit an accused under sections 249-A and

265-K of the code?
iv) Whether an F.I.R under offences mentioned in section 196 Cr.P.C. can be registered?
v)What is the principle of Delegatus Non-Potest Delegare?
vi)Whether a person can be held responsible for deeds and actions of another?
vii)What are the pre-conditions to prosecute a person for offences mentioned in section 196 of Cr.P.C.?

Analysis: i) In our criminal justice system, the provisions of Chapter XXII-A of the Code are mandatory in nature, which provide a procedure for the Courts to ensure a just and fair trial for the accused, the prosecution as well as the complainant, therefore, the same must be complied with in their true letter and spirit.(…) The exercise of the inherent powers is mandatory in nature, therefore, any departure therefrom would be a violation of the substantive provisions of law and would prejudice the interests of the accused, which is an illegality.
ii) A charge is a gist and precise statement of the allegation(s) made against a person(s), which is the foundation of a criminal trial. It specifies the offence with which an accused is charged, by giving a specific name, if any, and the relevant provision(s) of law(s) (…) Section 265-D provides that before framing of a charge, the Court must consider the FIR, the police report, all the documents, and the statements of the witnesses filed by the prosecution available before it in order to determine whether it has jurisdiction to take cognizance of the matter. If the Court is of the opinion that it is competent to take cognizance and prima facie reasonable grounds exist for proceeding with the trial of the accused, only then, charge has to be framed.
iii) The Code has granted an inherent jurisdiction by virtue of sections 249-A and 265-K to the trial courts, as the case may be, to acquit any or all accused at any stage of the judicial proceedings for reasons to be recorded, after providing an opportunity of hearing to the parties. The words "any stage" used in both the sections include the stages before or after framing of the charge or after recording of some evidence. (…) Thus, if circumstances for exercise of inherent powers exist, the Court must use such powers at any stage of the proceedings on its own or upon an application by the accused, provided that an opportunity of hearing is afforded to the parties before making any order (…) Such power can only be exercised where the Court is of the opinion that no charge could be framed because of lack of jurisdiction; because the material available before it is insufficient for the purposes of constituting an offence; that if charge is framed, but the Court considers it to be groundless and to allow the prosecution to continue with the trial would amount to an abuse of process; or that in all circumstances, where there is no probability of conviction of the accused, even after a full-fledged trial.
iv) The intent of the legislature is to limit a Government to prosecute a person for offences mentioned in section 196 of the Code, only upon a complaint in Court, instead of registration of an FIR, to ensure transparency and impartiality. A

complaint is filed before a Judicial Magistrate, who being a judicial officer, is free from the Government's influence. He is supposed to perform his functions fairly, efficiently, without any pressure and interference. On the other hand, the police officials, who are part of executive, are admittedly in subordination to the Government(s) concerned, therefore, an independent investigation cannot be expected. However, prosecution in offences other than those mentioned in section 196 of the Code can be initiated through an FIR, as provided by section 154 of the Code. (…) According to the said section, cognizance can only be taken by a Court upon a complaint made by the Federal Government, the Provincial Government concerned, or some officer empowered in this behalf in respect of the offences mentioned therein. (…) In such view of the matter, section 196 of the Code mandates that no person or authority other than the Federal Government or the Provincial Government or any officer empowered by the respective Governments in this behalf is competent to file a complaint in respect of the offences mentioned in section 196.

v) The principle of Delegatus Non-Potest Delegare is a Latin legal maxim that generally applied to the delegation of power or authority by one person or entity to another. According to this Maxim, if a person or entity to whom a power or authority is delegated, cannot himself further delegate that power or authority to someone else. However, such power can be delegated in circumstances where the law expressly permits to do so, or in the absence of a law, where the original delegation explicitly authorizes it.

vi) It is a settled principle of law that each person is responsible for his deeds and actions, hence, holding the petitioner responsible for the act of the main accused, without prima facie cogent evidence, is unjustified.

vii) Thus, in order to prosecute a person for offences mentioned in section 196, firstly, there must be a complaint only by an order of the Federal Government or the concerned Provincial Government or by an officer empowered in this behalf by either of the two Governments. Secondly, the complaint must contain the name of a person(s), against whom proceedings are required to be initiated and all the details in respect of the alleged offence(s). Moreover, after filing a complaint, if subsequently, it surfaces that some person(s) other than the one(s) named in the complaint is/are also connected in commission of the offences, the Federal Government, the Provincial Government or an officer empowered by either of the two Governments, as the case may be, may pass an order for filing of a supplementary complaint against them with all the stated details. In any case, before submitting a complaint, the authorities concerned must conduct a preliminary inquiry in order to avoid frivolous, malicious and purposeless prosecution. Similarly, the Magistrate upon receiving a complaint and before assumption of the jurisdiction, must cross the threshold by applying his mind and analysing the evidence, in order to determine its jurisdiction and to ascertain that on the basis of the available material, charge can be framed. The Magistrate, if satisfied, that prima facie case against the nominated person is made out, he can then initiate judicial proceedings against the person nominated in the complaint. If

he reaches a conclusion that the complaint or the supplementary complaint has been filed by an unauthorized person or that the same suffers from mandatory requirements of section 196 or he lacks jurisdiction, he should not issue process in a mechanical manner, rather, should refrain himself from initiating judicial proceedings.

Conclusions: i) The exercise of the inherent powers is mandatory in nature; therefore, any departure therefrom would be a violation of the substantive provisions of law and would prejudice the interests of the accused, which is an illegality.
ii) A charge is a gist and precise statement of the allegation(s) made against a person(s), which is the foundation of a criminal trial and before framing of a charge, the Court must consider the FIR, the police report, all the documents, and the statements of the witnesses filed by the prosecution available before it in order to determine whether it has jurisdiction to take cognizance of the matter.
iii) Court can acquit the accused at any stage of the proceedings on its own or upon an application by the accused by invoking the provisions of sections 249-A and 265-K of the Cr.P.C, even after a full-fledged trial.
iv) FIR cannot be registered regarding offences against the State as mentioned in section 196 of the code and cognizance can only be taken by a Court upon a complaint.
v) Delegatus Non-Potest Delegare is a Latin legal maxim according to which, if a person or entity to whom a power or authority is delegated, cannot himself further delegate that power or authority to someone else unless the law expressly permits to do so, or in the absence of a law, where the original delegation explicitly authorizes it.
vi) It is a settled principle of law that each person is only responsible for his own deeds and actions.
vii) See the analysis part at serial number (vii) mentioned above.

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10. **Supreme Court of Pakistan**
Sui Northern Gas Pipelines Limited, through its General Manager, Rawalpindi v. Muhammad Arshad
Civil Petition No.3598 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/c.p._3598_2020.pdf

Facts: The respondent filed a Civil Suit for declaration, perpetual injunction and mandatory injunction against the General Manager, Chief Engineer and Area Manager of the petitioner i.e. Sui Northern Gas Pipelines Limited ("SNGPL"), with the prayer that the gas utility bill was wrongly calculated and should be corrected as per actual consumption. A further relief was also sought for permanent injunction from recovery of the bill amount and disconnection of gas supply to the premises. The civil suit was decreed by the Additional District Judge/Gas Utility Court, Rawalpindi vide Judgment and, as a result thereof, the

gas consumption bill challenged in the suit was set aside, while SNGPL was found entitled to recover the cost of the meter. This Civil Petition for leave to appeal is directed against the Order passed by the High Court whereby the First Appeal filed by the petitioner was dismissed.

Issues: i) What is the meaning of the theft of natural gas?
ii) What is the legal requirement if any person desires a court to give a judgment as to any legal right or liability depending on the existence of facts which he asserts?
iii) Whether the liability is assessed according to the sanctioned load or not is to be proved in the Trial Court and such calculation sheet can be considered as the gospel truth?
iv) What is the meaning of "onus probandi"?
v) What is the meaning of legal principle "separate the grain from the chaff"?

Analysis: i) The 'theft of natural gas' means the use/consumption of gas in an unauthorized/un-lawful manner for which the user/consumer has neither been billed, nor he/she has paid for such consumption and also provides the possible instances of acts which are tantamount to theft. The procedure addresses several aspects of gas theft, the action that can be taken by the company in case of theft is conducting a raid at the premises and/or disconnecting gas supply to such subscriber.
ii) According to Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give a judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and the burden of proof lies on him. Lawsuits are determined on preponderance or weighing the scale of probabilities in which the Court has to see which party has succeeded to prove his case and discharged the onus of proof.
iii) The aspect of whether the liability is assessed according to the sanctioned load or not is to be proved in the Trial Court and such calculation sheet cannot be considered as the gospel truth unless the raiding team ascertained the actual load and consumption according to the appliances and equipment being used by the subscriber and confronted the subscriber or their representative at the time of raid in the case of theft of gas or tampered meter.
iv) The meaning of "onus probandi" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him.
v) The legal principle "separate the grain from the chaff" obligates the Court to scrutinize and evaluate the evidence recorded in the lis and judge the quality, and not the quantity, of evidence which has been done properly in the case without any non-reading or misreading of evidence by the Trial Court or the High Court concurrently.

Conclusion: i) The 'theft of natural gas' means the use/consumption of gas in an unauthorized/un-lawful manner for which the user/consumer has neither been billed, nor he/she has paid for such consumption.

ii) According to Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give a judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and the burden of proof lies on him.
iii) See above in the analysis clause.
iv) The meaning of "onus probandi" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him.
v) See above in analysis clause.

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11. **Supreme Court of Pakistan,**
Shah Fakhr-e-Alam and others v. Mst. Shaukat Ara and others,
C.A No. 998 of 2020,
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Muhammad Ali Mazhar,
Mr. Justice Athar Minallah.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._998_2020.pdf

Facts: Through this appeal filed under Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have challenged the judgment and decree, whereby Civil Revision filed by the respondents was allowed and concurrent judgments of the two *fora* below were set aside to the effect of decreeing the suit of the plaintiffs/respondents seeking a declaration of ownership of the suit-property, seeking correction of the erroneous entries in the revenue record favouring the defendants alongwith permanent injunction to prevent the defendants from denying their ownership and seeking restoration of possession if the plaintiffs were proved not to be already in possession as well as a partition of the suit-property.

Issues: i) What is the mandate of section 115 of the CPC in term of disagreeing with the findings of lower courts?
ii) Whether the law of limitation has ever provided a blanket exemption for individuals challenging an admitted wrong entry?

Analysis: i) When a trial court and the first appellate court, which are responsible for considering both factual and legal aspects, have already taken a specific viewpoint, the learned High Court under the jurisdiction granted by section 115 of the CPC should generally refrain from offering an alternative interpretation of the evidence, unless the lower courts' interpretation is clearly unreasonable or contradicts well established legal principles. When a higher court is unsatisfied with the findings of the lower courts, the higher court must carefully examine and discuss the lower courts' findings. Subsequently, the higher court should provide reasons for disagreeing with the lower courts and replacing their findings with its own.
ii) If a wrong entry is made and, in accordance with the prevailing Land Revenue Act, the ownership entry is recorded in the Register *Haqdaran Zameen/Jamabandi*/periodical record, each new entry in the latest record, updated

after every four years, creates a new cause of action. Unless challenged and declared invalid through appropriate action and declaration, an entry, order, or action remains in effect.

Conclusion: i) Section 115 of CPC mandates that any findings being set aside must be done so with proper reasons and logical justification, while the findings made by the higher court must also be supported by valid reasons based on the available evidence and the law.
ii) The Supreme Court, as well as the principles of law of limitation, have never provided a blanket exemption from the law of limitation for individuals challenging an admitted wrong entry.

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12. **Supreme Court of Pakistan**
Regional Police Officer, Dera Ghazi Khan Region, etc. v. Riaz Hussain Bukhari.
Civil Petition No.469-L of 2023
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._469_l_2023.pdf

Facts: This civil petition for leave to appeal is directed against the Order passed by the Punjab Service Tribunal whereby the appeal filed by the present respondent was allowed.

Issues: i) Whether in time barred petition filed by the Government, administrative delays due to lengthy procedure can be considered sufficient cause?
ii) What are the differences of considerations, between an individual and in case of government before filing an appeal while approaching the higher Courts?
iii) Whether preferential treatment can be accorded to Government Departments for condoning the delay?
iv) Whether delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied under the doctrine of law helps vigilant and not indolent?
v) Whether it is inherent duty of the Court to delve into the question of limitation, regardless of it that the objection is raised or not?
vi) Whether without mentioning necessary details in the application for condonation of delay in line with the guiding principles in the form of SOP as reported by the Supreme Court, the same can be succeeded in favor of Government departments?

Analysis: i) The mechanical and unpersuasive justification of administrative delays has almost become a trend which is consistently pleaded for condonation of delay through stereotypical and generalized applications, which cannot be considered 'sufficient cause' or a reasonable ground in every case...At times this cavalier attitude and approach smears and smacks mala fide and leads to the belief that the appeal is intentionally being presented belatedly only as a formality in order to

provide an undue advantage to the other side, rather than due to any genuine intent to challenge the judgment or order.

ii) In the case of an individual, all decisions rest solely on him with regard to the procurement of advice for challenging the decision at higher forum; the decision to challenge; the engagement of an advocate; supplying the relevant documents to the advocate for the preparation of the appeal/petition and then following the case religiously; however, in the case of the Government or any of its departments, the party has at its disposal the assistance of its own legal department; the help and support of the Attorney General's Office, or the Advocate General's Office as the case may be. Therefore, immediately upon receiving a copy of the judgment/order, the Government departments may move for instructions rather than waiting for the lapse of the period of limitation provided for approaching the higher Courts.

iii) It is also a well settled exposition of law that while considering the grounds for condonation of delay, whether rational or irrational, no extraordinary clemency or compassion and/or preferential treatment may be accorded to the Government department, autonomous bodies or private sector/organizations, rather their case should be dealt with uniformly and in the same manner as cases of ordinary litigants and citizens…The doctrine of equality before law demands that all litigants, including the State, are accorded the same treatment and the law is administered in an even-handed manner.

iv) No doubt the law favours adjudication on merits, but simultaneously one should not close their eyes or oversee another aspect of great consequence, namely that the law helps the vigilant and not the indolent. At this juncture, it is quite relevant to quote a Latin maxim"Leges vigilantibus non dormientibus subserviunt" or "Vigilantibus Non Dormientibus Jura Subveniunt" which articulates that the law aids and assists those who are vigilant but not those who are sleeping or slumbering. Delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied.

v) The astuteness of the law of limitation does not confer a right but ensues incapacitation after the lapse of the period allowed for enforcing some existing legal rights and it foresees the culmination of claims which have decayed by efflux of time. Under Section 3 of the Limitation Act, 1908 it is the inherent duty of the Court to delve into the question of limitation, regardless of whether it is raised or not. Carelessness, intentional or obvious sluggishness, or dearth of bona fide are no reason for condonation of delay.

vi) When the petitioner has skipped the necessary details including the identity of persons who became instruments of delay, deliberately or indeliberately, or whether any disciplinary action was taken against the person(s) responsible for the delay. All such details should have been jotted down in the application for condonation of delay for consideration which are if missing and due to dearth of such nitty-gritties, it cannot be determined whether the case is fit for condonation of delay in view of the guiding principles cogitated in the SOP which is very

much in field and should have been implemented in letter and spirit for seeking condonation of delay on sufficient cause...

Conclusion: i) In time barred petition filed by the Government, administrative delays due to lengthy procedure cannot be considered sufficient cause.
ii) See analysis portion.
iii) Preferential treatment cannot be accorded to Government Departments for condoning the delay.
iv) Yes, delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied under the doctrine of law helps vigilant and not indolent.
v) Yes, it is inherent duty of the Court to delve into the question of limitation, regardless of it that the objection is raised or not.
vi) Without mentioning necessary details in the application for condonation of delay in line with the guiding principles in the form of SOP as reported by the Supreme Court, the same cannot be succeeded in favor of Government departments.

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13. **Lahore High Court**
Muhammad Tanveer and another v. The State
Criminal Appeal No.66363-J/2019
The State v. Muhammad Tanveer
Murder Reference No.245/2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC5037.pdf

Facts: This single judgment shall dispose of criminal appeal filed by appellants against their convictions & sentences and murder reference sent by trial court for confirmation of death sentence awarded to appellant, as both the matters have arisen out of one and the same judgment passed by trial court.

Issues: i) How the question of sharing common intention has to be examined?
ii) What is the effect on sentence of death in murder case if prosecution fails to prove alleged motive and immediate cause of occurrence?

Analysis: i) It is trite law that for proving common intention, there should be evidence to prove preconcert/consultation between accused persons for committing the offence and in absence of the same, attending circumstances can also be taken into consideration for deciding existence of common intention e.g. if accused persons having joint motive/grudge i.e. reason for committing occurrence against the victim, after consultation and preparation come from their residence or some place to the place of occurrence and commit the occurrence, then existence of common intention can be gathered while examining the entire facts but at the same time it is also relevant to mention here that in case of presence of accused at the place of occurrence where his presence is otherwise natural or at least not

unusual/awkward e.g. at his home, question of sharing common intention has to be examined carefully.
ii) The law is well settled by now that if prosecution fails to prove alleged motive and immediate cause of occurrence then said failure reacts against the sentence of death awarded to convict on the charge of murder.

Conclusion: i) It is trite law that for proving common intention, there should be evidence to prove preconcert/consultation between accused persons for committing the offence and in absence of the same, attending circumstances can also be taken into consideration for deciding existence of common intention.
ii) If prosecution fails to prove alleged motive and immediate cause of occurrence then said failure reacts against the sentence of death awarded to convict on the charge of murder.

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14. **Lahore High Court**
Mst. Shabana Kausar v. The State
Criminal Appeal No. 44164-J of 2021
The State v. Mst. Shabana Kausar
Murder Reference No. 118 of 2021
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC5484.pdf

Facts: This judgment shall decide criminal appeal filed by appellant against her conviction and sentence and murder reference sent by the learned trial court for confirmation or otherwise of the death sentence awarded to appellant. Both these matters are decided by this single judgment as these have arisen out of the same judgment passed by the Sessions Judge.

Issues: i) Whether it is necessary that every circumstance should be linked with each other and it should form a continuous chain?
ii) Which interpretation is to be accepted if a fact is capable of two interpretations?
iii) Whether extra judicial confession is weak type evidence?
iv) Whether the accused can be convicted & sentenced merely on the basis of alleged recovery of dead body of the deceased?
v) Whether a single circumstance which creates doubt regarding the prosecution case, is sufficient to give benefit of doubt to the accused?

Analysis: i) It is settled by now that in such like cases every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused. But if any link in the chain is missing then its benefit must go to the accused.
ii) It is by now well settled that if a fact is capable of two interpretations then one favourable to the accused is to be accepted.

iii) It is by now well settled that evidence of extra judicial confession is a weak type evidence which can easily be procured in the cases of unseen occurrence to strengthen the weak prosecution case.
iv) The accused cannot be convicted & sentenced merely on the basis of alleged recovery of dead body of the deceased on his/her pointing out which is only a corroborative piece of evidence.
v) It is by now well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

Conclusion: i) It is necessary that every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused.
ii) If a fact is capable of two interpretations then one favourable to the accused is to be accepted.
iii) Extra judicial confession is weak type evidence.
iv) The accused cannot be convicted & sentenced merely on the basis of alleged recovery of dead body of the deceased on his/her pointing out which is only a corroborative piece of evidence.
v) A single circumstance which creates doubt regarding the prosecution case, is sufficient to give benefit of doubt to the accused.

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15. **Lahore High Court**
Ali Raza v. Inspector General of Police, Punjab etc.
W.P. No. 91824 of 2017
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5335.pdf

Facts: Feeling aggrieved by the unfavourable decision of the Police Department regarding non-appointment of petitioner as Junior Clerk on the ground that his father was retired on medical ground, petitioner has invoked constitutional jurisdiction of the Court.

Issue: Whether grant of Invalidation Certificate is conclusive proof of retirement on medical grounds?

Analysis: The criteria for issuance and completion of Medical Invalidation Certificate in favour of a government servant, who has been examined by the Medical Board, upon the request of his/her parent department, has been encapsulated in Notification, issued by the Additional Secretary, Primary & Secondary Healthcare Department, Govt. of the Punjab… After issuance of Invalidation Certificate by the Medical Superintendent concerned, on the basis of opinion of the Medical Board, same is to be forwarded to the Director General, Directorate General of Health Services, Punjab, for countersigning and if the same is countersigned then it is valid for retirement of government servant on medical grounds. It is well established by now that a written document outweighs an oral assertion…no

record relating to Invalidation Certificate, is found from Directorate General of Health Services, Punjab, Lahore, the same is considered to be fake and bogus… mere grant of medical allowance to a retiree does not determine the nature of his retirement rather contents of the Pension Payment Order are to be treated as conclusive proof in that regard.

Conclusion: No, along with Invalidation Certificate contents of Pension Payment Order are to be considered for determining nature of retirement.

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16. **Lahore High Court**
Mst. Nawab Bibi (deceased) through L.Rs. v. Hakim Ali and others
Civil Revision No.2312 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5523.pdf

Facts: The learned trial Court vide impugned judgment and decree decreed the suit of the petitioner(s)/plaintiff(s) to the extent of 1/2 share as inheritance from the legacy of the deceased. The petitioner(s)/plaintiff(s) being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree; hence, the instant revision petition by petitioner through her legal heirs with the prayer that she is entitled to inherit half property of deceased as sharer and half as return, whereas the petitioners in connected civil revision have prayed for setting aside the impugned judgments and decree and dismissal of the suit of plaintiff.

Issues: i) Whether every Muslim in the sub-continent is presumed to belong to Sunni sect?
ii) Whether any strict criteria can be set to determine the faith of a person?
iii) Whether fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved whether limitation does run?
iv) When the foundational transaction is based on fraud and mala fide, whether the subsequent superstructure built thereon can be allowed to stand?
v) Whether the concurrent findings on record can be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis: i) Every Muslim in the sub-continent is presumed to belong to Sunni sect, unless 'good evidence' to the contrary is produced by the party contesting the same. The judicial determination of whether the said presumption of faith of a party, positively stands rebutted, would be adjudged by the Court on the principle of preponderance of evidence produced by the parties.
ii) No strict criteria can be set to determine the faith of a person and therefore to pass any finding thereon, the Courts are to consider the surrounding circumstances i.e. way of life, parental faith and faith of other close relatives.
iii) Question of limitation has also rightly been adjudicated upon by the learned Courts below because fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved the limitation does not run.

iv) It is a settled principle of law that when the foundational transaction is based on fraud and mala fide, the subsequent superstructure built thereon cannot be allowed to stand and ultimately collapses.
v) The impugned judgments and decrees do not suffer from any infirmity rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Conclusion: i) Every Muslim in the sub-continent is presumed to belong to Sunni sect, unless 'good evidence' to the contrary is produced by the party contesting the same.
ii) No strict criteria can be set to determine the faith of a person and therefore to pass any finding thereon, the Courts are to consider the surrounding circumstances i.e. way of life, parental faith and faith of other close relatives.
iii) Fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved the limitation does not run.
iv) When the foundational transaction is based on fraud and mala fide, the subsequent superstructure built thereon cannot be allowed to stand and ultimately collapses.
v) When impugned judgment and decree does not suffer from any infirmity rather law on the subject has rightly been construed and appreciated then the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

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17. **Lahore High Court**
Muhammad Awais v. Zahida Parveen
C.R No. 4434 of 2019
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5517.pdf

Facts: Petitioner's right to produce evidence was closed and the learned trial court decreed the suit of respondent/plaintiff, against which petitioner preferred appeal and appellate court dismissed appeal of the petitioner/defendant. Being aggrieved petitioner through this revision petition challenged the judgment and decree passed by appellate court.

Issues: i) Whether nikahnama is per se admissible in evidence?
ii) Whether any condition such as "compensation in lieu of divorce" may be imposed on husband to exercise his right to divorce?

Analysis: i) The Nikahnama is per se admissible in evidence and entries of the same have not been challenged by the petitioner before any forum at the relevant time. Even otherwise, the entries of the Nikahnama have been proved by the respondent by producing oral as well as documentary evidence. As against this, the petitioner could not lead evidence in rebuttal as his right to produce evidence was closed by the learned trial Court and he remained unsuccessful in getting the said order reversed by the higher Courts despite availing of the remedy provided under law.

Meaning thereby the evidence of the respondent on this point is unrebutted and even during cross examination, conducted on the P.Ws. the petitioner's side could not shake the veracity of the testimonies of the P.Ws. rather the witnesses remained firm and unscathed.

ii) So far as the claim of the respondent for recover of Rs.500,000/- as compensation in lieu of divorce is concerned, it is observed that in the Holy Quran in Surah Al-Baqra and Surah Talaq the delegation of right of divorce has been described in detail. Similary, section 7(1) of the Muslim Family Laws Ordinance, 1961 deals with the matter of Talaq. The provision of section 105 of the Code of Muslim Personal Laws also caters this thing that a husband has an absolute right to divorce his wife. In this respect, no condition is described in Shariah as well as in the codified law. Reliance in this regard is placed on judgment reported as *Muhammad Bashir Ali Siddiqui v. Muhammad Sarwar Jahan Begum* (2008 SCMR 186), wherein it has been observed that no condition can be imposed on the husband if he desires to divorce his wife, because the right of divorce has been given by Almighty Allah to the husband and this proposition has been discussed in detail…The principles laid down by the Apex Court of the country in the judgment of *Muhammad Bashir Ali Siddiqui ibid* shall prevail in view of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

Conclusion: i) Nikahnama is per se admissible in evidence.

ii) No condition can be imposed on the husband if he desires to divorce his wife, as per settled principles and norms.

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18. **Lahore High Court**
The State v. Asad Ali
Capital Sentence Reference No.23 of 2019/ Crl. Appeal No.17007 of 2019
Ms. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC5025.pdf

Facts: Feeling aggrieved by the judgment of the trial court, the appellant assailed conviction by filing the instant appeal and trial court also referred Capital Sentence Reference to confirm the death sentence awarded to the appellant.

Issues: i) Whether, the statement of a witness/victim must be read in its entirety?

ii) Whether investigation flaws should prejudice the rights of the sexually harassed victims?

Analysis: i) Rape is a crime not only against human dignity but also against society as a whole. In our culture, the family members of a minor girl, the victim of sexual assault, would rather suffer silently than falsely implicate somebody. Any statement of rape is an extremely humiliating experience for the family members of the girls and women. Until she/they is/are a victim of sex crime, she/they would not blame anyone but the real culprit. While appreciating the victim's evidence, the courts must never forget that no self- respecting Father would put her daughter's honour at stake by falsely alleging the commission of rape on her.

Ordinarily, a look for corroboration of victim's testimony is unnecessary and uncalled for. No doubt, the DNA is negative, but it is evident from the testimony of the victim that she not only identified the accused but also proved how the incident had occurred. The statement of a witness must be read in its entirety. Reading a line out of context is not an accepted canon of appreciation of evidence.

ii) A statement recorded Under Section 164 Cr.P.C. can never be used as substantive evidence of the truth of the facts. Still, it may be used for contradiction or corroboration of the witness who made it. As such, we hold that the absence of any statement under Section 164 Cr.P.C. has not caused any prejudice to the accused or caused any miscarriage of justice… Moreover, it is a settled principle that investigation flaws should not cause prejudice to the rights of the sexually harassed victims, and accordingly, hyper-technicalities are to be avoided.

Conclusion: i) The statement of a witness must be read in its entirety. Reading a line out of context is not an accepted canon of appreciation of evidence.

ii) Investigation flaws should not cause prejudice to the rights of the sexually harassed victims.

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19. **Lahore High Court**
Khadija Shah v. The State, etc.
Criminal Misc. No.64830-B of 2023
Ms. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC5020.pdf

Facts: The petitioner sought post-arrest bail in the case F.I.R registered under section 7 of the Anti-Terrorism Act, 1997 and sections 302, 324, 290, 291, 353, 186, 153, 153-A, 153-B, 152, 149, 148, 146, 147, 131, 121, 121-A, 120-A, 107, 109, 505, 452, 436, 427, 395, 120-B of the Pakistan Penal Code, 1860.

Issue: Whether deletion of an objectionable tweet with an apology which was uploaded on social media to motivate the general public against the State Institutions makes the case one of further inquiry for bail under Section 497(2), Cr.P.C?

Analysis: As far as the contention of learned Additional Prosecutor Generals that the petitioner, along with others, enticed and motivated the general public against the Pakistan Army, State Institutions, and anti-state activities, leading to a devastating impact on the country, is concerned, the reports whether she made such tweets and same were uploaded from her social media accounts or not is still awaited. She admitted that one controversial tweet was uploaded which was subsequently deleted through her Twitter message. She tweeted and deleted it by admitting her wrongdoing. The petitioner, in her other Tweet after deleting the objectionable tweet, tendered apology through her tweet. The state is like a mother; one should be given a chance if she/he commits a mistake and apologizes. In these circumstances, prima facie prosecution case against the petitioner falls under the

ambit of further inquiry into her guilt under Section 497(2), Cr.P.C.

Conclusion: Deletion of an objectionable tweet with an apology which was uploaded on social media to motivate the general public against the State Institutions makes the case one of further inquiry for bail under Section 497(2), Cr.P.C.

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20. **Lahore High Court**
Muhammad Hanif Abbasi v. The State
Crl. Appeal No.663,684,685,834,747 of 2018
Miss Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC5352.pdf

Facts: The appellant faced trial for offences under Section 9(c), 14, 15 & 16 of the Control of Narcotic Substances Act, 1997. The trial court convicted the appellant under Section 9(c) & 16 of the Control of Narcotic Substances Act, 1997 and sentenced. Feeling aggrieved, the appellant has assailed his conviction by filing the instant appeal.

Issues: i) What is the obligation of an officer-in-charge of police station if any information disclosing a cognizable offence is laid before him satisfying the requirements of Section 154 of Cr.P.C?
ii) Whether there is any provision in law which allows arresting of a person without an order from the Magistrate and without a warrant?
iii) What is the condition precedent for putting the machinery of investigation in motion?
iv) What is the meaning of investigation?
v) Whether there is any specific provision relating to the permission of pre-investigative inquiry?
vi) Whether the investigating officer has jurisdiction to take steps regarding the investigation without the leave of the Court, if the offence is non-cognizable?
vii) Whether the trial court is bound to ask such questions from an accused under section 342 of the Criminal Procedure Code, 1898, which relates to the root of prosecution evidence based on his/their conviction?
viii) Whether the Public Prosecutor can withdraw from the prosecution of any person of the offences for which he is tried?
ix) What is the purpose of tendering pardon to an accomplice?
x) Whether the Magistrate of 1st Class is empowered to tender pardon to an accomplice at the stage of investigation?
xi) Whether an accomplice who has been given a pardon gets protection from the prosecution?
xii) What if the accomplice refused to comply with the condition on which he was tendered pardon?

Analysis: i) The criminal procedure provided that if any information disclosing a cognizable offence is laid before an officer-in-charge of a police station satisfying the requirements of Section 154 of Cr.P.C., the said police officer has no other option

except to enter the substance thereof in the prescribed form, that is to say, to register a case based on such information. The officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 of Cr.P.C.

ii) By its very definition, a cognizable offence would be a serious offence. A cognizable offence would be where the Investigating Officer can arrest the accused without a warrant. Section 154 of Cr.P.C. specifies that when a person commits any cognizable offense could be arrested without an order from the Magistrate and without a warrant.

iii) The only condition precedent for putting the machinery of investigation in motion under Section 154 of Cr.P.C. is information of a cognizable offence and registration of a criminal case for the offence alleged to have been committed, which is cognizable.

iv) The investigation includes all proceedings under the Code of Criminal Procedure, 1898, for collecting evidence by a police officer.

v) There is no specific provision where pre-investigative inquiry is either expressly permitted. Except under Section 174 Cr.P.C. as regards unnatural deaths and other cases reported to the police.

vi) If the offence is non-cognizable, the investigating officer has no jurisdiction to take any further steps regarding the investigation without the leave of the Court by the provisions of Section 155 (2) of the Code. It is only in cases where the cognizable offence is not disclosed or the authenticity of which ex-facie is highly doubtful.

vii) It is a consistent view of the Apex Court that any circumstance in respect of which an accused was not examined under section 342 of Cr.P.C. cannot be used against him/them. Non-indication of inculpatory material in its relevant facets by the trial court to the accused adds to the vulnerability of the prosecution case. The trial court was bound to ask such questions from an accused under section 342 of the Criminal Procedure Code, 1898, which relates to the root of prosecution evidence based on his/their conviction.

viii) As per the procedure laid down under section 494 of Cr.P.C. for withdrawal of the prosecution, the Public Prosecutor may, with the court's consent before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried.

ix) The principle for tendering pardon to an accomplice or its revocation is contained in sections 337 to 339 of the Code of Criminal Procedure, 1898, under Chapter XXIV. The principles of tendering a pardon to an accomplice in section 337 of Cr.P.C. have already been explained. The purpose of tendering pardon to an accomplice is mainly to un-reveal the truth in a grave offence so that the guilt of other accused persons concerned in committing a crime could be brought home. The object of section 337 of Cr.P.C. is to allow pardon in cases where a heinous offence is alleged to have been committed by several persons so that with

the aid of the evidence of the person granted pardon, the evidence may be brought home to the rest. Section 337 of Cr.P.C. empowers a Magistrate or the trial court to tender a pardon to a person supposed to have been directly or indirectly concerned in, or privy to an offence, to which this section applies at any stage of the investigation or inquiry or trial of the crime on condition of their making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence.

x) The Magistrate of 1st Class is also empowered to tender pardon to an accomplice during the trial but not at the stage of investigation on condition of his making full and true disclosure of entire circumstances within his knowledge relative to the crime.

xi) Section 338 of Cr.P.C. vests the court to which the commitment is made with the power to tender pardon to an accomplice. An accomplice who has been given a pardon under sections 337 and 338 of Cr.P.C. gets protection from the prosecution when they are called as a witness for the prosecution.

xii) They must comply with the condition of their making a full and true disclosure of the whole circumstances within their knowledge relating to evidence under his knowledge and in the knowledge of any other person, whether as principal or abettor, in the commission thereof and if they possess any material within their knowledge, concerning the commission of a crime or to refuse to comply with the condition on which tender was given to them, the public prosecutor shall give a notice under section 338 of Cr.P.C. to that effect, and the protection given to them is lifted.

Conclusion: i) The officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered.

ii) Section 154 of Cr.P.C. specifies that when a person commits any cognizable offense could be arrested without an order from the Magistrate and without a warrant.

iii) The only condition precedent for putting the machinery of investigation in motion under Section 154 of Cr.P.C. is information of a cognizable offence.

iv) The investigation includes all proceedings under the Code of Criminal Procedure, 1898, for collecting evidence by a police officer.

v) There is no specific provision where pre-investigative inquiry is either expressly permitted except under Section 174 Cr.P.C. as regards unnatural deaths and other cases reported to the police.

vi) The investigating officer has no jurisdiction to take steps regarding the investigation without the leave of the Court, if the offence is non-cognizable.

vii) The trial court is bound to ask such questions from an accused under section 342 of the Criminal Procedure Code, 1898, which relates to the root of prosecution evidence based on his/their conviction.

viii) The Public Prosecutor may, with the court's consent before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried.
ix) The purpose of tendering pardon to an accomplice is mainly to un-reveal the truth in a grave offence so that the guilt of other accused persons concerned in committing a crime could be brought home.
x) The Magistrate of 1st Class is not empowered to tender pardon to an accomplice at the stage of investigation.
xi) An accomplice who has been given a pardon under sections 337 and 338 of Cr.P.C. gets protection from the prosecution when they are called as a witness for the prosecution.
xii) If the accomplice refused to comply with the condition on which he was tendered pardon, the public prosecutor shall give a notice under section 338 of Cr.P.C. to that effect, and the protection given to him is lifted.

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21. **Lahore High Court**
Hasnain Afzal etc. v. Government of Punjab etc.
Writ Petition No.30999/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC5502.pdf

Facts: The petitioners challenged the order passed by respondent No.2, whereby petitioners' representation to treat them as "regular employees" instead of "permanent workmen" was declined.

Issues: i) Whether daily wager can be treated as regular employee or regular civil servant due to afflux of time?
ii) Whether word "regularization" can be construed to treat "daily wagers" as "regular employees" of the Board or "civil servants"?
iii) Whether appointments of daily wagers as "permanent workmen" and not as "regular employees" are contrary to the case law developed from time to time?
iv) Whether enrollment through daily wages, without any prescribed criteria, standards and transparent procedure, can be a route to become civil servant or regular employee in Public Sectors?

Analysis: i) Under Section 187(2) of the Punjab Local Government Act, 2022 (Act XXXIII of 2022), the employees of the Punjab Local Government service shall be appointed through the Punjab Public Service Commission (PPSC) and under Section 187(4) of the Act XXXIII of 2022, all the employees of Punjab Local Government, appointed through PPSC against sanctioned posts on contract basis prior to commencement of the Act XXXIII of 2022, shall stand regularized in Punjab Local Government service on completion of their contracts period. No provision in any relevant previous law of the Local Government or Policy of the Board has been referred to, under which daily wagers who were not enrolled through open merit competition, shall be treated as regular employees of the Board or civil servants merely due to afflux of time rather the employee, on work

charged basis or paid from contingencies or who is a worker or workman, has been specifically excluded from the definition of "Civil Servant" described under Section 2(b) of the Punjab Civil Servant Act, 1974 (Act of 1974). The relevant law, which provides protection to the daily wagers who have been performing their duties against permanent posts for long period of time, is Para 1(b) of the Schedule attached to the Ordinance of 1968… Under aforesaid Para 1(b) of the Schedule, attached to Ordinance of 1968, "permanent workman" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment.

ii) The word "regularization" cannot be construed to treat "daily wagers" as "regular employees" of the Board or "civil servants", as such interpretation will not only be against the law settled by the Supreme Court in "Province of Punjab Vs. Ahmad Hussain" supra but also go beyond the specific provision of Para 1(b) of the Schedule to the Ordinance of 1968 and Section 2(b) of the Act of 1974, and will amount to circumvent the entire due process of open merit competition, required for appointments of civil servants and regular employees in Public Sectors, including the Board.

iii) The argument of petitioners that their appointments as "permanent workmen" and not as "regular employees" are contrary to the case law developed from time to time, is misconceived.

iv) It can easily be deduced that enrollment through daily wages, without any prescribed criteria, standards and transparent procedure, cannot be a route to become civil servant or regular employee in Public Sectors, including the Board rather "daily wager" can only be treated as "permanent employee/workman" under the Ordinance of 1968.

Conclusion: i) Daily wager cannot be treated as regular employee or regular civil servant due to afflux of time but he will be considered as permanent employee.

ii) The word "regularization" cannot be construed to treat "daily wagers" as "regular employees" of the Board or "civil servants".

iii) The appointments of daily wagers as "permanent workmen" and not as "regular employees" are not contrary to the case law developed from time to time.

iv) Enrollment through daily wages, without any prescribed criteria, standards and transparent procedure, cannot be a route to become civil servant or regular employee in Public Sectors.

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22. **Lahore High Court**
Niaz Abbas alias Muhammad Nawaz, etc v.The State, etc
The State v. Muhammad Asif, etc
Criminal Appeal No.36092 of 2019
Murder Reference No.150 of 2019
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5215.pdf

Facts: Appellants (Niaz Abbas alias Muhammad Nawaz, Muhammad Asif, Muhammad

Aslam alias Mehnga and Muhammad Zahoor Ahmad) filed present Criminal Appeal against convictions and sentences awarded to them by the learned Trial Court on the charge under Sections 302, 324, 337-A(i), 337-D, 337-F(ii), 337-F(iii), 337-F(vi), 337- L(2), 109, 148, 149, P.P.C. However learned trial court vide same judgment acquitted Fazal Abbas, Muhammad Amjad, Muhammad Aslam son of Muhammad Iqbal, Muhammad Iqbal, Habib, Rabnawaz, Muhammad Zafar and Usman by extending them benefit of doubt and Criminal Appeal filed by complainant against acquittal of aforementioned accused persons before High Court has already been dismissed for non-prosecution. Moreover, one of the accused persons namely Raja Ijaz Ahmed who was assigned resorting to first fire shot that landed on the forehead of Muhammad Ashraf (deceased) was indicted and tried separately and at the end of trial earned acquittal and PSLA filed by the complainant was dismissed as having been withdrawn. Murder Reference was sent by learned trial court for confirmation of death sentence awarded to appellants. Since all the matters have originated from the impugned judgment, the same are decided through this single consolidated judgment.

Issues: i) What is the effect of belated recording of the statements of injured PWs?
ii) Whether evidence of a PW can be made basis for conviction of appellant(s), who names few accused persons in his examination-in-chief leaving all other appellants/accused?
iii) Whether injuries on the person of PWs are sufficient to prove their credibility and truth?
iv) When direct evidence of an injured witness cannot be relied?
v) What is the effect of dishonest improvements of witnesses of ocular account?
vi) What is the effect of acquittal of majority of accused persons on the same set of witnesses?
vii) What is the effect of dispatch of crime empties to PFSA after the arrest of accused?
viii) Whether investigation officer is bound by the statements of complainant?
ix) Whether heinousness of crime is alone sufficient to convict accused persons?

Analysis: i) …no plausible justification, however, was furnished qua belated recording of statements of injured PWs despite the fact that they were conscious when their injury statements were prepared by the Investigating Officer at T.H.Q. Hospital Shahpur Saddar. The belated recording of the statements of injured PWs would reduce their value to nil and no explicit reliance can be placed on such statements particularly where no reason was forthcoming justifying recording of their statements belatedly.
ii) …he in the whole of his examination in chief did not name out any of the accused except four accused persons as referred in the preceding lines. He simply omitted to name out any of the appellants. Evidence of this PW, therefore, can conveniently be put aside and in no way be made basis for the conviction of appellant.
iii) …it may be observed that mere stamp of injuries on their persons does not

make them truthful witnesses. It is, in fact the intrinsic worth of a witness which is evaluated by a court of law. It is by now a settled principle that injuries on the person of PWs may merely indicate qua their presence at the spot but same in no way can be counted as affirmative proof of their credibility and truth.

iv) …that direct evidence furnished even by the injured witnesses that apparently have no axe to grind, still can be dismissed if the same otherwise is found lacking the ring of truth. In the instant matter, we are of the considered view that evidence of even injured witness hardly rings true.

v) …It is by now settled principle of law that if improvements are found to be deliberate and dishonest, same would cast doubt on the veracity of the testimony of such witness of ocular account and no reliance can be placed on such testimony for conviction on a charge entailing death penalty for the simple reason that when a witness makes dishonest improvements while deposing before the court, he simply exposes himself to his own dishonesty that ipso facto is sufficient to discard his evidence by counting him a dishonest person.

vi) In such situation, principle of safe administration of criminal justice requires extending of benefit of doubt to the appellants particularly where majority of co-accused persons was acquitted on the same set of witnesses who did not come up with the whole truth, as such their evidence could not be used for convicting some of the accused keeping in view the principle as enshrined in maxim 'falsus in uno falsus in omnibus' and most importantly in a case where truth was mixed very heavily with something which was untrue and the prosecution witnesses did not disclose true and real facts.

vii) So far as recovery of firearm and positive report of Punjab Forensic Science Agency is concerned same is simply inconsequential in view of the fact that crime empties were shown to be recovered from the spot on 31.10.2015, however, the same were shown to be dispatched to the office of Punjab Forensic Science Agency on 18.01.2016 after the arrest of appellants namely Niaz Abbas, Muhammad Asif and Muhammad Aslam on 30.12.2015. Positive report, if any, qua these three appellants, therefore, was of no avail to prosecution.

viii) …He according to the provisions of Police Order and Police Rules in no way was bound by the statements of complainant and PWs and if he during the course of investigation came to the conclusion that real culprits were some other persons, he was fully competent to round them up, collect evidence and bring them to justice.

ix) It may be observed that mere heinousness of the crime cannot detract the court of law in any manner from the due course to judge and make the appraisal of evidence as per accepted principles of appreciation of evidence so propounded by the Superior Courts. Heinousness of crime alone in absence of confidence inspiring evidence to prove the charge against accused beyond any shadow of doubt, would hardly be sufficient for making the same a lawful basis for conviction of accused if charge has not been proved through the produced evidence beyond the shadow of reasonable doubt.

Conclusion: i) The belated recording of the statements of injured PWs would reduce their value to nil and no explicit reliance can be placed on such statements particularly where no reason was forthcoming justifying recording of their statements belatedly.
ii) From a particular PW, omitting to name out any of the appellants in evidence can conveniently be put aside and in no way be made basis for the conviction of appellant.
iii) Injuries on the person of PWs may merely indicate qua their presence at the spot but same in no way can be counted as affirmative proof of their credibility and truth.
iv) Direct evidence of an injured witness cannot be relied if the same lacks ring of truth.
v) If improvements are found to be deliberate and dishonest, same would cast doubt on the veracity of the testimony of such witness of ocular account.
vi) Where truth is mixed very heavily with something which is untrue, benefit of doubt is extended to accused persons in view of maxim 'falsus in uno falsus in omnibus'.
vii) Dispatch of crime empties to PFSA after the arrest of appellants and its positive report is of no avail to prosecution.
viii) Investigation officer is not bound by the statements of complainant and PWs and if he during the course of investigation came to the conclusion that real culprits were some other persons, he was fully competent to round them up, collect evidence and bring them to justice.
ix) Heinousness of crime alone in absence of confidence inspiring evidence, would hardly be sufficient for the basis of conviction.

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23. **Lahore High Court**
Syed Ali Raza Naqvi, etc. v. Chairman PPSC, etc.
W. P. No.43082 of 2023.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5412.pdf

Facts: The petitioners are aggrieved of non-issuance of appointment letters despite recommendations by Punjab Public Service Commission due to criminal cases, in which petitioners have already been acquitted. Hence, the instant writ petition has been filed.

Issues: i) How the term "criminal record" can be defined?
ii) Whether discretion can be exercised in mechanical way, when future of a citizen is at stake?
iii) Whether right of appointment of a qualified person is protected from any discrimination under the Constitution?
iv) Whether fundamental rights under the Constitution can be compromised by a rule of thumb?

Analysis: i) The term "criminal record", denotes a consistent involvement in criminal

activities.

ii) The discretion cannot be exercised in mechanical way, when future of a citizen is at stake. The petitioners, being citizens, have constitutional and fundamental right under Articles 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") against discrimination and for choice of occupation and profession.

iii) In particular under Article 27 of the Constitution, a person qualified for appointment is protected from any discrimination, which in this Court's opinion, includes denial for appointment on conjectures and surmises. For having a criminal record opinion, the authority must disclose the reasons, as envisaged in Faraz Naveed Case (supra), based on material gathered from Special Branch or concerned Police Station. The rule of thumb followed by the respondents to refuse appointment is declared ultra-vires of the Constitution.

iv) Acquittal for no evidence means that the allegation in FIR was false. Any law abiding citizen, by fate, can be entangled in any criminal case, therefore, his future and fundamental rights under the Constitution cannot be compromised by a rule of thumb.

Conclusion: i) The term "criminal record", means a consistent involvement in criminal activities.

ii) Discretion cannot be exercised in mechanical way, when future of a citizen is at stake.

iii) Right of appointment of a qualified person is protected from any discrimination under the Constitution.

iv) Fundamental rights under the Constitution cannot be compromised by a rule of thumb.

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24. **Lahore High Court**
Judicial Activism Panel v. Government of Pakistan, etc.
W. P. No.67863 of 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5568.pdf

Facts: In response to the Provincial Government's failure to enforce price control following the High Court Division Bench decision, citing a legal gap as an excuse, this petition was filed and is being heard alongside other connected petitions.

Issue: Whether Constitution of Pakistan grants unabridged powers to the High Court for enforcement of fundamental rights?

Analysis: Enforcement of fundamental rights and protection of the Constitution is the primary function of a High Court under the Constitution and as per the oath the Judge of this Court has sworn accordingly. Article 199(2) of the Constitution gives unabridged power to this Court for enforcement of fundamental rights under

Chapter 1, Part- II, which is subject only to the Constitution, not law.

Conclusion: Yes, the Constitution of Pakistan confers unbridged powers to the High Court for enforcement of fundamental rights.

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25. **Lahore High Court**
Zahida Bibi etc. v. SUMMIT Bank Ltd.
E.F.A. No.35845 of 2020
Mr. Justice Shahid Karim, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC9660.pdf

Facts: Through the instant appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the appellant has assailed the order whereby the objection petition filed by the appellants/judgment debtors has been dismissed.

Issue: Whether transparency of auction proceedings can be ignored merely on the basis of auction report?

Analysis: …To ensure transparency in the auction proceedings, through the Lahore High Court Amendment dated 15.08.2018, a duty has been cast upon the Court Auctioneer in sub-rule (2)(ii) of Rule 67 of Order XXI of CPC to cause video recording of the auction proceedings while ensuring transparent and fair bidding process of the public auction and the costs of such video recording shall be deemed to be costs of the sale… Rule 67 of Order XXI of CPC, prior to the Lahore High Court Amendment dated 15.08.2018, conferred authority upon the executing Court to direct that proclamation of auction shall be published in the official gazette or in a local newspaper or both and the cost of such publication shall be deemed to be costs of the sale. The purpose behind the enactment of Rules 54 and 67 of Order XXI of CPC is to give wide publicity to the sale of the property so that maximum number of people may turn up to participate in it and give bids that match the price the property deserves. Although Rule 67(2) ibid is directory, that failure to comply with such provision cannot be brushed aside without due application of mind and the Court has to undo a sale if such failure causes injustice. To ensure wide publicity, the Lahore High Court Amendment has substituted sub-rule (2) of Rule 67 of the CPC to make it mandatory for the Court to order proclamation to be published in at least one widely circulated national daily newspaper in every case where the reserve price fixed by the Court exceeds rupees two million, and the costs of such publication are deemed to be costs of the sale.

Conclusion: Ttransparency of auction proceedings cannot be ignored merely on the basis of auction report. Any objection in this regard requires factual inquiry and proper determination.

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26. **Lahore High Court,**
Manzoor Ahmad v. Federation of Pakistan Through Secretary to The Government of Pakistan, Ministry of Energy (Power Division), Islamabad and 4 others,
Intra Court Appeal No.60992 of 2023,
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2023LHC5152.pdf

Facts: The appellant was appointed as Deputy Managing Director (AD&M) on contract basis. However, later on, Deputy Secretary Government of Pakistan Ministry of Energy (Power Division) in a letter proceeded to direct the Board of Directors of National Transmission & Dispatch Company, Limited to dispense with the services of the appellant by serving one month's notice. Then, the Board of Directors terminated the services of the petitioner without cause. The appellant challenged the notification through writ petition, but it was dismissed. Hence, this appeal under Section 3 of the Law Reforms Ordinance, 1972 was filed.

Issue: Whether a contract employee may invoke the constitutional jurisdiction of High Court with regard to the matters relating to the terms and conditions of service or termination?

Analysis: In the case of breach of any of the terms and conditions of contract or any other issue ensuing there from, the grouse can only be remedied by filing a suit for damages. Regularization is a policy matter which necessarily requires backing of the law. In the absence of any law, policy or rules, an employee cannot knock on the door of the High Court for regularization of his/her services. It is the prerogative of the employer to decide the terms and conditions of an employee's contract. It is not for the court to step into the shoes of the employer and force him to employ someone for whom there is no available post, even if there is one, without following due process, procedure and criteria. The relationship between employer and contract-employee is governed by the principle of "master and servant" and except in exceptional circumstances; disputes arising there from are beyond the jurisdiction and parameters of the powers of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan.

Conclusion: A contract employee is precluded to invoke the constitutional jurisdiction of High Court with regard to the matters relating to the terms and conditions of service or termination, as the relationship of such employee and department shall be deemed to be as of master and servant.

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27. **Lahore High Court**
Ejaz Hussain Rathore v. Bahria Town (Private) Limited, Ahmad Ali Riaz and Riaz Malik
Regular First Appeal No. 08 of 2018
Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5476.pdf

Facts: Appellant filed suit for possession, permanent injunction and recovery of damages which was partially decreed and dismissed to the extent of prayer of possession of suit property. Hence, this appeal.

Issue: Whether mere breach of agreement is sufficient to straightway grant special damages?

Analysis: While awarding special damages, it is to be kept in mind that the person claiming special damages has to prove each item of loss with reference to the evidence brought on record. This may also include out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Appellant's claim so agitated in the case in hand was bound to be followed by strong and legally reckoned evidence for proof thereof and mere breach of the agreement on part of the Respondent in said regard was not sufficient enough to straightaway grant special damages in favour of the Appellant. In this connection, the Appellant was obliged to establish, substantiate and prove all heads of his claim separately and distinctly. According to substance of aforementioned Section 73 of the Contract Act, 1872, remote and indirect loss or damage sustained by reason of agitated breach cannot be granted.

Conclusion: Mere breach of agreement is not sufficient to straightway grant special damages rather the person claiming special damages has to prove each item of loss with reference to the evidence brought on record.

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28. **Lahore High Court,**
Irshad Ahmed v. Shaukat Hussain Kiyani etc.,
Writ Petition No. 1215 of 2020,
Mr. Justice MirzaViqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2023LHC5158.pdf

Facts: Respondent had moved an ejectment petition under the Punjab Rented Premises Act, 2009 seeking eviction of the petitioner from the ground floor of the rented house on score of expiry of relevant rent agreement, violation of its terms and conditions as well as non-payment of rent at the enhanced rate. Above mentioned petition was accepted and petitioner's preferred appeal was dismissed as well. Hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: i) Whether the term 'application' used in section 19 of PRPA, 2009 is restricted only to the ejectment petition?
ii) How a tenant's application seeking leave to contest would be proceeded if he seeks enforcement of his rights under the tenancy agreement not conforming to the provisions of the Punjab Rented Premises Act, 2009?
iii) Whether section 9 of PRP Act, 2009 is restricted only to application filed by landlord?

Analysis: i) From the bare perusal of section 19 of Punjab Rented Premises Act, 2009, it is manifestly clear that the term "application" used therein is not restricted to the ejectment application, rather it can be any other application falling within the domain of Rent Tribunal established under the "Act, 2009"

ii) Section 22 (2) of the Punjab Rented Premises Act, 2009 mandates that, subject to the Act ibid, a respondent shall file an application for leave to contest within ten days of his first appearance in the Rent Tribunal. If the tenancy agreement introduced by the tenant in his defence in the application for leave to contest is not registered or it does not conforming to the provisions of the Act ibid, the Rent Tribunal can halt further proceedings in the matter and can direct the tenant to pay the penalty in terms of section 9 of the Act ibid within specified period of time. On deposit of such amount within specified period, tenant's application for leave to contest should be proceeded further and in case of failure, it should be dismissed.

iii) Section 9 of the "Act, 2009" is not restricted only to the application filed by the landlord, more particularly the ejectment petition. In other words, any application either by the landlord or tenant, as the case may be, when brought before the Rent Tribunal under the "Act, 2009" for enforcement of his rights under the tenancy agreement not conforming to the provisions of the "Act, 2009", can be proceeded after having a recourse to section 9 of the "Act, 2009" by directing the landlord or the tenant to deposit the penalty.

Conclusion: i) The term 'application' used in section 19 of PRPA, 2009 is not restricted to the ejectment petition rather it can be any other application falling within the domain of Rent Tribunal established under the "Act, 2009".

ii) A tenant's application seeking leave to contest, brought before the Rent Tribunal under the Punjab Rented Premises Act, 2009, for enforcement of his rights under the tenancy agreement not conforming to the provisions of the Act ibid, can only be proceeded after having a recourse to section 9 of the Act ibid by directing him to deposit the penalty.

iii) Section 9 of the "Act, 2009" is not restricted only to the application filed by the landlord, more particularly the ejectment petition rather it applies to any application filed by landlord or tenant.

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29. **Lahore High Court**
Samina Naz and 5 others v. Evacuee Trust Properties Board
Writ Petition No.2826-R of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC5141.pdf

Facts: Subject property was allotted to the predecessors-in-interest of the petitioners. It is claim of the petitioners that respondent-department then sold out the "subject property" through registered sale deed to their predecessors-in- interest with the permission of the Federal Government. It is asserted that the sale deed was called in question by the respondent-department through a suit before the Civil Court,

which was initially dismissed by the trial court as well as the appellate court, however, in Civil Revision filed by the respondent-department judgments of both the courts were reversed by way of judgment. The petitioners being aggrieved filed Civil Appeal before the Supreme Court of Pakistan, which too was dismissed by way of judgment. The petitioners then filed a Civil Review Petition, which has been dismissed during the pendency of this petition. The grievance of the petitioners is that the respondent-department without any lawful authority, jurisdiction and without notice sealed the "subject property" and started entering into lease agreements with their tenants, which act is illegal and not operative upon their rights.

Issues: i) What was the object behind promulgation of Evacuee Trust Properties (Management and Disposal) Act, 1975?
ii) What is meant by evacuee trust property?
iii) Whether the Evacuee Trust Properties Board can resort to the provisions of the Evacuee Trust Properties (Management and Disposal) Act, 1975 instead of invoking the provisions of Order XXI of the CPC?

Analysis: i) "Act, 1975" was promulgated to provide for the management and disposal of evacuee properties attached to charitable, religious or educational trusts or institutions.
ii) Section 2(d) of the "Act, 1975" defines "evacuee trust property" as under:-

> "(d) "Evacuee trust property" means evacuee trust properties attached to charitable, religious or educational trusts or institutions or any other properties which form part of the Trust Pool constituted under this Act."

iii) There is no cavil to the proposition that in ordinary course a decree holder can only get the fruits of the decree by putting it to the test of execution in terms of Order XXI of "C.P.C." but on account of nature of the property being evacuee it always would remain a subject of the "Act, 1975". Section 25 of the "Act, 1975" authorizes the Chairman, Administrator, Deputy Administrator and Assistant Commissioner to eject any person in possession or occupation of any evacuee trust property whose possession or occupation is unauthorized. Section 31 of the Act ibid provides an overriding effect to the "Act, 1975". Needless to reiterate that when once it is declared by the court of competent jurisdiction that the "subject property" is an evacuee property and the sale in favour of the predecessors-in-interest of the petitioners was void ab-initio, status of the petitioners being successors-in-interest of the purported vendees becomes that of illegal occupant and trespassers, paving way for respondent-department to invoke the penal provisions of the "Act, 1975".

Conclusions: i) Act, 1975" was promulgated to provide for the management and disposal of evacuee properties attached to charitable, religious or educational trusts or institutions.
ii) Evacuee trust property" means evacuee trust properties attached to charitable, religious or educational trusts or institutions or any other properties which form

part of the Trust Pool constituted under this Act.
iii) Evacuee Trust Properties Board can resort to the provisions of the Evacuee Trust Properties (Management and Disposal) Act, 1975 instead of invoking the provisions of Order XXI of the CPC, as on account of nature of the property being evacuee it always would remain a subject of the "Act, 1975.

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30. **Lahore High Court**
Zahid Khan etc v. Muhammad Ahsan etc.
C.R.No.550-D/2016
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC5167.pdf

Facts: Through this civil revision the petitioners have challenged the validity of the judgment & decree passed by the learned Civil Judge who decreed the suit for possession through pre-emption filed by the respondent No.1 and also assailed the judgment & decree passed by the learned Additional District Judge who dismissed the appeal of petitioners.

Issues: i) Whether the right of preemption is stipulated with the sale of immovable property with permanent transfer of the title as well as the performance of the mandatory Talab as per law?
ii) What is meant by "sale"?
iii) Whether mere registration of the document of sale deed and attestation of mutation in favour of the vendee is only amounted to mature title of the vendee?
iv)Whether the suit of preemptor can be succeeded in case the subject matter land resold/ sale back to previous owner without preemption of such subsequent sale transaction?
v)Whether non-production of the acknowledgment receipt (A.D) amounts to withholding of material evidence?
vi)Whether non-production of witness of notice of Talb-i-Ishhad without furnishing plausible ground amounts to withholding best evidence and adverse presumption can be drawn against the plaintiff?
vii) Whether the performance of mandatory Talb as envisaged under Section 13 of the Punjab Pre-emption Act, 1991 has much significance?
viii) Whether High Court has jurisdiction to adjudicate the matter if it appears from decision of the subordinate Courts that the lower fora have exercised jurisdiction not vested in it by law?

Analysis: i) The right of preemption emanates from Section 5 of the Punjab Pre-emption Act, 1991 which is stipulated with the sale of immovable property with permanent transfer of the title as well as the performance of the mandatory Talab as per law...
ii) The sale means transaction of any land with permanent transfer of title / ownership against payment of price in the shape of money, thus a "sale" is transfer of ownership of immovable property in exchange for a price paid or

promised or partly paid or partly promised and for such transaction, payment of price must be contemplated; same must be followed by the delivery of possession.
iii) Mere registration of the document of sale deed and attestation of mutation in favour of the vendee is amounted to mature title of the vendee which is mere a subsequent event for the fiscal purpose or to update the official record…
iv) When the suit land was sold back to the ex-vendor through mutation which was sanctioned after a while and this transaction was not preempted and even the sale transaction affected through said mutation was also not pre-empted by the respondent, thus his suit is not maintainable…
v) Non-production of the acknowledgment receipt (A.D) amounts to withholding of material evidence, which flaw has grave adverse effect on the case of the respondent/plaintiff.
vi) When plaintiff has not produced the witness of notice of Talb-i-Ishhad nor any explanation has been furnished in this regard. Thus, it is amounted to withholding of the best evidence and it would be legally presumed that had the said witness produced in the evidence, he would have deposed unfavourable against the respondent/plaintiff and presumption under Article 129 (g) of Qanun-e-Shahadat Order, 1984 goes against him, as such the plaintiff failed to prove the service of notice of Talb-i-Ishad as well...
vii) The performance of mandatory Talb as envisaged under Section 13 of the Punjab Pre-emption Act, 1991 has much significance as it lays or dismantles the foundation of the very suit and skip off or non-performance of a single Talb demolishes the whole superstructure of the pre-emptory cause even though the remaining Talbs have been performed.
viii) Suffice it to say in this regard that under Section 115 C.P.C this Court has jurisdiction to entertain and adjudicate the matter if it appears from decision of the subordinate Courts that the lower fora have exercised jurisdiction not vested in it by law or failed to exercise a jurisdiction so vested, or have acted in the exercise of its jurisdiction illegally or with material irregularity and may pass appropriate order as it deems fit…

Conclusion: i) Yes, the right of preemption is stipulated with the sale of immovable property with permanent transfer of the title as well as the performance of the mandatory Talab as per law.
ii) A "sale" is transfer of ownership of immovable property in exchange for a price paid or promised or partly paid or partly promised and for such transaction, payment of price must be contemplated; it must be followed by the delivery of possession.
iii) Yes, mere registration of the document of sale deed and attestation of mutation in favour of the vendee is only amounted to mature title of the vendee.
iv) The suit of preemptor cannot succeed in case the subject matter land resold/sale back to previous owner without preemption of such subsequent sale transaction.
v) Yes, non-production of the acknowledgment receipt (A.D) amounts to

withholding of material evidence.
vi) Yes, non-production of witness of notice of Talb-i-Ishhad without furnishing plausible ground amounts to withholding best evidence and adverse presumption can be drawn against the plaintiff.
vii) Yes, the performance of mandatory Talb as envisaged under Section 13 of the Punjab Pre-emption Act, 1991 has much significance.
viii) Yes, High Court has jurisdiction to adjudicate the matter if it appears from decision of the subordinate Courts that the lower fora have exercised jurisdiction not vested in it by law.

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31. **Lahore High Court**
M/s Reshma Textile Mills Ltd v. Customs Appellate Tribunal
Through its Chairman Lahore etc.
Customs Reference No.57848/2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5346.pdf

Facts: This and connected Customs Reference applications are directed against common judgment passed by a Customs Appellate Tribunal.

Issue: Whether penal consequences could be invoked against a person or its agent in absence of constitution of offence of misdeclaration under section 32 of the Customs Act 1969?

Analysis: A bare perusal of sub-section (1) of section 32 of Customs Act 1969 indicates its independent existence for the purposes of attracting penalty in terms of clause 14 of section 156(1) of Customs Act 1969. Clause 14, ibid, treats offence under sub-section (1) of section 32 of Customs Act as an independent offence, for the purposes of the penalty envisaged. A person can be charged with offence under sub-section (1) of section 32 of Customs Act 1969 where same had knowingly and reason to believe that document furnished, and statement made in connection with the matter of Customs, is false (….) Sub-section (1) of section 32 of Customs Act 1969 does not draw any distinction between declaration made either for the purposes of in-bonding or ex-bonding. Evidently, incorrect declaration / statements made, even for the purposes of in-bonding, is covered under the expression in connection with any matter of customs, and same constitutes an offence under sub-section (1) of section 32 of the Customs Act 1969, incurring penalty in terms of clause 14 of section 156(1) of Customs Act 1969. .

Conclusion: Penal consequences can be invoked against a person or its agent upon misdeclaration under section 32 of the Customs Act 1969.

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32. **Lahore High Court**
Commissioner Inland Revenue, Legal Zone, Corporate Tax Office, Lahore v. LF Logistics Pakistan (Pvt.) Ltd., Lahore & another
ITR No.73773 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5270.pdf

Facts: The applicant-department filed Reference Application under Section 133 of the Income Tax Ordinance, 2001 regarding a question of law, urged to have arisen out of an order passed by an Appellate Tribunal Inland Revenue.

Issues: Whether it is the gross fee and not the gross receipts, which shall be treated as part of turnover for the purposes of commuting the minimum tax liability in terms of clause (b) of sub-section (3) of section 113 of the Income Tax Ordinance, 2001?

Analysis: The turnover, in terms of clause (b) of subsection (3) of section 113 of the Ordinance, means the gross fees paid for rendering of services other than those covered by final discharge of tax liability, for which tax is separately paid or payable. Fundamental question is whether the amounts, comprising of freight charges, terminal charges, shipment handling charges payment of duties and other taxes ('other amounts'), otherwise distinguishable from the fees paid in lieu of rendering of services in terms of clause (b) of sub-section (3) of section 113 of the Ordinance of 2001, could be treated as gross receipts. Factually, the claim of reimbursement of other amounts is not disputed. If construction proposed by learned counsel for the department is acknowledged – to treat other amounts and the service fees as part of gross receipts -, it would not only render clause (b) of sub- section (3) of section 113, *ibid*, redundant but conspicuously distort the meaning and effect of sub-clause (b) of clause (v) of sub-section (7) of section 153 of the Ordinance of 2001, and violates the ratio settled through various judicial pronouncements, wherein the term *"gross fee"* was elucidated. There is no cavil that the term "gross fee", in the context of *rendering of or providing of services*, would exclude reimbursable expenses for the purposes of ascertaining the volume of the "turnover". Accordingly, it is the gross fee and not the gross receipts, which shall be treated as part of turnover for the purposes of commuting the minimum tax liability in terms of clause (b) of sub-section (3) of section 113, *ibid*, and amounts comprising of freight charges, terminal charges, shipment handling charges payment of duties and other taxes have had to be excluded for the purposes of turnover in terms of clause (b) of sub-section (3) of section 113 of the Ordinance of 2001.

Conclusion: It is the gross fee and not the gross receipts, which shall be treated as part of turnover for the purposes of commuting the minimum tax liability in terms of clause (b) of sub-section (3) of section 113 of the Income Tax Ordinance, 2001.

33. **Lahore High Court**
Commissioner Inland Revenue, Zone-I, Regional Tax Office, Gujranwala v. Muhammad Khalid Chaudhry
ITR No.1255 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5263.pdf

Facts: The applicant-department filed Reference Application under Section 133 of the Income Tax Ordinance, 2001 regarding a question of law, urged to have arisen out of an order passed by an Appellate Tribunal Inland Revenue.

Issues: Whether an amendment in a statute which is procedural in nature is to be applied retrospectively even if a substantial right stands accrued in favor of a person?

Analysis: When the legislature, while amending any statute, intends to preserve any inchoate right under a repealed provision, it usually incorporates a saving clause or provision in the amending statute which in not the case in hand. Although, it is also settled law that when any amendment is made in a statute which is procedural in nature then the retrospective rule of construction is to be applied even if it is not specifically given retrospective effect. However, there is an exception to this general rule i.e. when any substantial right stands accrued in favor of a person then this general rule will not be applied.

Conclusion: An amendment in a statute which is procedural in nature cannot be applied retrospectively if a substantial right stands accrued in favor of a person.

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34. **Lahore High Court**
Nestle Pak Limited, Lahore etc v. Shehryar Kureshi etc.
C.R No.43193 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC5317.pdf

Facts: Through instant revision petition, petitioners have assailed judgment passed by Addl. District Judge, whereby respondents' appeal against order, passed by Civil Judge, returning plaint of their suit under Order VII Rule 10 CPC, was accepted, impugned order was set aside and the matter was remanded to Trial Court for decision afresh on merits.

Issues: i) Whether Trade Marks Ordinance affects the action against any person for passing off goods as the goods of another person or services as services provided by another person, or the remedies in respect thereof ?
ii) Whether trade mark owner receives protection against "passing off"?
iii) Whether musical work includes in the schedule of the Trade Marks Ordinance, 2001?
iv) Whether copyright is an exclusive right in relation to any tangible medium of comprehension either audio or visual in any form that could be copied etc. and it have any nexus with independent vendible goods or services unless the same used

as a trademark?

v)Whether register of Copyrights and the indexes as prima facie evidence of the particulars entered therein is admissible in evidence in Courts?

vi)Whether registration is compulsory for the enforcement of the copyright?

vii) Whether failure to get the copyright registered does impair the copyright or destroys the right to sue for copyright infringement?

viii) Whether all suits and other civil proceedings regarding infringement of intellectual property laws shall be instituted and tried in the Intellectual Property Tribunal?

ix) Where a general or special law is in force then whether the jurisdiction of Courts provided in the CPC is barred?

Analysis: i) Infringement of trademark is actionable under section 46 of the Trade Marks Ordinance, 2001. Sub-section (3) of section 46 provides that the Ordinance ibid would not affect the action against any person for passing off goods as the goods of another person or services as services provided by another person, or the remedies in respect thereof.

ii) Basically a trade mark owner receives protection against use of his mark by another in such a way as is likely to lead consumers to associate the others' goods with the trade mark owner. This protection against trade mark infringement, that is, against sale of another's goods as those of the trade mark owner by use of the owner's mark, may be described as protection against "passing off". However, passing off also includes any other method by which one person's goods are made to appear as if they originated from another, whether or not a trade mark is involved. Rule 11 of the Trade Marks Rules, 2004 deals with classification of goods and services, and provides that goods and services shall be classified in the manner specified in the Fourth Schedule.

iii) A comprehensive list containing 34 classes of vendible goods and 8 classes of services is available in the said Schedule, however musical work is not mentioned. Likewise, definition of "services" provided in section 2(xliii) of the Trade Marks Ordinance, 2001 does not include musical work in the ambit of services.

iv) Copyright in terms of section 3 of the Ordinance, 1962 is an exclusive right in relation to literary, dramatic, musical, artistic work, in any tangible medium of comprehension either audio or visual in any form that could be copied, reproduced, multiplied, communicated transmitted, repeated, broadcasted, telecasted, adopted in any form. "Copyright" from the scheme of the Copyright Ordinance appears to protect "copyright" in original work, by itself it is not relatable or associated with any vendible goods or services. The holder of such copyright in musical work has exclusive right to reproduce and multiply such work. From the scheme of the Copyright Ordinance, 1962 it appears that such Copyright work independently is capable of reproduction and reproduced copy is vendible independently and individually. It does not have any nexus with any other separate and independent vendible goods or services unless said work

otherwise is also used as a trade mark under the Trade Marks Ordinance.

v) Section 42 of the Ordinance of 1962 declares the Register of Copyrights and the indexes as prima facie evidence of the particulars entered therein and admissible in evidence in Courts suggesting that copyright subsists in the work and the person showed therein is the owner of such copyright.

vi) A bare reading of section 39 shows that the use of expression "may" is permissive and does not make it obligatory for an author to get the copyright registered. The natural and ordinary meaning of the word "may" would make the registration optional and not compulsory. Moreover, the words "may" and "shall" in legal parlance are interchangeable, depending upon the context in which they are used but legislative intent is to be seen and given effect to. The registration of copyrights in terms of 39 of the Ordinance of 1962 is not mandatory but optional with the author, publisher, owner or other person interested in the copyright…

vii) The very purpose of registration of copyright is to protect the interest of a person who has invented or prepared a particular work as against a person who wants to take undue advantage of the same in order to deceive the unwary public. Needless to say that mere failure to get the copyright registered does not invalidate or impair the copyright nor destroys the right to sue for copyright infringement.

viii) A designated forum i.e. Intellectual Property Tribunal (section 16 of the IPO Act of 2012) has been provided, replacing the Court of District Judge earlier provided by the Ordinance of 1962. Section 17(4) of the IPO Act of 2012 specifically provides that no court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of the Tribunal extends under this Act. Section 18 of the IPO Act of 2012 talks about jurisdiction of the Tribunal and says that all suits and other civil proceedings regarding infringement of intellectual property laws shall be instituted and tried in the Tribunal. Moreover, the intent of legislature regarding exclusive jurisdiction of the tribunal in all matters of intellectual property rights can also be inferred from section 18(2), which contain a non-obstante clause, and clearly bars the jurisdiction of all other courts regarding offences pertaining to intellectual property laws which was otherwise available to a court of Magistrate of the first class under section 72 of the Copyright Ordinance, 1962.

ix) As per Province of Punjab Amendment brought in section 9 of CPC (inserted by Punjab Act XIV of 2018, dated 20th March, 2018), the jurisdiction of Courts provided in the CPC is barred where a general or special law is in force.

Conclusion: i) Trade Marks Ordinance would not affects the action against any person for passing off goods as the goods of another person or services as services provided by another person, or the remedies in respect thereof.

ii) Yes, trade mark owner receives protection against “passing off”?

iii) Musical work does not include in the schedule of the Trade Marks Ordinance, 2001.

iv) Copyright is an exclusive right in relation to any tangible medium of

comprehension either audio or visual in any form that could be copied etc. and it does not have any nexus with independent vendible goods or services unless the same used as a trademark.

v) Yes, register of Copyrights and the indexes as prima facie evidence of the particulars entered therein is admissible in evidence in Courts.

vi) Registration is not compulsory for the enforcement of the copyright.

vii) Mere failure to get the copyright registered does not invalidate or impair the copyright nor destroys the right to sue for copyright infringement.

viii) Yes, all suits and other civil proceedings regarding infringement of intellectual property laws shall be instituted and tried in the Intellectual Property Tribunal.

ix) Yes, where a general or special law is in force than the jurisdiction of Courts provided in the CPC is barred.

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35. **Lahore High Court**
Fareeha Kanwal v. Punjab Healthcare Commission and others
Writ Petition No. 71548/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC5425.pdf

Facts: Petitioner filed writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, directed against a decision of the Punjab Healthcare Commission and a judgment delivered by a District Judge.

Issues: (i) Whether enhancement of fine can be claimed in appeal under Clause (e) of section 31 (1) of the Punjab Healthcare Commission Act 2010?

(ii) What is the scope of jurisdiction of High Court under Article 199(1)(a)(ii) of the Constitution of 1973?

(iii) Whether a fine can be imposed by the Punjab Healthcare Commission under section 28 of the Punjab Healthcare Commission Act 2010 without a determination based on reasoning?

(iv) Whether fine imposed by the Punjab Healthcare Commission can be utilized for compensating a complainant?

(v) What is the scope of the Punjab Healthcare Commission Act 2010 and the Pakistan Medical and Dental Council Act 2022 regarding the cases of medical negligence?

(vi) Whether the Punjab Healthcare Commission can refer a matter of medical negligence to the Pakistan Medical and Dental Council without recording any findings?

(vii) Whether allowing a healthcare establishment to operate on the basis of a provisional licence for an indefinite period is against the object and spirit of the Punjab Healthcare Commission Act 2010?

Analysis: (i) It is well-settled that the right to appeal is a substantive privilege established by law and must be expressly provided by the statute. It cannot be implied. A bare perusal of section 31 of the PHC Act reflects that the right of appeal under

the enactment is limited to five types of orders passed by the Commission. Section 30 merely mentions the bar of jurisdiction. It states that no court other than the Court of the District and Sessions Judge has the authority to question the legality of any action taken, order made or thing done under the PHC Act, or to grant an injunction, or stay or to issue an interim order in relation to any proceedings initiated by the Commission. Section 30 does not confer any new appellate powers on the District and Sessions Judge or otherwise broaden the scope of section 31.

(ii) The High Court's jurisdiction under Article 199(1)(a)(ii) of the Constitution of 1973 provides supervisory control over persons exercising functions related to the business of the Federation, a Province or a local authority. Nonetheless, this jurisdiction is limited to determining whether they acted in conformity with the law in performing theact or conducting the proceedings. If yes, the High Court will stay its hands and not substitute its findings for those of the tribunal. Decisions involving bad faith, excess and abuse of jurisdiction, misdirection, failure to follow the rules of natural justice and conclusions based on no evidence are treated as acts without lawful authority that vitiate the proceedings.

(iii) Section 28 of the PHC Act empowers the Commission to levy a fine up to Rs.500,000/- for contravention of any provision of the Act, and the rules and regulations framed thereunder, considering the gravity of the offence. Therefore, section 28 requires two assessments: first, ascertaining whether a violation occurred, and second, determining the magnitude of the breach and the appropriate monetary penalty. Reasons must support both determinations.

(iv) Section 32(1) of the PHC Act provides that a Fund shall be established for the purposes of the Act, which will be administered and controlled by the Commission. Section 32(2) delineates the sources for this Fund, which *inter alia* include any fees, penalties and other charges levied under the Act. This means that all fees and penalties must be deposited into this Fund. Section 32(3) specifies the permissible uses of the Fund, which primarily include expenses related to the Commission's functioning and operations of the Commission, such as paying employees, hiring contractors and consultants, purchasing equipment, repaying loans, and covering other legitimate expenses. Importantly, Section 32 does not grant the Commission the authority to utilize the Fund for compensating complainants.

(v) Section 19 of the PHC Act and section 44 of the PMDC Act of 2022 seem to overlap on the issue of medical negligence, but they do not. Section 44 can be invoked only when the alleged medical negligence is so grave that it raises the question of whether the medical practitioner concerned should be allowed to continue his practice. The Commission has a legal obligation to decide all complaints of medical negligence filed against healthcare service providers. Section 28 empowers it to levy a fine up to Rs. 500,000/-, depending upon the gravity of negligence, if the accusation is proven. Section 26(2) of the PHC Act stipulates that if the Commission deems that the facts of a case require action under another law, it may refer the matter to the competent governmental

authorities or law enforcement agencies for appropriate action under the relevant laws. It could entail a referral to the PMDC and registration of a criminal case. In this regard, the Commission must *inter alia* follow the principles elucidated by this Court in *Dr. Nafeesa Saleem and another v. Justice of Peace and others* (PLD 2022 Lahore 18).

(vi) Regulation 6 of the Complaint Management Regulations 2014 mandates the Commission to rule on all complaints, *inter alia* those involving medical negligence, malpractice or failure to provide adequate healthcare services. Section 28 of the PHC Act, in conjunction with Regulation 23, empowers the Commission to impose a fine if a complaint is successful. In this matter, the Commission has referred the cases of Respondents No.6 and 7 to PMDC without recording any findings. It has thus abdicated its jurisdiction. The Assistant Advocate General attempted to justify this course by arguing that the Commission required further inquiry to determine their culpability. This argument is not tenable. Regulations 15 and 16 of the 2014 Regulations provide for consultation with experts. In the present case, the Commission sought opinions from one neurologist and two anaesthesiologists. If it needed more assistance to decide on the guilt of Respondents No. 6 and 7, it could have consulted additional experts. The matter must, therefore, be remanded to it.

(vii) Granting a provisional licence to any healthcare establishment does not imply that it has complied with the relevant standards. Before issuing a regular licence, the Commission must ensure that it has complied with the PHC Act, Regulations and Standards and any instructions and/or corrective orders issued by it following the survey and/or the inspection report. In other words, cent per cent implementation of MSDS by healthcare establishments is mandatory. It is pertinent that the PHC Act does not stipulate any time limit within which the healthcare establishment must apply for a regular licence. As a result, these establishments continue to operate indefinitely under a provisional licence. It is trite that where the law does not prescribe a time limit for performing a duty, it must be completed within a reasonable time. Allowing a healthcare establishment to operate on the basis of a provisional licence for an indefinite period is against the objectand spirit of the PHC Act. The Provincial Government/ Commission must address this issue on priority.

Conclusion: (i) Enhancement of fine cannot be claimed in appeal under Clause (e) of section 31 (1) of the Punjab Healthcare Commission Act 2010.

(ii) The jurisdiction of High Court under Article 199(1)(a)(ii) of the Constitution of 1973 is limited to determining whether the persons exercising functions related to the business of the Federation, a Province or a local authority acted in conformity with the law in performing the act or conducting the proceedings.

(iii) A fine cannot be imposed by the Punjab Healthcare Commission under section 28 of the Punjab Healthcare Commission Act 2010 without a determination based on reasoning.

(iv) A fine imposed by the Punjab Healthcare Commission cannot be utilized for

compensating a complainant.

(v) The jurisdiction of the Pakistan Medical and Dental Council Act 2022 regarding the cases of medical negligence is limited as it can be invoked only when the alleged medical negligence is so grave that it raises the question of whether the medical practitioner concerned should be allowed to continue his practice while the Commission has a legal obligation to decide all complaints of medical negligence filed against healthcare service providers.

(vi) The Punjab Healthcare Commission cannot refer a matter of medical negligence to the Pakistan Medical and Dental Council without recording any findings.

(vii) Allowing a healthcare establishment to operate on the basis of a provisional licence for an indefinite period is against the object and spirit of the Punjab Healthcare Commission Act 2010.

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36. **Lahore High Court,**
Shariq Builders and Property Advisors v. Dr. Muhammad Faisal Murad etc., F.A.O. No. 54 of 2023,
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2023LHC5203.pdf

Facts: This Appeal is preferred in terms of Order XLIII of the Code of Civil Procedure (V of 1908) against the order of trial court, whereby ad-interim injunction was declined to the Appellant in the suit for specific performance, permanent and mandatory injunction.

Issue: Does order declining ad-interim injunction for want of deposit of balance consideration in a suit seeking specific performance of agreement to sell amounts to decision of the main application under Order XXXIX Rules 1&2 the Code of Civil Procedure, 1908?

Analysis: The word "ad-interim" would mean “for the meantime” (to make the interim gap), while the word "temporary" means “for a certain fixed period”, therefore, refusal of the "ad-interim" injunction would not amount to a case `decided'. If the main application filed under Order XXXIX, Rules 1 and 2 of Code of Civil Procedure, 1908 is still pending adjudication after declining ad-interim injunction to plaintiff and he deposits the remaining consideration amount in compliance of order of Court, then trial court would be required to finally decide the application under Order XXXIX Rules 1&2 of the Code ibid.

Conclusion: Declining ad-interim injunction for want of deposit of balance consideration in suit seeking specific performance of agreement to sell does not amount to decision of the main application under Order XXXIX, Rules 1&2 of the Code of Civil Procedure, 1908, which application will be finally decided after plaintiff deposits remaining consideration amount in compliance of order of the Court.

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37. **Lahore High Court,**
Muhammad Bashir v. Federation of Pakistan and NESPAK etc.,
Writ Petition No. 3320 of 2022,
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2023LHC4998.pdf

Facts: The Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking direction to the Respondents to implement the order of Supreme Court of Pakistan, passed in some earlier other Civil Petition, by way of reinstating him in service from the date of his termination.

Issues: i) Whether the *"NESPAK"* Service Rules are statutory or non-statutory in nature?
ii) Whether principle of 'Master and Servant' is applicable to the employees of the "*NESPAK*"?
iii) Whether an employee appointed prior to 1st November, 1993 falls within the ambit of 'sacked employees'?

Analysis: i) National Engineering Services Pakistan (Pvt.) Limited Employees Service Rules were framed by the Board of Directors of "*NESPAK"* in pursuance of powers conferred by the Memorandum and Articles of Association. Hence, application of the "Functional Test" suggests that the *"NESPAK* Service Rules" are neither issued under any Statute nor with approval of the Federal Government for being published in official Gazette. The Rules or Regulations, which are not required to be made with the approval of the Federal Government, cannot be termed as statutory in nature.
ii) *NESPAK* Service Rules*"* show that these are not framed under any Statute, rather they are made by the Board of Directors of the company/*NESPAK* in exercise of the powers conferred on it by the Article of Association of the Company. Therefore, these Rules are merely regulations, instructions and directions for internal use and management of the Company making principle of 'Master and Servant' applicable to the employees of the "*NESPAK*".
iii) Section 2(f) of the Sacked Employees (Re-instatement) Act, 2010 clearly defines 'sacked employee' as a person who was appointed as a regular or *ad hoc* employee or on contract basis or otherwise in service of employer during the period from 1stday of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed, terminated from service or whose contract period had expired or who had been given forced golden hand shake during the period from 1st day of November, 1996 to 12th day of October, 1999 (both days inclusive).

Conclusion: i) The *"NESPAK"* Service Rules are non-statutory in nature.
ii) Principle of 'Master and Servant' will be squarely applicable to the employees of "*NESPAK*".

iii) An employee appointed prior to 1st November, 1993 does not fall within the ambit of 'sacked employees'.

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38. **Lahore High Court**
Muhammad Yousaf Zaheer v. Additional District Judge etc.
Writ Petition No.61 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5194.pdf

Facts: The petitioner called in question the vires of an order, whereby an Additional District Judge, while dismissing the revision petition filed by the Petitioner upheld the orders passed by the Executing Court/Senior Civil Judge (Family Division).

Issue: Whether the conduct of a judgment debtor in a family execution can be taken into consideration in allowing or disallowing equitable relief in Constitutional jurisdiction?

Analysis: Record of proceedings before the Executing Court reflects that acts and conduct of the Petitioner/judgment debtor consistently aimed at frustrating proceedings of execution of subject decree. The conduct of the Petitioner is very much relevant with controversy in hand. The subjectdecree involving maintenance allowance of Petitioner's own kids pertains to the year 2012 but till date he has not bothered to satisfy thesame on his own, rather he has been consistent to gear in all efforts to frustrate execution proceedings to avoid satisfaction thereof. He time and again has chosen way to set in field tactics to handicap proceedings conducted for auction of his immoveable property andhas not even hesitated to put up every effort for bringing even custody of his attached vehicles in absolute disguise. Thereafter, the ExecutingCourt initiated process for attachment and auction of his aforementioned immoveable property and vehicles. Circumstances existing in case in hand lead to an irresistible conclusion that the Petitioner is capable to satisfy the subject decree, but he deliberately and intentionally is avoiding to do so, forcing even his own kids to starve. A person showing such a callous attitude, in particular, towards discharge of his parental obligation is not entitled for any discretionary relief and so is the case with a person himself not ready to follow and comply law.

Conclusion: The conduct of a judgment debtor in a family execution can be taken into consideration in allowing or disallowing equitable relief in Constitutional jurisdiction.

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39. **Lahore High Court**
PIA Officers Cooperative Housing Society Limited v. Province of Punjab
W.P.No.3340/2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5208.pdf

Facts: Through this petition under Article 199 of the Constitution, the Petitioner, PIA

Officers Cooperative Housing Society Limited has impugned the orders, passed by Registrar, Cooperative Societies Punjab, Lahore and the Secretary, Cooperative Department, Government of the Punjab, respectively.

Issues: i) Whether the Registrar can hold an inquiry at his own motion under the Cooperative Societies Act, 1925?
ii) What is the intent and object behind promulgation of the Cooperative Societies Act, 1925?
iii) Whether the Secretary Cooperatives Department has powers to examine the legality of any inquiry or the proceedings of any officer subordinate to him and whether he can modify, annul, or reverse the same?

Analysis: i) The Respondent No.2 on his own motion by himself is empowered, under the law/Act, to hold an inquiry into the constitution, working and financial condition of a society. In this regard, reliance can be placed on the judgment reported as Shahbaz Qalandar Cooperative Housing Society Limited through Chairman versus Province of Sindh through Secretary Cooperative Department and 2 others (2011 CLC 783) holding that "the main object and purpose of holding inquiry is to check whether mandatory requirements and the working affairs of the society are being conducted according to law and in the larger interest of the members of the society." In another identical case cited as Saddar Cooperative Market Ltd. through Honorary Secretary versus Province of Sindh, Department of Cooperation and 3 others (2009 CLC 143) it has been held that Section 43(1) gives the power to the Registrar to hold an inquiry at his own motion for which no procedure has been provided.
ii) the Respondent No.2 who has issued certain directions to the Inquiry Committee in consonance with the object of the Act, which has been promulgated with the only intent to facilitate formation and working of Co-operative Societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living specifically, better business.
iii) Secretary, Cooperatives Department, being official head of the Department, has dealt with the matter as per the functions assigned to him under Section 64A of the Act read with Clause 1(a) and Clause 7(i) to Second Schedule of the Rules in which he/she also administers the provisions of the Cooperative Societies Act, 1925 alongwith Rule 10 of the Rules, because he/she is responsible for efficient and smooth working of the affairs of the Society.

Conclusions: i) Yes, the registrar under Section 43(1) of the Cooperative Societies Act, 1925 on his own motion by himself is empowered, under the law/Act, to hold an inquiry into the constitution, working and financial condition of a society
ii) The intent behind promulgation of the Cooperative Societies Act, 1925 is to facilitate formation and working of Co-operative Societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs to bring about better living specifically, better business.

iii)The Secretary Cooperatives Department, being official head of the Department has vested powers to examine the legality of any inquiry or the proceedings of any officer subordinate to him and he can modify, annul, or reverse the same.

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40. **Lahore High Court**
Al-Khalid Flour Mills v. Government of Punjab and others
Writ Petition No.3042 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5468.pdf

Facts: By way of this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 the Petitioner has challenged Clause-6 of Standing Operating Procedure dated 21.09.2022 issued by Director Food Punjab, Lahore which reads as: "No wheat quota to any flour mill will be issued during the days of Army grinding".

Issues: i) What is the mandate of food department?
ii) Whether there is any policy for the release of wheat stock available and to ensure its uninterrupted supply and stabilization of its price in market?
iii) Whether the Constitution of the Islamic Republic of Pakistan, 1973 promotes the rights of trade/business?
iv) What if the law describes or requires a thing to be done in a particular manner?
v) Whether writ petition can be filed for the entitlement of rights?
vi) Whether there is any condition on the inalienable right of every citizen to be treated in accordance with law?

Analysis: i) The Food Department has the mandate to legislate, formulate policy and plan as a measure of food security through wheat procurement, construction and maintenance of storage accommodation, storage of wheat, financial arrangements with the banks, transportation of wheat and release of wheat and its overall monitoring.
ii) For the release of wheat stock available and to ensure its uninterrupted supply and stabilization of its price in market, the Food Department introduced the "Policy" under Section 3 of the Punjab Foodstuffs (Control) Act, 1958 with certain terms and conditions specifically Clause-III, which entitles the flour mills to grind private wheat stock. This clause clearly demonstrates that no restriction was imposed upon the flour mills on the private grinding but with only condition to deliver 25% of flour obtained from private wheat stocks in their respective districts. Pursuant to issuance of the "Policy" by the Secretary Food Department, the Director Food Punjab, in order to ensure proper monitoring with regard to grinding of Government wheat, its production and supply to flour mills, issued the "SOP".
iii) Article 18 of the "Constitution" promotes the rights of trade/business of every citizen to carry out lawful trade but these rights are subject to certain qualifications as prescribed by the law.

iv) It is a settled principle of law that when a law describes or requires a thing to be done in a particular manner, it should be done in that manner or not at all.
v) It is settled law that writ is for enforcement of fundamental rights and not for the entitlement of rights and if any equitable relief is sought from the Court then it can only be granted subject to provision of relevant law.
vi) It is inalienable right of every citizen to be treated in accordance with law as envisaged by Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 but it is subject to Article 5 of the "Constitution" which cast duty and inviolable obligation on every citizen to obey the constitution and the law.

Conclusion: i) See above in analysis clause.
ii) Food Department introduced the "Policy" under Section 3 of the Punjab Foodstuffs (Control) Act, 1958 for the release of wheat stock available and to ensure its uninterrupted supply and stabilization of its price in market.
iii) Article 18 of the "Constitution" promotes the rights of trade/business of every citizen to carry out lawful trade but these rights are subject to certain qualifications as prescribed by the law.
iv) If law describes or requires a thing to be done in a particular manner, it should be done in that manner or not at all.
v) It is settled law that writ is for enforcement of fundamental rights and not for the entitlement of rights.
vi) See above in analysis clause.

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41. **Lahore High Court**
M/s Popular International (Pvt.) Ltd. v. Province of Punjab and others
W.P. No.54097 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC5550.pdf

Facts: The petitioner assailed the responsiveness of competitor respondent No.3 by filing a complaint before the Grievance Redressal Committee of the hospital. The Grievance Redressal Committee in its meeting considered the complaint of the petitioner and concluded against the responsiveness of respondent No.3 then he filed a representation before respondent No.1 against the decision. The stance of the respondent No.3 was accepted and decision of the Grievance Redressal Committee to the extent of its non-responsiveness was set aside and as a result the decision of the Technical Evaluation Committee declaring said respondent to be responsive in terms recorded in the pertinent document was affirmed. Through the instant constitutional petition this order of respondent No.1 is now assailed in constitutional jurisdiction.

Issues: i) Whether definition of term drug includes medical devices as per The Drugs Act, 1976?
ii) Whether the provisions of the Drug Regulatory Authority of Pakistan Act, 2012 are in derogation of the provisions made in the Drugs Act, 1976?

iii) Whether the Drug Regulatory Authority of Pakistan Act, 2012 stipulates concrete definitions of "drug" and "medical device"?
iv) Whether the importer needs to have a Drug Sale License at the time of bidding?

Analysis: i) The Drugs Act, 1976 at section 3(g) stipulated an inclusive definition of the term "drug" that appeared to cover both drugs as well as medical devices. As illustration reference is made to mention of the term "sutures" in the category of "drugs" as defined which functionally is a medical device with needle for stitching wounds and surgical incisions and incidentally is inter alia also one of the items under objection. The other item is disposable gloves.
ii) Sub-section (1) of section 32 of the Drug Regulatory Authority of Pakistan Act, 2012 states that the provisions of the said Act shall be in addition to and not in derogation of the provisions made in the Drugs Act, 1976 and any other law for the time being in force to clarify that the Act of 2012 shall not override other laws, however, sub-section (2) of said section 32 provides that in case of inconsistency between the provisions of the said Act and any other law for the time being in force the provisions of the Act of 2012 shall prevail.
iii) Conception of "drugs" was given a more focused form under the Act of 2012 by prescribing "drugs" and "medical devices" separate and distinct mechanism of identification. This mechanism is injected through the interpretation clause of the Act of 2012 which has distinct provisions in the form of sub-sections (xii) and (xviii) of section 2 of the Act of 2012 for "drug" and "medical device" respectively. Interestingly against both these provisions instead of stipulating concrete definitions it is inscribed "as defined in Schedule-I" for "drugs" and "as specified in Schedule-I" for "medical device". They as such are given to denote definitions ascribed to them by entries in Schedule-I of the said Act which the Federal Government has been empowered to amend from time to time.
iv) The analysis concludes that by virtue of notification No.10-1/2020-MD dated 04.6.2021 DRAP omitted the requirement to possess drugs sales license for importers of medical devices, therefore, the importer would not need to have a Drug Sale License at the time of bidding to be passing the test of meeting the compulsory criteria.

Conclusion: i) The Drugs Act, 1976 at section 3(g) stipulated an inclusive definition of the term "drug" that appeared to cover both drugs as well as medical devices.
ii) Sub-section (1) of section 32 of the Drug Regulatory Authority of Pakistan Act, 2012 states that the provisions of the said Act shall be in addition to and not in derogation of the provisions made in the Drugs Act, 1976.
iii) Relevant provisions of the Act, 2012 instead of stipulating concrete definitions it is inscribed "as defined in Schedule-I" for "drugs" and "as specified in Schedule-I" for "medical device".
iv) The importer will not need to have a Drug Sale License at the time of bidding to be passing the test of meeting the compulsory criteria.

42. **Lahore High Court**
Abida Sughra Farooqi v. Province of Punjab through its Secretary Labour & Human Resource Department, Lahore & others.
W.P. No. 65865/2019
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5462.pdf

Facts: Through this petition the petitioner assailed the order of competent authority, whereby, order of de novo inquiry was repeated.

Issues: i) Whether order of de novo inquiry can be passed in wake of de novo inquiry previously ordered on same allegations under sub-section (6) of section 13 of PEEDA Act 2006?
ii) Whether competent authority can order de novo inquiry, once order in writing has been passed under sub-section (5) of section 13 of PEEDA Act 2006?

Analysis: i) Textual reading of referred provision of law places no such restriction on the competent authority regarding re-ordering of de novo inquiry, once de novo inquiry was ordered, previously. Interpretation proposed by counsel for the petitioner is fallacious. Such interpretation, if attributed to provision of law under reference, would in fact suggests curtailing / limiting the authority / power of the competent authority to examine the inquiry report, presented in the wake of order of de novo inquiry, earlier made. Additionally, such interpretation, as proposed by the counsel, if accepted would implies that inquiry report, submitted post de novo inquiry order, would attain finality, ipso facto. Incidentally no final order was passed qua the innocence or guilt of the petitioner in the context of relevant facts, nor any finality could be attributed to inquiry report, unless any order is passed by competent authority. Since no order, in terms of sub-section (5) of section 13 of PEEDA Act, was passed, therefore option to invoke jurisdiction under sub-section (6) of section 13, ibid. was available and rightly invoked – in wake of reasoning extended.
ii) The only limitation sub-section (6) of section 13 of PEEDA Act provides is the condition of recording reasons and passing of such directions, as competent authority considers appropriate. Yes, competent authority cannot order de novo inquiry, once order in writing has been passed under sub-section (5) of section 13 of PEEDA Act – in such situation it would become functus officio.

Conclusion: i) Order of de novo inquiry can be passed in wake of de novo inquiry previously ordered on same allegations under sub-section (6) of section 13 of PEEDA Act 2006.
ii) Competent authority cannot order de novo inquiry, once order in writing has been passed under sub-section (5) of section 13 of PEEDA Act 2006.

43. **Lahore High Court**
Muhammad Iqbal, etc. v. The State and another
Criminal Appeal No.55/2013.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5119.pdf

Facts: Through this petition under section 426 (2B) Cr.P.C. petitioners seek suspension of sentences as altered by this Court vide judgment passed in Murder Reference and the appeals filed against the judgment passed by learned Additional Sessions Judge, in a private complaint arising out of case under sections 302, 324, 148/149, 109 PPC registered at Police Station.

Issues: i) What connotes 'special leave to appeal' under subsection (2B) of section 426 Cr.P.C.? How and from whom it is availed?
ii)Why 'special leave to appeal' has been inserted through subsection (2B) in section 426 Cr.P.C.?
iii)What does the word 'may' used in sub-section 426 (2B) of section 426 Cr.P.C. connote?

Analysis: i) Constitution of the Islamic Republic of Pakistan, 1973 and Supreme Court Rules, 1980 only talk about 'leave to appeal' and not 'special leave to appeal'. A remedy for "special leave to appeal" is not an omnibus remedy rather true meanings of special leave are "leave granted on special grounds" and issuance of certificate for fitness to appeal on special grounds is one mode of the grant of special leave to appeal; therefore, when High Court in a criminal case permits to appeal to the Supreme Court from the sentence of High Court on special grounds, the High Court may, in its discretion, suspend the sentence and grant bail pending the appeal.
ii) Subsection (2B) of section 426 Cr.P.C. is parametria to section 382A Cr.P.C. which is further reflected from the enacted sequence of subsections 2, 2A & 2B in section 426 Cr.P.C.; all sub-sections are of same kind dealing with different situations in which accused seeks bail enabling him to present appeal against the impugned judgment of conviction. If it was a different provision for vesting a special jurisdiction on High Court, then it could have been numbered differently within the section 426 Cr.P.C. which is usually required in the format of an enactment pursuant to legislative drafting technique.
ii) The word 'may' used in sub-section 426 (2B) of section 426 Cr.P.C. makes it discretionary to grant bail to the seekers, and High Court can well refuse the same.

Conclusion: i) "Special leave to appeal" means "leave granted on special grounds". When High Court in a criminal case permits to appeal to the Supreme Court from the sentence of High Court on special grounds, the High Court may, in its discretion, suspend the sentence and grant bail pending the appeal.
ii) Subsection (2B) of section 426 Cr.P.C. is parametria to section 382A Cr.P.C.

iii) The word ‘may’ used in sub-section 426 (2B) of section 426 Cr.P.C. makes it discretionary.

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44. **Lahore High Court**
Sajid Hussain v. The State
Criminal Appeal No. 289-J of 2019
Murder Reference No. 45 of 2019
Malik Muhammad Saleem v. The State etc.
Criminal Appeal No. 457 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5291.pdf

Facts: Murder Reference in, and appeal against conviction & acquittal passed in, judgment handed down by Additional Sessions Judge u/s 302/34 PPC, whereby accused was convicted u/s 302(b) PPC and sentenced to death as ta’zir and ordered to pay compensation of Rs. 200,000/- to the legal heirs of deceased, for default to undergo SI for six months, and co-accused was acquitted.

Issues: i) Whether the testimony of complainant can be relied upon as trustworthy if he is not present at the place of occurrence?
ii) What is the object of preparing two site plans in law?
iii) What is the effect of contradiction between medical and ocular account?
iv) Whether one reasonable doubt is sufficient to acquit an accused?

Analysis: i) The complainant was not present at the place of occurrence; therefore, his testimony cannot be relied upon as trustworthy.
ii) The requirement of site plan in law is referred in Rule 25.13 of Police Rules, 1934. However, requirement of preparing two site plans shows that in the first plan, reference relating to facts observed by the police officer should be entered while in the latter, references based on the statement of witnesses which are not relevant in evidence may be recorded. Thus, the law requires that one site plan prepared by the police officer or expert shall be on the basis of their own observation of crime scene and second shall include some facts based on the statement of witnesses to show connection of this site plan with the case under inquiry and this second site plan shall not be sent to the court but can help the investigating officer to refresh his memory when appearing in the dock to depose as witness. We have observed that both expert or the investigating officer have failed to perform their duty to prepare the site plan accurately which is a violation of sub-rule (v) of Rule 25.13 of Police Rules, 1934 .
iii) The conflict in medical and ocular account shows that occurrence was not committed in the manner as being claimed by the prosecution. This contradiction is fatal to the prosecution. Such contradiction also leads us to draw an inference that as a matter of fact the prosecution witnesses were not truthful in their stance and were not present at the place of occurrence at the relevant time and had not witnessed the occurrence.

iv) It is trite that to extend benefit of doubt to an accused person, it is not necessary that there should be several circumstances creating doubt, rather one reasonable doubt is sufficient to acquit an accused.

Conclusion: i) Testimony of complainant cannot be relied upon as trustworthy if he is not present at the place of occurrence.
ii) The law requires that one site plan prepared by the police officer or expert shall be on the basis of their own observation of crime scene and second shall include some facts based on the statement of witnesses to show connection of this site plan with the case under inquiry and this second site plan shall not be sent to the court but can help the investigating officer to refresh his memory when appearing in the dock to depose as witness.
iii) The conflict in medical and ocular account shows that occurrence was not committed in the manner as being claimed by the prosecution.
iv) It is not necessary that there should be several circumstances creating doubt, rather one reasonable doubt is sufficient to acquit an accused.

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45. **Lahore High Court**
Muhammad Yar alias Mumna v. The State and another
Crl. Misc. No. 21405-B of 2023
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5417.pdf

Facts: After dismissal of pre-arrest bail petition by learned Additional Sessions Judge, instant petition has been filed under section 498 of the Code of Criminal Procedure, 1898 (Cr.P.C.) by the petitioner seeking pre-arrest bail in case F.I.R. registered for the offence under section 379 of the Pakistan Penal Code, 1860 (PPC).

Issues: i) Whether person of an accused be handed over to police for effecting recovery without any tangible evidence to connect him with commission of alleged offence?
ii) Whether source and details of alleged suspicion is necessary for affecting arrest of an accused?
iii) Whether any confession of accused before complainant be termed as extra-judicial confession?
iv) What is reasonableness in a complaint or suspicion and credibility of information?
v) What is malice in law?

Analysis: i) …Person of an accused cannot be given in the custody of police for effecting any recovery where in the first place no positive, tangible either direct or indirect evidence is available with the investigator to connect the accused with the commission of crime falling within the purview of section 379 of PPC.
ii) …Mere bald allegation of theft is not sufficient for holding the petitioner liable for the commission of alleged crime. In case of non-availability of direct

evidence, the investigator is required to have collected even some circumstantial or indirect evidence during the investigation to justify arrest of the petitioner in the instant case. No details whatsoever have been given by the complainant that how and under what circumstances he gathered suspicion against the petitioner. Mere allegation of theft in the incident that admittedly was unwitnessed, without disclosing the source and the details on the basis of which complainant gathered the suspicion that it was the petitioner who committed the theft, would not be sufficient to connect the petitioner with the commission of alleged crime.

iii) … Assertion of complainant that petitioner along with his co-accused confessed to have committed theft of ox and promised to return the same, even cannot be considered to be extra judicial confession by the accused.

iv) …It is hard to give a precise or general definition of what constitutes "reasonableness" in a complaint or suspicion and the credibility of the information; rather, it must depend on the presence of concrete legal evidence in the police officer's cognizance, and he must determine whether it is sufficient to establish the reasonableness and credibility of the charge, information, or suspicion.

v) … In the instant case, undeniably, no incriminating material is available with the prosecution to connect the petitioner with the commission of alleged crime, despite that insistence of I.O to arrest the petitioner depicts his malice. This type of malice is ‘malice in law’ which is distinct from ‘malice of fact’. Malice in law is considered as implied malice that means to say the malice inferred from a person’s conduct.

Conclusion: i) Person of an accused cannot be handed over to police for effecting recovery without any tangible evidence to connect him with commission of alleged offence.

ii) Mere bald allegation is not sufficient and source and details of alleged suspicion is necessary for affecting arrest of an accused.

iii) Confession of accused before complainant cannot be termed as extra-judicial confession.

iv) Reasonableness in a complaint or suspicion and the credibility of the information depend on the presence of concrete legal evidence in the police officer's cognizance.

v) Malice in law is considered as implied malice that means to say the malice inferred from a person’s conduct.

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46. **Lahore High Court**
Mehmood (*deceased*) through LRs etc. v. Siraj Ahmad (*deceased*) through LRs.
Civil Revision No.1463 of 2023
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC5072.pdf

Facts: The petitioners filed Civil Revision against the judgments/orders of Courts below whereby the objections raised by the petitioners upon the maintainability of the

execution petition pertaining to a decree in a pre-emption suit, were dismissed concurrently.

Issues: (i) Whether the Revenue Authorities are obligated to sanction mutation in favor of a decree holder in a suit for pre-emption on deposit of decretal amount even if the decree was not put to execution or the execution has become time barred?
(ii) In what circumstances an execution court must necessarily be involved in case of execution of a decree in a suit for pre-emption?

Analysis: (i) The Revenue Authorities are under obligation to sanction mutation on the basis of the decree of a Civil Court and cannot refuse attestation of mutation on the ground that the decree was not put into execution within the prescribed period of limitation and had become ineffective. The view taken by the Member Board of Revenue is in conflict with the dictum led down by the august Supreme Court. He was on legal misconception in assuming that the implementation of the decree of a Civil Court could be declined by a revenue officer on the plea of having not been put into execution for a period of three years or that its execution had become barred by time. The said Member did not consider that the decree which was being implemented was a decree in a pre-emption matter which has its own significant features. The decree holder in a suit for pre-emption on deposit of decretal amount, in term of order XX Rule 14, C.P.C., became absolute owner of the suit property, and such ownership would remain operative and intact even if such decree was not put to execution. Revenue Officer was under statutory duty to implement such decree in revenue record even if execution petition had become time barred. The pre-emptor/decree holder becomes absolute owner of the suit property and sanction of mutation could be made on the basis of said decree without resorting to execution proceedings.
(ii) The executing Court in such matters would only be involved in case where the judgment debtor fails to deliver the possession of the land in pursuance of such decree and in such case the executing court will be required to deliver the same by issuance of warrant of possession.

Conclusion: (i) The Revenue Authorities are obligated to sanction mutation in favor of a decree holder in a suit for pre-emption on deposit of decretal amount even if the decree was not put to execution or the execution has become time barred.
(ii) An execution court in such matters would only be involved in case where the judgment debtor fails to deliver the possession of the land in pursuance of such decree.

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47. **Lahore High Court**
Mst. Sara Akhtar, etc. v. Mehmood Khan, etc.
Civil Revision No.1376 of 2022
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC5185.pdf

Facts: The petitioner instituted a suit for declaration and permanent injunction against respondents and the same was decreed which remained intact upto this Court. Thereafter, the petitioner filed an execution petition for recovery of possession through warrant of possession and the respondents challenged the same. Executing Court, after hearing the parties, dismissed the execution petition. The petitioner preferred an appeal which was allowed. Being dissatisfied, both parties approached this Court through their independent Civil Revisions.

Issues: i) Whether the decree passed in a suit for declaration creates or confers any new right?
ii) Whether the possession of one co-sharer is considered to be possession on behalf of all co-sharers?
iii) What is the pre-requisite for the execution of a decree?
iv) Whether a decree is to be executed in accordance with its terms and conditions without modification?

Analysis: i) The decree passed in a suit for declaration did not create or confer a new right but the same would declare a pre-existing right. Any person entitled to any legal character, or to any right as to any property may institute a suit against any person denying, or interested to deny his title to such character or right and the Court may in its discretion make a declaration that he is so entitled.
ii) According to law, possession of one co-sharer is always considered to be possession on behalf of all co-sharers. Co-sharer having possession even on the fractional share of the joint land has a right, title and interest in every part of the joint land till such land stands partitioned by metes and bounds in accordance with law.
iii) A decree sought to be executed should be capable of execution i.e. it should order the doing of an act or restrain the doing of an act.
iv) It is settled law that a decree is to be executed by the Executing Court in accordance with its terms and conditions without modification.

Conclusion: i) The decree passed in a suit for declaration does not create or confer a new right but the same would declare a pre-existing right.
ii) According to law, possession of one co-sharer is always considered to be possession on behalf of all co-sharers.
iii) A decree sought to be executed should be capable of execution.
iv) It is settled law that a decree is to be executed by the Executing Court in accordance with its terms and conditions without modification.

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48. **Lahore High Court**
Muhammad Anwar and others v. Atta Ullah (deceased) through L.Rs.
Civil Revision No.1200-D of 2002
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC5083.pdf

Facts: Through this civil revision the petitioners have assailed the judgments and decrees

of Courts below, whereby, the petitioners' suit for recovery of possession through pre-emption was dismissed, concurrently.

Issues: i) Whether it is imperative for pre-emptor to prove performance of requisite Talbs for proving suit for possession through pre-emption?
ii) Whether jumping demand is the foundation of the claim of pre-emption?
iii) Whether for proving Talb-i-Muwathibat the plaintiff is required to state exact date, time and place of gaining knowledge of sale?
iv)Whether it is necessary to produce the postman for proving the delivery of notice of Talb-i-Ishhad if the said fact is denied by the defendant?
v)Whether parties are required to lead evidence in consonance with the pleadings?
vi)Whether a person who wishes to avail himself of a right under pre-emption law is always required to be vigilant to comply with the conditions imposed upon him?
vii)Whether the statement made by the party was to constitute admission only if the same was during the subsistence of interest?

Analysis: i) To prove the suit for possession through pre-emption, it is imperative for the pre-emptor to prove performance of requisite talbs through cogent, reliable and confidence inspiring evidence, in accordance with law. Talbs as enumerated in Section 13 of the Punjab Pre-emption Act X of 1991 being essential for claiming right of pre-emption, strict proof for observance thereof would be necessary. In case of failure, the pre-emptor would be legally debarred. Performance of requisite talbs in other words is a sine qua non for decree of pre-emption suit.
ii) The Talb-i-Muwathibt literally means immediate demand, that is commonly known as jumping demand and foundation of claim of pre-emption rested on making an immediate declaration of intention to assert one's right and if the same is not done that would be fatal for whole claim of pre-emption and making of valid demands namely the Talb-i-Muwathibat and Talb-i-Ishhad, the condition precedent to exercise of the right of pre-emption.
iii) For proving Talb-i-Muwathibat the plaintiffs are required to state exact date, time and place of gaining knowledge because without proving the specific time, date and place of knowledge, the plaintiffs cannot prove jumping demand. When petitioners prove that on such date at such specific time and place they gained knowledge only then they could prove that they announced their intention forthwith to file the suit for pre-emption which is called jumping demand.
iv) It is held in the judgments reported as "MUHAMMAD BASHIR AND OTHERS V. ABBAS ALI SHAH"(2007 SCMR 1105) and "BASHIR AHMED V. GHULAM RASOOL"(2011 SCMR 762) by the august Supreme Court of Pakistan that where the plaintiff alleged performance of Talb-i-Ishhad by sending of notice of Talb-i-Ishhad through registered post and if the said fact is denied by the defendant then the plaintiff of such a suit must produce the postman to prove the delivery of the notice to the defendant or its refusal by the later as the case may be but in the instant case said mandatory requirement of production of

postman was not fulfilled and the pre-requisite of notice of Talb-i-Ishhad was not complied with. The oral assertion, with regard to the performance of Talb-i-Ishhad, was not sufficient to get the relief as sought for and such default is fatal for the pre-emption suit on account of the failure of performance of Talb-i-Ishhad

v) It is settled principle of law that parties are required to lead evidence in consonance with their pleadings and no evidence beyond the pleadings is permissible and even if it has been led by a party, the Court shall exclude or ignore the same from consideration.

vi) Judicial Concept Law is that provisions of Pre-emption Law must strictly to be complied with to attract its rigour and even the technicalities, therefore, are also relevant provisions of law. A person, who wishes to avail himself of a right under such law, is required to be vigilant and see that he complied with all the conditions imposed upon him.

vii) According to Article 31 of the Qanun-e-Shahadat Order, 1984 the statement made by the party was to constitute admission only if same was during the subsistence of interest… the pre-emptors have to prove the Talbs even if suit for pre-emption was not contested by the defendant.

Conclusion: i) Yes, it is imperative for pre-emptor to prove performance of requisite Talbs for proving suit for possession through pre-emption.

ii) Yes, jumping demand is the foundation of the claim of pre-emption.

iii) Yes, for proving Talb-i-Muwathibat the plaintiff is required to state exact date, time and place of gaining knowledge of sale.

iv) Yes, it is necessary to produce the postman for proving the delivery of notice of Talb-i-Ishhad if the defendant denied the said fact.

v) Yes, parties are required to lead evidence in consonance with the pleadings.

vi) Yes, a person who wishes to avail himself of a right under pre-emption law is always required to be vigilant to comply with the conditions imposed upon him.

vii) Yes, the statement made by the party was to constitute admission only if the same was during the subsistence of interest.

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49. **Lahore High Court**
Rashida Bibi v. Station House Officer & another
Crl. Misc. No. 4043-H of 2023
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC5052.pdf

Facts: Through this petition filed under Section 491 Cr.P.C, the petitioner supplicated for the recovery of her real brother from the illegal and improper custody of respondents through Bailiff of this Court.

Issues: i) Whether extrajudicial confession before Investigating Officer can be valid ground for arrest of accused and grant of physical remand?

ii) Whether accused can be arrested if sufficient incriminating material is not available?

iii) Whether police can arrest an accused on suspicion of complainant or while

using term that complainant has come to know through reliable source (without disclosing that source)?

Analysis: i) The first version of accused recorded vide case diary shows that he made extra-judicial confession before the Investigating Officer during police custody which was not a valid ground for the grant of physical remand because confession before the police is not admissible in evidence in terms of Articles 38 & 39 of The Qanun-e-Shahadat Order, 1984… Not a single complainant or PW of cases has got recorded statement against the detenu. Mere extra judicial confession of accused before the investigating officer of case FIR during police custody was not sufficient ground for his arrest, as it was not an admissible piece of evidence…
ii) It has been well settled by now that arrest of accused cannot be made if some sufficient incriminating material is not available against him. It is also held that arrest of any person cannot be made without any evidence.
iii) This Court has also observed that in such like cases police oftenly arrest the accused on the ground that the complainant has strong suspicion or firm belief against him. Similarly, using the term that the complainant has come to know through reliable source (without disclosing that source) or land lord's clue (zameendara gawera) that any person is involved in the commission of crime is also not a legal evidence and arrest cannot be made solely on this ground.

Conclusion: i) Extrajudicial confession before Investigating Officer is not valid ground for arrest of accused and grant of physical remand.
ii) Arrest of accused cannot be made if some sufficient incriminating material is not available against him.
iii) Police cannot arrest an accused on suspicion of complainant or while using term that complainant has come to know through reliable source (without disclosing that source).

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50. **Lahore High Court**
Muhammad Aslam v. The State and another
Criminal Revision No.206/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5014.pdf

Facts: The petitioner filed a criminal revision against an order passed by a Sessions Judge during the trial in a criminal case, whereby permission was declined to cross-examine a prosecution witness/medical officer owing to the fact that he had also conducted medico-legal examination of the accused persons of the case.

Issue: Whether during cross-examination, questions can be asked by defence counsel from a prosecution witness/medical officer about a fact which is not part of his/her examination-in-chief?

Analysis: Defence counsel must have been allowed to ask such questions from the medical officer during the cross-examination and defence counsel can refer MLCs and

radiologist report for asking question while showing it to the witness for the purpose of refreshing the memory as mentioned in Article 155 of Qanun-e-Shahadat Order, 1984 and such witness can also be testified for the facts mentioned in such MLCs and Radiologist report, whereas prosecution has also right to cross-examine such witness to this aspect while seeking permission from the court pursuant to Article 150 of Qanun-e-Shahadat Order, 1984; however, during cross-examination such documents can simply be referred, and could only be tendered in evidence at a stage mentioned in section 265(7) Cr.P.C.

Conclusion: During cross-examination questions can be asked by defence counsel from a prosecution witness/medical officer about a fact which is not part of his/her examination-in-chief.

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51. **Lahore High Court**
Muhammad Sufyan Qasim (deceased) through Legal Heirs v. Manzoor Ahmad & two others
W. P. No. 7834 / 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC5180.pdf

Facts: This constitutional Petition brings a challenge to the impugned Order and Judgment passed by the Courts below. The application of the petitioners for setting aside the ex-parte judgment and decree was concurrently dismissed by the Courts below, vide impugned Order and Judgment.

Issue: Whether legal representatives of missing person prior to passing of ex-parte decree against him have the right to challenge the same in appeal?

Analysis: When one of the legal representative of a person pleaded before the Trial Court that he went missing prior to passing of ex-parte decree against him, the right to challenge the same in appeal would accrue to the legal representative.

Conclusion: Legal representatives of missing person prior to passing of ex-parte decree against him have the right to challenge the same in appeal.

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52. **Lahore High Court**
Shamim Ismail, etc. v. Addl. District Judge, etc.
Writ Petition No.66966 of 2020
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5329.pdf

Facts: Through this petition, the petitioner challenged the visitation schedule on the ground that the impugned judgment is against welfare of the minor inasmuch as the age factor of the minor had been ignored, who had attained the age of 15-years. At the time of hearing of this petition, the petitioner attained the age of majority, therefore, High Court lacks jurisdiction to pass any direction.

Issues: i) What is aim and object of the Guardians & Wards Act, 1890?
ii) Whether lis becomes infructuous when at any stage of the proceedings in a guardian case, the minor attains the age of majority?
iii) Whether power of High Court to issue a writ of certiorari is an independent jurisdiction?

Analysis: i) Before answering the legal question, it will be in fitness of things to examine the object of the Act, which is a special enactment. The Act aims at ensuring that welfare of a minor is kept at forefront while deciding the guardian petition and chalking out the visitation schedule for which the jurisdiction vests with the Guardian Courts. Jurisdiction of the Court, in law, refers to authority vested with a Court to hear and adjudicate the cases according to the subject matter of the cases. One cannot lose sight of the fact that it is the Act that vests jurisdiction in the Guardian Court to ensure that a minor's person and property is extended proper protection through appointment of a guardian since a minor is presumed to suffer from disability and is not in a position to appreciate his/her welfare. Therefore, through appointment of a guardian, the minor is brought to the protection of the Guardian Court which is obligated to exercise the jurisdiction vested with it to ensure continuity of the welfare of a minor. Once a guardian is appointed, such a minor is treated as a "Ward" in terms of Section 4(3) of the Act that reads as under: "ward" means a minor for whose person or property, or both there is a guardian;"

ii) Such protection of the minor and the jurisdiction of the Courts continues so long as the ward is under the legal disability (minority); however, the moment the said disability transforms into the legal capacity, on attaining the age of majority, the jurisdiction of the Guardian Court ceases to exist along with the power of the guardian so appointed by the Guardian Court. Section 41(1)(c) of the Act is amply clear in this regard…The law in its wisdom envisages that once a minor attains the age of majority, he becomes sui juris, and it is believed that such person is well aware of the consequences of his/her acts and omissions. He/she is also vested with certain fundamental rights under the Constitution to decide what is in his/her best interest and cannot be compelled to meet someone against his/her wishes, even if such other person is his/her real father. Since on attaining the age of majority, the Guardian Court ceases to have any jurisdiction... Therefore, the moment, at any stage of the proceedings in a guardian case, the minor attains the age of majority, the lis becomes infructuous as the Courts cease to have jurisdiction, under the Act and cannot pass any directions. As a natural corollary, any further proceedings by this Court would be coram-non-judice, therefore, the constitutional jurisdiction of this Court also comes to an end…

iii) Power of this Court to issue a writ of certiorari is not an independent jurisdiction but supervisory in nature and is used to bring into the High Court, the decisions of subordinate Courts in order to investigate the same and if any jurisdictional defect or procedural impropriety is pointed out, the same are quashed.

Conclusion: i) The aim and object of the Guardians & Wards Act, 1890 is to ensure that welfare of a minor is to be kept at forefront while deciding the guardian petition and chalking out the visitation schedule.
ii) The moment, at any stage of the proceedings in a guardian case, the minor attains the age of majority, the lis becomes infructuous as the Courts cease to have jurisdiction.
iii) Power of High Court to issue a writ of certiorari is not an independent jurisdiction but supervisory in nature.

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53. **Lahore High Court**
Muhammad Afzal v. Asia Zaheer
Civil Revision No.5252/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5404.pdf

Facts: The petitioner filed a suit for specific performance which was dismissed by trial court and appellate court upheld the decision. Both courts allowed the respondent to forfeit the earnest money paid by the petitioner under the agreement, hence, this civil revision.

Issues: i) Whether failure on part of vendor to fulfill a condition/stipulation of agreement disentitles him to forfeit the earnest money on non-payment of balance consideration amount by vendee?
ii) Whether a promise to perform an act without intention to perform the same amounts to fraud?

Analysis: i) Generally, the agreements to sell do not contain a clause whereby it is stipulated that gas meter/connection shall be got installed by the seller, rather, the sales are made with the amenities/facilities like electricity or water connections, at the site/property, existing on the date of execution of an agreement. The incorporation of the said clause in itself indicates the intention of the parties that the said term was material in reaching the consensus ad idem. Therefore, it runs counter to equitable principles to penalize the petitioner for failure of the respondent to fulfill material term of the agreement. Moreover, allowing forfeiture of the earnest money in favour of the respondent belies logic as this would amount to putting premium on failure of the respondent to fulfill his part of the agreement what seems to be material term thereof by the respondent himself. The vendor who admittedly agreed to get the gas meter installed in the suit property but did not honour his word; in such circumstances the vendor is not entitled to forfeit the earnest money…
ii) The respondent incorporated the condition of installation of gas meter when admittedly there was no ban imposed and no effort was made to get it installed and now that the ban has been imposed by M/s SNGPL, refuge is being taken before this Court on ground of imposition of ban. Meaning thereby that incorporation of the stipulation in respect of the installation of gas meter appears

to be a promise without intent to perform the same and hence, amounts to fraud as contemplated under subsection (3) of Section 17 of the Contract Act, 1872.

Conclusion: i) If the vendor agreed to fulfill a condition/stipulation but did not honour his word, in such circumstances the vendor is not entitled to forfeit the earnest money on non-payment of balance consideration amount by vendee.
ii) Yes, a promise to perform an act without intention to perform the same amounts to fraud.

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54. **Lahore High Court**
Akash Masih v. Senior Superintendent of Police, etc.
Writ Petition No.59263 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5453.pdf

Facts: The petitioner challenged the rejection of his application by police Department on the ground that as per Standing Order, a candidate having criminal record shall not be appointed in police Department even though he successfully completed all formalities of job.

Issues: i) Whether High Court can interfere in the policy decision of police Department while exercising constitutional jurisdiction?
ii) Whether a Judicial Magistrate has jurisdiction to nullify or to make redundant a policy decision of the police Department?

Analysis: i) [High] Court in Constitutional jurisdiction cannot sit over the wisdom of the department reflected in a policy unless the same is found to be violative of fundamental rights or based on mala fide as observed hereinabove. In addition, such an observation may hold some persuasion in any other department but not in police force. Standard expected of a person intending to join a uniformed service like the Police Department is quite distinct, from other services, which is required to be more disciplined institution and inclusion of person having criminal antecedents could have bearing on the discipline of the force that is tasked to maintain law and order in the society.
ii) …moreover, besides the lack of jurisdiction of judicial magistrate to nullify or make redundant the policy of the Police Department, there is another aspect of the matter from which this case can be examined. In the instant case, the learned judicial magistrate has made observations that sending the petitioner on parole would have no bearing on his recruitment to any department in future whereas there is possibility that some other judicial magistrate in such like case(s) may not make any such observations with respect to some other applicant. This would engender a discrimination of its own kind having no lawful justification and possibility thereof cannot be ruled out. This also necessitates that in such eventualities it is left to the Police Department to scrutinize the cases of candidates, on individual basis, in accordance with its policy, envisaged under the Standing Order, without any discrimination.

Conclusion: i) High Court cannot interfere in the policy decision of police Department while exercising constitutional jurisdiction unless the same is found to be violative of fundamental rights or based on mala fide.
iii) Judicial Magistrate lacks the jurisdiction to nullify or make redundant the policy of the Police Department.

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55. **Lahore High Court**
Fayyaz Ahmad v. Subay Deen
C.R No. 66481 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5286.pdf

Facts: Petitioner through this revision petition challenged the order and decree passed by learned Civil Judge upon special oath alongwith judgment and decree passed by learned Additional District Judge.

Issue: Whether petitioner can back out from a careful statement/offer of a special oath filed in the form of an application and whether principle of approbate and reprobate attract in such situation?

Analysis: The revision-petitioner offered in terms of section 9 of the *Act*. The *application* is signed by the revision-petitioner as well as his learned counsel. The *application* was filed after three days of the relevant event i.e. the statement of Muhammad Riaz / DW-2, upon which the revision-petitioner showed satisfaction to make the offer in question. This offer was accepted by the other side as well as the witness concerned and the learned Court proceeded to administer the special oath of Muhammad Riaz son of Khushi Muhammad in terms of the *Act*…There appears to be no haste, in making the offer or its acceptance. The revision-petitioner took his time, then instructed learned lawyer to make the offer, who after drafting the *application* obtained signatures of the revision-petitioner on the *application*…The revision-petitioner was fully aware that the statement on oath, if given shall be binding upon him and it can have consequence of dismissal of the suit…The consequences of the offer were very clear to the revision-petitioner. The revision-petitioner cannot be allowed to back out from a statement / offer after it has culminated into a binding contract and when the contract has been acted upon. This attempt to withdraw from the statement and the dual stance also attract the principle of *approbate* and *reprobate* with its full force.

Conclusion: Petitioner cannot back out from a careful statement/offer of a special oath, which is made with awareness as to its consequences and principle of approbate and reprobate attract with full force in such situation.

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56. **Lahore High Court**
Muhammad Islam v. Learned Additional District Judge and others
Writ Petition No.3722 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC10060.pdf

Facts: Through this writ petition, the petitioner has challenged the order whereby his application for leave to contest was dismissed and as a result thereof eviction petition was accepted, as well as the judgment whereby appeal against the aforementioned order was also dismissed.

Issue: Whether a tenant can question the authority of his landlord to receive the rent?

Analysis: As provided in the Punjab Rented Premises Act, 2009, definition of landlord includes not only the owner but the one authorized to receive rent of the rented premises. Therefore, any person entitled to claim rent is a landlord. The petitioner, who admittedly obtained rented premises on lease from respondent and paid him the rent for four years, has no right to question his authority to lease the premises in question. Where conduct of the tenant is found to be inequitable in denying the status of landlord, he is disentitled for the grant of any equitable relief.

Conclusion: A tenant cannot subsequently challenge the authority of landlord to receive rent.

LATEST LEGISLATION/AMENDMENTS

1. In Punjab Safe Cities Authority Service Regulations, 2017, sub clause 15(6) has been inserted and amendments in column no. 02 of row no. 07 of Annexure-I has been made through Notification No.163 of 2023.
2. First schedule of the Punjab Central Business District Development Authority Act, 2021 has been amended through Notification No.162 of 2023.
3. Vide Notification No.S.R.O.1326 (I)/2023, Anti-Rape (Sex Offenders Register) Rules, 2023 has been made.
4. In pursuance of section 4 of the Anti-Rape (Investigation and Trial) Act, 2021, Anti- Rape Crises Cells in 26 Public Hospitals of Province of Sindh have been established through Notification No.S.R.O.899 (I)/2023.
5. Amendments have been made in Instructions about Confidential Reports after para 66 through Notification No.171 of 2023.
6. Amendments in the Notification No.197-2023/0334-CS. II(IX) dated 20.02.2023 regarding conditions for lease of specified State land for corporate agriculture farming at paras no. 05, 13, 16 & 17 have been made through NotificationNo.172 of 2023.
7. Entry at serial no. 1 of Notification No. SOR(LG)1-11/2019 dated 20.10.2022 regarding Punjab Local Government Act 2022, has been modified through Notification No.173 of 2023.
8. Master Conservation and Re- Development Plan has been notified with regard to Walled City of Lahore Act 2012 through Notification No.164 of 2023.

SELECTED ARTICLES

1. LEGAL VISION
https://legalvision.com.au/authority-to-fundraise/#content-next

What should a businesses and charities include in an authority to fundraise? By Stephanie Mee

Fundraising allows charitable and not-for-profit organizations to engage a business to raise funds. In order to legally raise funds on behalf of a charity, require that businesses possess an authority to fundraise. An authority to fundraise is a formal document that outlines the terms and conditions under which a business or charity can seek funds from external sources. This article explains the key elements that should be included in an authority to fundraise. The first element in an authority to fundraise document is the identification of all parties involved. This section should clearly specify the name, contact information of the business and charity and licensing information under which the charity can grant the authority to fundraise. This section ensures that there is clarity regarding who is authorized to fundraise and who is providing this authorization. The law requires charities to have a clear purpose and cause. When undertaking charitable fundraising activities in the form of a partnership, both parties must strive towards a unified purpose that matches the charitable purpose for which the charity is established. After all, donors will want to know what their money goes toward.. The parties also need to define that how funds are collected and disbursed and what percentage or fee (if any) the authorized party will retain for fundraising services. An authority to fundraise is a vital document for businesses and charities seeking external financial support, not only to clarify expectations but also to ensure compliance. Crafting a comprehensive document ensures that you conduct fundraising legally and build productive relationships that align with the charity's purpose and social responsibility.

2. LEGAL VISION
https://legalvision.com.au/termination-rights-franchisee/

What Are My Termination and Cooling-Off Rights as a Franchisee? By Caroline Snow

Deciding to operate a franchise can be an excellent way to run a business with an established brand and reputation. After meeting with the franchisor and signing the franchise agreement, there may be times when you are unsure of your decision. Running a franchise is a significant commitment. Even though you have already signed the franchise agreement, you may still have options to leave without attracting legal penalties. This article explores the termination and cooling-off rights of a franchisee. A franchising agreement is a legally binding contract. Once you sign the agreement, you are bound by its terms. However, most franchise agreements will include a cooling-off period, where you can exercise your right to terminate the agreement. This gives you an

opportunity to really think about whether being a franchisee is what you really want. A cooling-off period is a specific time period within which you may exercise your right to terminate the franchise agreement. If you decide to terminate your franchise agreement within the cooling-off period, the franchisor is required to refund your franchise fee payment. Importantly, franchisors can deduct reasonable expenses from this refund. Although you would expect your freedom after terminating the franchise agreement within the cooling-off period, it is not as easy as that. You will be released from most of your obligations but may still be subject to certain legal obligations under the franchise agreement. These might include clauses concerning restraint of trade, confidentiality provisions and the intellectual property rights of the franchisor. These clauses generally survive the termination of a franchise agreement.

3. MANUPATRA

https://articles.manupatra.com/article-details/Courts-Should-Be-Inclusive-When-Dealing-with-the-Rights-of-People-with-Disabilities

Courts Should Be Inclusive When Dealing with the Rights of People with Disabilities by Nyaaya

A person with disability is a person with long-term physical, mental, intellectual or sensory impairment, which restricts their full and effective participation in society equally with others. A person with benchmark disability is someone who has at least 40% of a 'specified disability'. These specified disabilities include physical disability which is an inability to perform activities associated with movement. People with locomotors disability include those with cerebral palsy, dwarfism, muscular dystrophy, acid attack victims; etc. Visual impairment is a condition of blindness or low vision. Hearing impairment is a deafness or loss of hearing. Speech and language disability is a permanent disability affecting speech and language. Intellectual disability is a significant limitation in intellectual functioning (reasoning, learning, problem solving) and adaptive behavior (everyday social and practical skills) including specific learning disabilities and autism spectrum disorder. Mental illness is a substantial disorder of thinking, mood, perception, orientation or memory that severely impairs judgment, behavior and capacity to recognize reality or ability to meet the ordinary demands of life. This does not include mental retardation. Disability caused due to chronic neurological conditions, multiple sclerosis, Parkinson's disease, blood disorders: Hemophilia, Thalassemia, Sickle cell disease. Multiple disabilities: more than one of the above specified disabilities. Any other disability as specified by the Central Government. This principle promotes equality and prevents discrimination based on disability, health condition or personal belief. It calls for making necessary and appropriate adjustments, while ensuring that they do not impose an undue burden on others, to help exercise their rights equally.

4. **CANADIAN JOURNAL OF LAW**
https://www.cambridge.org/core/journals/canadian-journal-of-law-and-society-la-revue-canadienne-droit-et-societe/article/digital-space-of-ones-own-rethinking-childrens-online-privacy/313FCE4D7BCA3D77C3FD76F9E8C5A662

A Digital Space of One's Own: Rethinking Children's Online Privacy by Stephanie Belmer

In a digitalized environment, children seek out opportunities to experiment, take risks, and communicate with their friends, without feeling the pressure of adult norms. According to legal scholar and professor Shauna Van Praagh: "Cyberspace can be conceptualized as a new terrain for play—play in which young people take risks, learn from mistakes, sometimes get hurt and sometimes hurt others." ... such extensions of analog experience into the digital are necessary if we are to avoid demonizing cyberspace at young people's expense. By reconceptualizing personal space and privacy, I offer a more precise rendering of how we might conceive of the harms made available by online experience. Not the novel harms of online technology but rather the harms newly inscribed upon a historical self, whose freedoms require constant reappraisal.

5. **YALE LAW JOURNAL**
https://www.yalelawjournal.org/pdf/132.8.Ahdout_f44smiqr.pdf

Separation-of-Powers Avoidance by Z. Payvand Ahdout

Separation-of-powers avoidance is one tool that judges use to cool conflict with coordinate branches, and it is motivated, at least in part, by judicial concerns. This Article has traced the link between avoidance and doctrine in certain constitutional areas and the distortion that is caused when that doctrine is taken outside the courtroom. More importantly, it has shown that just as scholarship has recognized that doctrine is not necessarily coterminous with law for individual rights, so, too, legal discourse must recognize the gap between doctrine and the structural constitution.

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FORTNIGHTLY CASE LAW BULLETIN

(01-11-2023 to 15-11-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
The Officer Incharge Army Housing Directorate, Karachi v. The Federation of Pakistan through Secretary Ministry of Defence and others
Civil Petition No. 1026 of 2021 along with CMA No. 5076 of 2021
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1026_2021.pdf

Facts: This petition is filed by 'The Officer Incharge, Army Housing Directorate' and the Advocate on Record was engaged on the basis of an 'Authority Letter' issued by Assistant Director, Housing (Askari Colonies Management) Askari-IV, Karachi. The Advocate on Record then engaged a private counsel as the Advocate Supreme Court to represent the petitioner. The petitioner has arrayed the Federation of Pakistan, the Military Estate Office, the Cantonment Board and others as respondents.

Issues: i) Whether the Askari Housing or its Officer Incharge is a legal entity established by law or has locus standi to initiate and defend legal proceeding?
ii) Whether Officer Incharge Army Housing Directorate can engage a private counsel to represent him in court?

Analysis: i) In response to our query whether the Askari Housing was a legal entity established by law or has locus standi to initiate and defend legal proceeding the learned private counsel, referred to the letter and to the lease and stated that the Askari Housing could do so. But, he did not support his answer with reference to the Constitution, the Rules of Business, 1973 ('the Rules') or any law. The learned AOR filed this CPLA, without first ascertaining the petitioner's legal status. He assumed that the 'Authority Letter' issued by an Assistant Director of Askari Housing was sufficient, and, on its basis also engaged an ASC. The underlying assumption of the learned AOR being that the executive authority of the Federation can be exercised by Askari Housing through its Assistant Director. It would be appropriate to examine how the executive authority of the Federation is to be exercised; how the Federal Government allocates and transacts its business; and, how litigation on behalf of the Federal Government is authorised and who can institute and conduct litigation… Neither Askari Housing nor its Officer Incharge is a separate entity. The requisite authorisation to initiate/defend legal proceedings, as mentioned above, was also not obtained. If the High Court's judgment was to be challenged it had to be done by one of the legal entities which have been arrayed as respondents herein, and after obtaining requisite approval/permission. The petitioner arraying them as respondents suggests that the respondents were satisfied with the judgment of the High Court, which has been assailed herein.
ii) As regards our query whether the petitioner could engage a private counsel we did not receive any answer from the learned Mr. Zuberi. Askari Housing is a component of the Federal Government and has no independent legal status. And, this Court has held that private counsel can only be engaged as stipulated in the

decision in Rasheed Ahmed's case, relevant portion wherefrom is reproduced hereunder: 'There may however be cases which involve complicated questions of the Constitution or some extremely technical law which the Attorney-General, in case of the Federation, and the Advocate General, in the case of a province, and their law officers do not have the requisite ability to attend to. In such a case the concerned constitutional officer holder should certify that he and the law officers do not have the requisite expertise in the field and that the engagement of a private counsel who is competent and experienced is required. Needless to state, the engagement of private counsel can only be sanctioned for compelling reasons and in the public interest and not to protect or save a particular individual or for any other ulterior reason.' (para 21, pp.132- 133) 'The Federal Government and the provincial governments have a host of law officers who are paid out of the public exchequer. If a government contends that none amongst its law officers are capable of handling cases then the question would arise why have incompetent persons been appointed. In such a scenario the public suffers twice, firstly they have to pay for incompetent law officers, and secondly, they have to pay again for the services of competent counsel the government engages. The public exchequer is not there to be squandered in this manner.' (para 17, p.130)

Conclusion: i) Neither Askari Housing nor its Officer Incharge is a separate entity established by law and has no locus standi to initiate and defend legal proceeding.
ii) Officer Incharge Army Housing Directorate cannot engage a private counsel to represent him in court.

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2. **Supreme Court of Pakistan**
M/s Sprint Oil and Gas Services Pakistan FZC, Islamabad v. Oil and Gas Development Company Limited (OGDCL), Islamabad
Civil Petition No.740 of 2021
Mr. Justice Qazi Faez Isa, CJ., Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._740_2021.pdf

Facts: The petitioner company carried out cementation works for OGDCL under the contracts and the subject dispute pertains to the sales tax paid by it on the said works. OGDCL refused to reimburse the sales tax paid by the petitioner, therefore, the petitioner writ petition filed before Islamabad High Court which was allowed. The respondent filed intra court appeal against said decision which was accepted, hence this civil petition.

Issues: i) Whether High Court of any Province can interpret law enacted by all provincial legislatures?
ii) Whether jurisdiction of High Court can be invoked in matters of disputed facts?
iii) Whether parties can confer jurisdiction upon court if otherwise court has no jurisdiction?

Analysis: i) Pakistan is a Federation comprising of four provinces and the Islamabad Capital Territory. The Constitution provides a High Court for each province and, subsequently, the Islamabad High Court was established in 2010. Each province can enact laws with regard to their respective territories, and only the High Court of the said province can interpret them. Therefore, the four provincial laws (Sindh Sales Tax on Services Act, 2011, Punjab Sales Tax on Services Act, 2011, Khyber Pakhtunkhwa Finance Act, 2013, and Balochistan Sales Tax on Services Act, 2015.) could only have been interpreted by the High Court of the province in which they had been enacted, and not by the Islamabad High Court.
ii) The High Court's jurisdiction under Article 199 of the Constitution may also not be invoked when contracts have to be interpreted, and all the more so when they are technical and/or complex nor when evidence is required to be recorded. In the exercise of its writ jurisdiction, under Article 199 of the Constitution, a High Court also does not enter into the realm of disputed facts.
iii) Parties cannot confer jurisdiction on a court. This established principle was recently reiterated by Supreme Court in the case of Eden Builders Pvt. Ltd. Lahore v Muhammad Aslam: 'It is settled proposition of law that the parties cannot by agreement confer jurisdiction upon any court when otherwise the court has no jurisdiction.'

Conclusion: i) Each province can enact laws with regard to their respective territories, and only the High Court of the said province can interpret them.
ii) In the exercise of its writ jurisdiction, under Article 199 of the Constitution, a High Court does not enter into the realm of disputed facts.
iii) Parties cannot confer jurisdiction upon court if otherwise court has no jurisdiction.

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3. **Supreme Court of Pakistan**
Mehmood Khan and others v. Sara Akhtar
Civil Petition No.3030 of 2021
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3030_2021.pdf

Facts: The Respondent filed a suit seeking declaration and cancellation of sale mutations. The suit was decreed by the trial court and the decision was upheld in appeal while the civil revision, filed before the Lahore High Court, was also dismissed.

Issue: Whether the burden to establish a sale and sale mutation lay upon the beneficiary thereof?

Analysis: The burden to establish the sales and the sale mutations, lay upon the beneficiaries thereof, the petitioners, but they failed to discharge it, and when the same was not discharged it may be stated to constitute fraud.

Conclusion: The burden to establish a sale and sale mutation lay upon the beneficiary thereof.

4. **Supreme Court of Pakistan**
Supreme Court Bar Association of Pakistan through its Secretary, Islamabad and others etc v. Federation of Pakistan through Secretary, Cabinet Division, Islamabad and others.
Constitution Petition Nos.32 and 36 of 2023
Pakistan Tehreek-e-Insaf (PTI), Islamabad through its Secretary General and another etc v. Election Commission of Pakistan through Chief Election Commissioner, Islamabad and others etc.
Civil Misc. Appeal Nos.118 and 119 of 2023 in Const.P.Nil/2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/const.p._32_2023_04112023.pdf

Facts: Through these Constitutional Petitions, along with civil misc. Appeals, the petitioners sought the early elections in the country.

Issues: i) Whether it is Constitutional duty of President and Election Commission to appoint a date of General Elections and to issue notification of Election Programme respectively within ninety days after dissolution of Assembly?
ii) Whether a census is followed by delimitation of constituencies?
iii) Whether every constitutional body must act in accordance with the mandate of the Constitution without interference into the constitutional jurisdiction of another?
iv) Whether obedience to the Constitution and law is an inviolable obligation of every citizen?
v) Whether President can dissolve the National Assembly, once the requisite number of members has given a notice of a resolution for a vote of no confidence?
vi) Whether Prime Minister facing a vote of no confidence can advise dissolution of the National Assembly?

Analysis: i) The President of Pakistan was required to 'appoint a date, not later than ninety days from the date of the dissolution, for the holding of a general election to the Assembly under Article 48(5)(a) of the Constitution of the Islamic Republic of Pakistan. And, the Elections Act, 2017 requires the notification of the Election Programme, including the date of the general election...Article 224(2) of the Constitution also requires that general election 'shall be held within a period of ninety days after the dissolution'.
ii) A census is followed by delimitation. Article 222(b) of the Constitution empowers Parliament to make laws providing for the 'delimitation of constituencies', and Delimitation of Constituencies is provided in Chapter III of the Elections Act, 2017.
iii) The Supreme Court and the holder of every constitutional office and every constitutional body, including the President and the ECP, must act in accordance with the mandate of the Constitution. Abiding by the Constitution is not optional.

It is equally important that no institution transgresses into the constitutional jurisdiction of another…Constitutional office holders must adhere to the Constitution; fulfil the duties assigned to them as a sacred trust, and divest themselves from all that is outside their constitutional domain; only then do they serve the people of Pakistan.

iv) The higher the constitutional office or body the greater is the responsibility. Obedience to the Constitution and law is an inviolable-obligation of every citizen, however, an added responsibility and obligation is placed on all those who assume their office by taking an oath. The President takes the prescribed oath and so too the Chief Election Commissioner and Members of the ECP. The Constitution has subsisted for fifty years; there is no longer any excuse to remain ignorant of the Constitution.

v) The Constitution clearly mandated that once the requisite number of members had given a notice of a resolution for a vote of no confidence in the National Assembly, the power to advise dissolution of the National Assembly no longer remained with the Prime Minister. Therefore, the President could not dissolve the National Assembly…

vi) In the case reported as Pakistan Peoples Party Parliamentarians v Federation of Pakistan. It was pointed out by the Chief Justice and four Judges of Supreme Court what was manifestly clear, that a Prime Minister facing a vote of no confidence could not advise the dissolution of the National Assembly.

Conclusion: i) Yes, it is Constitutional duty of President and Election Commission to appoint a date of General Elections and to issue notification of Election Programme respectively, within ninety days after dissolution of Assembly.

ii) Yes, a census is followed by delimitation of constituencies.

iii) Yes, every constitutional body must act in accordance with the mandate of the Constitution without interference into the constitutional jurisdiction of another.

iv) Yes, obedience to the Constitution and law is an inviolable obligation of every citizen.

v) President cannot dissolve the National Assembly, once the requisite number of members has given a notice of a resolution for a vote of no confidence.

vi) Prime Minister facing a vote of no confidence cannot advise dissolution of the National Assembly.

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5. **Supreme Court of Pakistan**
Cantonment Board Faisal and another v. Habib Bank Limited, Karachi and another
Civil Appeals No.1363 to 1365 of 2018
Civil Misc. Application No. 4728 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1363_2018.pdf

Facts: These Civil Appeals, assailing the judgment of a Division Bench of the High Court, are filed by the Cantonment Boards. The Cantonment Boards had levied provincial taxes in respect of professions, trades, callings and employments mentioned in Article 163 of the Constitution of the Islamic Republic of Pakistan.

Issues: i) Whether there is any specific provision in the Constitution which empowers the provinces to impose professional taxes?
ii) Whether the decisions of Supreme Court are binding on all executive functionaries, including cantonment boards?

Analysis: i) Article 163 of the Constitution specifically empowers the provinces to impose the professional taxes; it is the only provision in the Constitution which permits or authorizes this, and it must be given effect to; it cannot be disregarded or whittled down by untenable submissions.
ii) Decisions of Supreme Court are binding on all executive functionaries, including cantonment boards, as mandated by Article 189 of the Constitution. Therefore, section 60(1) of the Cantonments Act and its Schedule VII to the extent that they may authorize the imposition of the professional taxes are ultra vires the Constitution.

Conclusion: i) Article 163 of the Constitution specifically empowers the provinces to impose the professional taxes.
ii) Decisions of Supreme Court are binding on all executive functionaries, including cantonment boards, as mandated by Article 189 of the Constitution.

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6. **Supreme Court of Pakistan**
Human Right Case No. 82928 of 2018
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/h.r.c._82928_2018.pdf

Facts: The petitioner had written to the Human Rights Cell in the Supreme Court and leveled serious allegations against respondent. The matter was put up in Chamber before the then Chief Justice. As per the report of the Director-General, Human Rights Cell, the then Chief Justice had by order summoned both parties for hearing in his Chamber. The dispute between the private parties was attended to and decided.

Issue: Whether the Chief Justice in Chamber can summon parties under Article 184(3) of the Constitution on a complaint written to the Human Rights Cell of the Supreme Court?

Analysis: Neither can the Chief Justice nor any Judge in Chamber alone can pass an order beyond what is provided for in the Rules. Therefore, the proceedings that the former Chief Justice undertook with regard to the said matter, in our considered opinion, were not legal proceedings, and were of no legal effect. The Human

Rights Cell can only consider the complaints it receives, and if the same meet the test of Article 184(3) of the Constitution, that is, the matter is one of public importance with reference to enforcement of any of the Fundamental Rights put it up for consideration of the Chief Justice of Pakistan, and the Chief Justice in Chamber could only direct that it be numbered and put up for consideration in Court. However, since the promulgation of the Supreme Court (Practice and Procedure) Act, 2023 ('the Act') the Chief Justice has lost even this power as now the Committee, under section 2(1) of the Act, comprising of the Chief Justice and the next two senior Judges, will determine whether the matter should be numbered and fixed in Court for hearing.

Conclusion: The Chief Justice in Chamber cannot summon parties under Article 184(3) of the Constitution on a complaint written to the Human Rights Cell of the Supreme Court rather the Committee, under section 2(1) of the Supreme Court (Practice and Procedure) Act, 2023, comprising of the Chief Justice and the next two senior Judges, will determine whether the matter should be numbered and fixed in Court for hearing.

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7. **Supreme Court of Pakistan**
Javed Hameed, etc. v. Aman Ullah, etc.
Civil Petition No.1990-L of 2017
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1990_l_2017.pdf

Facts: Trial court closed the right of petitioners to lead evidence and dismissed the suit and such decision was upheld by the appellate court and then by the revisional court. Hence, this civil petition.

Issue: How courts can ensure that litigants do not abuse the process of court?

Analysis: Courts must be vigilant that the process of the court is not abused, and ensure that legitimate owners are not deprived of their properties. From the date of filing of the suit till date 14 years have elapsed, and petitioners who were not entitled to the said land continue in possession of it, probably thinking there would no consequences for their actions. This impression must be corrected. Courts must impose costs whenever it is required, stem frivolous litigation and stop the abuse of the process of the court in perpetuating wrongdoing.

Conclusion: Courts must impose costs whenever it is required, stem frivolous litigation and stop the abuse of the process of the court in perpetuating wrongdoing.

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8. **Supreme Court of Pakistan**
Human Right Case No. 8157-P of 2023
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/h.r.c._8157_p_2023.pdf

Facts: The applicant filed an application under Article 184(3) of the Constitution of the Islamic Republic of Pakistan leveling serious allegations of misuse of office by a senior official of the Armed Forces while working in the Inter Services Intelligence (ISI).

Issue: Whether Article 184(3) of the Constitution can be invoked in respect of a private complaint/grievance?

Analysis: The allegations are of an extremely serious nature, and if true, undoubtedly would undermine the reputation of the Federal Government, the Armed Forces, ISI and Pakistan Rangers, therefore, they cannot be left unattended. However, the nature of a case filed under Article 184(3) of the Constitution is different from other cases, for a number of reasons. Firstly, the Supreme Court under Article 184(3) of the Constitution exercises *original power*, and whenever *original power* is exercised it must be done cautiously. Secondly, where there exists other forum(s) to attend to the same it is best that they first do so. Thirdly, against the decision of a High Court appeals may come before this Court under Article 185 of the Constitution. Fourthly, direct intervention by this Court under Article 184(3) of the Constitution may adversely affect the rights of others.

Conclusion: Article 184(3) of the Constitution cannot be invoked in respect of a private complaint/grievance.

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9. **Supreme Court of Pakistan**
Province of Punjab thr. the Deputy Commissioner, Collector District Gujranwala and others v. Zulfiqar Ali and another
Civil Petition No.386-L of 2021
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._386_l_2021.pdf

Facts: The facts leading to the filing of the present civil appeal, briefly, are that on nine *marlas* of land a road was constructed by petitioners. However, since no compensation was paid for the said land nor was it acquired pursuant to the Land Acquisition Act, 1894, the owner filed a suit in the year 1997 and though the suit was dismissed the appeal against the same was allowed and the judgment of the appellate court was upheld through the impugned judgment.

Issues: i) When a person can be compulsorily deprived of property?
ii) What is the value of public resources and court time?

Analysis: i) …They deemed it fit to challenge a matter of little financial significance and do so contrary to the provisions of the Constitution of the Islamic Republic of Pakistan which guarantees as a fundamental right the right to acquire, hold and dispose of property (Articles 23 and 24), and being oblivious to the fact that a person can only be compulsorily deprived of property provided compensation therefor is paid.
ii) This is the fourth Court before which the Government of Punjab is a party, and it pleads by disregarding the Constitution and the law. Not only have public resources been wasted, but also Court time, both of which are a trust held on behalf of the people. The respondents who were deprived of their land must have spent money and time with regard to a case which should have never seen a court of law, provided the petitioners had abided by the Constitution and the law.

Conclusion: i) A person cannot be compulsorily deprived of his property against Articles 23 and 24 of the Constitution of Pakistan, provided compensation thereof is paid.
ii) Public resources and Court time are a trust held on behalf of the people.

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10. **Supreme Court of Pakistan**
Civil Review Petitions No.266 of 2019 etc. along with Civil Miscellaneous Applications No.8270 and 8288 of 2023 etc. in Suo Motu Case No.7 of 2017
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._266_2019_01112023.pdf

Facts: The petitioners/appellants aggrieved by the judgment of Supreme Court filed these Civil Review Petitions along with Civil Miscellaneous Applications.

Issues: i) Whether legislature has assigned certain responsibilities and obligations to PEMRA?
ii) What is limitation period for filling review petition against the judgement of Supreme Court?

Analysis: i) PEMRA is a statutory organization; the legislature has assigned it certain responsibilities and obligations.
ii) If a party is aggrieved by the Judgment of Supreme Court, its review can be sought, 'within thirty days after pronouncement of the judgment, or, as the case may be, the making of the order, which is sought to be reviewed', as stipulated in Order XXVI, rule 2 of the Supreme Court Rules, 1980...

Conclusion: i) Yes, legislature has assigned certain responsibilities and obligations to PEMRA.
ii) The review petition can be sought against the judgement of Supreme court within thirty days.

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11. **Supreme Court of Pakistan**
Muhammad Atif v. The State etc.
Criminal Petition Crl.P. 298 / 2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi , Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._298_2023.pdf

Facts: The petitioner sought leave to appeal against an order of the Lahore High Court, whereby the post-arrest bail had been declined to him for the offences punishable under Sections 302, 148 and 149 of the Pakistan Penal Code ("PPC").

Issue: What is the benchmark for applying the rule of consistency in granting bail to an accused?

Analysis: …The rule of consistency applied in bail matters is premised on the fundamental right to equality before the law guaranteed under Article 25 of the Constitution of Pakistan. This right to equality before the law ensures that persons similarly placed in similar circumstances are to be treated in the same manner. In other words, among equals the law should be equally administered. The like should be treated alike. Article 25 of the Constitution does not prohibit different treatment to persons who are not similarly placed or who are not in similar circumstances. To claim equality before the law an accused person must therefore show that he and his co- accused who has been granted bail are similarly placed in similar circumstances. In other words, he must show that the prosecution case, as a whole, against him is at par with that against his co -accused who has been granted bail, and not distinguishable in any substantial aspect. The rule of consistency is also pillared on Articles 4 and 10A of the Constitution ensuring that level playing field and fairness is maintained in adjudicating cases of co-accused. The right to liberty under Article 9 of the Constitution has to be extended fairly and without discrimination to an applicant seeking bail. The rule of consistency in bail matters is fundamental to ensuring fairness, reducing arbitrary decision -making, and maintaining public confidence in the criminal justice system. It's a key aspect of the rule of law, ensuring that all individuals are treated equally under the law…The rule of consistency in bail matters is attracted and applied after the grant of bail to a co-accused. Grant of bail by a court considers several factors like the contents of the FIR, the incriminating material collected by the police during investigation, the past history of the accused, etc. The grounds which form the basis for the grant of bail to a co-accused is thus the benchmark for grant of bail to the accused under the rule of consistency. Therefore, the court has to assess whether the role of the accused in the FIR, examined in the background of the material collected by the Police is the same as that of the co-accused, who has been granted bail. It is this congruence in the case of the co-accused and the accused that attracts the rule of consistency.

Conclusion: Benchmark for applying the rule of consistency is not only the role attributed to the accused in the FIR but also the material collected in the investigation.

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12. **Supreme Court of Pakistan**
M/s Fun Infotainment (Pvt) Limited/NEO T.V., Lahore. v. Pakistan Electronic Media Regulatory Authority through its Chairman, Islamabad and others
Civil Petition NO. 5438 OF 2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5438_2021.pdf

Facts: The matter originated with a complaint filed before the Council of Complaints of the Pakistan Electronic Media Regulatory Authority alleging that the petitioner violated the Electronic Media (Programmes and Advertisements) Code of Conduct 2015 in a programme. The COC found the contents of the programme to be violative of the Code of Conduct and recommended fine to be imposed on the petitioner. The said recommendation was approved by the Chairman PEMRA. The High Court dismissed the appeal filed against the order of the Chairman PEMRA. The petitioner now seeks leave of this Court to appeal against the order of the High Court.

Issues: i) Whether PEMRA has been given the power to delegate any of its powers, responsibilities or functions?
ii) Whether delegation envisaged under Section 13 of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 shall be structured with conditions prescribed under the rules?

Analysis: i) A look at Section 26 of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 suggests that PEMRA has been given the power to delegate any of its powers, responsibilities or functions to the Chairman or a member or any member of its staff, or an expert, consultant, adviser, or other officer or employee of PEMRA.
ii) The legislature has intended that the exercise of delegation envisaged under Section 13 of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 shall be structured with conditions prescribed under the rules framed with the approval of the Federal Government.

Conclusion: i) PEMRA has been given the power to delegate any of its powers, responsibilities or functions.
ii) The legislature has intended that the exercise of delegation shall be structured with conditions prescribed under the rules.

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13. **Supreme Court of Pakistan**
Bashir Ahmad v. Addl. District Judge, Hafizabad & others
Civil Petition No. 5918/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5918_2021.pdf

Facts: The petitioner's grandson instituted a family suit through his mother for his maintenance against his father and the petitioner's son. The suit was decreed and a petition was filed for the execution of the decree against the judgment debtor. The presence of the judgment debtor could not be procured to pay the decretal amount nor could the decree holder trace out any of his property. The decree holder found the revenue record of the property owned by the petitioner, grandfather and requested the executing court to attach that property for recovery of the decretal amount, which was accepted. The petitioner filed an application for the release of his property from attachment, pleading that he had neither been a party to the suit nor had any decree been passed against him. The executing court dismissed his application. The petitioner challenged the orders of the executing court in the High Court through writ petition which was also dismissed; hence, this petition for leave to appeal.

Issues: i) Whether just ends justify unjust means?
ii) Whether a decree for maintenance passed against the father of a child can be executed against the grandfather or the child has to institute a suit for maintenance against his grandfather?
iii) What are conditions upon which grandfather is under obligation to maintain his grandchild?

Analysis: i) 'Doing what is right may still result in unfairness if it is done in the wrong way.' The right thing must be done in the right way. Just ends do not justify unjust means. The present case is a classic instance of doing a right thing in a wrong way. In their urge to provide a child with due maintenance at the earliest, the courts below have circumvented the due process of law, and instead of achieving the desired result, have thrown the parties into a protracted, unnecessary litigation. Courts in this country, from top to bottom, must always remember that the matters of life, liberty, body, reputation or property of all persons must be dealt with in accordance with law and that every person appearing before them is entitled to a fair trial and due process for the determination of his civil rights and obligations or in any criminal charge against him.
ii) Under the Islamic law of maintenance of the children, if the father of a child has died or the father, being a poor person, has no financial resources to maintain his child, the obligation to maintain such child passes on to his grandfather provided he is financially in easy circumstances.4 This statement of Islamic law is not disputed before us. The matter of contention between the parties that requires determination by us is: whether a decree for maintenance passed against the father

of a child can be executed against the grandfather or the child has to institute a suit for maintenance against his grandfather, in case no property of his father, the judgment debtor, is found for the execution of the decree… This is the requirement of the fundamental right guaranteed by Article 10A of the Constitution of Pakistan, which mandates that for the determination of his civil rights and obligations, a person shall be entitled to a fair trial and due process. The matter of providing maintenance to his grandchild is a matter of civil obligation; for its determination, the grandfather must be provided with a fair trial and due process. Both the above conditions, the fulfillment of which brings a grandfather under obligation to maintain his grandchild, are factual propositions, not legal ones. Their existence or non-existence can, therefore, only be proved through producing their respective evidence by the parties in a properly instituted suit for maintenance. Such evidence cannot be recorded in the execution proceeding nor can any determination be made therein by the executing court on these facts. The recording of evidence and making of findings on these facts in an execution proceeding would be a useless exercise, as despite making a positive finding, an executing court cannot modify the decree5 nor can it execute the decree against a person who was not a party to the suit.6 Further, the Family Courts Act 1964 prescribes a procedure for how the claims of maintenance are to be entertained and decided by the Family Courts. Such a claim made against a grandfather operates against his property; he is, therefore, entitled to be dealt with the procedure prescribed by law, i.e., the Family Courts Act, as per Article 4 of the Constitution. We, therefore, hold that a decree for maintenance passed against the father of a child cannot be executed against the grandfather, and the child has to institute a suit for maintenance against his grandfather, in case no property of his father, the judgment debtor, is found for the execution of the decree.

iii) As it is evident from the above statement of the Islamic law of maintenance of the children, the obligation of a grandfather to maintain his grandchild is dependant upon two conditions: (i) the father of the child must be a poor person who has no financial resources to maintain that child, and (ii) the grandfather of the child must be a person who is financially in easy circumstances. In case either of these conditions is not fulfilled, the grandfather is not under any obligation to maintain his grandchild. These two conditions are thus also the grounds of defence available to a grandfather against whom his grandchild makes a claim of maintenance. A child who claims his maintenance from his grandfather has to prove these two conditions, and the grandfather must be provided with an opportunity to defend the claim made against him by rebutting the existence of either of these two facts…

Conclusion: i) Just ends do not justify unjust means.

ii) A decree for maintenance passed against the father of a child cannot be executed against the grandfather, and the child has to institute a suit for maintenance against his grandfather, in case no property of his father, the judgment debtor, is found for the execution of the decree.

iii) The obligation of a grandfather to maintain his grandchild is dependant upon two conditions: (i) the father of the child must be a poor person who has no financial resources to maintain that child, and (ii) the grandfather of the child must be a person who is financially in easy circumstances.

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14. **Supreme Court of Pakistan**
The Commissioner Inland Revenue, Lahore v. M/s. Atta Cables (Pvt.) Ltd., Lahore, etc.
Civil Appeal No.247 of 2021
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._247_2021.pdf

Facts: This appeal arises out of the Income Tax Ordinance, 2001 ("Ordinance") and relates to the tax year 2015. According to the department (i.e., the Commissioner concerned) the respondent taxpayer came within the ambit of s. 214D of the Ordinance, which had been newly added by the Finance Act, 2015 and which provided for automatic audit under s. 177 of those taxpayers that fulfilled the conditions thereof.

Issues: i) Whether a taxpayer in default automatically comes within the ambit of s. 177 of the Ordinance?
ii) Whether in terms of other provisions of the Ordinance selection for audit is automatic?
iii) What is the effect of any deviation or discrepancy, howsoever minor, slight or even inconsequential the conditions that exist for the section 214D to be attracted?
iv) What will be the status of application for the grant of extension for the purposes of s. 214D, if the Commissioner did not grant or refuse the application in writing?

Analysis: i) A taxpayer in default automatically came within the ambit of s. 177, the principal provision in the Ordinance relating to audit. The audit requirements of s. 177 are broadly stated and certainly impose a heavy, cumbersome and onerous burden on the taxpayer.
ii) In the ordinary course, and in terms of other provisions of the Ordinance which need not be considered in detail, selection for audit is not automatic but is a result that comes about after going through various statutory filters, including such as are set out in various circulars issued by the Federal Board of Revenue.
iii) Section 214D, inasmuch as it applied automatically (subject to certain exceptions contained in its subsections (3) and (4)) and therefore bypassed the filters otherwise built into the Ordinance before an audit could be undertaken, had therefore to be construed and applied strictly. More particularly, the conditions that had to exist for the section to be attracted had to apply precisely. Any deviation or discrepancy, howsoever minor, slight or even inconsequential it may otherwise appear to be would apply, and go, in favor of the taxpayer.

iv) It is to be noted that subsection (3) of s. 119 specifically requires the Commissioner to grant the extension in writing. Since s. 214D had to be applied exactly, this meant that for purposes of this provision the refusal of the Commissioner also had to be in writing. In other words, any inaction on the part of the Commissioner, or a failure to reject or refuse the application for extension in any manner other than in writing, would mean that for the purposes of s. 214D the application would be regarded as pending. Clearly therefore, until the application for extension was actually disposed of by an order in writing the section would not become applicable.

Conclusion: i) A taxpayer in default automatically comes within the ambit of s. 177, the principal provision in the Ordinance relating to audit.
ii) See above in analysis clause.
iii) The conditions that had to exist for the section to be attracted had to apply precisely. Any deviation or discrepancy, howsoever minor, slight or even inconsequential it may otherwise appear to be would apply, and go, in favor of the taxpayer.
iv) Any inaction on the part of the Commissioner, or a failure to reject or refuse the application for extension in any manner other than in writing, would mean that for the purposes of s. 214D the application would be regarded as pending.

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15. **Supreme Court of Pakistan**
Maqsood Alam v. The State etc.
Criminal Petition Nos. 1710-L & 1329 Of 2017
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1710_l_2017.pdf

Facts: Petitioner along with four co-accused was tried in a private complaint lodged under Sections 302/109/34 PPC. The Trial Court vide its judgment while acquitting the co-accused of the petitioner, convicted the petitioner under Section 302(b) and sentenced him to death on two counts. He was also directed to pay Rs.100,000/- on two counts as compensation to the legal heirs of each deceased or in default whereof to further undergo SI for six months. In appeal the High Court while maintaining the conviction of the petitioner, altered the sentence of death into imprisonment for life on two counts. The amount of compensation and the sentence in default thereof was also maintained. Benefit of Section 382-B Cr.P.C. was also extended to the petitioner.

Issues: i) Whether the same evidence can be relied upon to convict the accused, when the ocular account of the eye-witnesses has been disbelieved by the Trial Court against the co-accused, who was alleged to have played a similar role in the occurrence?
ii) Whether the burden of proof is always on prosecution to prove its case beyond reasonable doubt?

Analysis: i) When the ocular account of the eye-witnesses had been disbelieved by the Trial Court against the acquitted co-accused, who was alleged to have played a similar role in the occurrence, then the same evidence could not be relied upon to convict the accused on capital punishment unless there was an independent corroboration and some strong incriminating evidence to the extent of his involvement in commission of the offence but as discussed above the same is lacking in the instant case.

ii) It is settled principle of law that the conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable doubt.

Conclusion: i) See above in analysis clause.

ii) The burden of proof is always on prosecution to prove its case beyond reasonable doubt.

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16. **Supreme Court of Pakistan**
Faqir Muhammad v. Khursheed Bibi and others etc.
Civil Petitions No.1877-L and 1878-L of 2016
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1877_l_2016.pdf

Facts: These Civil Petitions for leave to appeal have been brought to challenge the Judgments passed by the learned Division Bench of the Lahore High Court, Lahore, whereby both the appeals were dismissed being barred by time with the findings that the petitioner/appellant completely failed to show his bona fide of due care in prosecuting the case and also remained unsuccessful in explaining the delay incurred in filing the appeals.

Issues: i) Whether it is onerous duty of the Court, including the Officer of the Appellate Court or any staff member of the Court to accept the presentation of the memo of appeal before admission and diligently examine the memo of appeal, and judgment and decree, including all supporting documents, to ensure that everything is in order, and, if there is any doubt in the mind of the concerned Court clerk/official with regard to jurisdiction, they should raise the objection(s) and bring it to the attention of the Court to resolve it?

ii) Whether the parties can, by mutual consent, take away the jurisdiction vested in any Court of law?

iii) Whether an inadvertent error or lapse on the part of Court may be reviewed?

iv) Whether the Court must examine what fault, if any, has been committed by the Court on account of which a litigant has been made to suffer; then the Court must consider whether the benefit of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Limitation Act 1908?

v) Whether the scope and niceties of Sections 5 and 14 of the Limitation Act 1908 are distinct in application and concentration but the purpose is almost the same?

Analysis: i) A survey of the aforesaid provisions cited from the CPC emphasizes the onerous duty of the Court, including the Officer of the Appellate Court or any staff member of the Court (clerk of court/chief ministerial officer) who has been authorized and assigned the task to accept the presentation of the memo of appeal before admission and diligently examine the memo of appeal, and judgment and decree, including all supporting documents, to ensure that everything is in order, and, if there is any doubt in the mind of the concerned Court clerk/official with regard to jurisdiction, they should raise the objection(s) and bring it to the attention of the Court to resolve it; and if the Court concludes at the time of admission that the appeal has been filed at the wrong forum, whether due to a lack of territorial or pecuniary jurisdiction, or some other ancillary or incidental reasons, the memo of appeal should be promptly returned to the appellant to elect the right remedy and forum to avoid rendering the decision of the Court coram non judice at the end of the day.

ii) The examination and evaluation of jurisdiction at the initial stage is also significant pursuant to the well-settled explication of law that the parties cannot, by mutual consent, take away the jurisdiction vested in any Court of law, nor can they confer jurisdiction to any Court not vested in it by law.

iii) It is also a well settled elucidation of law that an inadvertent error or lapse on the part of Court may be reviewed in view of the renowned legal maxim "*actus curiae neminem gravabit*", recognized by both local and foreign jurisdictions which articulates that no man should suffer because of the fault of the Court or that an act of the Court shall prejudice no one. This maxim is rooted in the notion of justice and is a benchmark for the administration of law and justice to ensure that justice has been done with strict adherence to the law and for undoing the wrong so that no injury should be caused by any act or omission of the Court.

iv) In the dictum rendered by this Court in the Khushi Muhammad (supra), it was opined that the principle "*actus curiae neminem gravabit*" has no application where a litigant approaches a wrong forum even if it is entertained by the Court staff. Thus no condonation of delay can be availed on this principle, but in unison as a rider and precondition it has been made obligatory that the Court must examine what fault, if any, has been committed by the Court on account of which a litigant has been made to suffer; then the Court must consider whether the benefit of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Limitation Act.

v) No doubt, the scope and niceties of Sections 5 and 14 of the Limitation Act are distinct in application and concentration but the purpose is almost the same. Section 5 of the Limitation Act is germane to the extension of period in appeal or application/revision or review of the judgment, or for leave to appeal, or any other application to which this Section is made applicable by or under any enactment and the aforesaid genre of proceedings may be admitted after the period of

limitation prescribed, provided the Court is satisfied that the appellant or applicant has brought to light sufficient cause for not preferring the appeal or application within the prescribed period of limitation. On the other hand, Section 14 of the Limitation Act pertains to the exclusion of time of proceeding bona fide in a Court without jurisdiction, and, in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, due to the defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Conclusion: i) It is onerous duty of the Court, including the Officer of the Appellate Court or any staff member of the Court to accept the presentation of the memo of appeal before admission and diligently examine the memo of appeal, and judgment and decree, including all supporting documents, to ensure that everything is in order, and, if there is any doubt in the mind of the concerned Court clerk/official with regard to jurisdiction, they should raise the objection(s) and bring it to the attention of the Court to resolve it?

ii) The parties cannot, by mutual consent, take away the jurisdiction vested in any Court of law, nor can they confer jurisdiction to any Court not vested in it by law.

iii) An inadvertent error or lapse on the part of Court may be reviewed in view of the renowned legal maxim "*actus curiae neminem gravabit*".

iv) The Court must examine what fault, if any, has been committed by the Court on account of which a litigant has been made to suffer; then the Court must consider whether the benefit of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Limitation Act 1908.

v) The scope and niceties of Sections 5 and 14 of the Limitation Act 1908 are distinct in application and concentration but the purpose is almost the same.

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17. **Supreme Court of Pakistan**
United Bank Limited (UBL) through its President and others v. Jamil Ahmed and others
Civil Petition No.2997 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2997_2021.pdf

Facts: The services of the respondent no. 01 were terminated by petitioner's management and being aggrieved the respondent no. 01 filed grievance petition in Labour Court which was allowed. The petitioner assailed the order of Labour Court before Full Bench of NIRC through appeal which was dismissed, thereafter, petitioners filed writ petition before High Court which was also dismissed. Hence, this CPLA.

Issues: i) Whether status of 'workman' or worker, or Manager, Officer depends on

nomenclature of the post?
ii) On whom burden of prove lies, if an employee asserts that he was working as worker or workman?
iii) Under what circumstances, appeal under section 59 of Industrial Relations Act, 2012 lies?
iv) What are powers of Full Bench of NIRC under IRA, 2012 while disposing of appeal?
v) What is right of appeal and what are duties of appellate court?
vi) Whether concurrent findings recorded by lower fora can be interfered with by High Court in Constitutional Jurisdiction?

Analysis: i) In order to adjudicate whether a person is performing his duties as a 'workman' or 'worker', or Manager, Officer and or duties of supervisory nature, the pith and substance of the adjudication predominantly depends on the nature of duties and not on the basis of the nomenclature of the post.
ii) In case the employee asserts that he was performing duties as workman and such contentions are opposed by the management, then in such eventuality the burden of proof lies upon the employee to substantiate that he was in fact performing the duties of a 'workman' and the mere nomenclature of the post does not affect his status of employment as worker or workman.
iii) Under Section 59 of the IRA, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission.
iv) The Full Bench may confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal. In addition to the above powers, the Full Bench of the NIRC may, on its own motion, at any time, call for the record of any case or proceedings under this Act in which a Bench within its jurisdiction has passed an order for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order in relation thereto as it thinks fit, provided that no order under this section shall be passed on its own motion revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard.
v) It is a well settled exposition of law that a right of appeal is a right of entering into a superior court and invoking its aid and interposition to redress the error of the forum below. It is essentially a continuation of the original proceedings as a vested and substantive right of the litigant. It is the duty of the Court and Tribunal to adhere to the applicable law in letter and spirit. It is the foremost duty of the appellate court to determine whether the oral and documentary evidence produced by the parties for and against during the trial fortifies and adds force to the weight of decision or not… It is not the domain or function of appellate court and/or High Court to re-weigh or interpret the evidence, but they can examine whether the impugned judgment or order attains the benchmark of an unflawed judgment;

and whether it is in consonance with the law and evidence and free from unjust and unfair errors apparent on the face of record.

vi) If the concurrent findings recorded by the lower fora are found to be in violation of law or based on flagrant and obvious defect floating on the surface of record, then it cannot be treated as being so sacrosanct or sanctified that it cannot be reversed by the High Court in the Constitutional jurisdiction vested in it by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as a corrective measure in order to satisfy and reassure whether the impugned decision is within the law or not and if it suffers any jurisdictional defect, in such set of circumstances, the High Court without being impressed or influenced by the fact that the matter reached the High Court under Constitutional jurisdiction in pursuit of the concurrent findings recorded below, can cure and rectify the defect.

Conclusion: i) The status of 'workman' or worker, or Manager, Officer depends on the nature of duties performed and not on the nomenclature of the post.

ii) If an employee asserts that he was working as worker or workman, burden of prove lies on employee.

iii) Under Section 59 of the IRA, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission.

iv) The Full Bench may confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal. Furthermore, NIRC may call for the record of any case or proceedings on its own motion under IRA, 2012.

v) Right of appeal is a right of entering into a superior court and invoking its aid and interposition to redress the error of the forum below which is a continuation of the original proceedings as a vested and substantive right of the litigant. It is the foremost duty of the appellate court to determine whether the oral and documentary evidence produced by the parties for and against during the trial fortifies and adds force to the weight of decision or not.

vi) If the concurrent findings recorded by the lower fora are found to be in violation of law or based on flagrant and obvious defect floating on the surface of record, the High Court without being impressed or influenced by the fact that the matter reached the High Court under Constitutional jurisdiction in pursuit of the concurrent findings recorded below, can cure and rectify the defect.

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18. **Lahore High Court**
Sarwar Masih v. Chairman, Punjab Labour Appellate Tribunal & others.
Writ Petition No.141 of 2017
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5572.pdf

Facts: The petitioner submitted an application for his reinstatement in service which was dismissed. He filed Grievance Petition before the Punjab Labour Court which was

dismissed against which he filed appeal before the Punjab Labour Appellate Court, Lahore but without any success as the same was dismissed; hence this petition.

Issues: i) When a person is confined in prison, whether he can only be served through the Superintendent of the prison concerned?
ii) Whether resort to substituted service can only be made when it has been established on record that the person concerned has refused to accept service of summons/notices issued by a forum?
iii) When an employee has been dismissed from service on account of his absence from duty for having been arrested in a criminal case, as and when he is released/acquitted, whether he is entitled for reinstatement in service?
iv) Whether without service of Show Cause Notice, any penultimate order can be passed?
v) Whether a person released on bail, prior to his conviction in a criminal case, can approach his department seeking reinstatement in service?

Analysis: i) It is well established by now that when a person is confined in prison, he can only be served through the Superintendent of the prison concerned. Insofar as the case in hand is concerned, though the learned Law Officer addressed the Court at reasonable length but was unable to give even half a reason for non-issuance of the Show Cause Notices to the petitioner through the Superintendent of the Jail where he was confined.
ii) Resort to substituted service can only be made when it has been established on record that the person concerned has refused to accept service of summons/notices issued by a forum. Though learned Law Officer has argued at length but has not been able to refer any document to show that upon refusal of the petitioner to accept notice issued to him, the competent authority decided to get him served with Show Cause Notice by way of substituted service in the shape of proclamation in newspaper.
iii) According to Rule 54 of the Fundamental Rules, when an employee has been dismissed from service on account of his absence from duty for having been arrested in a criminal case, as and when he is released/acquitted, he is entitled for reinstatement in service.
iv) The observation of the learned Labour Court that since the petitioner used to come to a court of law in afore-referred criminal case, he could conveniently inform the department about his arrest in the said case through his near and dear ones, present in the said court, being alien to the established principle of law that without service of Show Cause Notice, no penultimate order can be passed, carries little weight. Moreover, according to Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 a citizen has inalienable right to be proceeded in accordance with law and if any deviation is noted on the part of the competent authority, the same cannot be allowed to be let unnoticed by the judicial forums.
v) During arguments, learned Law Officer put much emphasis on the fact that as

the petitioner was not acquitted rather he was released from jail, under Section 249 Cr.P.C., the said release cannot be equated with acquittal, thus he was not entitled for his reinstatement in service. In this regard, I do not see eye-to-eye with the learned Law Officer for the reason that even a person released on bail, prior to his conviction in a criminal case, can approach his department seeking reinstatement in service.

Conclusion: i) When a person is confined in prison, he can only be served through the Superintendent of the prison concerned.
ii) Resort to substituted service can only be made when it has been established on record that the person concerned has refused to accept service of summons/notices issued by a forum.
iii) When an employee has been dismissed from service on account of his absence from duty for having been arrested in a criminal case, as and when he is released/acquitted, he is entitled for reinstatement in service.
iv) Without service of Show Cause Notice, no penultimate order can be passed.
v) A person released on bail, prior to his conviction in a criminal case, can approach his department seeking reinstatement in service.

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19. **Lahore High Court**
Abdul Sattar. v Additional District Judge and others
Writ Petition No.36355 of 2019.
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5642.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 passed by learned appellate court and trial court whereby his guardian petition as father being natural guardian after death of minor's mother under section 25 of the Guardian & Wards Act, 1890, for custody of minor has been dismissed.

Issue: Whether father being natural guardian is entitled to custody of female minor after death of minor's mother?

Analysis: The father being natural guardian after death of female minor's mother can better look after her interest and can take care of her as well as provide her education. Para 355 of the Muhammadan Law has expressly provided right of custody of male paternal relations in default of female relations and the father being natural guardian stands at top priority among male paternal relations.

Conclusion: Father being natural guardian is entitled to custody of female minor after death of minor's mother.

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20. **Lahore High Court**
Rehana Shafqat v Afira Butt and others
Civil Revision No.49064 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5631.pdf

Facts: The petitioner has filed Civil Revision under section 115 of C.P.C, against the decision of lower courts wherein the succession petition was accepted on the basis of special oath offered by the petitioner and accepted by the respondent.

Issue: Whether a decision rendered on the basis of special oath is appeal-able or not?

Analysis: The arrangement for disposal of suit/case as agreed by the parties was a sort of compromise, which was lawful and permissible; therefore, the same cannot be assailed through appeal. Moreover, it is the sweet will of the party to get decided the matter in terms of special oath. Therefore, the offer of special oath must be made voluntarily and accepted by the opposite party. It must not be a result of emotional behaviour or give rise to any void agreement .When a party offers for special oath, then it becomes binding upon him and he cannot resile from the same, and he has to face the consequences of the same.

Conclusion: A decision rendered on the basis of special oath is not appealable.

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21. **Lahore High Court**
Muhammad Nawaz and others v. Province of Punjab through Additional Collector and others.
Civil Revision No.176407 of 2018
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5635.pdf

Facts: Tersely, the petitioners instituted a suit for declaration, alleging therein that they may be declared owner in possession of the suit property and gift mutation and exchange mutation may be declared null and void, result of fraud, misrepresentation and result of connivance inter se the respondents and revenue officials. The suit was filed on 01.09.2001, however, the same was withdrawn on 29.01.2004 due to some technical defects with permission to file a fresh suit. Then, fresh suit was filed in the year 2006, which was also withdrawn on 30.11.2010 with permission to file a fresh suit. Again, the petitioners instituted suit on 07.04.2012. The respondents filed an application under Order VII, Rule 11, CPC, seeking rejection of the plaint being barred by law of limitation. The learned trial Court accepted the application and rejected the plaint. The petitioners being aggrieved preferred an appeal but the same was dismissed; hence, the instant revision petition.

Issues: i) Whether fresh plaint could be presented after rejection of plaint under Order VII Rule 11 CPC?

ii) What are the prerequisites to allow withdrawal of suit with permission to file a fresh suit?
iii) What are the eventualities where withdrawal of the suit could be allowed with permission to file a fresh suit?
iv) Whether defect in plaint could be remedied by allowing amendments, if so, what are its preconditions?
v) Whether withdrawal of suit with permission to file fresh suit, have the effect of setting aside the judgment and decree passed against the plaintiff?
vi) Whether withdrawal of suit with permission to file fresh suit gives fresh cause of action?
vii) When delay can be condoned under Section 5 of the Limitation Act, 1908?
viii) Whether court is bound to dismiss barred suit under section 3 of the Limitation Act, 1908 even limitation has not been set up as defense?
ix) Whether the Court has power to condone the delay in filing the suit?
x) Whether law of limitation is merely a technicality?

Analysis: i) Perusal of Rule 11 of Order VII, Code of Civil Procedure, 1908, divulges that it envisions four categories where the Court could reject a plaint and the first three are where the deficiencies in the plaint could be redressed. For instance, under clause (a) where the plaint is rejected on the ground that it does not disclose a cause of action, subject to law of limitation, a fresh plaint could be presented by overcoming the defect and disclosing the cause of action. Likewise, under clause (b) where the plaint is rejected on failure(s) of plaintiff to correct the valuation, again subject to law of limitation, the defect could be removed and a fresh plaint could be presented. In the same manner, under clause (c) if the plaint is rejected on failure of the plaintiff to supply the requisite stamp paper, subject to law of limitation, such defect could be remedied by supplying the court fees. However, where the plaint under clause (d) of Rule 11 is rejected on the ground that the suit is barred by any law, the filing of fresh plaint is not envisaged unless the findings declaring the suit to be barred by any law are reversed and, therefore, the withdrawal of the suit could not be allowed with the permission to file a fresh. It would, of course, be unlawful to revive a dead cause without bringing back the suit to life.

ii) In the like manner, Order XXIII, Rule 1, C.P.C., which allows the plaintiff to withdraw his suit or abandon part of his claim, empowers the Court to allow such withdrawal with permission to file a fresh suit. However, such permission is to be granted by the Court after satisfying itself and recording reasons that unless such permission is allowed, the suit would fail by reason of some formal defect. The Court can also allow such withdrawal with permission to file a fresh suit in case where the Court is of the view that there are other sufficient grounds for allowing plaintiff to withdraw his suit with the permission to file a fresh suit.

iii) A case law study shows that the suit may be allowed to be withdrawn in a case where the plaintiff fails to implead necessary party or where the suit as framed does not lie or the suit would fail on account of misjoinder of parties or causes of

action or where the material document is not stamped or where prayer for necessary relief has been omitted or where the suit has been erroneously valued and cases of like nature.

iv) It is always to be kept in mind that where such defect could be remedied by allowing amendments, the Court should liberally exercise such powers but within the parameters prescribed by Order VI, Rule 17, C.P.C. Besides while exercising powers under this provision the Court must identify the defect and record its satisfaction that the defect is formal and does not go to the root of the case.

v) It is also to be kept in mind that such withdrawal would not automatically set-aside the judgment and decree which has come against the plaintiff unless such judgment and decree is set-aside by the Court after due application of mind.

vi) If the permission is granted for filing a fresh suit under Order XXIII, Rule 1, C.P.C., then, pursuant to Order XXIII, Rule 2, the plaintiff is bound by the law of limitation in the same manner as if the first suit had not been filed, therefore, no fresh cause of action would accrue from the date when such permission was granted by the Court.

vii) Cases falling in the first category; Section 5 of the Limitation Act, 1908 is applicable which vests the Court with vast discretion of condoning delay in cases where the Court is satisfied that the application seeking condonation of delay discloses "sufficient cause" by accounting for each day of delay occasioned in filing the application, appeal, review or revision.

viii) On the other hand, the Courts on the original side while trying a suit as required under section 3 of the Limitation Act, 1908 are bound to dismiss the suit if it is found to be barred by time notwithstanding that limitation has not been set up as defense. (…) In fact, the language used in Section 3 of the Act ibid is mandatory in nature and imposes a duty upon the Court to dismiss the suit instituted after the expiry of period provided unless the plaintiff seeks exclusion of time by pleading in the plaint one of the grounds provided in Sections 4 to 25 of the Limitation Act. (…) In cases where limitation is not set up in defense and consequently a waiver is pleaded, the Courts notwithstanding such waiver are bound to decide the question of limitation in accordance with law

ix) The Court has no power to condone the delay in filing the suit but could exclude time, the concession whereof is provided in sections 4 to 25 of the Limitation Act, 1908, only in cases where the plaintiff has set up in the plaint one of such grounds available in the Act such as disability, minority, insanity, proceedings bona fide before a Court without jurisdiction etc. and not otherwise.

x) It has been held in number of judgments by Apex Court of the country that the Law of Limitation is not a mere technicality and that once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

Conclusions: i) Where plaint is rejected under Rule 11 of Order VII clause (a) to (c), a fresh plaint could be presented by overcoming the defects mentioned therein but where the plaint is rejected under clause (d) of Rule 11 on the ground that the suit is

barred by any law, the filing of fresh plaint is not envisaged unless the findings declaring the suit to be barred by any law are reversed.

ii) Order XXIII, Rule 1, C.P.C empowers the Court to allow withdrawal of suit with permission to file a fresh suit, satisfying itself and recording reasons that unless such permission is allowed, the suit would fail by reason of some formal defect. The Court can also allow such withdrawal on other sufficient grounds as well.

iii) See above

iv) Yes, defect in plaint could be remedied by allowing amendments as prescribed by Order VI, Rule 17, C.P.C, however, before exercising such powers, Court must identify the defect and record its satisfaction that the defect is formal and does not go to the root of the case.

v) Withdrawal of suit with permission to file a fresh would not automatically set-aside the judgment and decree which has come against the plaintiff unless the same is set-aside by the Court after due application of mind.

vi) If the permission is granted for filing a fresh suit, then pursuant to Order XXIII, Rule 2, the plaintiff is bound by the law of limitation in the same manner as if the first suit had not been filed, therefore, no fresh cause of action would accrue from the date when such permission was granted by the Court.

vii) Delay under Section 5 of the Limitation Act, 1908 can be condoned where the Court is satisfied that the application seeking condonation of delay discloses "sufficient cause" by accounting for each day of delay occasioned in filing the application, appeal, review or revision.

viii) Courts on the original side while trying a suit as required under section 3 of the Limitation Act, 1908 are bound to dismiss the suit if it is found to be barred by time notwithstanding that limitation has not been set up as defense.

ix) The Court has no power to condone the delay in filing the suit but could exclude time, the concession whereof is provided in sections 4 to 25 of the Limitation Act, 1908.

x) Law of Limitation is not a mere technicality and that once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

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22. **Lahore High Court**
Muhammad Sarwar alias Babar v. Muhammad Yasin (deceased) through L.Rs. & others
Civil Revision No. 66655 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5624.pdf

Facts: The petitioner instituted suit challenging the gift mutation in favour of respondent No.2 and subsequent mutation in favour of respondents No.3 and 4 as well as agreement to sell with the defendant No.5. The respondent No.5 instituted suit for possession through specific performance. The trial Court decreed the suit of the petitioner/plaintiff in terms of impugned judgment and decree whereas the suit for

specific performance etc. filed by the respondent No.5 was decreed as prayed for. The petitioner preferred two appeals against the said consolidated judgment and decree. However, the appellate Court dismissed both the appeals; hence, the instant revision petition.

Issues: i) Which steps are necessary to be performed by the purchaser after cut-off date to show bona fide and readiness to perform his part of agreement?
ii) Whether the concurrent findings, on facts can be disturbed in exercise of revisional jurisdiction?

Analysis: i) Moreover, after cut-off date, the petitioner did not send any written notice to the deceased respondent Muhammad Yasin showing his readiness to pay the remaining amount and asking him to perform his part of the agreement. Furthermore, the suit was filed by him after nine month of the cut-off date but he did not deposit the remaining sale consideration with the Court by moving an application in this regard, which was necessary to show his bona fide and readiness to perform his part of agreement.
ii) Pursuant to above, both the learned Courts have evaluated evidence in true perspective and have reached to a just conclusion, concurrently; as such the concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of revisional jurisdiction (…)'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and conclusion drawn is contrary to law.'(…)'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non- reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'

Conclusions: i) After the cut-off date, it is necessary for the purchaser to send written notice to the other party showing his readiness to pay the remaining amount and asking him to perform his part of the agreement and deposit the remaining sale consideration with the Court.
ii) Concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of revisional jurisdiction.

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23. **Lahore High Court**
Ghulam Hussain v. Province of Punjab, etc.
Civil Revision No.69554 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5645.pdf

Facts: The petitioner instituted a suit for specific performance of agreement to sell along with permanent injunction regarding the suit property against the respondents. One of the respondents instituted a suit for declaration, recovery of compensation and possession against the petitioner and others. Both the suits were consolidated and dismissed by the trial court. Separate appeals against the said consolidated judgment and decree were preferred. The appeal preferred by the petitioner was dismissed, hence, the instant revision petition.

Issues: i) Whether limitation is a mere technicality or the law of limitation requires mandatory application?
ii) If the question of law of limitation is not raised by opposite party to a lis, whether such question may be considered by the Courts at appellate or revisional stage?

Analysis: i) The object of the law of limitation and the law itself, prescribing time constraints for each cause or case or for seeking any relief or remedy, is that if no time constraints and limits are prescribed for pursuing a cause of action and for seeking reliefs/remedies relating to such cause of action, and a person is allowed to sue for the redressal of his grievance within an infinite and unlimited time period, it shall adversely affect the disciplined and structured judicial process and mechanism of the State, which is sine qua non for any State to perform its functions within the parameters of the Constitution and the rule of law. And this shows the Imperative adherence to and the mandatory application of such law by nature and is held to mean and serve as a major deterrent against the factors and the elements which would affect peace, tranquility and due order of the State and society.
ii)The law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law; as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire, which would be the misuse of the judicial process and may also cause exploitation of the legal system and the society as a whole. Therefore, from the mandate of section 3 of the Limitation Act, it is obligatory upon the court to dismiss the cause/lis which is barred by time even though limitation has not been set out as a defence by the other contesting party(s).

Conclusion: i) The limitation is not a technicality or a hyper technicality and once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

ii) The question of law of limitation, even if not taken or raised by the opposite party, could be considered by the Courts even at appellate and revisional stage.

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24. **Lahore High Court**
The State v. Muhammad Rafique
Capital Sentence Reference No.13-T of 2020
Muhammad Rafique v. The State
Crl. Appeal No.67706-J of 2020
Ms. Justice Aalia Neelum, Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5692.pdf

Facts: The appellant has assailed his conviction and sentence recorded by the learned Additional Sessions Judge vide judgment in case FIR registered under section 376 (iii) PPC, whereby the learned trial court convicted the appellant and sentenced to Death, with the direction to pay fine and in case of default thereof, to undergo 06-months S.I further. The appellant was also directed to pay compensation and, in case of its non-payment, to undergo 06-months S.I further. Feeling aggrieved by the judgment of the trial court, the appellant has assailed his conviction by filing the instant jail appeal. The trial court also referred Capital Sentence Reference for confirmation of the death sentence awarded to the appellant.

Issues: i) Whether rape is an offence that is violative of the fundamental right of every person?
ii) Whether the improved defense plea of the accused in the statement u/s 342 Cr.P.C., without supporting evidence can be relied upon?
iii) Whether the evidence of prosecution can be brushed aside on the flimsy plea of the accused?
iv) Whether the accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence?

Analysis: i) Rape is an offence that is violative of the fundamental right of every person. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to the victim's honor and offends her self-esteem and dignity, and it degrades and humiliates the victim, where the victim is a helpless, innocent child or a minor. It leaves behind a traumatic experience.
ii) The accused improved its defense plea in the statement u/s 342 Cr.P.C., to the extent, “That offer was flatly refused by me and I about to leave when she attracted me and thrust her finger into the vagina of minor after that victim cried and the blood started oozing.” The accused, to substantiate his plea put the suggestion to the witness, the subscriber of FIR, that mother of infant Zunaira had injured her by inserting her finger in her vagina. The said witness denied the suggestions and negated the defence plea during cross-examination. It is pertinent to note that the accused brought no evidence supporting the improved stand. Resultantly, the testimony of the complainant, and the eyewitness, prevails over

the bald averment of the accused under Section 342 Cr.P.C.
iii) Given the settled legal proposition, the testimony of the complainant, and the eye witness, is sufficient to bring home the guilt of the accused, which, in the instant case, finds corroboration from the medical evidence. As such, the learned trial Court rightly convicted the appellant by holding that the prosecution had succeeded in establishing its case beyond reasonable doubt.
iv) Given the above circumstances, we have concluded that the prosecution has proven its case against the appellant beyond any doubt. However, the factors that have persuaded us not to uphold the capital sentence of the appellant are the negative DNA report and the appellant's age at the time of the incident. As the appellant has been convicted and sentenced to death, the same can be considered a mitigating circumstance in such an eventuality. Based on the grounds discussed hereinabove, we believe that mitigating circumstances exist about the quantum of the appellant's sentence. Therefore, we believe the death sentence awarded to the appellant is quite harsh. The well-recognized principle is that the accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence.

Conclusion: i) Rape is an offence that is violative of the fundamental right of every person.
ii) The improved defense plea of the accused in the statement u/s 342 Cr.P.C., without supporting evidence cannot be relied upon.
iii) The evidence of prosecution cannot be brushed aside on the flimsy plea of the accused.
iv) The accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence.

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25. **Lahore High Court**
Sheikh Siddique Ahmed v. Chairman Evacuee Trust Property Board, etc.
W.P.No.3344-R of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC5679.pdf

Facts: Chairman Evacuee Trust Property Board, Government of Punjab, Lahore decided a reference under sections 8 and 10 of the Evacuee Trust Properties (Management and Disposal) Act, 1975, whereby the Deputy Administrator, Evacuee Trust Property Board was directed to take over the management and control of suit property and to handle it in accordance with the Act ibid. The said order is impugned in instant petition, which is to be decided alongwith connected Writ Petition challenging the proceedings initiated by the Chairman, Evacuee Trust Property Board on the reference filed by one of respondents.

Issues: i) Whether the constitutional jurisdiction can be exercised despite availability of alternate remedy?
ii) What is legal status of an office memorandum?

iii) Whether a reference under Section 10 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 involving intricacy of facts can be decided by Chairman Evacuee Trust Property Board in a summary manner?

Analysis: i) Law holds that constitutional jurisdiction cannot be curtailed or abridged though subservient statutes.
ii) An office memorandum is a special order of the Government released by a proper authority stating the government's policy or decision. Thus, an office memorandum has the force of law.
iii) Section 10 (3) of the Evacuee Trust Properties (Management and Disposal) Act, 1975 guarantees the providing of reasonable opportunity of hearing to the affected person. Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 safeguards such right of the affected ones. Section 21 of the Act ibid bestows power of a civil court upon the Federal Government or any person authorized by it, the Chairman Evacuee Trust Property Board and every Officer appointed under the Act ibid for the purposes of making any inquiry or hearing in appeal or revision under the Act ibid for the matters mentioned therein.

Conclusion: i) The constitutional jurisdiction can be exercised despite availability of alternate remedy if the proceedings or order is patently illegal or perverse as well as where the alternate remedy is not efficacious or adequate.
ii) An office memorandum is recognized as an order from the government or a circular released by the executive branch having the force of law.
iii) If the reference under Section 10 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 before the Chairman Evacuee Trust Property Board involves intricacy of facts, it cannot be decided in a summary and slipshod manner.

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26. **Lahore High Court**
Province of Punjab through Collector, District Sialkot etc v. Mst. Sughran Bibi (deceased) etc.
C.R.No.115655/2017
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC5726.pdf

Facts: Through this civil revision the petitioners have challenged the validity of the judgment & decree passed by the learned Civil Judge who decreed the suit for declaration with possession and mandatory injunction filed by the respondents and also assailed the judgment & decree passed by the learned Additional District Judge who dismissed the appeal of the petitioners.

Issues: i) Whether it is mandatory requirement of law that documents relied upon should be produced in the evidence by party in its own statement?
ii) Whether in the absence of a necessary party, effective decree or order can be passed?
iii) Whether treatment of evacuee property could only be assailed through

proceedings before the Custodian of Evacuee Property?
iv)Whether High Court has jurisdiction to interfere in the perverse concurrent judgments & decrees of the lower fora?
v) Whether it is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul is being played with the state assets.

Analysis: i) It is mandatory requirement of law that documents relied upon should be produced in the evidence by party in its own statement so that the adverse party may have a fair opportunity to cross-examine the same, as such the documents produced by the counsel lack intrinsic value and such documents can validly be excluded from consideration...
ii) In the absence of a necessary party, no effective decree or order can be passed and even if passed that would have no binding force qua the party who was not party to the lis...
iii) It is settled law that where a property, rightly or wrongly, treated to be an evacuee property, such treatment of property could only be assailed through proceedings before the Custodian of Evacuee Property...
iv) High Court, under Section 115 C.P.C, has jurisdiction to interfere in the perverse concurrent judgments & decrees of the lower fora.
v) It is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul is being played with the state assets. An extraordinary obligation is placed upon the courts to keep abreast itself with law and facts of the case and when certain material facts unearthed before it then the matter should be decided as per law even without being influenced by respective pleadings of the parties…

Conclusion: i) Yes, it is mandatory requirement of law that documents relied upon should be produced in the evidence by party in its own statement.
ii) Yes, in the absence of a necessary party, effective decree or order cannot be passed.
iii) Yes, treatment of evacuee property could only be assailed through proceedings before the Custodian of Evacuee Property.
iv) Yes, High Court has jurisdiction under Section 115 C.P.C to interfere in the perverse concurrent judgments & decrees of the lower fora.
v) Yes, it is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul is being played with the state assets.

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27. **Lahore High Court**
Gulzar Ahmad (deceased) through his legal heirs v. Rab Nawaz etc.
Civil Revision No.60420 of 2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC5745.pdf

Facts: Through these civil revisions, the petitioners have challenged the validity of the judgment & decree passed by the Civil Judge who decreed the suit for declaration filed by the respondents No.1 to 6 and also assailed the judgment & decree passed by the learned Additional District Judge who dismissed the appeal of the petitioners.

Issues: i) Whether principles of Quran and Sunnah are admitted as supreme law of Pakistan?
ii) Whether principles of Quran and Sunnah are mandatorily and manifestly applicable upon Muslims?
iii) Whether limitation runs against the inheritance matters as well as against any patently void order entry?

Analysis: i) Even as per Article 227 of the Constitution of the Islamic Republic of Pakistan, 1973, the principles of Quran and Sunnah are admitted as supreme law of this country and all provisions, rules, regulations are to be legislated and framed within the precincts of Islamic principles.
ii) As the predecessor-in-interest of the parties of the lis as well as the parties themselves are Muslims and principles of Quran and Sunnah are mandatorily and manifestly applicable upon them as well. The shares of each and every Muslim inheritor have conclusively been prescribed in Holy Quran. Allah Almighty has ordained the Muslims to decide their disputes as per the principles of the Holy Quran… The rights or shares of each and every Muslim heirs in the estate of his/her deceased propositus is absolutely, conclusively and finally described/determined in the Holy Quran, which shares are definite in nature. In this regard, it is expedient to take guidance from the Holy Quran, particularly from Surah tul Nisa Ayat Nos.7 to 11 (English translation whereof by Marmaduke Pickthall and Urdu translation by Molana Fateh Muhammad Jalandari)…
iii) As regard the objection of the petitioners/defendants that the suit is time barred. Admittedly, the moment deceased closed his eyes, all his legal heirs according to the principles of Quran and Shariah became absolute owner to the extent of their respective shares in estate of the deceased and without resorting to the legal course of independent transaction, the said ownership cannot be taken away by means of any unauthorized entry in the revenue record and if any entry is made in clandestine manner with collusiveness of the revenue staff, such entry is devoid of any legality and creating any valid right. The main object of registration and sanctioning of mutation of inheritance is mere formality to update the official record whereas all legal heirs of a deceased become absolute owners of the property to the extent of their respective share until and unless they themselves voluntarily and legally further alienate their said share/right and the said legal heirs by operation of law become joint owners in the estate having constructive possession over their share and no limitation runs against the inheritance matters as well as against any patently void order entry.

Conclusion: i) As per Article 227 of the Constitution of the Islamic Republic of Pakistan,

1973, the principles of Quran and Sunnah are admitted as supreme law of Pakistan.
ii) The principles of Quran and Sunnah are mandatorily and manifestly applicable upon Muslims.
iii) No limitation runs against the inheritance matters as well as against any patently void order entry.

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28. **Lahore High Court**
Muhammad Tariq v. The Government of the Punjab through Secretary Finance, Lahore & others
Writ Petition No.174 of 2022/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC5763.pdf

Facts: The petitioner assailed *vires* of correspondence issued by respondents No.3 & 1, whereby deficiency in qualifying service of petitioner was not condoned and petitioner was disentitled for grant of pension.

Issue: Whether a civil servant who is compulsorily retired is entitled to grant of pension even if his length of service is less than 20 years?

Analysis: Under Rule 3.1 of the Pension Rules, pensions are classified into four categories catering for different situations and circumstances… The case of petitioner falls in the category (d) i.e. Retiring Pension, which is dealt with under Rule 3.5… The [said] Rule does not prescribe any minimum or maximum length of service for grant of retiring pension. Furthermore, Rule 2.12(2)(a) of the Pension Rules provides that a deficiency of 06-months or less in qualifying service of a government servant shall be deemed to have been condoned… Needless to say that compulsory retirement differs from dismissal or removal from service as it does not stipulate penal consequences inasmuch as a person retired compulsorily is entitled to pension and other retiral benefits proportionate to the period of service standing to his credit.

Conclusion: A civil servant who is compulsorily retired is entitled to grant of pension even if his length of service is less than 20 years.

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29. **Lahore High Court**
Ijaz Hussain alias Jajay Shah v. The State and another
Criminal Appeal No.214/2021
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC5785.pdf

Facts: The appellant filed appeal against the judgment passed by the trial court in case FIR for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 whereby he was convicted under section 9(c) of the Act and sentenced to rigorous imprisonment for four years and six months with a fine of Rs.20,000/-.

Issue: What is the primary objective of drawing the recovery memorandum on the spot, with the signatures of witnesses?

Analysis: A recovery memorandum is the fundamental document in cases involving narcotics. This document must be executed in the presence of two or more credible witnesses, who are then required to endorse it with their signatures. The primary objective of drawing the recovery memorandum on the spot, with the signatures of such witnesses, is to ensure that the recovery process is carried out transparently and with integrity, reducing the possibility of false allegations or evidence tampering. Once the recovery memorandum is prepared, the next step for the prosecution is to produce the same before the trial court, to prove the recovery of the material and the memo's preparation through the scribe and the marginal witnesses.

Conclusion: The primary objective of drawing the recovery memorandum on the spot, with the signatures of witnesses, is to ensure that the recovery process is carried out transparently and with integrity, reducing the possibility of false allegations or evidence tampering.

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30. **Lahore High Court**
Abdul Sattar v. The State and another
Crl. Misc. No.2439/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC5667.pdf

Facts: According to the prosecution, four girls while studying at Government Sadiq College, stayed at the Petitioner's private hostel. The water tank of which on the roof was constantly leaking and due to which building was damaged and roof caved in, killing two of the girls and injuring two others. The Complainant, the father of one of the deceased girls, lodged FIR under section 302 of the PPC. During the investigation, the police substituted section 302 PPC with section 322 PPC. The Petitioner seeks pre-arrest bail in that case through this application.

Issues: i) Whether mens rea is condition precedent to attract the provisions of section 321 PPC?
ii) What is definition of word "unlawful act"?
iii) When omission to perform a particular act becomes an offence?
iv) What is the "but for" test?
v) What are the requirements to prove the charge of provisions of Section 321 PPC?
vi) Whether an accused is entitled to bail straightaway as of right in a case under section 322 PPC?
vii) Whether accused of bailable offence can be arrested?
viii) Whether accused is entitled to bail in hurt cases being punishable only with Arsh or Daman or is there any exception to it?

ix) Whether the considerations for granting pre-arrest and post-arrest bail are different?

x) Whether bail can be granted in offences not falling within the prohibitory clause as a rule and refusal is an exception?

xi) Whether the offence under section 322 PPC falls within the prohibitory clause?

Analysis: i) Analysis of section 321 PPC would show that this provision applies when a person (a) commits an unlawful act, (b) without any intention to cause the death of, or cause harm to any person, and (c) the said act becomes a cause for the death of another person. Clearly, mens rea is not the condition precedent to attract this section. The legislature has made actus reus culpable.

ii) The Pakistan Penal Code does not define "unlawful act", so we must have recourse to the dictionary meaning. According to Black's Law Dictionary, it connotes "conduct that is not authorized by law; a violation of a civil or criminal law".

iii) Albeit an infraction might be committed by omission, this does not imply that everyone is under a duty to act. The courts have identified several categories in which a duty to act arises. There may be some overlap, but we can classify recognized duties according to their recognized sources as follows: (a) duties arising from statute (i.e. where it expressly states that failure to perform a particular duty imposed by it constitutes an offence), (b) duties arising from contract, (c) duties based on a relationship, (d) duties arising from the assumption of responsibility, and (e) duties arising where accused has created a danger.

iv) In other words, it must demonstrate that the incident would not have happened but for the accused's actions. (This is also known as the "but for" test).

v) Section 321 PPC must be interpreted according to the principles discussed above. It makes a person legally accountable not only for engaging in an illegal act that results in the death of another person but also for failing to take measures within his power to prevent such an event from happening if he owes a duty of care. In order to succeed, the prosecution must establish a causal relationship between the accused's conduct (or omission) and the incident resulting in a person's death. In other words, it must demonstrate that the incident would not have happened but for the accused's actions. (This is also known as the "but for" test). Second, the prosecution must establish legal causation, which is closely connected to the notions of responsibility and culpability.

vi) The principle that emerges from the above discussion is that the offence of Qatl-bis-sabab being non-bailable, an accused cannot seek bail as of right. The court has to decide every bail application judiciously considering its facts, the nature of allegations and the evidence available on record, and the principles regulating refusal or grant of pre- and post-arrest bail.

vii) The Full Bench stated that even if the offence is bailable, an accused person can be arrested during the investigation phase, but he is entitled to be admitted to bail as of right. It held that the arrest of an accused person for investigation cannot

be equated with the punishment of a prison sentence, which may be imposed on him upon his conviction after the trial.

viii) when considering a post-arrest bail, the court should treat hurt cases punishable only by Arsh or Daman differently from those cases where the offence attracts the optional additional sentence of imprisonment as Ta'zir because the accused "is a previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of honour" as mentioned in subsection (2) of section 337-N PPC. The court may legitimately refuse bail to an accused person falling in the second category, taking into account the specific circumstances of the case.

ix) The considerations for granting pre-arrest and post-arrest bail are different.

x) Regarding post-arrest bail, section 497 Cr.P.C. outlines the circumstances when a court may admit an accused to bail in cases involving non-bailable offences. Furthermore, in Tariq Bashir and others v. The State (PLD 1995 SC 34) and a chain of subsequent decisions, the Supreme Court has ruled that where an offence does not fall under the prohibitory clause, accepting bail is a rule and the rejection is an exception.

xi) The offence under section 322 PPC does not fall within the prohibitory clause since its maximum punishment is Diyat.

Conclusions: i) Mens rea is not the condition precedent to attract provisions of section 321 PPC, however, the legislature has made actus reus culpable.

ii) The word "unlawful act", has not been defined in PPC. According to Black's Law Dictionary, it connotes "conduct that is not authorized by law; a violation of a civil or criminal law".

iii) The categories in which a duty to act arises are: (a) duties arising from statute (b) duties arising from contract, (c) duties based on a relationship, (d) duties arising from the assumption of responsibility, and (e) duties arising where accused has created a danger.

iv) "but for" test demonstrate that the incident would not have happened but for the accused's actions.

v) In order to prove charge under section 321 PPC the prosecution must establish a causal relationship between the accused's conduct (or omission) and the incident resulting in a person's death. Second, the prosecution must establish legal causation, which is closely connected to the notions of responsibility and culpability.

vi) Offence of Qatl-bis-sabab u/s 321 PPC being non-bailable, an accused cannot seek bail as of right.

vii) An accused person can be arrested during the investigation phase in bailable offence, but he is entitled to be admitted to bail as of right.

viii) When considering a post-arrest bail, the court should treat hurt cases punishable only by Arsh or Daman, however the court may refuse bail to an accused person falling under subsection (2) of section 337-N PPC.

ix) The considerations for granting pre-arrest and post-arrest bail are different.

x) When an offence does not fall under the prohibitory clause, accepting bail is a rule and the rejection is an exception.
xi) The offence under section 322 PPC does not fall within the prohibitory clause since its maximum punishment is Diyat.

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31. **Lahore High Court,**
Rizwan Ali Sayal v. Federation of Pakistan and others
Writ Petition No. 1938 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5476.pdf

Facts: Through this Constitutional petition, the Petitioner seeks a writ of *quo warranto* under Article 199(1)(b)(ii) of the Constitution of Islamic Republic of Pakistan thereby challenging the appointment of one of the Respondents as Member Judicial, Appellate Tribunal Inland Revenue.

Issues: i) Whether an acquittal on basis of a compromise would be honorable one, if so, what would be consequent impact thereof?
ii) Whether Section 130(3) of the Income Tax Ordinance, 2001 provides any condition relating to character verification for appointment of a Judicial Member of Income Tax Appellate Tribunal?
iii) Whether a writ of *"quo warranto"* should be allowed in case where a candidate's unchallenged qualifications were thoroughly examined at time of his appointment?
iv) Whether the office of Member Judicial, Appellate Tribunal Inland Revenue is a public office?

Analysis: i) Once a person is acquitted by trial court, said person would stand shorn of stigma of any allegation and he would be deemed as innocent as that he had not committed any crime. Order of acquittal of an accused shall erase, efface, obliterate and wash away his alleged or even already adjudged guilt in the matter.

ii) For appointment as Judicial Member of Income Tax Appellate Tribunal, two categories of persons have been provided under Section 130(3) of the Income Tax Ordinance, 2001, one who has exercised powers of District Judge and the other who has been an Advocate of High Court, and both categories of persons are required to fulfill only one common qualification i.e. they should be qualified to be a Judge of the High Court.
iii) Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 reveals that, for the purpose of maintaining a writ of *quo warranto*, the petitioner must satisfy the court, inter alia, that the office in question is a public office and is held by a usurper without legal authority. A Member Judicial Appellate Tribunal Inland Revenue would be lawfully occupying the public office if he is appointed after fulfilling all codal formalities and keeping in view Section 130(3) of the Income Tax Ordinance, 2001 prescribing eligibility criteria of a candidate.
iv) The term Public Office has not been defined under Article 260 of the

Constitution of Islamic Republic of Pakistan, 1973, but generally it refers to any person working in the Public Sector, whether in Parliamentary, Government or Municipal Institutions. Usually, the offices created under the Constitution or specific statutes are deemed to be public offices. A Member Judicial of Appellate Tribunal Inland Revenue is appointed u/s 130(3) of the Income Tax Ordinance, 2001 read with the Appointment of Income Tax Appellate Tribunal Member's Rules, 1998. The office of Member Judicial, Appellate Tribunal Inland Revenue is created by the State and the statute. Moreover, the duties attached to said office are of public nature.

Conclusion: i) All the acquittals including acquittal on basis of compromise are honorable for the reason that the prosecution does not prove such cases against the accused on the strength of evidence and an acquittal in outcome of compromise must entail upon all consequences of pure acquittal.
ii) Section 130 (3) of the Income Tax Ordinance, 2001 does not provide any conditions relating to character verification for appointment of a Judicial Member of Income Tax Appellate Tribunal.
iii) A writ of *"quo warranto"* should not be allowed when a candidate's unchallenged qualifications were thoroughly examined at the time of his appointment.
iv) The office of Member Judicial Appellate Tribunal Inland Revenue by all intents and purpose is a public office.

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32. **Lahore High Court**
Khushdil Khan Malik v. Federation of Pakistan and others
W.P. No. 3542/2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5792.pdf

Facts: The Petitioner filed petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking a direction to Respondents No.1 to 3 to consider the recommendations/citations of the Petitioner as made by the Respondent No.5, for conferment of Civil Award of "Sitara-i-Imtiaz" upon the Petitioner by the President of Pakistan.

Issue: Whether mere recommendation of the name of a person for Civil Award, creates any fundamental right, in favour of the said person for conferment of such award?

Analysis: If Article 259(2) of the *"Constitution"* and provisions of Section 3 of the [Decorations Act, 1975] are put in juxta-position, it would be clarified that the President can only award the title, honour or decoration on any citizen in recognition of gallantry (awards in relation to *Shuja'at*), academic distinction (awards in the order of *Imtiaz*), sports, nursing, human rights and public service (awards in the order of *Imtiaz*) and the power to withdraw, forfeit or annul a title or decoration also vests with the President on whose personal approval, the title or decoration shall be restored if once withdrawn, forfeited or annulled. There is a

complete mechanism for conferment of the Awards and after adopting all the procedural steps, the matter has been referred by the Committee to the President for conferment of the Award, therefore, the contention raised by the Petitioner that the Committee has no authority to confer the Award on any citizen of Pakistan has no force. Merely nominating name of the Petitioner by his parent Department to the relevant Division, does not create any legal/vested or fundamental right in his favour.

Conclusion: Mere recommendation of the name of a person for Civil Award, does not create any fundamental right, in favour of the said person for conferment of such award.

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33. **Lahore High Court**
M/s Nordex Singapore Equipment Limited v. Federal Board of Revenue, CIR and FFC Energy Ltd.
Writ Petition No.420 of 2014
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5802.pdf

Facts: Through this writ petition under article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner is seeking direction to the respondents to declare that being non-resident Company, it is not liable to tax deduction under Section 152 Ordinance, 2001; that a direction be issued to the Respondent No.3 to make payment to the petitioner without deduction of tax; that the petitioner is seeking exemption from deduction of tax in terms of Section 152(7)(a) of the Ordinance, 2001.

Issues: i) What is status of a non-speaking order?
ii) Whether availability of alternative remedy bars the jurisdiction of High Court to entertain writ petition and grant relief to the aggrieved party?

Analysis: i) It also reveals from the impugned order that the Respondent No.2 has neither considered the version of the "Petitioner" nor provided any solid grounds or mentioned the relevant provision of law, thus, passed a non-speaking order which is not sustainable in the eye of law i.e. Sections 206-A and 152 of the "Ordinance"… Similarly, the Courts in various judgments, has directed several authorities to adhere to the above-mentioned principle while passing a speaking order with reasons and after keeping in view the facts and circumstances of the case, applicable law as well as precedents, if available.
ii) It has been held in the case of "The Murree Brewery Co. Ltd. versus Pakistan through the Secretary to Government of Pakistan Works Division" (PLD 1972 SC 279) that "the rule that the High Court will not entertain a writ petition when other appropriate remedy is yet available, is not a rule of barring jurisdiction, but a rule by which the Court regulates its jurisdiction. One of the well-recognized exceptions to the general rule is a case where an order is attacked on the ground that it was wholly without authority. Where a statutory functionary acts mala fide or in a partial, unjust and oppressive manner, the High Court, in the exercise of its

writ jurisdiction, has power to grant relief to the aggrieved party".

Conclusion: i) A non-speaking order is not sustainable in the eye of law.
ii) Availability of alternative remedy does not bar the jurisdiction of High Court to entertain writ petition and grant relief to the aggrieved party but this general rule regulates the jurisdiction of High Court.

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34. **Lahore High Court**
Muhammad Javed Shafi, etc. v. National Bank of Pakistan
RFA No. 30994 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5775.pdf

Facts: This Regular First Appeal, under section 22 of the Financial Institutions (Recovery of Finances) Ordinance 2001, is directed against the judgment and decree, whereby learned Single Judge in chambers, exercising jurisdiction under the Ordinance, 2001, decreed the claim of respondent Financial Institution against the appellants, jointly and severally, alongwith costs of funds in terms of Section 3 of the Ordinance, 2001 and costs of the suit.

Issues: i) What is the effect of not appending current account statement with application for leave to defend?
ii) Whether filing of suit by customer and grant of unconditional leave to defend to Financial Institution would entitle appellants/customers for grant of leave to defend in suit by Financial Institution as a rule of thumb?

Analysis: i) …Failure to append current account statement with application for leave to defend raises presumption of withholding of material information, discrediting claim for grant of unconditional leave to defend.
ii) …Mere institution of suit by the customer, seeking various declarations, and grant of unconditional leave to defend to the Financial Institution would not *per se* entitle appellants for grant of leave to defend in suit by Financial Institution, as rule of the thumb.

Conclusion: i) It raises presumption of withholding of material information, discrediting claim for grant of unconditional leave to defend.
ii) No it would not *per se* entitle appellants/customers for grant of leave to defend in suit by Financial Institution, as rule of the thumb.

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35. **Lahore High Court**
Muhammad Aslam v. The State etc.
Criminal Revision No.255 of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5661.pdf

Facts: The petitioner through revision petition has questioned the order passed by the learned Additional Sessions Judge, whereby application filed by the petitioner for

recalling of order requiring the accused to submit surety bond under section 91 of Cr.P.C for his future appearance in the court was dismissed.

Issues: i) Whether applicability of section 91 of the Code is limited to trial in private complaints only or it is applicable to State cases as well?
ii) Whether it is necessary to grant bail to an accused before requiring or after taking the surety bond for appearance from him under section 91 of the Cr.P.C?
iii) Whether the court can require accused to execute a bond with or without sureties for his future appearance upon summoning under section 204 of the Code?
iv)What is the purpose of issuance of warrant, bailable or non-bailable?
v) Whether the Court can commit the accused to custody for the purpose of trial?
vi) What options are available to the Court, when an accused is summoned to face the trial?
vii) Under what law, the detention of accused under section 351 of Cr.P.C is regulated and whether post arrest bail of such accused u/s 497 of Cr.P.C can be entertained?

Analysis: i) After taking cognizance of an offence by the Court through any of three modes as mentioned in section 190, followed by commencement of proceedings under section 204, it has power to take bond from the accused under section 91 of the Code, in order to secure his presence during the trial.
ii) It is not necessary that an accused of non-bailable offence must be granted bail before asking him to execute bond with or without sureties under section 91 of the Code because provisions of section 91 and 497 of the Code are meant for different situations (…) When a bond is taken under section 91 of the Code, question of bail does not arise because "bail is only for continued appearance of a person and not to prevent him from committing certain acts"
iii) On summoning under section 204 of the Code, accused can apply for his pre-arrest bail which may or may not be granted depending upon the circumstances of the case but even in such a case upon appearance of the accused before the Court, the Court in its discretion can require him to execute a bond with or without sureties for his future appearance.
iv) Issuance of warrant, bailable or non-bailable is meant only to procure attendance of an accused person before the Court and not for any other purpose.
v) It is misconception that the Court in every case in an omnibus manner shall direct the offender to execute a bond on his appearance before the Court to face the trial. The word "may" used in section 91 of the Code is when read in the light of section 351 of the Code, makes it clear that if the Court deems appropriate can commit the accused to custody for the purpose of trial (…) even if accused is not under arrest or upon a summons, the Court is still authorized to detain him if he is present before the Court and against whom evidence is available of committing an offence.
vi) When an accused is summoned to face the trial, the Court has two options, either to ask him to execute bond with or without sureties under section 91 of the

Code for his continued appearance before the Court during the trial or commit him to custody as per section 351 of the Code if the evidence is available that he has committed the offence.

vii) His such detention shall then be regulated under section 344 of the Code in order to remand him to custody from time to time and at an appropriate stage his request for bail u/s 497 of the Code can be entertained.

Conclusions: i) Section 91 of Cr.P.C is not limited to trial in private complaints only as it is also applicable to State cases as well**.**

ii) It is not necessary to grant bail to an accused before asking him to execute bond or after taking the said sureties under section 91 of the Cr.P.C.

iii) Yes, upon summoning under section 204 of Cr.P.C, the Court in its discretion can require accused on his appearance to execute a bond with or without sureties for his future appearance.

iv) Issuance of warrant, bailable or non-bailable, is meant only to procure attendance of an accused person before the Court.

v) Yes, the Court is authorized to detain the accused if he is present before the Court and against whom evidence is available of committing an offence.

vi) When an accused is summoned to face the trial, the Court has two options, either to ask him to execute bond under section 91 of the Code or commit him to custody as per section 351 of the Code.

vii) The detention of the accused under section 351 of Cr.Pc is regulated under section 344 of the Code and his request for bail u/s 497 of the Code can be entertained at an appropriate stage.

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36. **Lahore High Court**
Muhammad Irfan v. Addl. District Judge, etc.
Writ Petition No.50434 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5703.pdf

Facts: Through this writ petition the petitioner has assailed the order of Appellate Court, whereby, after admitting the appeal, the parties are directed to maintain the status quo, however, the petitioner was also directed to deposit arrears of rent, and monthly rent during pendency of the appeal.

Issues: i) Whether in an appeal, emanating from the eviction proceedings, wherein the respondent has denied the relationship of landlord and tenant, the Appellate Court while admitting the said appeal can pass an order directing the appellant to deposit the arears of rent adjudicated by the Rent Tribunal, along with regular deposit of monthly rent, till the pendency of the appeal?

ii) Whether Rent Tribunal is empowered to refuse the leave and straightaway allow the eviction application and simultaneously pass an order to pay rent due from the tenant?

iii) In what circumstances the Appellate Court can pass an order directing

appellant before it to deposit the arrears of rent, as also the monthly rent, during the pendency of appeal?

iv)Whether power of the Appellate Court can be considered co-extensive with that of the Rent Controller?

Analysis: i) Section 24 of the Punjab Rented Premises Act, 2009 deals with the deposit of rent, during the pendency of the ejectment petition, before the Rent Tribunal. When an eviction petition is filed and the respondent therein appears and files leave to appear and contest the case, Section 24 comes into play and the Rent Tribunal is empowered to pass an order directing the tenant to deposit the monthly rent due…If the relationship has been denied by the respondent as sub-Section (2) of Section 24 of the Act lays down that if there is dispute as to the amount of rent due, then the Rent Tribunal shall tentatively determine the dispute and pass the order for the deposit of rent and since the term "rent due" has a wide sweep and would include a dispute of the nature where the tenancy relationship is denied, therefore, any other construction would not only nullify the intention of the legislature but also would give a lever in the hands of the tenants to avoid the payment of rent…Examining the matter from yet another angle, this Court is of the opinion that the Appellate Court while issuing notice and admitting the appeal should not pass an order directing the appellant (purported tenant) to deposit the arears of rent determined by the Rent Tribunal, along with monthly rent till pendency of the appeal as the same would lead to a self-defeating inference drawn by the Appellate Court inasmuch as on the one hand, the Appellate Court considers the case of the appellant to prima facie have some force and on the other hand, simultaneously burdening the appellant with deposit of arrears of rent and/or monthly rent in cases where the tenancy relationship is denied. Such contradictory and self-defeating inference is certainly not envisaged under sub-Section (6) of Section 28 of the Act read with Section 24 thereof. At this juncture, it is pertinent to observe that the legislature in its wisdom has provided for decision of an appeal, preferred under the Act, within prescribed period of 60-days in terms of sub-Section (7) of Section 28 thereof. In cases where the tenancy relationship is denied, significance of such time bound provision of the law gets accentuated, which is necessarily required to be strictly adhered by the Appellate Court, in order to ensure that rights of the landlord and/or the tenant do not hang in an uncertainty, for too long.

ii) In cases where the denial of tenancy relationship is frivolous and shallow, the Rent Tribunal, is empowered to refuse the leave and straightaway allow the eviction application and whilst so doing, the Rent Tribunal can simultaneously pass an order under Section 24 of the Act finally determining the rent due from the tenant and direct that the same be deposited/paid…Needless to mention that the Appellate Court, in terms of sub-Section (4) of Section 28, can always dismiss the appeal in limine if after examining the final order passed by the Rent Tribunal and the record, if any, appended with the appeal, it reaches the conclusion that the denial of tenancy relationship was contumacious and the Rent Tribunal has

rendered a just decision, which does not require any further probe and the issuance of notice to the ejectment petitioner is not necessary.

iii) Once the Rent Tribunal has held a respondent of the eviction petition to be a tenant, there is a judicial verdict against the said respondent and therefore, the Appellate Court can pass an order directing such respondent (appellant before it) to deposit the arrears of rent, as also the monthly rent, during the pendency of appeal, as directed through the impugned order. Section 28 of the Act deals with the appeals and in terms of its sub-Section (6), the powers of the Rent Tribunal are available to the Appellate Court...

iv) The Appellate Court is vested with all the powers that can be exercised by the lower forum as appeal is continuation of the lis. This principle also applies to such powers which the Trial Court cannot exercise under the law, in terms of passing an interim order like the one under Section 24 of the Act, directing the respondent to deposit the rent due. If the Rent Tribunal is not vested with the power under Section 24 to direct deposit of the interim/tentative rent in case where the tenancy relationship is denied, then in terms of sub-Section (6) of Section 28 of the Act, while hearing the appeal, the same principle applies to the Appellate Court where the said respondent after losing before the Rent Tribunal, prefers an appeal against the final order of eviction that includes the rent payable as determined by the Rent Tribunal…Sub-Section (6) of Section 28 by reference makes Section 24 of the Act applicable to the appeals, which has been predominantly interpreted in various cases that the Rent Tribunal has no power to pass the order to deposit tentative rent if the tenancy relationship is denied. The power of the Appellate Court in such matter co-exists with that of the Rent Tribunal as noted hereinabove.

Conclusion: i) In an appeal, emanating from the eviction proceedings, wherein the respondent has denied the relationship of landlord and tenant, the Appellate Court while admitting the said appeal should not pass an order directing the appellant to deposit the arears of rent adjudicated by the Rent Tribunal, along with regular deposit of monthly rent, till the pendency of the appeal.

ii) Yes, Rent Tribunal, is empowered to refuse the leave and straightaway allow the eviction application and simultaneously pass an order to pay rent due from the tenant in cases where the denial of tenancy relationship is frivolous and shallow.

iii) In circumstances where once the Rent Tribunal has held a respondent of the eviction petition to be a tenant and there is a judicial verdict against the said respondent, the Appellate Court can pass an order directing appellant before it to deposit the arrears of rent, as also the monthly rent, during the pendency of appeal.

iv) Yes, power of the Appellate Court can be considered co-extensive with that of the Rent Controller.

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37. **Lahore High Court**
Ali Mansoor v. Area Judicial Magistrate, etc.
WP No. 58171 of 2023
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC5767.pdf

Facts: Through this constitutional petition, the petitioner has challenged the vires of the impugned order passed by Judicial Magistrate 1st Class, whereby the cancellation report prepared under Section 173 of the Criminal Procedure Code, 1898 for offence under Section 489-F of the Pakistan Penal Code, 1860, was agreed with.

Issues: i) What is the rationale behind rule 24.7 of the Punjab Police Rules, 1934 qua cancellation of criminal cases?
ii) Whether finding of magistrate, that there is no mandatory requirement to hear complainant before passing an order on cancellation report, is legal in terms of maxim *Audi Alteram Partem*?
iii) Whether the rule of justice embodied in the maxim *audi alteram partem* is only confined to judicial proceedings?
iv) Whether the principle "justice should not only be done but should manifestly and undoubtedly be seen to be done" is applicable to administrative adjudications?
v) Whether the principle of *audi alteram partem* is read in every statute as its integral part even if not explicitly provided therein and how violation of this principle is considered?
vi) Whether it is mandatory for the investigating officer to inform the complainant through ordinary or modern ways of communication, about the conclusion/result of the investigation of cancellation report?
vii) What is the effect of not taking thumb impression of complainant on cancellation report?
viii) What guidelines should be followed by the investigating agency, concerned prosecutors and Magistrates regarding the preparation, forwarding and dealing with a cancellation report in connection with a criminal case?

Analysis: i) …The rationale behind this Rule is that a cancellation report in a criminal case should be filed through a senior supervisory officer to preclude the possibility of malpractice and arbitrariness on the part of the investigating officer. This precautionary measure has been provided in the Rules to ensure fairness and impartiality in the investigation process because if a cancellation report of a criminal case is agreed with by the concerned Magistrate, it amounts to the termination of that criminal case. It is incumbent upon the Superintendent of Police to forward the cancellation report after applying his independent mind, otherwise, the very purpose of Rule 24.7 of the Rules shall be defeated.
ii) … No doubt that while agreeing with a cancellation report Magistrate acts on the administrative side but I am afraid that such findings by the Magistrate are against the dictates of law and violative of the principle of natural justice *'audi alteram partem'*…The maxim *Audi Alteram Partem* is derived from the Latin

phrase "*audi atur et altera pars*" which means that every party shall be heard.

iii) The maxim *audi alteram partem* is applicable to judicial, quasi-judicial and administrative proceedings…The rule of justice embodied in the maxim *audi alteram partem* is not confined to judicial proceedings but extends to quasi-judicial and administrative proceedings, too.

iv) It is now beyond doubt that all the tribunals and administrative authorities while exercising quasi-judicial or administrative powers are also under an obligation to opt the above canons of judicial conduct…that "justice should not only be done but should manifestly and undoubtedly be seen to be done" is realized largely in its application to administrative adjudication.

v) The principle of *audi alteram partem* is read in every statute as its integral part even if not explicitly provided therein...The violation of this principle vitiates the proceedings and makes the action taken therein to be illegal, as the violation of this principle is considered as a violation of law.

vi) …A bare reading of the above-stated Rule makes it amply clear that this Rule applies to all kinds of final reports prepared, under Section 173 of the Code, at the conclusion of an investigation. It also includes a cancellation report and makes it mandatory for the investigating officer to inform the complainant of the conclusion/result of the investigation. His signature or thumb impression shall be taken on the final report. If the informant/complainant is not present, he shall be informed in writing by postcard or by the delivery of a notice by hand, and the fact that needful has been done, shall be noted in the final report. This Court observes that in addition to the abovementioned modes of informing the complainant, the investigating agency can take benefit of the modern ways of communication to show its fairness and transparency. Such a process should be reflected in the final report and relevant police diary. The cancellation report prepared by the investigating agency in this case does not show that signature or thumb impression of the complainant/informant was taken or he was informed regarding the conclusion of the investigation which is violative of the aforementioned Rule and reflects mala fide on the part of the investigating officer.

vii) The cancellation report prepared by the investigating agency in this case does not show that signature or thumb impression of the complainant/informant was taken or he was informed regarding the conclusion of the investigation which is violative of the aforementioned Rule and reflects *mala fide* on the part of the investigating officer. It is an axiomatic principle of law that when law requires a thing to be done in a particular manner, it should be done in that manner or not at all.

viii) …The following are the guidelines to be followed in the future by all the concerned: -

I. When an investigating officer intends to close the investigation and prepares a report under Section 173 of the Code including a cancellation report, he shall inform the complainant/ informer, and his signature or thumb impression should be taken on that report in accordance with the Rule 25.57 of the Rules.

II. All the reports prepared under Section 173 of the Code shall reflect that the

needful was done and Rule 25.57 of the Rules was complied with in its letter and spirit. In addition to modes as provided in the aforementioned Rule to apprise the complainant/informer regarding the closure of the investigation and its result, modern ways of communication should also be utilized.

III. The cancellation report prepared in every criminal case shall be forwarded by the Superintendent of Police concerned, who shall forward the same furnishing his independent opinion/reasoning to agree with the same. Guidelines already provided in the case titled *Ehsan Ullah Chaudhry vs. The State, etc. – PLD 2023 Lahore 233* must be adhered to.

IV. No prosecutor shall forward a cancellation report to the concerned Magistrate if the same is not duly forwarded/endorsed by the concerned Superintendent of Police. The concerned prosecutor should also forward the report while furnishing his independent opinion.

V. The Magistrate, before adjudicating upon a cancellation report, must issue notice to all the concerned to provide them an opportunity for hearing to meet the requirement of the principle of natural justice *audi alteram partem.*

Conclusion: i) The rationale behind this Rule is that a cancellation report in a criminal case should be filed through a senior supervisory officer to preclude the possibility of malpractice and arbitrariness on the part of the investigating officer.

ii) Such findings by the Magistrate are against the dictates of law and violative of the principle of natural justice *'audi alteram partem*'.

iii) The rule of justice embodied in the maxim *audi alteram partem* is not confined to judicial proceedings but extends to quasi-judicial and administrative proceedings, too.

iv) This principle "justice should not only be done but should manifestly and undoubtedly be seen to be done" also applies to administrative adjudications.

v) The principle of *audi alteram partem* is read in every statute as its integral part even if not explicitly provided therein and the violation of this principle is considered as a violation of law.

vi) Yes, it is mandatory for the investigating officer to inform the complainant through ordinary or modern ways of communication, about the conclusion/result of the investigation of cancellation report.

vii) Such act of investigation officer is violative of rule 25.57 and reflects his mala fide.

viii) See analysis portion.

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38. **Lahore High Court**
Awais Gohar v. Sumaira Adnan and 2 Others
Writ Petition No. 65237 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5618.pdf

Facts: Through present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed judgment passed by the

learned Additional District Judge and order passed by the learned Civil Judge.

Issues: i) When trial Court can proceed for open auction and fix the reserve price?
ii) What is the purpose of Punjab Partition of Immovable Property Act, 2012?
iii) Whether conduct of a party denotes his willingness to do or not to do an act?

Analysis: i) … Section 11(1) of the *Act* clearly commands to further proceed with the open auction when (i) co-owners refuse to participate in internal auction or (ii) only one co-owner shows his willingness to participate or (iii) internal auction under section 10 of the *Act* fails and the Court can proceed with open auction and fix the reserve price.
ii) Section 14 of the *Act* provides specific period of six months to complete the proceedings in such suits from their date of institution. The petitioner has already gained about nine months for making a suitable offer or properly assisting the learned Court in the proceedings of internal auction or show willingness to participate. By various means and adopting different tactics the petitioner defeated the very purpose of the *Act* which has been enacted for the purposes of expeditious partition of immovable properties and to provide remedy for ancillary matters.

iii) …the word "*willing*" is defined as „eager, co-operative, ready and prompt to act; voluntary; chosen; intentional". As per Oxford Advanced Dictionary (10th Edition) the word "*willingness*" means 'ready to do something"…it has been already observed that the word "*willingness*" also denotes the conduct of a relevant party.

Conclusion: i) If the co-owners refuse to participate in internal auction or only one co-owner shows willingness to participate in such auction and other(s) are not willing or when the internal auction under section 10 of the Act has failed, then the Court can proceed with open auction and fix the reserve price.
ii) The purpose of Punjab Partition of Immovable Property Act, 2012 is expeditious partition of immovable properties and to provide remedy for ancillary matters.
iii) Yes, "willingness" also denotes the conduct of a relevant party.

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39. **Lahore High Court**
Ayesha Hashmat Kamal and 2 Others v. Additional District Judge and 2 Others
Writ Petition No. 27381 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5606.pdf

Facts: Through this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners sought enhancement of maintenance allowance of two minors.

Issues: i) Under what circumstances a grandfather is liable to pay maintenance allowance to his minor grandchildren?

ii) What is the standard of fixation of quantum of maintenance allowance of minors and when adverse inference can be drawn against father?

iii) Whether benefit of rewards, bonuses, perks and privileges of a father may be extended to minors to fix their maintenance allowance?

iv) Whether preference has to be given to the judgment rendered by the learned Appellate Court, in case of inconsistency in findings of learned two Courts below?

v) Whether maintenance award or decree should cover the entire education and other expenses if same is beyond financial condition of father?

Analysis: i) Perusal of above reflects that grandfather when is affluent, then the obligation to maintain children lies on the grandfather but only when father is poor, infirm and incapable of earning by his own labour and mother is also poor. This is not the position in the present case. The *respondent-father* is in decent employment and not indigent, thus, holding the *grandfather* responsible to contribute towards maintenance allowance is not warranted.

ii) Fixing quantum of maintenance always requires to strike a balance between needs of minors and earnings of a father as well as his other sources. The award in favour of minors should not be incompatible or inconsistent with the financial conditions of father or the one who is held to be obliged by law to take care of children. The learned Family Courts should consider the education, medical, food expenses and other day to day needs of minor(s) at one side and on the other hand, the Courts are required to determine the financial status of the father. In *"Nazia Bibi and Others*" case (*supra*) this Court has laid down guidelines, as to how the power to ascertain the needs of minor(s) and financials of the father is required to be exercised by the learned Family Courts. When a father makes it impossible to reach a just conclusion as to his earning or paying capacity, by mis-declarations or unfair disclosures as well as by hiding his sources then the learned Family Courts are empowered to draw adverse inference…

iii) …There is no convincing reason available for not extending benefit of those rewards or bonuses, perks and privileges to the minors. Specially, when the respondent-father has no other liability and he has his permanent residence at the house of the grandfather and for temporary purposes, at the places of his posting, official residence is being used.

iv) …and argued that in case of inconsistency in findings of learned two Courts below, preference has to be given to the one rendered by the learned Appellate Court. This is correct when the interference of learned Appellate Court in findings of learned trial Court is based on cogent and confidence inspiring reasons. However, when such decision is not based on correct exposition of law and facts then leaving it to hold the field is unsafe.

v) …As far as the contention of learned counsel for the petitioners that maintenance award or decree should cover the entire education and other

expenses is concerned, it is suffice to reproduce the relevant observation of the Supreme Court of Pakistan in case titled *"Tauqeer Ahmad Qureshi Versus Additional District Judge, Lahore and 2 Others"* (PLD 2009 Supreme Court 760)… *school fees of the minors are more than the rate of maintenance allowance granted by the Family Court, therefore, the annual increase granted by the Family Court should not be interfered with, has also no force. The mother, if she desires or can afford, may put the children in expensive schools but the father's obligation to maintain the minors is only to the extent of his status and financial condition and the Family Court must keep these factors in mind while granting maintenance allowance.*

Conclusion: i) Grandfather is liable to pay maintenance allowance to his minor grandchildren only when father is poor, infirm and incapable of earning by his own labour and mother is also poor.
ii) Fixing quantum of maintenance always requires to strike a balance between needs of minors and earnings of a father as well as his other sources. Adverse inference may be drawn against father when he makes it impossible to reach a just conclusion as to his earning or paying capacity, by mis-declarations or unfair disclosures as well as by hiding his sources.
iii) Yes, benefit of rewards, bonuses, perks and privileges of a father may be extended to minors to fix their maintenance allowance.
iv) This is correct when the interference of learned Appellate Court in findings of learned trial Court is based on cogent and confidence inspiring reasons.
v) No, father's obligation to maintain minors is only to the extent of his status and financial condition.

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40. **Lahore High Court**
Asad Mumtaz Warriach v. Ali Mumtaz Warriach
Civil Revision No.60871 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC5757.pdf

Facts: This civil revision under Section 115 of CPC is filed by defendant who has challenged the order passed by the Additional District Judge, whereby his application under Rule 4 of Order XXXVII CPC for setting aside ex-parte judgment and decree was dismissed.

Issue: What are the pre-conditions of summoning of a defendant, before initiating ex-parte proceedings against him?

Analysis: Rule 16 of Order V CPC requires the serving officer/process server to obtain signature of the defendant while delivering him a copy of the summons personally. Rule 17 of Order V CPC provides the manner in which the affixation is to be made. Necessary pre-conditions for invoking such rule is that either there is refusal of the petitioner or his agent to sign the acknowledgement or failure of the process server to find the petitioner after using all due and reasonable

diligence. A copy of the summons should be affixed on the door or some conspicuous part of premises of the petitioner to satisfy requirement of said rule. Rule 8, Part B, Chapter 7, Volume IV, of the Rules and Orders of the Lahore High Court, Lahore requires that in case of sending a judicial notice for publication in a newspaper, the manager of the newspaper should send the copy of the paper containing the notice, under postal certificate, to the party for whose perusal it is intended at the address given in the notice. Publication in the newspaper is not sufficient in the absence of sending a copy of the paper to the party concerned.

Conclusion: Requirements of summoning as provided in Order V CPC must be complied with before initiating ex-parte proceedings against defendant.

LATEST LEGISLATION / AMENDMENTS

1. Para number 2 of notification no. PRA.32-24/2022/561 dated 05-07-2023 has been substituted by Notification No.165 of 2023 in the Punjab Sales Tax on Services Act, 2012.
2. Powers of enforcement officer (Enforcement Unit-1) have been assigned through Notification No.166 of 2023, Punjab Sales Tax on Services Act, 2012.
3. Powers of Deputy Commissioner (Enforcement V, Unit-3) have been assigned through Notification No.167 of 2023 in the Punjab Sales Tax on Services Act, 2012.
4. Powers of Additional Commissioner and Enforcement Officer Audit-cum-Risk Compliance Officer have been assigned vide Notification No.168 of 2023 in the Punjab Sales Tax on Services Act, 2012.
5. Powers of Enforcement Officer have been assigned vide Notification No.169 of 2023 in the Punjab Sales Tax on Services Act, 2012.
6. Powers of Commissioner (Appeals-I &II) have been assigned vide Notification No.170 of 2023 in the Punjab Sales Tax on Services Act, 2012.
7. Amendments in the rules 12- 14 of Punjab Police (Efficiency and Discipline) Rules, 1975 have been made through Notification No.174 of 2023.
8. Amendments in schedule after serial no 4 in the Directorate of Pest Warning and Quality Control of Punjab Service Rules, 1987 have been made through Notification No.175 of 2023.
9. Punjab Arms Rules, 2023 has been promulgated vide Notification No.176 of 2023.
10. Amendments in rules 5 & 6 has been made in the Punjab Pension Fund Rules, 2007 vide Notification No.177 of 2023.
11. Second Schedule under the head Prosecution Department of Amendment in the Punjab Government Rules of Business 2011vide Notification No.178 of 2023.

12. Amendment in the Punjab Specialized Healthcare and Medical Education Department (General, Specialists and Miscellaneous Posts) Services Rules, 1981 have been made through Notification No.180 of 2023.

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/Implications-of-Internet-Bans-on-Online-Education-Addressing-Constitutional-Conflicts-and-Educational-Rights

Implications of Internet Bans on Online Education: Addressing Constitutional Conflicts and Educational Rights By Anjali Tripathi

Internet restrictions, while intended to protect public safety, pose serious problems for the right to an education, especially in unstable political and social environments. The negative effects of internet restrictions on e-learning programmes and students' access to education highlight the urgent need for reasonable alternatives. Temporary shutdowns hamper educational advancement while maybe preventing the spread of hate speech and false information. It is critical for decision-makers to give the right to education top priority during internet censorship and to implement alternatives to promote students' learning in order to resolve this dispute. To ensure that students can continue to obtain high-quality instruction despite difficult circumstances, it is crucial to strike a balance between public safety and academic freedom. Societies may protect both the right to free speech and the right to an education by encouraging inclusive and flexible approaches, which will produce a population of informed and well-rounded citizens.

2. MANUPATRA
https://articles.manupatra.com/article-details/Challenges-and-Remedies-to-WTO-Dispute-Settlement

Challenges and Remedies to WTO Dispute Settlement By Ipsita Aparajita Padhi

The dispute settlement system has been created for smooth and better functioning of the trade relations among the member states of World Trade Organisation. Though the trade sanctions are mostly for non-compliance, the question still remains that in what authority the body does it. The issue arises when the legislation process starts expressing the competency of internal laws in accordance in agreement as well as GATT. Compulsory Alternate Dispute Resolution should be there as settlement process and after its exhaustion they can approach the Dispute Settlement Unit. It has a very heavy workload of cases that are to be resolved but within a stipulated time period. However, this can be prevented during the settlement procedure that is non-binding in nature.

3. YALE LAW JOURNAL
https://www.yalelawjournal.org/article/the-modern-state-and-the-rise-of-the-business-corporation

The Modern State and the Rise of the Business Corporation By Taisu Zhang & John D. Morley

The rise of the modern state was a necessary condition for the rise of the business corporation. A typical business corporation pools together a large number of strangers to share ownership of residual claims in a single enterprise with guarantees of asset partitioning. This arrangement requires the support of a powerful state with the geographical reach, coercive force, administrative power, and legal capacity necessary to enforce the law uniformly among the corporation's various owners. Strangers cannot cooperate on the scale and with the legal complexity of a typical business corporation without a modern state and the legal apparatus it supplies to enforce the terms of their bargain. Other historical forms of rule enforcement, such as customary law among closely knit communities and commercial networks like the Law Merchant, are theoretically able to support many forms of property rights and contractual relations but not the business corporation.

4. **YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/the-perils-and-promise-of-public-nuisance

The Perils and Promise of Public Nuisance By Leslie Kendrick

Public nuisance can seem unusual, even outlandish. At worst, it is a potentially capacious mechanism that allows executive-branch actors to employ the judicial process to address legislative and regulatory problems. Nevertheless, its perils are easily overstated and its promise often overlooked. Historically, public nuisance has long addressed problems such as harmful products. Doctrinally, it accords better with tort law than is commonly recognized. And institutionally, it functions as a response to nonideal conditions—specifically, where regulatory mechanisms underperform.

5. **OXFORD JOURNAL OF LAW AND RELIGION**
https://academic.oup.com/ojlr/article/5/1/94/1752338?searchresult=1

Forgiveness and Restorative Justice: Is It Necessary? Is It Helpful? By Joanna Shapland

Though forgiveness does not require apology (nor even knowing who the offender is), the important interactive and communicative aspects of restorative justice link it firmly to apology. Yet apology is complicated, being in the case of crime to both the victim and the state. When considering forgiveness, the immediate pairing is the possibility of forgiveness by victims to offenders, but it is also conceivable to consider forgiveness by offenders to themselves and forgiveness of the offender by supporters/families and the local community (though not, it seems, the state). Empirically, these victim reactions include achieving closure (for both offenders and victims), supporting offenders' efforts to change their lives, and appreciating offenders' apologies and courage in answering questions and communicating. Healing and reconciliation are less mentioned (or relevant). The word 'forgive' is only rarely mentioned. Forgiveness may be appropriate

as a social action in many different contexts: when someone has knocked into us in a crowded street, after an accident, if a precious mug has been broken. Restorative justice, which involves the offender and victim themselves in communication, is now suggested to be offered at all stages of the criminal process.

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FORTNIGHTLY CASE LAW BULLETIN

(16-11-2023 to 30-11-2023)

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

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SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Civil Miscellaneous Applications No. 3577 of 2019 and 9219 of 2023 in Civil Review Petition Nil of 2019 and Civil Review Petition No.266 of 2019 in Suo Motu Case No.7 of 2017.
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._3577_2019_15112023.pdf

Facts: The petitioners/appellants aggrieved by the judgment of Supreme Court passed in Suo Motu Case No.7 of 2017 filed these Civil Review Petitions along with Civil Miscellaneous Applications.

Issue: Whether implementation of any decision of the Supreme Court can be forestalled when review petitions and other applications are pending?

Analysis: It should not need reminding that every decision of the Supreme Court is binding and must be implemented by all executive authorities as stipulated in Articles 189 and 190 of the Constitution. Implementation however may be forestalled when review petitions and other applications are pending.

Conclusion: Implementation of any decision of the Supreme Court can be forestalled when review petitions and other applications are pending.

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2. **Supreme Court of Pakistan**
Muhammad Mumtaz Khan (deceased) through L.Rs and others v. Mst. Siraj Bibi (deceased) through her L.Rs and others
Civil Misc. Application No. 6336 of 2023 in Civil Review Petition No. 272 of 2022
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._6336_2023.pdf

Facts: Earlier main Civil Review Petition was dismissed for non-prosecution, which was sought to be restored through instant application. After granting instant restoration application, main Civil Review Petition was restored and heard as well.

Issues: i) What would be fate of a sale transaction of subject land by an attorney in favour of his own sons despite the fact that relevant power of attorney does not specifically authorize him to do so?
ii) When mutation of unauthorized sale of a woman's land is attested, then how the Revenue Officers/Officials involved in such attestation should be dealt with?

Analysis: i) Sale of subject land by attorney in favour of his own sons would amount to be a misuse of power of attorney, especially when such power of attorney does not specifically authorize attorney to give effect to such transaction.

ii) An unauthorized sale transaction would be a violation of Article 24 (1) of the Constitution of the Islamic Republic of Pakistan, which guarantees that no person shall be deprived of his property save in accordance with law. A mutation based upon unauthorized transaction would be deemed effected in derogation of section 42 of the Land Revenue Act, 1967.

Conclusion: i) If an attorney sells subject land in favour of his own sons despite the fact that relevant power of attorney does not specifically authorize him to do so, then the principal could repudiate the said sale transaction as stipulated in section 215 of the contract Act, 1872.
ii) When mutation of unauthorized sale of a woman's land is attested, then legal action should be initiated against the revenue officers/officials involved in such attestation.

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3. **Supreme Court of Pakistan**
Syed Ghazanfar Ali Shah v. Hassan Bokhari and others
Civil Petition No.946 of 2022
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._946_2022.pdf

Facts: Respondents had submitted an application under section 135 of the Punjab Land Revenue Act, 1967 seeking partitioning of certain lands. The application was objected to by the petitioners. The matter eventually came up before the Member, Board of Revenue, who disposed of the same by consent. However, the petitioners assailed the consent order by filing a writ petition before the High Court. The learned Judge of the High Court reproduced the earlier consent and dismissed the writ petition with cost.

Issue: Whether only possession is a valid ground to oppose partition proceedings?

Analysis: We enquired from the learned counsel why partition is being objected to and he stated that the petitioners are in possession of land and their rights will be adversely effected. This is not a valid ground to oppose partition.

Conclusion: Mere possession of the land and adverse effect upon the rights of petitioner is not a valid ground for opposing partition.

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4. **Supreme Court of Pakistan**
Javid Khan v. Arshid Khan and another
Criminal Petition No.149-P of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._149_p_2023.pdf

Facts: The petitioner sought leave to appeal against an order of the High Court, whereby his post-arrest bail had been declined.

Issues: i) Why the practice of adding the word sahib with one's job title be discontinued?
ii) How prior notice to the state for preparation of the case has lost its seriousness?
ii) Whether the documents sent by e-mail, fax or Whatsapp, can be useful in determining the outcome of bail application?

Analysis: i) The practice of adding the word sahib with one's job title be discontinued, as it unnecessarily elevates the status of public servants, which may instil in them delusions of grandeur and a perception of unaccountability, which is unacceptable since it is against the interests of the public whom they are meant to serve.
ii) A practice has developed whereby despite prior notice to the state preparation of the case is done before the court, rendering court into an office of the prosecution, rather than attending to the matter with the seriousness that it deserves.
iii) Documents sent by e-mail, fax or by Whatsapp, can be useful in determining the outcome of bail application.

Conclusion: i) The practice of adding the word sahib with one's job title be discontinued, as it unnecessarily elevates the status of public servants.
ii) A practice has developed whereby despite prior notice to the state preparation of the case is done before the court instead of coming to the court fully prepared.
iii) The documents sent by e-mail, fax or Whatsapp, can be useful in determining the outcome of bail application

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5. **Supreme Court of Pakistan**
Raja Muhammad Haroon etc. v. Province of Sindh through Board of Revenue and others etc.
Constitution Petition No.34/2023 etc.
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._8758_2018_23112023.pdf

Facts: Bahria Town (Private) Limited ('Bahria Town' or 'BTPL') filed a Civil Miscellaneous Application on the ground that pursuant to the order of this Court Bahria Town was to receive 16,896 acres of land in District Malir in the province of Sindh but only received 11,747 acres of land, that is, there was a shortfall of 5,149 acres. Bahria Town had agreed to pay 460 billion rupees in installments within a period of seven years. Bahria Town was paying the agreed installments but when it discovered the shortfall of 5,149 acres it stopped payments and through CMA this shortfall was brought to the attention of this Court. Bahria Town also filed CMA seeking 'reasonable time/moratorium period for fulfilling its payment obligations under the Order.

Issues: i) When a sale or a lease deed is registered pursuant to the Registration Act, 1908, whether the transaction gets recorded?

ii) Whether record keeping mechanism can protect public and prevent double book-keeping?

Analysis: i) Learned AG states that when a sale or a lease deed is registered pursuant to the Registration Act, 1908 the transaction gets recorded, but, before this stage neither the government nor any official organization maintains the record of the allotments and of their ownership. Allottees suffer in the absence of requisite record keeping. Legislators and governments, who must want to protect the public and ensure proper record keepings, will undoubtedly act to fill this lacuna.
ii) In this age of information technology and computerization, record keeping can easily be undertaken with little capital outlay and every transaction can be recorded. Developers and builders, including public sector authorities and societies, should be required to electronically, and automatically, transmit to a designated record keeper every transaction with complete particulars thereto, and to periodically provide a hard copy of the transactions. In addition to protecting the public this would also prevent double book-keeping by developers/builders and will document the economy. A record keeping mechanism could also be designed to prevent duplicate or multiple allotments in respect of the same plot of land or apartment, and to also prevent arbitrary cancellation of allotments.

Conclusion: i) When a sale or a lease deed is registered pursuant to the Registration Act, 1908, the transaction gets recorded.
ii) Record keeping mechanism can protect public and prevent double book-keeping.

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6. **Supreme Court of Pakistan**
Zahid Sarfaraz Gill v. The State
Criminal Petition No.1192 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1192_2023.pdf

Facts: Through the instant petition the petitioner has challenged the impugned order and sought bail in FIR under section 9(1) (c) of Control of Narcotic Substances Act, 1997.

Issues: i) Whether video recording or taking photograph by the police and members of Anti-Narcotic Force, during search, seizure and/or arrest, permissible as evidence?
ii) How can, use of mobile cameras by police or Anti-Narcotics Force members for recording video or photographing during search, seizure and arrest, be useful?

Analysis: i) …However, we fail to understand why the police and members of the Anti-Narcotics Force (‘ANF’) do not record or photograph when search, seizure and/or arrest is made. Article 164 of the Qanun-e-Shahadat, 1984 specifically permits the

use of *any evidence that may have become available because of modern devices or techniques*, and its Article 165 overrides all other laws.
ii) …If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.

Conclusion: i) Video recording or taking photograph by the police and members of Anti-Narcotic Force, during search, seizure and/or arrest, is permissible in evidence under Article 164 of Qanun-e-Shahadat, 1984.
ii) It would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search & its seizure and to prevent false allegations levelled against ANF/police.

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7. **Supreme Court of Pakistan**
Ghulam Fareed (deceased) through his L.Rs. etc. v. Daulan Bibi
Civil Petition No.3465-L of 2022
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3465_l_2022.pdf

Facts: The suit filed by the respondent was decreed against which the petitioner filed an appeal which was dismissed. Thereafter, the petitioners invoked the revisional jurisdiction of the High Court but the Civil Revision filed by the petitioners was also dismissed. Hence, the petitioners have filed this civil petition.

Issue: Whether burden to prove the purported sale lies upon the beneficiary of the sale?

Analysis: The burden to establish the purported sale lay upon the beneficiary of the sale but this was not discharged. The respondent was not required to disprove the sale yet she undertook to do so.

Conclusion: Burden to prove the purported sale lies upon the beneficiary of the sale.

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8. **Supreme Court of Pakistan**
M Taimoor Ali v. The State through P.G. Punjab and another
Criminal Petition No.1294 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1294_2023.pdf

Facts: This criminal petition for leave to appeal has been filed against the order of High Court wherein it was recorded that the petitioner's counsel did not press the petition in order to approach the Supreme Court of Pakistan. That bail was disposed of earlier by the Supreme Court while recording that petitioner's counsel

did not press it for the time being.

Issue: Whether an accused should withdraw his bail petition filed on merit if fresh ground for bail becomes available to him?

Analysis: If a fresh ground had become available to the petitioner prior to the passing of the impugned order then counsel should not have withdrawn the petition, but insisted that the petition be decided on merits.

Conclusion: An accused should not withdraw his bail petition filed on merit but insist that the petition be decided on merits even fresh ground for bail becomes available to him.

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9. **Supreme Court of Pakistan**
Province of Sindh through Secretary Agriculture Department, Government of Sindh and others v. Multiline Enterprises
Civil Appeals No.477 and 478 of 2021
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._477_2021.pdf

Facts: The matter has arisen from cross appeals against a judgment of a learned Division Bench of the High Court. The Province of Sindh advertised a tender inviting bids for the supply of 15 crawler tractors. Multiline Enterprises participated in the tender and was awarded the contract. At the time the contract was entered into there was an exemption from the payment of sales tax at import stage. The collection of advance income tax at import stage was also at a concessional rate. However, by the time the goods came to be delivered the exemption from sales tax at import stage was wholly withdrawn, and the rate at which advance income tax was to be collected at that stage was also enhanced. Multiline demanded a reimbursement on the sales tax that it had to pay, as also the payment of advance income tax at the enhanced rate in terms of s. 64A of the Sale of Goods Act. In terms of s. 64A of the Sale of Goods Act, 1930. The Province was aggrieved to the extent that the claim for reimbursement of sales tax at import stage had been decreed. Multiline was aggrieved to the extent that its claim for reimbursement of advance income tax at the import stage at the enhanced rate had been dismissed.

Issues: i) Scope and applicability of s. 64A of the Sale of Goods Act, 1930?
ii) Significance of "Incoterms"?
iii) Basic principles applicable to payment of sales tax in VAT mode?

Analysis: i) Even on a bare perusal s. 64A applies only in relation to three types of taxes: central excise duty, customs duty and sales tax. These are taxes normally classified as indirect. The section makes no mention of income tax, which is normally classified as a direct tax. The finding to the extent of advance income tax since s. 64A did not apply to income tax was upheld. With regard to the sales tax aspect, it was observed that the learned Court by alluding to the "spirit" of s. 64A, found it attracted to the claim for reimbursement of sales tax paid at import

stage in disregard to clause 26 of the general conditions of the contract which stipulated that the contract was on DDP basis, i.e., Delivery Duty Paid.

ii) The Incoterms or International Commercial Terms are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) relating to international commercial law. Incoterms define the responsibilities of exporters and importers in the arrangement of shipments and the transfer of liability involved at various stages of the transaction. They are widely used in international commercial transactions or procurement processes and their use is encouraged by trade councils, courts and international lawyers. The Incoterms rules are accepted by governments, legal authorities, and practitioners worldwide for the interpretation of most commonly used terms in international trade. A contract on DDP basis is most favorable for the buyer in that almost all the risks, costs and tasks are to the account of the seller. Now as the contract was on DPP basis hence the application of Section 64 A was ousted.

iii) It is important to keep in mind that the supply chain, which is such a basic feature of sales tax in VAT mode, was not found in the present case since the contract was directly between the seller/importer (i.e., Multiline) and the buyer/final consumer (i.e., the Province). Furthermore, the distinction between the legal liability to pay a tax on the one hand and (if it be an indirect one) the "liability" to bear its economic incidence or financial burden on the other must be kept in mind. Section 3(3) of the 1990 Act clearly places the legal liability for the tax on the seller.

Conclusion: i) Section 64A was not attracted to a contract made on DPP (Delivery Duty Paid) basis.

ii) The purpose of Incoterms is to provide a mechanism as to how the tasks, costs and risks associated with international trade are to be divided between the buyer and seller.

iii) Although the Sale of Goods Act1990 Act contemplates a supply chain, with there being output tax-input tax payments at each "link" of the chain but the chain was missing in the present case.

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10. **Supreme Court of Pakistan**
Muhammad Yasin and others v. The State
Crl. Petition No. 476-L and Jail Petition No. 337 of 2018
Mr. Justice Ijaz ul Ahsan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._476_l_2018.pdf

Facts: Judgment, rendered in criminal appeal and murder reference by the High Court for the offences under section 302(b) read with 148 and 149 PPC whereby conviction was maintained and sentence was altered to that of imprisonment for life, has been assailed before the august Supreme Court.

Issues: i) Mitigating circumstances justifying reduction of sentence from death to imprisonment for life?
ii) Basis of imposing death penalty only in 'most serious crimes' as expounded by Article 6 of the International Covenant on Civil and Political Rights (ICCPR)?

Analysis: i) Non-proving of the motive i.e. absence of premeditation, in the cases of capital punishment could be considered as a mitigating circumstance justifying reduction of sentence from death to imprisonment for life. The august Court relied on 2013 SCMR 1602 as well 2011 SCMR 1165. Moreover recovery at the instance of the accused was also one of the factors considered for mitigating the sentence.
ii) It is trite that quantum of sentence may be reduced from death penalty to life imprisonment if the prosecution fails to establish motive**.** This principle is in conformity with Article 6 of the ICCPR which stipulates that the death penalty may only be imposed for the 'most serious crimes'. The august court explained the concept of '*inherent right to life'* finding mention in ICCPR's General Comment No. 6 of 1982 as well as Article 9 (right to life) and Article 14 (right of dignity) of the Constitution of Pakistan to discuss the scope for imposing capital punishment. Moreover the Resolution No. 1984/50 by the United Nations Economic and Social Council (ECOSOC) elucidating the safeguards guaranteeing protection of rights of those facing death penalty was also spelt out for the purpose of refining the boundary line for imposing capital punishment.

Conclusion: i) Quantum of sentence may be reduced from death penalty to life imprisonment if the prosecution fails to establish motive.
ii) Death penalty is only to be imposed in most serious crimes in order for it to be in conformity with Article 6 of the ICCPR as well as Articles 9 and 14 of the Constitution of Pakistan.

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11. **Supreme Court of Pakistan**
Zagham Hassan Khan v. The State, etc.
Crl.P.172-L/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._172_l_2023.pdf

Facts: The present case of an accused person suffering from 'schizophrenia' and aged about 60 years prompts us to examine, whether the trial court has reasonably exercised the discretion vested in it under Section 466 of the Code of Criminal Procedure 1898 in declining to release him on sufficient security after postponing the further proceedings in the case under Section 465, CrPC, and also to enunciate the principles that should guide the reasonable exercise of this discretion.

Issues: i) Whether under section 466 of CrPC, the course of releasing the accused who is of unsound mind and incapable of making his defence on sufficient security must be adopted as a rule while the order for detaining him in safe custody is to be made only as an exception?
ii) What may be the circumstances that can justify adopting the exceptional course

of detaining the accused who is of unsound mind and incapable of making his defence in safe custody?

Analysis: i) A bare reading of Section 466, CrPC, shows that in cases where the accused person is found to be of unsound mind and incapable of making his defence, the court has been conferred with special power to release him on sufficient security, notwithstanding whether the case is one in which bail may be taken or not. The sufficient security required is that of a person who binds himself (i) to properly take care of the accused, which includes his proper medical treatment, (ii) to prevent the accused from doing injury to himself or any other person, and (iii) to produce the accused when required before the court or before such officer as ordered by the court. If in the opinion of the court, bail should not be taken, i.e., the accused should not be released, or if the required sufficient security is not given, the court can order the accused to be detained in safe custody in such place and manner as it thinks fit. From the reading of Section 466, CrPC, it transpires that the primary course prescribed is to release the accused, who is of unsound mind and incapable of making his defence, on sufficient security while detaining him in safe custody secondary to the primary course. It, therefore, follows that the course of releasing such an accused on sufficient security must be adopted as a rule while the order for detaining him in safe custody is to be made only as an exception.

ii) Next comes the question: what may be the circumstances that can justify adopting the exceptional course of detaining the accused in safe custody? The answer to this question also lies within the provisions of Section 466. The noticeable point is that while conferring the discretion on the court, by using the word 'may', Section 466 provides an inbuilt guidance for the exercise of that discretion by making it conditional on giving sufficient security to properly take care of the accused and to prevent him from doing injury to himself or any other person. These two conditions are the touchstone on the basis of which the court is to exercise its discretion in either way. If keeping in view the facts and circumstances the court forms an opinion that in releasing the accused on bail, there is an apprehension that he would not be properly taken care of or prevented from doing injury to himself or any other person, it can then decline to release him on bail and direct for keeping him in safe custody in such place and manner as it may think fit. The facts and circumstances that are relevant in forming such an opinion by the court may be that no one from the kith and kin of the accused comes forward to give sufficient security for the fulfillment of the said conditions, or that his kith and kin have previously remained unsuccessful in preventing him from doing injury to other persons.

Conclusion: i) Under section 466 of CrPC, the course of releasing the accused who is of unsound mind and incapable of making his defence on sufficient security must be adopted as a rule while the order for detaining him in safe custody is to be made only as an exception.

ii) If keeping in view the facts and circumstances the court forms an opinion that in releasing the accused on bail, there is an apprehension that he would not be properly taken care of or prevented from doing injury to himself or any other person, it can then decline to release him on bail and direct for keeping him in safe custody in such place and manner as it may think fit.

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12. **Supreme Court of Pakistan**
Mst. Shahida Siddiqa v. Allied Bank Limited through its President, etc.
Allied Bank Limited through its President, etc. v. Mst. Shahida Siddiqa
Civil Appeals No. 836-L, 837-L/2013
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._836_l_2013.pdf

Facts: The appellant filed this appeal, with leave of Supreme Court, against the judgment of Lahore High court whereby the judgments of both the Courts below, the Punjab Labour Appellate Tribunal and the Punjab Labour Court were modified by the High Court.

Issue: Whether penalty imposed for a guilt ought to be harsh?

Analysis: It is a settled proposition of law that a penalty should be proportionate to the guilt. The modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed. Given the fact that the Labour Court and the Appellate Tribunal found the Appellant negligent of not properly keeping the secret code but did not see any merit in the allegations of embezzlement, the imposition of a major penalty of compulsory retirement from service would definitely be harsh.

Conclusion: The modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed.

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13. **Supreme Court of Pakistan**
Pervaiz Hussain Shah v. Secretary to Government of the Punjab Food Department, Lahore, etc.
Secretary to Government of the Punjab Food Department, Lahore and another v. Pervaiz Hussain Shah
Civil Petitions No. 1007 and 1112-L/2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1007_2022.pdf

Facts: The parties seek Leave to Appeal against the judgment of Punjab Service Tribunal, whereby the Tribunal had partially allowed the Appeal of petitioner employee.

Issues: i) What does expression "negligence" connotes and how ordinary negligence

differs from gross negligence?
ii) What is professional negligence?
iii) What is modern notion of proportionality regarding imposing penalty?

Analysis: The expression "negligence" in fact connotes a dearth of attentiveness and alertness or disdain for duty. The genus of accountability and responsibility differentiates and augments an act of gross negligence to a high intensity rather than an act of ordinary negligence. To establish gross negligence, the act or omission must be of a worsened genre whereas ordinary negligence amounts to an act of inadvertence or failure of taking on the watchfulness and cautiousness which by and large a sensible and mindful person would bring into play under peculiar set of circumstances.
ii) Lord President Clyde in *Hunter v Hanley* vis-à-vis negligence, observed: "in relation to professional negligence I regard the phrase 'gross negligence' only as indicating so marked a departure from the normal standard of conduct of a professional man as to infer a lack of that ordinary care which a man of ordinary skill would display."
iii) It is now a settled proposition of law that a penalty should be proportionate to the guilt. Since the current constitutional era has been termed as the 'age of proportionality', the modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed.

Conclusion: i) The expression "negligence" in fact connotes a dearth of attentiveness and alertness or disdain for duty. To establish gross negligence, the act or omission must be of a worsened genre whereas ordinary negligence amounts to an act of inadvertence or failure of taking on the watchfulness and cautiousness which by and large a sensible and mindful person would bring into play under peculiar set of circumstances.
ii) When the conduct of a person is so marked indicating a departure from the normal standard of conduct of a professional man as to infer a lack of that ordinary care which a man of ordinary skill would display, that is professional negligence.
iii) The modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed.

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14. **Supreme Court of Pakistan**
Gul Zaman v. Deputy Commissioner/Collector Gwadar & others
Civil Appeal No.13 -Q Of 2020
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Mussarat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._13_q_2020.pdf

Facts: This direct appeal is by the landowner and arises out of the proceedings brought

by him under Section 18 of the Land Acquisition Act, 1894, seeking enhancement of compensation for his land, which was acquired for the construction of Free Trade Zone.

Issues: i) What are the jurisdictional facts, compliance of which is a condition precedent to the exercise of the power of reference under Section 18 of the Land Acquisition Act, 1894?

ii) Whether the landowner can directly file an application under Section 18 of the Land Acquisition Act, 1894 before the court?

iii) Whether jurisdiction given by a statute only upon certain specified terms can be exercised without complying with such terms?

Analysis: i) When we peruse the various Sections in the Act, particularly Sections 18, 19, 20 and 21 thereof, it becomes abundantly clear that there are certain conditions which have to be fulfilled before the Collector is empowered to make the reference, and then alone the Court has any jurisdiction to entertain the reference. These conditions are:

a) A written application should be made before the Collector.
b) The person applying should be one interested in the subject matter of the reference, but who does not accept the award.
c) The grounds of objection as to the measurement, or the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested should be stated in the application; and
d) The application should be within the period prescribed under the provisos (a) & (b) to Section 18 of the Act.

These are all matters of substance, which may be conveniently called jurisdictional facts, and their compliance is a condition precedent to the exercise of the power of reference under Section 18 of the Act.

ii) The matter goes to Court only upon a reference made by the Collector. It is only after such a reference is made that the Court is empowered to determine the objections made by a claimant to the award. In fact , it is the order of reference which provides the foundation of the jurisdiction of the Court to decide the objections referred to it. The Court is bound by the reference and cannot widen the scope of its jurisdiction or decide matters which are not referred to it. It is thus, not within the domain of the Court to entertain any application under the Act pro inter esse suo (that is, according to his interest) or in the nature thereof.

iii) whenever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with in order to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.

Conclusions: i) See analysis portion.

ii)The matter goes to Court only upon a reference made by the Collector therefore, it is not within the domain of the Court to entertain any application

under the Act pro inter esse suo or in the nature thereof.
iii) It is a universal principle that jurisdiction given by a statute upon certain specified terms contained therein should be complied with, to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.

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15. **Supreme Court of Pakistan**
Mehr Noor Muhammad v. Nazeer Ahmed
Civil Appeal No.317-L of 2011
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._317_l_2011.pdf

Facts: The plaintiff/appellant by a summary suit had sued upon a promissory note claiming that the defendant/respondent owed him Rs.800,000. The defendant traversed the claim and averred that he used to purchase pesticide from the plaintiff and as he was illiterate, some blank papers thumb-marked by him were obtained by the plaintiff in business dealing, which he had now made a promissory note. Both the suit and appeal failed which was assailed now before the august Supreme Court.

Issues: i) Prerequisites for admissibility of a Promissory Note?
ii) Whether a document which has once been admitted in evidence then such admission cannot be called into question at any stage of the suit or in proceedings, on the ground that the instrument has not been duly stamped qua section 36 of the Stamp Act 1899?

Analysis: i) It may be noted that as per Section 4 of the Negotiable Instruments Act, 1881, a promissory note is required to contain four essential ingredients: (i) an unconditional undertaking to pay, (ii) the sum should be the sum of money and certain, (iii) the payment should be to or to the order of a person who is certain, or to the bearer, of the instrument, and (iv) the maker should sign it. If an instrument fulfils these four conditions, it will be called a promissory note, and the requirement of attestation of a document provided under Article 17(2)(a) of the Qanun-e-Shahdat,1984, does not apply to a promissory note. Two more things also need to be clarified here. First, if an instrument, notwithstanding the provisions of Section 4 of the Negotiable Instruments Act,1881, is attested by witnesses, the nature and character thereof shall not be affected. It shall remain a promissory note and shall not be converted into a bond within the meaning of section 2(5)(b) of the Stamp Act, 1899. Secondly, if a promissory note is not witnessed, it does not appear that any third person saw it signed, in which case, the best evidence is the handwriting of the parties but if it is witnessed, then it appears, on the face of the promissory note, that there is better evidence behind it i.e. the evidence of witnesses. Moreover the august Court also discussed the impact of section 118 of the Negotiable Instrument Act, 1881, a section which says that until the contrary is proved, inter alia the presumption that every negotiable instrument was made for consideration shall be drawn. Such a

presumption is only a prima facie, and may be displaced by raising a probable defence. In the case in hand keeping in view the circumstantial evidence payment was not proved.

ii) It is now well settled premised on the import of section 36 of the Stamp Act 1899 that where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, it has to be decided there and then when the document is tendered in evidence. Once the Court, rightly or wrongly, admits the document in evidence and allows the parties to use it in examination and cross examination, so far as the parties are concerned, the matter is closed. It was also not open for the Court then to exclude it from consideration.

Conclusion: i) Promissory Note was not found to be admissible in evidence as it fell foul of the prerequisites discussed above.

ii) Once the Court admits any document in evidence then it was not open for the Court to exclude it from consideration at a later stage.

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16. **Supreme Court of Pakistan**
Amir Waheed Shah & others v. Ajmal Khan & others
C.A.271/2015
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._271_2015.pdf

Facts: The respondent no. 01 filed suit for possession under the Khyber Pakhtunkhwa Pre-emption Act, 1987. During trial an application under Order VII Rule 11 of CPC was filed which was dismissed by trial court. The appellants filed application u/s 115 of CPC which was allowed. The respondent no. 01 filed petition under Article 199 of constitution which was allowed and case was remanded to trial court with direction to decide the suit after recording of evidence. Hence, this appeal.

Issues: i) Whether right of pre-emption arises when gift of property is made?
ii) Whether validity of transaction is examined in a suit of pre-emption?
iii) Whether law of pre-emption can be evaded by devices or disguise?
iv) What is appropriate course for a party who challenges a sale through suit for pre-emption but a second/subsequent gift transaction also exists?

Analysis: i) It is now well settled that the right of pre-emption arises when the sale of land occurs. The sale, per the definition provided in Section 2(d) of the Act, does not include a gift.

ii) In a suit for pre-emption, the validity of the transaction is not examined; however, the nature of the transaction may be determined.

iii) A marked distinction exists between a devise and disguise. Device is permitted but not disguise. When transaction has been given a false colour to evade third party rights, it is not only the function but also duty of the Court to

remove veil, see through disguise and then to determine real and true character of transaction. A person is also equally entitled to evade law of pre-emption by all lawful and legitimate devices, like gift, exchange etc.

iv) So, in the given circumstances of the case, respondent No. 1 (plaintiff) could not ignore the gift mutation while making his demand. The appropriate course for him was to say, firstly, that the second transaction was a sale, but to defeat his right of pre-emption, it had been dubbed as a gift; and secondly, that he had made all the requirements of Talbs regarding the second transaction.

Conclusion: i) The right of pre-emption does not arise when gift of property is made.

ii) In a suit for pre-emption, the validity of the transaction is not examined.

iii) Device is permitted but not disguise. A person is entitled to evade law of pre-emption by all lawful and legitimate devices, like gift, exchange etc.

iv) The appropriate course is that firstly, the second transaction be claimed as sale which is dubbed as gift to defeat the right of pre-emption and secondly, fulfill all requirements of Talbs regarding the second transaction.

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17. **Supreme Court of Pakistan**

Kh. Muhammad Fazil v. Mumtaz Munnawar Khan Niazi (decd.) thr. L.Rs. & another

Civil Petition No. 2351 of 2019

Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar

https://www.supremecourt.gov.pk/downloads_judgements/c.p._2351_2019.pdf

Facts: In a suit for declaration filed by petitioner, the respondent filed an application under Order VII Rule 11 of CPC for rejection of plaint due to non-deposit of court fee. The trial court disposed of the application and ordered the petitioner to pay requisite court fee by next date of hearing failing which the plaint would be deemed as rejected. However, on that date trial court granted last opportunity for deposit of court fee and being aggrieved, the respondent filed revision petition against said order which was accepted and plaint was rejected. The petitioner filed writ petition which was dismissed, hence, this civil petition.

Issues: i) What are distinctive features and characteristics of section 148 of CPC as compared to section 149 of CPC?

ii) Whether section 149 CPC is an exception to the command delineated under sections 4 & 6 of Court Fees Act, 1870?

iii) What does term "*functus officio"* indicate?

iv) In what proceedings, the doctrine of "*functus officio"* is applicable and what would be consequences if this doctrine is not adhered to?

v) What is reason of incorporating section 148 CPC and whether discretion for extending time u/s 148 can be exercised arbitrarily, capriciously or whimsically?

vi) What type of construction of law ought to be avoided?

vii) What is effect of passing conditional order to the effect that in non-compliance of court order, suit/application shall stand dismissed?

viii) Whether rejection of plaint for non-deposit of court fee precludes the plaintiff from presenting fresh plaint?

Analysis: i) The provision for enlargement of time is assimilated under Section 148, CPC which articulates that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the CPC, the Court may, in its discretion from time to time, enlarge such period, even though the period originally fixed or granted may have expired. Whereas Section 149 deals with the power to make up the deficiency of court fee which elucidates in a translucent stipulation that where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

ii) It is visible from Section 149, CPC that it an exception to the command delineated under Sections 4 and 6 of the Court Fees Act, 1870. The exercise of discretion by the Court at any stage is, as a general rule, expected to be exercised in favour of the litigant on presenting plausible reasons which may include bona fide mistake in the calculation of the court fee; unavailability of the court fee stamps; or any other good cause or circumstances beyond control, for allowing time to make up the deficiency of court fee stamps on a case to case basis, and the said discretion can only be exercised where the Court is satisfied that sufficient grounds are made out for nonpayment of the court fee in the first instance. The provisions depicted under Order VII, Rule 11 and Section 149, CPC have to be read collectively.

iii) The Latin maxim “functus officio” denotes that once the competent authority has finalized and accomplished the task for which he was appointed or engaged, his jurisdiction and authority is over and ended or, alternatively, that the jurisdiction of the competent authority is culminated once he has finalized and accomplished his task for which he was engaged. If the Court passes a valid order after providing an opportunity of hearing, it cannot reopen the case and its authority comes to an end and such orders cannot be altered save for where corrections need to be made due to some clerical or arithmetical error.

iv) This doctrine is applicable to both judicial and quasi-judicial authorities, and, if it is not adhered to, it may result in turmoil for the litigating parties. If the authorities or the judges would be able to alter, change or modify orders capriciously and variably then resultantly will leave no certainty and firmness to any order or decision passed by any Court or authority. It is imperative for a sound judicial system to result in finality and certitude to the legal proceedings.

v) The raison d'etre of incorporating Section 148 in the CPC is to deal with genuine cases for extension or enlargement of time in exigency on a case to case basis and despite lapse of time either granted by the Court or the CPC, the Court

has been vested with the jurisdiction to extend time in suitable cases…No doubt the time allowed for doing a thing can be enlarged by the Court under Section 148, CPC, in its discretion from time to time, even though the period originally fixed or granted may have expired, but this discretion cannot be exercised arbitrarily, capriciously or whimsically, rather such discretion must be exercised and structured in a reasonable and judicious manner.

vi) A construction which renders the statute or any of its sections or components redundant should be avoided and must be so construed so as to make it effective and operative.

vii) Such conditional orders are against the spirit of the powers granted to the Court to meet exigencies and as a result, even in genuine cases with proper explanation and sufficient cause of non-compliance or some force majeure circumstances, the party will be non-suited unless the conditional order of dismissal of suit or rejection of plaint or memo of appeal is reviewed by the Court itself or is set aside by the higher fora.

viii) Under Order VII, Rule 13, CPC, the rejection of a plaint on any of the grounds hereinbefore mentioned (i.e. in Order VII) shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Meaning thereby that, as the plaint in this case was rejected due to non-payment of court fee and not for any other cause such as limitation, a pathway was opened to the petitioner/plaintiff to invoke the remedy provided under Order VII, Rule 13, CPC by presenting fresh plaint within the prescribed period of limitation.

Conclusion: i) Section 149 reckons the ratification of time for the payment of court fee in the beginning, while Section 148 is germane to the enlargement of time for the compliance of any act for which any period is fixed or granted by the Court as allowed by the CPC, and the Court in its discretion may enlarge such period from time to time, despite the fact that the period originally fixed or granted has expired.

ii) It is visible from Section 149, CPC that it an exception to the command delineated under Sections 4 and 6 of the Court Fees Act, 1870.

iv) This doctrine is applicable to both judicial and quasi-judicial authorities, and, if it is not adhered to, it may result in turmoil for the litigating parties and would lead to uncertainty.

v) The raison d'etre of incorporating Section 148 in the CPC is to deal with genuine cases for extension or enlargement of time in exigency on a case to case basis. Discretion u/s 148 CPC cannot be exercised arbitrarily, capriciously or whimsically, rather such discretion must be exercised and structured in a reasonable and judicious manner.

vi) A construction which renders the statute or any of its sections or components redundant should be avoided and must be so construed so as to make it effective and operative.

vii) once a conditional order is passed, the Court fastens its own hands and gives

up the jurisdiction so conferred under Section 148, CPC and virtually becomes functus officio.

viii) Rejection of plaint for non-deposit of court fee and not for any other cause such as limitation, does not preclude the plaintiff from presenting fresh plaint within the prescribed period of limitation.

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18. **Supreme Court of Pakistan**
International Islamic University, Islamabad through its Rector and another v. Syed Naveed Altaf and others
Civil Petition No.835 of 2021
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._835_2021.pdf

Facts: The petitioners filed Civil Petition against judgment passed by the Islamabad High Court, Islamabad whereby an intra-court appeal filed by the Petitioners was dismissed on the ground that Section 38 of the International Islamic University Ordinance, 1985 provides for a right of appeal and review against the decision of the Board of Governors.

Issue: What is the essential requirement to invoke the proviso to Section 3(2) of the Law Reforms Ordinance?

Analysis: The relevant law in this case is Section 38 of the Ordinance of 1985, which provides for the remedy of appeal or review before the Board of Governors against any order punishing a teacher or other employees of the university. The Respondents admittedly availed the remedy of appeal provided against the original order by the Board of Governors in terms of Section 38 of the Ordinance of 1985. Consequently, the proviso to Section 3 (2) of the Law Reforms Ordinance creates a bar on the remedy of appeal. As per the dicta of [Supreme] Court, the essential requirement to invoke the proviso to Section 3(2) of the Law Reforms Ordinance is to see whether the remedy of at least one appeal, review or revision is available under the law against the original order, in the proceedings in which the law is applicable to decide the ICA on merit. The law must prescribe for the remedy of appeal, review or revision, and if so Section 3(2) of the Law Reforms Ordinance will be applicable, notwithstanding whether that remedy is available to the person filing the ICA.

Conclusion: The essential requirement to invoke the proviso to Section 3(2) of the Law Reforms Ordinance is to see whether the remedy of at least one appeal, review or revision is available under the law against the original order or not.

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19. **Supreme Court of Pakistan**
Junaid Wazir v. Superintendent of Police, Pru/Dolphin Police, Lahore
Civil Petition No.3186 of 2020
Mr. Justice YahyaAfridi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3186_2020.pdf

Facts: The petitioner was proceeded under the provisions of Punjab Police (Efficiency & Discipline) Rules, 1975 with charge that he remained absent from official duty without any application or prior permission of the competent authority. In regular departmental inquiry, the inquiry officer found the petitioner guilty and the respondent No.1 imposed the penalty of discharge from service, whereas the petitioner's departmental appeal was rejected being not maintainable against the discharge from service under rule 12.21 of the police rules, 1934. Thereafter, the Petitioner's service appeal was dismissed by the learned Tribunal on the point of limitation, hence, this civil petition for leave to appeal.

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Issues: i) Whether a departmental appeal could be filed against the order of discharge from service under Rule 12.21 of Police Rules, 1934?
ii) Whether any adverse decision on representation can be challenged?
iii)What does the doctrine of *ex debitojustitiae* refers to?

Analysis: i)The section 21 of the Punjab Civil Servants Act, 1974 enunciates that where a right to prefer an appeal or apply for review in respect of any order relating to the terms and conditions of his service is allowed to a civil servant by any rule applicable to him, such appeal or application shall, except as may otherwise be prescribed, be made within sixty days of the communication to him of such order and if no provision for appeal or review exists in the rules in respect of any order, a civil servant aggrieved by any such order may, except where such order is made by the governor, within sixty days of the communication to him of such order, make a representation against it to the authority next above the authority which made the order provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post.

ii)Section 4 of the Punjab Service Tribunals Act,1974, provides that if a right of appeal or review was not provided in the aforesaid rule then, in unison, it does not debar or prohibit the civil servant from electing the remedy of filing a representation as of right.

iii) The legal maxim *"ex debitojustitiae"* (latin) means "as a matter of right or what a person is entitled to as of right". This Maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act *ex debitojustitiae* is an inherent power of courts to fix procedural errors.

Conclusion: i) No right of appeal against the discharge from service is provided under rule 12.21 of the Police Rules, 1934, but representation against the order of discharge is maintainable under section 21 of the Punjab Civil Servants Act, 1974.
ii)Any adverse decision on representation can be challenged under section 4 of the Punjab Service Tribunals Act, 1974.
iii) The doctrine of *ex debitojustitiae* refers to the remedies to which a person is entitled as a matter of right as opposed to a remedy which is discretionary.

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20. **Supreme Court of Pakistan**
Akhtar s/o Gul Zameer v. Khwas Khan and another
Criminal Petition No.1054 OF 2023
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1054_2023.pdf

Facts: This Criminal Petition is directed against the order passed by the High Court whereby the application moved for post-arrest bail qua offences under sections 302, 201, 120-B and 109 of the Pakistan Penal Code, 1860 ("PPC"), and Section 15 of the Khyber Pakhtunkhwa (KPK) Arms Act, 2013 ("Arms Act") was dismissed.

Issues: i) Whether a confession made before the police is admissible?
ii) Connotation of the expression "reasonable grounds" as contained under Section 497, Cr.P.C?
iii) Explanation of the expression "Further Inquiry"?

Analysis: i) Article 38 of the Qanun-e-Shahadat Order 1984 is quite lucid that no confession made to a police officer shall be proved as against a person accused of any offence, while Article 39 emphasizes that, subject to Article 40, no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.
ii) The expression reasonable grounds necessitated the prosecution to show that it is in possession of sufficient material or evidence to demonstrate that accused had committed an offence falling within the prohibitory limb of Section 497, Cr.P.C. expression 'reasonable grounds' signifies and corresponds to the grounds which are legally rational, acceptable in evidence and attractive to the judicial mind, as opposed to being imaginative, fallacious and/or presumptuous.
iii) It is a well settled notion of law that further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching a just conclusion.

Conclusion: i) A confession made before the police is not made admissible by dint of the Article 38 of the Qanun-e-Shahadat Order 1984.

ii) Reasonable grounds as contained under Section 497, Cr.P.C., necessitated the prosecution to show that it is in possession of sufficient material or evidence to connect the accused with the offence.
iii) Further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime.

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21. **Supreme Court of Pakistan**
Nasir Khan v. Nadia Ali Butt and others
Civil Petition No. 2885 Of 2022
Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2885_2022.pdf

Facts: Being aggrieved with the ex-parte order, the petitioner preferred an appeal before the Additional District Judge that was dismissed then the petitioner approached the High Court by filing a writ petition which too met with the fate of dismissal. Through this petition for leave to appeal, the petitioner has assailed the order passed by the High Court.

Issues: i) Whether it is essential that a landlord should be the owner of the rented property?
ii) Whether the tenancy is necessarily be created by a written instrument in express terms?
iii) Whether a tenant can prolong his occupation by exercising his right of being subsequent purchaser and what are its reasons?

Analysis: i) It is a well settled principle of law that a landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in the normal circumstances, in the absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as a tenant under the law.
ii) The tenancy may not be necessarily created by a written instrument in express terms, rather may also be oral and implied.
iii) A tenant remains a tenant; he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind are that the tenant has no status to justify his possession and if he denies the relationship of landlord and tenant he will be known to be an illegal occupant. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises and has instituted a suit for declaration in this regard.

Conclusion: i) It is a well settled principle of law that a landlord may not be essentially an owner of the rented property.
ii) The tenancy may not be necessarily created by a written instrument in express terms, rather may also be oral and implied.
iii) See above in analysis clause.

22. **Lahore High Court**
Ghulam Mustafa v. Punjab Labour Appellate Tribunal, Lahore etc.
Writ Petition No. 2842 of 2017/RWP
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5999.pdf

Facts: The Labour Officer filed report/reference before Punjab Labour Court relating to non-payment of bonus to the workers by the petitioner-concern at the end of the financial year, in terms of the Industrial and Commercial Employment (Standing Order) Ordinance, 1968. Upon service of notice, in addition to filing reply to the report/reference, the petitioner-concern filed an application under section 54(i) of the Industrial Relations Act, 2012 before the Labour Court, for return of the challan submitted by the Labour Officer which was dismissed, against which the petitioner-concern filed revision petition before the Punjab Labour Appellate Tribunal, and the same was dismissed; hence this petition.

Issues: i) Whether a Labour Court has the jurisdiction to try an offence under the provisions of the Ordinance, 1968?
ii) Whether jurisdiction of the Labour Court is ousted while dealing with matters of a trans-provincial establishment and the Commission has power to take up any matter arising out of non-payment of bonus by the employer to an employee?
iii) Whether any forum can be allowed to assume the jurisdiction to take cognizance at the whims of a party when parent statute has not vested the jurisdiction in it?
iv) Whether the Industrial and Commercial Employment (Standing Order) Ordinance, 1968 is an independent entity?
v) Whether High Court can upset concurrent findings recorded by the courts below in Constitutional jurisdiction?

Analysis: i) Indisputably, powers of the Inspectors of Mines appointed under Section 4 of the Mines Act, 1923 and those of the Inspectors appointed under Section 10 of the Factories Act, 1934 and such others persons, not being conciliators appointed under the Industrial Relations Ordinance, 1969 have been encapsulated under Standing Order No.6 of the Ordinance 1968… Further Standing Order No.7 deals with penalties and procedure for prosecution against an employer which violates Standing Order No.6… According to Standing Order No.7(6), no Court other than a Labour Court has the jurisdiction to try an offence under the provisions of the Ordinance, 1968, meaning thereby that if any violation of Standing Order has been established on the part of the employer or the worker, the forum is to be determined according to the recitals of the Standing Orders. Even otherwise Standing Order No.7(6) of the Ordinance, 1968 has been couched in negative language barring jurisdiction of any other forum except the Labour Court to deal with the matters relating to violation of Standing Order No.6 and allied matters, thus, it has to be given effect by adopting its plain language.
ii) Taking up the plea of learned counsel, representing the petitioner-concern that

since the petitioner-concern is a trans-provincial establishment, jurisdiction of the Labour Court is ousted, I am of the view that functions of the Commission have been embodied in Section 54 of the Act 2012… According to Section 54, the Commission has jurisdiction inter-alia to adjudicate upon the cases of unfair labour practices specified under Section 31 and 32 of the Act, 2012. Sections 31 deals with unfair labour practices on the part of the employer… As far as section 32 of the Act, 2012 is concerned, same deals with unfair labour practice on the part of the workmen. Conjunctive reading of Sections 31 and 32, renders it crystal clear that no-where the Commission has been empowered to take up any matter arising out of non-payment of bonus by the employer to an employee… During the course of arguments, learned counsel, representing the petitioner-concern, has put much emphasis on the fact that the Inspectors, referred to by learned Law Officer, in relation to Standing Order No.6 of the Ordinance, 1968, have also been empowered under Section 29 of the Act, 2012, hence, while dealing with an issue relating to a trans-provincial establishment, they are bound to act according to the provisions of the Act, 2012, thus, the Labour Officer could not file report/reference before the Labour Court rather he was supposed to file the same before the Commission. With a view to appreciate the said plea, I have gone through the provisions of Sections 29 and 30 of the Act, 2012… According to Section 30(1)(a), the Inspector has been empowered to make a report in writing to the Registrar having jurisdiction of any offence punishable under the provisions of the Act, 2012 in relation to violation of Sections 27 and 28 of the Act, 2012. A joint reading of Sections 27 and 28 makes it abundantly clear that the same in no manner deal with payment of bonus by the employer at the end of financial year, thus, the plea of the petitioner-concern that the Inspectors appointed under the Act, 2012 have the same powers as those appointed under Standing Order No.6 of the Ordinance, 1968 cannot be given any weightage.

iii) It is well established by now that jurisdiction of a forum to take cognizance of a matter can be decided on the basis of parent statute and if any power has not been vested in it, same cannot be allowed to be assumed at the whims of a party.

iv) It is important to observe over here that with a view to give effect to the provisions of the Act, 2012, the Commission with prior approval of the Federal Government has framed National Industrial Relations Commission (Procedure and Functions) Regulations, 2016 (the Regulations, 2016). According to Regulation No. 63 of the Regulations, 2016, the Chairman of the Commission has been empowered to make Standing Orders for general superintendence of affairs of the Commission in terms of Section 54(i) of the Act, 2012. Learned counsel for the petitioner-concern has not been able to convince this Court that if the Ordinance, 1968 had no independent entity as to why the Chairman was empowered to make Standing Orders while exercising powers under Section 54(i) of the Act, 2012. The said fact also lends support to the plea of learned Law Officer that violation of Standing Order No.6 of the Ordinance, 1968 is not covered under the Act, 2012, thus the said issue is to be taken up in accordance with Standing Order No.7 of the Ordinance, 1968.

v) Even otherwise, concurrent findings recorded by the courts below cannot be upset in Constitutional jurisdiction until and unless they are proved to be perverse or result of some arbitrariness…

Conclusion: i) A Labour Court has the jurisdiction to try an offence under the provisions of the Ordinance, 1968.
ii) A Labour Court has jurisdiction to deal with matters of a trans-provincial establishment and the Commission has no power to take up any matter arising out of non-payment of bonus by the employer to an employee.
iii) Any forum cannot be allowed to assume the jurisdiction to take cognizance at the whims of a party when parent statute has not vested the jurisdiction in it.
iv) The Industrial and Commercial Employment (Standing Order) Ordinance, 1968 is an independent entity.
v) High Court cannot upset concurrent findings recorded by the courts below in Constitutional jurisdiction unless they are proved to be perverse or result of some arbitrariness.

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23. **Lahore High Court**
WASA Rawalpindi and another v. Punjab Labour Appellate Tribunal, Lahore etc.
Writ Petition No. 3439 of 2019/RWP
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6121.pdf

Facts: The private respondents filed complaints under sections 33(8), 65 & 66 of the Punjab Industrial Relations Act, 2010. The Labour Court directed the Managing Director and the Director (Admin) WASA to regularize services of the private respondents (petitioners therein) against the posts of said order and fixed the matter for compliance. Being aggrieved of order the department filed revision petition before PLAT which was dismissed, hence this petition.

Issues: i) When a workman attains status of a permanent workman against a post of permanent nature?
ii) Whether the Executing/ Implementing Court sit over the judgment/decision implementation whereof has been sought?
iii) Whether an employee who has been inducted in service without fulfilment of requisite criteria can claim exemption from the scrutiny at the time of regularization of his service?

Analysis: i) According to Standing Order No.1(b) of the Schedule attached with the Ordinance, 1968, a workman who performs duties for more than three months against a post of permanent nature attains status of a permanent workman.
ii) It is well established by now that the Executing/ Implementing Court cannot sit over the judgment/decision implementation whereof has been sought.
iii) The employees did not fulfill the eligibility criteria for appointment/regularization against the posts being held by them in terms of the

service rules framed for the employees of WASA Rawalpindi, in the year 2012, being persuasive, cannot be discarded lightly. Though the eligibility of the employees was to be determined at the time of their induction in service but when they completed the requisite period, they were entitled for regularization against the post being held by them but in this case it is admitted position that the private respondents were hired without adopting the due process, thus, their eligibility to hold any post on regular basis could not be bypassed especially when the service rules were framed by WASA much prior to issuance of orders regarding their regularization. Had the employees been inducted in service upon fulfilment of requisite criteria they could have claimed exemption from the scrutiny at the time of regularization of their services.

Conclusion: i) A workman who performs duties for more than three months against a post of permanent nature attains status of a permanent workman.
ii) The Executing/ Implementing Court cannot sit over the judgment/decision implementation whereof has been sought.
iii) An employee who has been inducted in service without fulfilment of requisite criteria cannot claim exemption from the scrutiny at the time of regularization of his service.

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24. **Lahore High Court**
Roshan Iqbal v. Nazar Muhammad and others
Civil Revision No.2584 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5855.pdf

Facts: The respondents No.1 to 4 instituted a suit under sections 39 & 42 of the Specific Relief Act, 1877 alongwith consequential relief. The trial Court decreed the suit in favour of the respondents No.1 to 4 and against the present petitioner and respondent No.5. Appeal was preferred by the petitioner which was accepted and the respondents No.1 to 4 preferred R.S.A., which was accepted with the consent of the counsel for the parties and remanded the case to the appellate Court for decision of appeal afresh. After remand, the learned appellate Court heard the parties' counsel and dismissed the appeal preferred by the present petitioner; hence, the instant revision petition.

Issues: i) Who is to prove the facts if someone desires any court to give judgment as to any legal right or liability dependent on existence of facts?
ii) Whether it is necessary for the party to state about the particulars of misrepresentation, fraud, breach of trust, default, or undue influence who relies on the same?
iii) Whether the evidence, led by any party regarding the fact which is not mentioned in the pleadings, is acceptable?
iv) Whether any shortcoming or discrepancy in the evidence of the rival party can extend benefit to the other party?

v) What is the situation when the High Court is vested with authority to undo the concurrent findings while exercising revisional jurisdiction?

Analysis: i) Article 117 of Qanun-e-Shahadat Order, 1984 provides that whoever desires any Court to give judgment as to any legal right or liability dependent on existence of facts which he asserts, must prove that those facts exist.
ii) Order VI, Rule 4 of the Code of Civil Procedure, 1908 enunciates that, 'in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items necessary) shall be stated in the pleadings.'
iii) Any evidence led by the respondents No.1 to 4 pertaining to fraud, purportedly committed by the present petitioner, cannot be considered being inadmissible as the same was not pleaded in their plaint because a party cannot go beyond its pleadings.
iv) It is admitted that certain shortcomings and contradictions took place in the depositions of the witnesses the same are natural and are not too fatal to disbelieve the same. Even otherwise, the party has to stand on its own legs and any shortcoming or discrepancy in the evidence of the rival party cannot extend benefit to the other party.
v) When the Courts below have misread evidence of the parties and the position is as such, High Court is vested with authority and ample power to undo the concurrent findings while exercising revisional jurisdiction under section 115, Code of Civil Procedure, 1908.

Conclusion: i) Whoever desires any Court to give judgment as to any legal right or liability dependent on existence of facts which he asserts, must prove that those facts exist.
ii) It is necessary for the party to state about the particulars of misrepresentation, fraud, breach of trust, default, or undue influence who relies on the same.
iii) The evidence, led by any party regarding the fact which is not mentioned in the pleadings, is not acceptable because a party cannot go beyond its pleadings.
iv) Any shortcoming or discrepancy in the evidence of the rival party cannot extend benefit to the other party.
v) See above in analysis clause.

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25. **Lahore High Court**
Hassan Munir v. Province of the Punjab, etc.
W. P. No.70260 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC5943.pdf

Facts: The petitioner has called into question the show cause notice issued by the Vice Chancellor, University of Agriculture, Faisalabad under Section 13(4) of the

Punjab Employees Efficiency, Discipline and Accountability Act, 2006 ("PEEDA Act, 2006') whereby he has been afforded opportunity of personal hearing.

Issue: i) Whether Section 12 of the Protection against Harassment of Women at the Workplace Act, 2010 does exclude possibility of proceedings in any other law?
ii) In case of inconsistency between the Federal and Provincial law, whether the former will prevail?

Analysis: i) The petitioner has allegedly been proceeded under the PEEDA Act for misconduct on account of harassment of a female student. Section 12 of the Act of 2010 states that the provisions of the said Act are in addition to any other law in force. It is clearly manifest from the perusal of above provision that proceedings under the Act, 2010 do not exclude possibility of proceedings in any other law, therefore, there is no illegality or jurisdictional error in proceedings against the petitioner, if allegation falls within the scope and ambit of the PEEDA Act, 2006.
ii) Undisputedly the Act of 2010 is a Federal legislation whereas the PEEDA Act, 2006 has been enacted by the Provincial Assembly. Article 143 of the Constitution provides that in case of any inconsistency between the Federal and Provincial Law, the former will prevail. Hence, it is quite clear that in case of any inconsistency between the Act of 2010 and the PEEDA Act, 2006, the provisions of the Act of 2010 shall prevail in its application to the proceedings for the alleged harassment against respondent No.8.

Conclusion: i) Section 12 of the Protection against Harassment of Women at the Workplace Act, 2010 does not exclude possibility of proceedings in any other law.
ii) In case of inconsistency between the Federal and Provincial law, the former law prevail?

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26. **Lahore High Court**
Muhammad Safdar v. Jameel Ahmed and another
R.S.A.No.195522 of 2018
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5877.pdf

Facts: Appellant/ plaintiff instituted a suit for possession through specific performance of agreement to sell alongwith permanent injunction. The trial Court decreed the suit in favour of the appellant. The respondent No.2 being aggrieved preferred an R.F.A. before High Court, however, due to enhancement of pecuniary jurisdiction of the District Judge, the said R.F.A. was transmitted to the District Judge for decision. The appellate Court accepted the appeal, set aside the judgment and decree passed by the learned trial Court and dismissed suit of the appellant for specific performance, however, held the appellant entitled to receive back earnest money Rs.1,500,000/- from the respondent No.1 in addition to withdrawal of any other amount deposited by him in compliance of judgment and decree hence, the instant regular second appeal.

Issues: i) Whether the relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief?
ii) What is the effect if the appellant did not send any written notice to the respondent showing his readiness to pay the remaining amount and asking him to perform his part of agreement after cut-off date?
iii) Whether the judgment of the appellate Court can be interfered?

Analysis: i) It is a settled proposition of law that to bestow the relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief as enunciated in section 22 of the Specific Relief Act, 1877; even in cases where the agreement to sell is validly proved by the plaintiff, the Courts may refuse to allow the relief of specific performance. Court is neither obliged to grant the relief of specific enforcement nor can the plaintiff claim it as a matter of right.
ii) The time is essence of the agreement as the cut-off date was fixed as 29.09.2009, however, the present appellant for the first time demanded execution of registered sale deed by approaching the respondent No.1 on 25.10.2009, meaning thereby he was not ready to perform his part of purported agreement to sell till the cut-off date. Moreover, after cut-off date, the appellant did not send any written notice to the respondent No.1 showing his readiness to pay the remaining amount and asking him to perform his part of agreement, despite the fact that as per terms and conditions of agreement, if vendee fails to pay balance consideration amount till target date the agreement to sell will stand cancelled.
iii) This a regular second appeal which has a very limited scope as provided under section 100, Code of Civil Procedure, 1908. The judgment of the appellate Court cannot be interfered with unless some procedural defects materially effecting such findings is pointed out by the appellant. Reliance is placed on Bashir Ahmed v. Mst. Taja Begum and others (PLD 2010 Supreme Court 906) and Muhammad Feroze and others v. Muhammad Jamaat Ali (2006 SCMR 1304).

Conclusion: i) The relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief as enunciated in section 22 of the Specific Relief Act, 1877.
ii) If the appellant did not send any written notice to the respondent showing his readiness to pay the remaining amount and asking him to perform his part of agreement even after cut-off date, the agreement to sell will stand cancelled.
iii) See above in analysis clause.

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27. **Lahore High Court**
Ahmad (deceased) through L.Rs v. Haji Saeed Ahmad (deceased) through L.Rs.
Civil Revision No.247 of 2015
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6112.pdf

Facts: Through this civil revision the petitioner(s) being aggrieved by the judgments and

decrees of trial court and appellate court in consequence of the suit for specific performance of agreement to sell filed by the respondents, have challenged the same.

Issues: i) Whether date ,time ,place along with names of witnesses in whose presence the agreement to sell reached upon, are sine qua non to be pleaded and proved?
ii) What is the definition of "Contingent Contract"?
iii) When contingent agreement cannot be enforced?
iv) Whether mere exhibition of the document is sufficient?
v) Whether depositions of witnesses based upon hearsay can be relied?
vi) Whether High Court is vested with ample power to undo the concurrent findings while exercising revisional jurisdiction?

Analysis: i) Once vendee could not plead as to when, where and at what place the alleged agreement to sell was reached at and only pleaded that the vendor entered into agreement to sell with him, without mentioning the names of the witnesses, in whose presence the parties bargained and agreed to enter into the transaction in dispute, which otherwise was necessary and sine qua non to be pleaded and proved, in such circumstances the suit for specific performance cannot be succeeded...
ii) Under section 31 of the Contract Act, 1872, A "Contingent contract" is a contract to do or no to do something, of some event, collateral to such contract, does or does not happen...
iii) When the very basis of the purported agreement to sell did not remain in field, the contingent agreement loses its value and cannot be enforced...
iv) Mere exhibition of the document is not sufficient rather the contents of the same are to be proved…
v) The depositions of P.W.7, P.W.8 and P.W.9 are based on hearsay, so the same have no value in the eye of law and cannot be relied upon…
vi) High Court is vested with authority and ample power to undo the concurrent findings while exercising revisional jurisdiction under section 115, Code of Civil Procedure, 1908…

Conclusion: i) Yes, date ,time ,place along with names of witnesses in whose presence the agreement to sell reached upon, are sine qua non to be pleaded and proved.
ii) See analysis portion.
iii) When the very basis of the purported agreement to sell did not remain in field, then in such situation contingent agreement cannot be enforced.
iv) Mere exhibition of the document is not sufficient rather the contents of the same are to be proved.
v) The depositions of witnesses based upon hearsay cannot be relied upon.
vi) Yes, High Court is vested with ample power to undo the concurrent findings while exercising revisional jurisdiction.

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28. **Lahore High Court**
Raja Asad Kiani v. Addl.Sessions Judge etc
Crl.Rev.No.265 of 2023
Mr. Justice Sadaqat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5822.pdf

Facts: The petitioner filed a criminal revision against an order passed by an Addl.Sessions Judge during the trial in a criminal case, whereby his application for summoning the record/Rapt with Audio recording from the office of Rescue-15 has been dismissed.

Issue: Can the accused be allowed to give evidence or to summon the document in trial of a criminal case during the turn of prosecution evidence?

Analysis: The provisions of section 265-F Cr.P.C. have provided a complete procedure for both; prosecution and the accused to examine the witnesses and to produce document(s), since the procedure has made it clear that accused shall be asked to adduce his evidence after conclusion of the prosecution evidence. If accused wants the court to summon any person to give evidence or to produce any document, he shall have to wait till conclusion of the prosecution evidence (…) petitioner has the right to summon record/relevant witness regarding matter in issue but only on his turn i.e. entering on his defence and not before this stage

Conclusion: In trial of a criminal case the accused cannot be allowed to give evidence or to summon the document during the turn of prosecution evidence.

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29. **Lahore High Court**
Sakhi Muhammad (deceased), through LRs. v. Mst. Maridan Mai and others
Civil Revision No.4290 of 2016
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5844.pdf

Facts: The petitioners assailed the decision of the lower courts through Civil Revision wherein petitioners filed suit against respondents and during pendency of suit, parties referred their dispute to the Arbitration subsequently suit was dismissed as withdrawn. After that petitioners moved application before trial court for pronouncement of judgment according to Award but it was dismissed and appeal met the same fate.

Issues: i) Whether will of parties can fetter the settlement of their disputes out of court?
ii) Whether Code of Civil Procedure allows private resolution of dispute during a suit ?
iii) Whether settlement of disputes out of court is recognized under various statutory jurisdictions?
iv) What is arbitration agreement?
v) What is the scope of appeal filed under Arbitration Act?
vi) Whether after dismissal/withdrawal of a suit, application under section 14 and

17 of Arbitration Act can be dismissed?

vii) Whether Order 23 Rule 3 and proviso to section 47 of Arbitration Act depict the unfettered will of the parties to settle their disputes?

viii) What is sine qua non for a compromise or adjustment of a suit?

ix) Whether a decree under Order 23 Rule 3 of C.P.C, can be passed on Arbitration Agreement without following the provisions of Arbitration Act?

x) What are the requirements for pronouncement of a judgment by Civil Court under section 17 of Arbitration Act?

Analysis: i) It is a basic jurisprudence that the will of parties to get their disputes settled out of court cannot be fettered (proviso to S.47).

ii) The Code of Civil Procedure, 1908 allows private resolution of dispute during a suit, even after invoking jurisdiction of the court under Section 9 of CPC.

iii) Out of court settlement of disputes is recognized under various statutes in our jurisdiction and generally under the Act of 1940, Section 46 of which applies provisions of this Act to Statutory Arbitrations as well.

iv)A written agreement to submit, present or future differences to Arbitration, even without naming the Arbitrator is called Arbitration Agreement, under Section 2(a) of the Act of 1940. It can be independent or in shape of a clause in a contract.

v) Appeal against an order by the court, under the Act of 1940, also has limited scope and the Appellate Court cannot go beyond the scope of jurisdiction available to the court under the Act of 1940.

vi) If the suit is withdrawn after the Arbitration Agreement during pending suit, the question of staying the proceedings in suit shall not arise. Such Arbitration Agreement, with due deference, is not an unlawful agreement and consequent Award shall be treated under Chapter II as Arbitration without intervention of Court. Hence the application under Section 14 & 17 of the Act of 1940, for judgment in terms of Award could not be dismissed, simply because an order of reference under Section 21 was not obtained before entering into an Arbitration Agreement.

vii) Rule 3 of Order XXIII and proviso to Section 47 of the Act of 1940 depict the basic jurisprudence of unfettered will of the parties to settle their disputes privately, even during a suit.

viii) The sine qua non for treating any informal private agreement to settle a dispute as a compromise or adjustment of a suit is consent of all the parties in a pending suit under ordinary jurisdiction under Section 9 of CPC.

ix) If both parties agree, in writing, before the court in a suit to pass a decree in accordance with an Arbitration Award, even if it was reached without following the provisions of the Act of 1940 . The decree shall be under Order XXIII Rule 3, taking such Award as a compromise or adjustment of suit as envisaged under proviso to Section 47 of the Act of 1940.

x) If the Award and Arbitration proceedings were in accordance with the

provisions of the Act of 1940 and there is no suit pending; the Award can be filed in the Civil Court, as defined under Section 2(c) of the Act of 1940, and judgment can be pronounced in conformity with such Award under Section 17.

Conclusion i) Will of parties cannot fetter the settlement of their disputes out of court.
ii) The Code of Civil Procedure, 1908 allows private resolution of dispute during a suit, even after invoking jurisdiction of the court under Section 9 of CPC.
iii) Out of court settlement of disputes is recognized under various statutes in our jurisdiction and generally under the Act of 1940.
iv) See above in analysis clause.
v) Appeal against an order by the court, under the Act of 1940, also has limited scope.
vi) If the suit is withdrawn after the Arbitration Agreement during pending suit, the application under Section 14 & 17 of the Act of 1940, for judgment in terms of Award could not be dismissed.
vii) Rule 3 of Order XXIII and proviso to Section 47 of the Act of 1940 depict the basic jurisprudence of unfettered will of the parties.
viii) The sine qua non for treating any informal private agreement to settle a dispute as a compromise is consent of all the parties.
ix) If both parties agree, in writing, before the court in a suit to pass a decree in accordance with an Arbitration Award, the decree shall be under Order XXIII Rule 3, taking such Award as a compromise or adjustment of suit as envisaged under proviso to Section 47 of the Act of 1940.
x) If the Award and Arbitration proceedings were in accordance with the provisions of the Act of 1940 and there is no suit pending, judgment can be pronounced in conformity with such Award under Section 17.

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30. **Lahore High Court**
Samia Zaman v. Asad Zaman and another
Writ Petition No. 8786 of 2021
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5893.pdf

Facts: Petitioner assailed the decision of appellate court through the writ petition wherein Family court held the petitioner entitled to maintenance allowance from the date of birth till her legal entitlement with annual increment.

Issues: i) Whether the date of annual increment in maintenance allowance would be reckoned from the date of decree or from the date when a person is held entitled?
ii) Whether the applicability of the order/judgment/decree will be prospective?

Analysis: i) A family court while decreeing a suit qua recovery of maintenance allowance apart from determining the quantum of maintenance allowance will also suggest

the annual increase however if the annual increase has to be made applicable keeping in view the evidence of the parties, it has to give a categoric finding in this regard justifying the applicability of the increase from a particular date otherwise if the increase is not suggested from a particular date or no increase is suggested, the same shall be deemed to be applicable from the date of decree.
ii) Applicability of the order/judgment/decree will be prospective unless through a clear and categoric direction, it is made applicable retrospectively.

Conclusion: i) The annual increase has to be made applicable from a particular date and the court has to give a categoric finding otherwise the date of annual increment would be reckoned from the date of decree.
ii) Applicability of the order/judgment/decree will be prospective.

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31. **Lahore High Court**
Commissioner Inland Revenue v. M/S Pakistan Cricket Board Lahore
ITR No. 2590/2023
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5827.pdf

Facts: This and connected Income Tax Reference Application are directed against consolidated order of learned Appellate Tribunal Inland Revenue, Lahore, whereby appeals preferred by Taxpayer were allowed and appeal preferred by the department was dismissed.

Issue: Whether rental income from the property under section 15 of the Income Tax Ordinance of 2001, subject to the fulfillment of the conditions prescribed for charging of Minimum tax under Section 113 of the Ordinance, qualifies as taxpayer's gross receipts for the purposes of turnover for computing Minimum tax?

Analysis: Income from property may be classified as income under one of the different heads of income but not otherwise specifically excluded for the purposes of computation of minimum tax; provided benchmarks under section 113 are otherwise met. Learned counsel failed to convince us that how income from property be brought within the exclusions provided through Explanation to sub-section (1) of section 113 of the Ordinance, 2001 - inserted through the Finance Act, 2012. It is pertinent to mention that meaning of turnover, in sub-section (3) of section 113 of the Ordinance, 2001, underwent change, wherein addition of express 'gross sales' was made. Gross receipts needed to be read in conjunction with sub-section (1) of section 113, „……person's turnover from all sources for that year: Gross receipts include income from non-sales sources, and nor necessarily related to regular business activity. Expression 'gross sales' and 'gross receipts', employed in clause (a) of sub-section (3) of section 113 have had to be construed accordingly – to give effect to the changes made in the definition of turnover. Term 'gross receipts' cannot be confined to activity connected with

sales of goods, when such activity of sale of goods is catered through expression 'gross sales' – added by Finance Act, 2011. Addition of expression 'gross sales' in fact, distinguishes and enlarges the scope and compass of „gross receipts. Expression "gross receipts" needs to be construed and read disjunctively, while distinguishing it from activity of sale of goods, simplicitor. Evidently, coupling of expression 'gross receipts' exclusively with activity of sale of goods would render the expression 'gross sales' redundant, superfluous and have an effect of narrowing down the base of income for the purposes of Minimum tax regime. Hence, in view of the above, rental income from property is not the deemed income and have had to be reckoned for the purposes of considering benchmark for Minimum tax regime.

Conclusion: Rental income from the property under section 15 of the Income Tax Ordinance of 2001, subject to the fulfillment of the conditions prescribed for charging of Minimum tax under Section 113 of the Ordinance, qualifies as taxpayer's gross receipts for the purposes of turnover for computing Minimum tax.

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32. **Lahore High Court**
Ghulam Qadir Khan v. National Accountability Bureau, etc.
W.P.No.2366 of 2023
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC6132.pdf

Facts: The petitioner is amongst the accused in Accountability Reference facing trial before the District & Sessions Judge/ Judge Accountability Court. Through instant petition, he is seeking his release on post-arrest bail.

Issues: i) What is the mandate of the National Accountability Ordinance, 1999 regarding the conclusion of trial of the accused?
ii) Whether the failure to comply the order, on the direction of High Court, will vest a right upon the accused to claim bail?
iii) Whether the Superior Courts have the power to grant bail independent of any statutory source?
iv) Whether only tentative assessment of the material available is to be made for forming an opinion at bail stage?

Analysis: i) Section 16 of the National Accountability Ordinance, 1999 as amended by Act No.XI of 2022 dated 22nd June, 2022 mandates that the trial of accused under the Ordinance shall be completed within one year.
ii) There is no cavil that failure to comply the order on the direction of High Court would not vest a right upon the accused to claim bail but at the same time, expeditious trial is an inalienable right of every accused. Needless to observe that delay in prosecution of accused amounts to abuse the process of law. It is an inalienable right of every accused to have expeditious and fair trial, which right is even guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

iii) It is well settled principle that the Superior Courts have the power to grant bail under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 independent of any statutory source of jurisdiction such as 497 of the Code of Criminal Procedure, 1898.
iv) There is no cavil to the proposition that at bail stage, only tentative assessment of the material available is to be made for forming an opinion as to whether reasonable grounds exist against the accused for the commission of alleged offence.

Conclusion: i) Section 16 of the National Accountability Ordinance, 1999 mandates that the trial of accused under the Ordinance shall be completed within one year.
ii) Failure to comply the order, on the direction of High Court, will not vest a right upon the accused to claim bail.
iii) The Superior Courts have the power to grant bail independent of any statutory source of jurisdiction.
iv) At bail stage only tentative assessment of the material available is to be made for forming an opinion.

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33. **Lahore High Court**
Chaudhary Abdul Majeed v. The Learned Ex-Officio Justice of Peace Rawalpindi and 6 Others
Writ Petition No. 3343 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6035.pdf

Facts: One of the respondents moved a petition under Section 22-A/22-B of the Cr.P.C. While proceeding with the petition, the Ex-Office Justice of Peace requisitioned a report from the concerned police quarters. On receipt of report and after hearing the parties, the Ex-Officio Justice of Peace passed the impugned order, whereby he proceeded to direct the Station House Officer (SHO) to record statement of respondent No.2 under Section 154 of the Code of Criminal Procedure, 1898 in accordance with law. The petitioner impugned this order in this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 after remaining unsuccessful in voicing grievance before higher authorities**.**

Issue: While exercising powers under Section 22-A(6) of the Cr.P.C., after requisitioning a report from the police, whether Ex-Officio Justice of Peace is expected to brush aside such report without assigning any lawful reasoning?

Analysis: It is trite law that functions performed by the Ex-Officio Justice of Peace under Section 22-A of the "Cr.P.C." are quasijudicial in nature and it cannot be termed as executive/administrative or ministerial. At the same time powers exercised by the Ex-Officio Justice of Peace are neither unbridled nor indefinite. While exercising powers under Section 22-A(6) of the "Cr.P.C." the ExOfficio Justice of Peace is not supposed to proceed mechanically and in vacuum. After

requisitioning a report from the police, Ex-Officio Justice of Peace is not expected to brush aside such report without assigning any lawful reasoning.

Conclusion: While exercising powers under Section 22-A(6) of the Cr.P.C., after requisitioning a report from the police, Ex-Officio Justice of Peace is not expected to brush aside such report without assigning any lawful reasoning.

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34. **Lahore High Court**
Usama Bin Maalik v. Federal Public Service Commission through its Chairman etc.
F.A.O No.80183/2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC5972.pdf

Facts: Through these appeals under Section 7(3)(d) of Federal Public Service Commission Ordinance, 1977 the appellants have challenged the validity of Memorandums, whereby the Federal Public Service Commission rejected the representation as well as review of the appellants.

Issues: i) Whether Federal Government across the board allocated 10% quota to Women which does not apply to the vacancies reserved for recruitment on the basis of open merit?
ii) Whether compliance of the decisions of Supreme Court of Pakistan is mandatory for all the organs of the state?
iii) Whether the suitability/eligibility of a candidate for appointment against a post falls within the exclusive domain of an Appointing Authority/Selection Committee?

Analysis: i) In the Memorandum dated 22.05.2007, the Federal Government across the board allocated 10% quota to Women and under paragraph No.3(i) whereof the said percentage/allocation does not apply to the vacancies reserved for recruitment on the basis of open merit.
ii) The compliance of the decisions of Supreme Court of Pakistan is mandatory for all the organs of the state as enshrined in Article 189 of the Constitution of the Islamic Republic of Pakistan...
iii) The suitability/eligibility of a candidate for appointment against a post falls within the exclusive domain of an Appointing Authority/Selection Committee, who are considered the best evaluator/judge on the field...

Conclusion: i) Yes, Federal Government across the board allocated 10% quota to Women which does not apply to the vacancies reserved for recruitment on the basis of open merit.
ii) Yes, compliance of the decisions of Supreme Court of Pakistan is mandatory for all the organs of the state.
iii) Yes, the suitability/eligibility of a candidate for appointment against a post falls within the exclusive domain of an Appointing Authority/Selection

Committee.

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35. **Lahore High Court**
Masha Ali v. The State & another
Crl. Revision No. 67181 of 2023
Mr. Justice Shehram Sarwar Ch., Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC6054.pdf

Facts: Through the instant Criminal Revision petition petitioner challenged vires of the order passed by learned Administrative Judge, Anti-Terrorism Courts through which the custody of the petitioner was handed over to the Investigating Officer of case FIR under offences Sections 440, 395, 386, 148 & 149 PPC read with Section 7 of the Anti-Terrorism Act, 1997, on physical remand. During the pendency of this petition, the impugned order elapsed but through Crl. Misc. No.3/2023, that order has been placed on the record through which a further seven days physical remand of the petitioner was allowed by the Administrative Judge.

Issues: i) What is the scope of revisional jurisdiction of High Court under Section 439 Cr.P.C?
ii) What are the two stages of detention of a person prior to the commencement of an inquiry or trial?
iii) What is the duty of Magistrate while granting remand of an accused?
iv) What is difference between physical remand and judicial remand?
v) What is the meaning and effect of discharge of an accused?
vi) What does "satisfaction of the Court" used in section 21-E of Anti Terrorism Act connote?
vii) Whether Section 21-E, Anti-Terrorism Act bars the application of general principles to be followed by a Magistrate while dealing with the matter of remand under Section 167 of the Code?
viii) What is the duty of investigation officer regarding submission of case diaries during physical remand of an accused?
ix) What are the guidelines regarding remand of accused for the Magistrate/Administrative Judge Anti-Terrorism Court to be followed in the future?

Analysis: i) Under Section 439 Cr.P.C. the High Court is empowered, while exercising its revisional jurisdiction, to examine the vires of any proceedings the record of which has been called for by itself or which otherwise comes to its knowledge. The revisional jurisdiction is very wide and is not a power, but rather a duty, which must be exercised whenever facts calling for its exercise are brought to the notice of the Court.
ii) The Legislature has expressly separated the period for which a person can be detained in custody prior to the commencement of an inquiry or trial into two stages. The first phase is the period of 24 hours as envisaged under Article 10 (2) of the Constitution and Section 61 of the Code. In this period the investigating agency has the power to detain a person, subject to the conditions contained in

Section 54 of the Code, for the purpose of investigation. If the investigation cannot be completed within 24 hours, the police must forward the accused to the nearest Magistrate as mandated by Section 167(1) of the Code.

iii) When an accused is remanded back to the Investigating Officer by the Magistrate, it means that his custody is handed over to the investigating agency for the purpose of further investigation through a well-reasoned order that 'Custodial Interrogation' is indispensable to unearth the truth and collect the further evidence which is not possible in the absence of the accused. The prospect of the collection of further evidence/incriminating material is a substantial premise for remanding the accused to police custody. The Magistrate must undoubtedly be convinced of the need for remand of the accused to such custody while considering the material already available on the record and he must record his reasons in that respect.

iv) The difference between 'physical remand' and the 'judicial remand' is characterized by the degree of access the Investigating Officer has to the accused for the purpose of interrogation. In police custody, an accused is in the exclusive custody of the investigating officer, and the primary aim is to allow the police to conduct "custodial interrogation" to unearth the truth in any given case. On the other hand, judicial custody refers to the custody of an accused in jail. When a person is in jail custody, he is indirectly deemed to be in the custody of the court.

v) Discharge of an accused person does not amount to smothering of the investigation, cancellation of the case, termination of prosecution or acquittal. An investigation, if in progress, can continue unaffected by such an order of discharge. Discharge of an accused by the Magistrate, be it of any kind, cannot be equated with acquittal of the accused person so discharged as there is a world of difference between a discharge and an acquittal and there is no question of mixing one with the other under any circumstances.

vi) It is true that Section 21-E, ATA empowers the special court to grant physical remand, but the words 'satisfaction of the Court' used in the above-referred provision of law are of utmost importance. Satisfaction of the court connotes subjective satisfaction based on the cogent material available on the record to satisfy itself regarding the progress in the investigation made in the previous period of remand and further expectation of availability of evidence.

vii) Furthermore, Section 21-E, ATA does not bar the application of general principles to be followed by a Magistrate while dealing with the matter of remand under Section 167 of the Code. In this regard, Section 32, ATA is relevant which provides an overriding effect of said Act. It has been specifically provided in that Section that the provisions of Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before Anti-Terrorism Court… As per Section 32(1), ATA, provisions of the Code are fully applicable to the Anti-Terrorism Court, if they are not inconsistent with any provision of ATA.

viii) … when he remained on physical remand with the investigating agency as no police diaries for those four days are available on the police file. Rule 25.53 of the Punjab Police Rules, 1934 casts a duty on the Investigating Officer that in

consonance with the provisions of Section 172(1) of the Code a case diary shall be maintained and submitted daily during an investigation.

ix) Before parting with the judgment, it shall be beneficial to formulate guidelines, for the Magistrate/Administrative Judge to be followed in the future, as infra: -

I. The question of remand in cases exclusively triable by the Anti-Terrorism Court is governed by Section 21-E of the ATA but Section 167 of the Code and the relevant considerations shall also be applicable as much as those are not inconsistent with the provisions of ATA.
II. The remand of an accused can only be granted when he is produced before the Magistrate. No remand order should be passed by the Magistrate in the absence of an accused.
III. It is the bounden duty of the Magistrate to apply her/his independent judicious mind to the facts and circumstances of the case to arrive at the decision, whether the physical remand should be granted or refused. Application of an independent judicious mind being *sine qua non* must be reflected in the order passed by the Magistrate and for that purpose, the case diaries and other documents available on the record must be examined to arrive at a just decision.
IV. The Magistrate must pass a speaking order while dealing with the question of grant or refusal of physical remand, furnishing cogent and convincing reasoning as the grant of remand to police custody is not a rule, but an exception, therefore, the accused can only be handed over to investigating agency in cases of real necessity and that too for the shortest possible time required for investigation.
V. Before granting remand, the Magistrate should ensure that *prima facie* evidence is available on the record to connect the accused with the commission of the offence in question and the physical custody of the accused is necessary for the collection of further evidence.
VI. In case the Investigating Officer seeks an extension in physical remand, the Magistrate should examine the progress since the previous order(s), as the longer the accused person has been in custody the stronger should be the grounds required for further remanding him to the police custody. If no investigation was conducted after having obtained the physical remand, further remand should be refused.
VII. The accused must be given a fair opportunity to oppose the request of the Investigating Officer regarding the grant of remand himself or through his counsel. His objections should be brought on the record and the Magistrate should ensure that no physical harm is caused to him during police custody.
VIII. To strike a balance, between the needs of a thorough investigation on the one hand and the protection of the citizens from the oppressive attitude of the Investigating Agency, on the other hand, is the foremost duty of a Magistrate dealing with the question of grant or refusal of physical remand.

Conclusion: i) The revisional jurisdiction is very wide and is not a power, rather a duty, which must be exercised whenever facts calling for its exercise are brought to the notice of the Court.

ii) There are two stages of detention of a person prior to the commencement of an inquiry or trial i.e.

- The first phase is the period of 24 hours as envisaged under Article 10 (2) of the Constitution and Section 61 of the Code.
- In second phase, if the investigation cannot be completed within 24 hours, the police must forward the accused to the nearest Magistrate as mandated by Section 167(1) of the Code.

iii) The Magistrate must pass a well-reasoned order while granting the remand that 'Custodial Interrogation' is indispensable to unearth the truth and collect the further evidence which is not possible in the absence of the accused.

iv) The difference between 'physical remand' and the 'judicial remand' is that in physical remand "custodial interrogation" is allowed and judicial custody refers to the custody of an accused in jail or indirectly in custody of court.

v) Discharge of an accused does not mean smothering of investigation or cancellation of case and it cannot be equated with acquittal of accused.

vi) Satisfaction of the court connotes subjective satisfaction based on the cogent material available on the record to satisfy itself regarding the progress in the investigation made in the previous period of remand and further expectation of availability of evidence.

vii) Section 21-E of Anti Terrorism Act does not bar the application of general principles to be followed by a Magistrate while dealing with the matter of remand under Section 167 of the Code. In this regard, Section 32, ATA is relevant which provides an overriding effect of said Act.

viii) During investigation in physical remand of accused, investigating officer is duty bound to maintain and submit case diaries daily.

ix) See corresponding analysis above.

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36. **Lahore High Court**

Commissioner Inland Revenue, Legal-Zone-LTO, Lahore v. M/s Rasool Nawaz Sugar Mills Ltd.

STR No.77498/2022

Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez

https://sys.lhc.gov.pk/appjudgments/2023LHC5946.pdf

Facts: This Sales Tax Reference Application under section 47 of the Sales Tax Act, 1990 arises out of order, whereby Appellate Tribunal Inland Revenue allowed Sales Tax appeal preferred by the registered person and set-aside the orders concurrently passed by the Commissioner Inland Revenue (CIR) and CIR (Appeals).

Issue: i) Whether there is any amnesty from penalty u/s 33 and default surcharge u/s 34

in the proceedings initiated under section 11(1) of the Sales Tax Act, 1990?
ii) Whether filing of return is mandatory and non-submission of return within due date would amount to commission of an offence and same would hold the registered person liable under the provisions of section 33 of the Sales Tax Act, 1990?

Analysis: i) There is no cavil that sub-section (1) of section 11, ibid, entitles the Officer Inland Revenue, after notice and upon happening of event(s) of default as identified therein, to „make an order of assessment of tax including imposition of penalty and default surcharge in accordance with section 33 and 34 of the Act. Proviso to sub-section (1) of section 11 of Act of 1990 provides an eventuality of abatement of order, if passed, and the notice, provided default is addressed upon payment of tax along with default surcharge and penalty and filing of return(s) after due date. Omission / inaction on the part of registered person in filing return by prescribed date or upon short payment of the tax due, entitles the Officer of Inland Revenue, subject to notice, to make an order of assessment including imposition of penalty and default surcharge in accordance with sections 33 and 34 of the Act. Proviso to sub-section (1) of section 11 provides an opportunity to the registered person to address an event of default, by filing return after the due date and upon payment of tax payable according to the return along with default surcharge and penalty, whereupon show cause notice and order of assessment, if any made, would abate. Provision of law under reference neither contemplates nor absolves the registered person from the consequence of default, triggered upon failing to file return for the tax period by due date or short payment of tax.
ii) In terms of section 11(1) of Act, consequence of incidence of default is a default surcharge and penalty, even if no tax is payable as per the tax return. Default position can only be reversed / addressed by opting for concession prescribed in proviso to sub-section (1) of section 11 of Act, 1990, subject to fulfillment of conditions – upon filing of tax return after due date and making payment of tax along with default surcharge and/or penalty, depending upon the nature of default. Mere filing of delayed return of tax, before issuance of notice, would not be considered an act of compliance, especially when default had triggered, which can be reconciled upon voluntarily meeting the conditions prescribed in proviso to section 11(1) of Act. It is inconceivable how a default, once accrued, would stand reconciled without fulfilling the requirements provided in proviso. Proviso must be given effect, which does not indicate or refers to incidence of any order of assessment of tax or notice, as condition precedent for claiming default surcharge and penalty. Default situation could only be addressed by invoking assistance of the proviso, upon meeting the conditions prescribed. Coupling the necessity of having underlying tax liability for the purposes of defining the scope of order of assessment of tax manifests misreading of sub-section (1) of section 11, ibid, and otherwise tantamount to undermine the individuality and significance of section 34 of the Act of 1990, which opens with a non-obstante expression - Notwithstanding the provisions of section 11. Effect

of non-obstante status of section 34 of the Act, 1990 was neither considered nor dilated upon in the case of Messrs Quetta Electric Supply company Limited, (supra). Even if upon filing of return after due date no tax – defined in terms of section 2(34) of Act, 1990 and subject to the context - is payable, still penalty and default surcharge could be ordered and claimed. Restrictive interpretation of the scope of "order of assessment of tax" would nullifies the disciplined compliance envisaged in law and otherwise render sections 33 and 34 of Act, 1990, redundant.

Conclusion: i) There is no amnesty from penalty u/s 33 and default surcharge u/s 34 in the proceedings initiated under section 11(1) of the Sales Tax Act, 1990.
ii) Irrespective of the fact whether tax has been paid or not, filing of return is mandatory and non-submission of return within due date would amount to commission of an offence and same would hold the registered person liable under the provisions of section 33 of the Sales Tax Act, 1990.

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37. **Lahore High Court**
Muhammad Khawar Ilyas v. Federation of Pakistan through Secretary Finance & Economic Affairs Division, Government of Pakistan, Islamabad & others
W.P No.10464 of 2021/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC5924.pdf

Facts: The petitioner challenged correspondence issued by Chief Commissioner Inland Revenue, Regional Tax Office, whereby pursuant to an Enquiry Report– recommending imposition of major penalty of *dismissal from service* – show cause notice, followed by personal hearing notice, was issued to petitioner in connection with disciplinary proceedings under the Removal from Service (Special Powers) Ordinance, 2000.

Issues: (i) Whether the repeal of the Removal from Service (Special Powers) Ordinance, 2000 can be made a shield to save a person from the disciplinary proceedings commenced before the repeal of the Ordinance?
(ii) Whether the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently?
(iii) Whether the effect of Rule 54-A of the Fundamental Rules is mandatory in nature?
(iv) Whether the power to impose a liability on a retired employee by a public official can be exercised after lapse of statutory timeframe for the exercise of such powers?
(v) Whether a writ is maintainable against a show cause notice?

Analysis: (i) Undeniably, the Ordinance of 2000 was repealed by the Act of 2010, however under sub-section (2) of Section 2 of the Act *ibid*, all proceedings pending under the repealed Ordinance against any person whether in government service or

corporation service were held to be continued. In these circumstances, the repeal of Ordinance of 2000 cannot be made a shield to save petitioner from the disciplinary proceedings commenced much before the repeal. And, under sub-section (3) of Section 2 of the Act ibid, all fresh disciplinary proceedings from 5th March, 2010 onwards relating to persons in government service, to whom the Civil Servants Act, 1973 (LXXI of 1973) and the Government Servants (Efficiency & Discipline) Rules, 1973, apply were held to be governed under the Act *ibid* and the rules made thereunder. In the given circumstances, there is no harm to the disciplinary proceedings initiated under the Ordinance of 2000 well before its repeal and petitioner cannot claim to wriggle out the same on this misconceived plea.

(ii) The purpose of departmental inquiry is to maintain and uphold discipline and decorum in the institution and efficiency of the department to strengthen and preserve public confidence. Whereas proceeding under the penal statutes are altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt, and if proved, punishment is awarded for the offences committed by the accused. It is well-settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect.

(iii) In view of Rule 54-A of the Fundamental Rules, if the disciplinary proceedings, including an inquiry, against an employee or public servant started during his / her service and are not concluded until the age of superannuation, such proceedings shall stand abated upon retirement and such government servant is entitled to get full pensionary benefits. The effect of afore-referred provision is mandatory because of the word "shall" used therein, as a result, the disciplinary proceedings initiated against petitioner stood abated upon his retirement on 08.07.2021, and he is entitled to full post-retirement benefits permissible under the law.

(iv) Generally, a statute which regulates the manner in which public officials exercise the powers vested in them is construed to be directory rather than mandatory, especially when neither private or public rights are injured or impaired thereby. But if the public interest or private rights call for the exercise of the power vested in a public official, the language used, though permissive and directory in form, is in fact peremptory or mandatory as a general rule. This general principle, however, does not apply where the phraseology of the provision, or the nature of the act to be performed, or the consequence of performing or failing to perform it within the prescribed timeframe is such that the prescription of timeframe is actually a limitation on the power of the public functionary. Or where a public functionary is empowered to create liability against a citizen only within the prescribed time, the performance of such a duty within the specified timeframe is mandatory. Where a public official can impose liability on a retired employee if the power is exercised within a certain statutory timeframe and there is a delay in the exercise of such power on the part of a

public official, no such liability can be imposed after the lapse of the statutory period.
(v) So far as objection that Writ Petition against issuance of Show Cause Notice is not maintainable, is concerned, admittedly in routine writ is not maintainable; however, where the show cause notice was barred by law or abuse of process of the Court or was coram non judice, and if the issuance of the show cause notice was without jurisdiction or with mala fide, the same can be challenged in Writ Petition.

Conclusion: (i) The repeal of the Removal from Service (Special Powers) Ordinance, 2000 cannot be made a shield to save a person from the disciplinary proceedings commenced before the repeal of the Ordinance.
(ii) The prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently.
(iii) The effect of Rule 54-A of the Fundamental Rules is mandatory in nature.
(iv) The power to impose a liability on a retired employee by a public official cannot be exercised after lapse of statutory timeframe for the exercise of such powers.
(v) A writ is maintainable against a show cause notice where the show cause notice was barred by law or results in abuse of process of the Court or was coram non judice, or the same was issued with mala fide.

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38. **Lahore High Court**
Imran Mustafa v. Government of Punjab, etc.
Writ Petition No. 16629 of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC6047.pdf

Facts: The facts giving rise to instant writ petition are that, the convict/petitioner was convicted under Section 9-C Control of Narcotic Substances Act, 1997 prior to promulgation of Narcotic Substances Amended Act, 2022 dated 5th September, 2022, by the trial Court and subsequently appellate Court reduced the sentence awarded to him. Moreover, convict/petitioner was declined remissions owing to insertion of section 9(A) (1) through an Act namely Control of Narcotic Substances (Amendment) Act, 2022 (Act No.XX of 2022). Petitioner finally prayed that application of newly inserted Section 9(A)1 be declared as having no legal effect on the petitioner/convict.

Issue: Whether the provisions of section 9(A) (1) of the Amendment Act, 2022 have retrospective effect and in turn depriving of the convict who has been arrested, indicted and convicted before the date of insertion of said section?

Analysis: …Undeniably convict was rounded up on 12.11.2020 in case F.I.R. No.810/2020 dated 12.11.2020, under section 9(c) of CNSA, 1997, registered at Police Station Qutabpur, Multan and after having been sent to face trial, was indicted on 23.12.2020 and was convicted and sentenced on 10.05.2022. There is also no

denial to the fact that section 9(A) (1) was introduced by virtue of an amendment through the Amended Act 2022 dated 06.09.2022… Bare perusal of above would vividly suggest that same have given no retrospective effect by the legislature. Even it does not transpire therefrom that the rights available to an accused involved in case falling within the purview of CNSA, 1997 prior to the amendment made on 06.09.2022 have been taken away in any manner whatsoever. The provisions of section 9(A) (1) of Amendment Act, 2022 from their bare reading are prospective in nature and same cannot be given effect retrospectively by placing any sort of embargo on the right of a convict qua earning remissions who had been arrested, indicted and even convicted prior to insertion of section 9(A) (1) through Amendment Act, 2022.

Conclusion: The provisions of section 9(A) (1) of Amendment Act, 2022 from their bare reading are prospective in nature and same cannot be given effect retrospectively by placing any sort of embargo on the right of a convict qua earning remissions who had been arrested, indicted and even convicted prior to insertion of section 9(A) (1) through Amendment Act, 2022.

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39. **Lahore High Court**
The State v. Shafique Ahmed
Criminal Appeal No. 166 of 2020
Mr. Justice Asjad Javaid Ghural, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5933.pdf

Facts: This appeal against acquittal filed by the State questions the impugned judgment passed by Additional Sessions Judge/CNS Court/MCTC, whereby accused/ respondent was acquitted under section 265-K Cr.P.C., in case FIR under section 9-C of the Control of Narcotic Substance Act, 1997 on the ground that PFSA Analysis Report, though not tendered in evidence, is bereft of necessary protocols.

Issues: i) Whether appeal against acquittal can be decided even in the absence of accused?
ii) Whether there is any difference between the words test or analysis used in Rule-6 of Government Analyst Rules, 2001?
iii) Whether contraband is limited to narcotic drug only?
iv) Whether every contraband requires examination and proper inspection?
v) Whether test or analysis is required for identification and calculation of percentage in any material containing controlled substance or psychotropic substance?
vi) Which types of tests are of international standards and considered sufficient?
vii) What is the meaning of the word “any offence”?
viii) Whether the offender can be tried if he has the possession of Charas?
ix) Whether the prosecution has any option for re-examination of contraband or clarification of report if the report of PFSA is not amenable to be used as cogent evidence?

Analysis: i) Appeal against acquittal can be decided even in the absence of accused as per section 423 of the Code. Under the principle of Audi alteram partem, notice for hearing is necessary as per section 422 of the Code and thereafter power under section 423 of the Code becomes available to the Court. Plain reading of above section explains that if the appellant or his counsel appear in appeal against conviction, the Court would provide him opportunity of hearing and to the Public Prosecutor but it is not mandatory for the Court to hear the appellant in an appeal against acquittal but must hear the accused, if he appears. Non-appearance of accused does not restrict the Court to decide the appeal in his absence.

ii) Perusal of Rule-6 of Government Analyst Rules, 2001 and Form-II transpire that the use of words "test or analysis" is meaningful; though both words sometimes used interchangeably yet maintain subtle difference due to which connotation is changed. Section 36 of Control of Narcotic Substances Act, 1997 (CNSA, 1997) talks about test and analysis of contrabands in the manner as may be prescribed. Therefore, it was prescribed through Government Analyst Rules, 2001 made under section 77 of CNSA, 1997 and perusal of Rule-6 of Government Analyst Rules, 2001 & Form-II throws light that an analyst shall either conduct test or analyze the contrabands.

iii) As per preamble read with section 6, 7 & 8 of CNSA, 1997, contraband is not limited to narcotic drug only rather there are three types of contrabands; Narcotic Drug, Psychotropic Substance and Controlled Substance which show that their identification either require test or analysis.

iv) For the identification, Quantification, Purity Analysis, Adulterant Detection, and its confirmation with regulations, every contraband requires examination and proper inspection that can either be done through naked eye with spot testing including other like methods, or through microscopic analysis with the help of scientific equipment/machines which is also evident from a "Manual For Use By National Law Enforcement and Narcotics Laboratory Personnel" written at New York in year 1994 for 'RAPID TESTING METHODS OF DRUGS OF ABUSE', under the auspices of United Nations International Drug Control Programme, Viena, wherein for different kinds of contrabands, a series of tests are prescribed.

v) It depends upon the nature of contraband and demand of prosecution as to whether, test be conducted or the analysis be preferred. However, generally for identification and calculation of percentage in any material containing controlled substance or psychotropic substance a deep microscopic analysis is required, whereas a narcotic drug can even be identified through a presumptive test.

vi) Three types of tests mentioned in PFSA report like, (i) Analytical balance for weight (ii) Chemical Spot Test (iii) Gas Chromatography-mass spectrometry, are of international standards and were considered sufficient by the Supreme Court in number of cases, only for narcotic drugs.

vii) The word "any offence" means that even if offence is not mentioned in the charge which interpretation stands in conformity with section 237 & 238 of the Code based on the principle that "no offence should go unchecked and no offender should go unpunished'.

viii) Possession of Charas is also an offence under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979, therefore, offender can be tried under such Order if the requirement of section 36 of CNSA, 1997 read with Rule-6 of Government Analyst Rules, 2001 is not fulfilled because section 73 of CNSA, 1997 saves the prevailing Provincial and Special laws.
ix) If the report of PFSA was not amenable to be used as cogent evidence, prosecution still had some options to be exercised like calling of analyst pursuant to section 510 of Cr.P.C., and for re-examination of contraband or clarification of report as per section 11 & 12 of the Punjab Forensic Science Agency Act, 2007.

Conclusion: i) Appeal against acquittal can be decided even in the absence of accused as per section 423 of the Code.
ii) Perusal of Rule-6 of Government Analyst Rules, 2001 and Form-II transpire that the use of words "test or analysis" is meaningful; though both words sometimes used interchangeably yet maintain subtle difference due to which connotation is changed.
iii) As per preamble read with section 6, 7 & 8 of CNSA, 1997, contraband is not limited to narcotic drug only rather there are three types of contrabands.
iv) Every contraband requires examination and proper inspection that can either be done through naked eye with spot testing including other like methods, or through microscopic analysis with the help of scientific equipment/machines.
v) Generally for identification and calculation of percentage in any material containing controlled substance or psychotropic substance a deep microscopic analysis is required.
vi) Three types of tests mentioned in PFSA report like, (i) Analytical balance for weight (ii) Chemical Spot Test (iii) Gas Chromatography-mass spectrometry, are of international standards and considered sufficient.
vii) See above in analysis clause.
viii) Possession of Charas is also an offence under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979, therefore, offender can be tried.
ix) If the report of PFSA is not amenable to be used as cogent evidence, the prosecution still has options for re-examination of contraband or clarification of report.

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40. **Lahore High Court**
Umair Ishtiaq v. Station House Officer etc.
Writ Petition No.70628/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC9665.pdf

Facts: Through this constitutional petition, the petitioner assailed the order of Justice of peace, whereby, he ordered the investigation officer to arrest the petitioner and others named in the cross-version as per law and the Police Rules.

Issues: i) What is the object of investigation?

ii) Whether the police have the statutory right to investigate the circumstances of an alleged cognizable offence and the courts have no authority to interfere in their functions?

iii) Whether the mere fact that FIR has been registered does obligate the Investigating Officer to arrest the accused?

iv) Whether Ex-officio Justice of Peace is competent under section 22-A (6) of Cr.P.C., to direct the police to arrest a person nominated in the FIR (or implicated through a cross-version of the accused party)?

Analysis: i) Section 4(1)(i) of the Code of Criminal Procedure, 1898, defines the term "investigation" and says that it "includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorized by a magistrate in this behalf." It follows that the object of investigation is to collect evidence and determine whether the allegations against a person are true or otherwise.

ii) As far back as the year 1945, in Emperor v. Khawaja Nazir Ahmad (AIR 1945 PC 18), the Privy Council held that the police have the statutory right to investigate the circumstances of an alleged cognizable offence and the courts have no authority to interfere in their functions. The Hon'ble Supreme Court of Pakistan endorsed the above view in Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Baluchistan and another (PLD 1971 SC 677) and ruled that the High Court had no jurisdiction under the Constitution3 or any other law, including the Code, to supervise the investigation of a criminal case or to control the agency conducting it. Again, in Muhammad Hanif v. The State (2019 SCMR 2029), while reaffirming the law laid down in Khawaja Nazir Ahmed's case, supra, the Hon'ble Supreme Court held that our Constitution is based on trichotomy of powers and undue interference by the judiciary in the police investigation militates against that concept. However, there is an exception to the above prohibitions. In Shahnaz Begum's case, supra, the apex Court held that the constitutional jurisdiction of the High Court may be invoked if the investigation is malafide or without jurisdiction.

iii) A perusal of sections 155(2), 156(1), 156(3), 157(1), 174, and 202 Cr.P.C., shows that registration of FIR is not a condition precedent for initiating investigation by the police. Even where the FIR is recorded he may refuse to investigate the case under section 157 Cr.P.C. Importantly, the mere fact that FIR has been registered does not obligate the Investigating Officer to arrest the accused.

iv) The question as to whether the Ex-officio Justice of Peace is competent under section 22-A(6) Cr.P.C., to direct the police to arrest a person nominated in the FIR (or implicated through a cross-version of the accused party) was considered at length by a Full Bench of this Court in Khizer Hayat and others v. Inspector-General of Police (Punjab), Lahore and others (PLD 2005 Lahore 470). According to the principles discussed above, the Investigating Officer should defer the arrest of an accused if he is not satisfied about his involvement in an

offence. There is nothing on the record to suggest that the inaction of the police in the instant case is malafide. Even if Respondent No.6 had been able to make out a case for intervention of the Ex-officio Justice of Peace, the only jurisdiction the latter had was to issue a direction to the SP (Investigation) to look into the matter.

Conclusion: i) The object of investigation is to collect evidence and determine whether the allegations against a person are true or otherwise.
ii) The police have the statutory right to investigate the circumstances of an alleged cognizable offence and the courts have no authority to interfere in their functions. However, constitutional jurisdiction of the High Court may be invoked if the investigation is malafide or without jurisdiction.
iii) The mere fact that FIR has been registered does not obligate the Investigating Officer to arrest the accused.
iv) Ex-officio Justice of Peace is not competent under section 22-A (6) of Cr.P.C., to direct the police to arrest a person nominated in the FIR (or implicated through a cross-version of the accused party). However, he can issue a direction to the SP (Investigation) to look into the matter.

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41. **Lahore High Court**
Asfandyar and others v. The State and another
Criminal Revision No. 37/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6074.pdf

Facts: This Criminal Revision is directed against the order of Additional Sessions Judge, whereby, the application of the petitioners for holding in abeyance the proceedings of challan case and private complaint filed by respondent No.11 till the final decision of private complaint filed by respondent No. 3 was dismissed.

Issues: i) If the police introduce a new individual as an accused who has not been mentioned by the complainant in the private complaint, then whether the proceedings in the private complaint should be prioritized and completed first, while the challan case should be put on hold as directed in Nur Elahi case?
ii) If the rival parties advance different versions of the same incident through cross-cases and such different versions contain different sets of accused persons, whether the trial of such cases is to be held simultaneously and side by side?

Analysis: i) The Code of Criminal Procedure, 1898, does not explicitly outline the procedure for conducting a trial when there is a challan case and a private complaint related to the same offence. Judicial precedents have addressed this lacunae. The procedure outlined in the Nur Elahi case is generally recommended. Nevertheless, some situations may require a departure from it. These can be categorized into two distinct groups: (a) cases where there are two prosecution versions regarding the same incident but entirely or partially different from the one reported earlier through the first information report, and (b) cases where there are different versions of the same incident by rival parties. As regards the first

category, these are as follows: i) Where the party lodging the FIR also files a private complaint containing the same allegations against the same set of accused persons, the trial court will try the complaint case first and put the challan case on hold until its decision. ii) Whenever the facts or circumstances allow, cross-cases involving two different versions of the same incident and two distinct sets of accused must be tried together in the same court. The rationale is that if the two cases giving different accounts of the same incident are not tried concurrently, there is a considerable risk of conflicting judgments. iii) Where the complaint case is instituted after the FIR is lodged and not only there are differences in the names of some of the accused, but at least one person mentioned in the FIR as an accused is excluded and replaced by another individual, the complaint case must be taken up first for trial as stipulated in Nur Elahi. This is particularly essential when the two sets of allegations made in the said two cases regarding the weapons used and the roles ascribed to the various accused are materially different. iv) When the persons nominated as accused in the private complaint are the same as those named in the FIR, the trial court has the authority to summon the individuals listed in Column No. 2 of the report filed by the police under section 173 Cr.P.C. However, if the police introduce a new individual as an accused who has not been mentioned by the complainant in the private complaint, the procedure recommended in the Nur Elahi case is the most suitable approach. In simpler terms, if, during an investigation, the police include or exclude any accused in the report under section 173 Cr.P.C., but the complainant adheres to their initial version, then the proceedings in the private complaint should be prioritized and completed first, while the challan case should be put on hold as directed in Nur Elahi. v) While a consolidated trial of challan and complaint cases is not recommended, the Supreme Court will not interfere with the order of acquittal recorded by the trial court and High Court if such a trial did not cause a failure of justice (due to the unworthy and unreliable evidence available with prosecution), and the complainant did not object to it before the trial court.

ii) If the rival parties advance different versions of the same incident through cross-cases and such different versions contain different sets of accused persons, the trial of such cases is to be held simultaneously and side by side. The same court must hear and decide them to avoid conflicting judgments. There may be instances where the private complaint is instituted by one of the accused persons in the challan case rather than the original complainant party, with different versions, separate sets of witnesses, and different accused. In Abdul Shakoor v. The State (2012 PCrLJ 231), this Court held that in such a situation, the principle laid down in Nur Elahi to try the private complaint and challan case sequentially need not be followed. The two cases should instead be proceeded side by side.

Conclusion: i) If the police introduce a new individual as an accused who has not been mentioned by the complainant in the private complaint, then the proceedings in the private complaint should be prioritized and completed first, while the challan case should be put on hold as directed in Nur Elahi case.

ii) If the rival parties advance different versions of the same incident through cross-cases and such different versions contain different sets of accused persons, the trial of such cases is to be held simultaneously and side by side.

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42. **Lahore High Court**
Faisal Zafar and another v. Siraj-ud-Din and 4 others, GENOME Pharmaceuticals and SECP
Civil Original No.06 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6015.pdf

Facts: The Petitioners filed this petition under Sections 286 and 287 along with all enabling provisions of the Companies Act, 2017 alleging the mismanagement by shareholder Respondents in the affairs of the Respondent Company.

Issue: Whether a corporate dispute under Sections 286 and 287 of the Companies Act, 2017, involving allegation of the mismanagement by members of a company, may be resolved by way of mediation and compromise prior to the determination by the Court?

Analysis: Section 276(1) of the Companies Act, 2017 authorizes the parties to the proceedings before the Securities and Exchange Commission of Pakistan or the Appellate Bench to apply, with mutual consent, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. Section 276(2) of the Act ibid requires the Securities and Exchange Commission of Pakistan to maintain a panel to be called "Mediation and Conciliation Panel". Under Section 277 of the Act ibid, a company, its management/its members or creditors may, by written consent, directly refer a dispute, claim or controversy arising between them or between the members or directors inter-se, for resolution, to any individual enlisted on the mediation and conciliation panel mentioned afore.

Conclusion: A corporate dispute or petition under Sections 286 and 287 of the Companies Act, 2017, involving allegation of the mismanagement by members of a company, may be resolved through mediation and compromise prior to any determination by the Court in light of guideline envisaged in preamble along with Sections 6, 276 and 277 of the Act ibid.

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43. **Lahore High Court**
Mst.Shehnaz Bibi and another v. The State and another
Crl.Misc.No.2945-B of 2023
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC5817.pdf

Facts: The petitioners sought bail after arrest in a criminal case registered against them for offence under sections 302, 34 PPC.

Issue: Is it a fundamental right of every accused to be provided with the grounds of arrest at the time of nabbing him and whether the Magistrates, seized with the matters of physical remand under section 167 Cr.P.C will ensure it?

Analysis: This court in case reported as "Mst.Khatoon Bibi vs. State etc" (2021 P.Crl.L.J 593) reiterated the importance of Articles 9, 10 and 14 of the Constitution of the Islamic Republic of Pakistan in reference to the fundamental right of an accused to be informed about the grounds of his arrest and issued direction to the Inspector General of Police, Punjab for taking following steps:- (i) Station Diaries in all Police Stations be maintained in accordance with 22.48 of Police Rules, 1934 and Article 167 of Police Order, 2002. (ii) In accordance with Article 10 of the Constitution, grounds of arrest must be provided to every accused immediately after taking him in police custody. (iii) Inspections of all police stations be conducted in terms of Chapter-XX, Rule 5 of Police Rules, 1934. (iv) Appropriate steps be taken for educating the police personnel in the Province in accordance with Articles 10 and 11 of UNCAT regarding torture during custody, interrogation, arrest, detention or imprisonment etc (…) It is further expected that the learned Magistrates, seized with the matters of physical remand under section 167 Cr.P.C will ensure that grounds of arrest are provided to the accused by making them part of the police file.

Conclusion: It a fundamental right of every accused to be provided with the grounds of arrest at the time of nabbing him and the Magistrates, seized with the matters of physical remand under section 167 Cr.P.C will ensure that grounds of arrest are provided to the accused by making them part of the police file.

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44. **Lahore High Court**
Umama Islam and others v. The Province of the Punjab and others
W.P.No.67948 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC5917.pdf

Facts: The petitioners through the instant constitutional petition have called into question their purported exclusion from the list of successful candidates qua process initiated for recruitment as Senior Station Assistant (SSA) and Police Station Assistant (PSA) in Punjab Police against vacant posts. Grievance is also voiced by the petitioners that their names were liable to be included in the list of successful candidates as they had cleared written test as well as the interviews.

Issues: i) Whether the call for interview should necessarily entail the conclusion that candidate cleared all criteria?
ii) Whether resolving reliable factual controversy is practicable in summary jurisdiction of High Court under Article 199 of the Constitution?
iii) Whether the presumption of regularity is attached to official acts and same can be annulled on vague allegations?

Analysis: i) Learned counsel for the petitioners at this point wishes to assail typing results by reiterating that the call for interview should necessarily entail the conclusion that they cleared all criteria. There does not appear to be any warrant for such assumption to be made in abstraction on some a priori basis nor could a technical evaluative exercise carried out on merits at the competent departmental level be discredited on such tenuous abstraction as suggested.

ii) As to aspersion on veracity of results, as being impliedly cast, the same presupposes the unjustified expectation that embarking on an exercise for reliable resolution of factual controversy that may present, shall be practicable in summary jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

iii) It is observed that presumption of regularity attached to official acts, could not be dislodged on the basis of bald assertions, by candidates who participated in the recruitment process but remained unsuccessful which unfortunately appears to be the case at hand. This is especially in stark relief when in the pleadings no material particularization of any mala fide is recorded or any other ground established as to give any substance to the assertion that the petitioners despite having failed in typing test were yet liable to be appointed.

Conclusions: i) Calling for interview should not necessarily lead to the conclusion that the candidate has satisfied all the criteria.

ii) It is unjustified expectation to get resolved factual controversy through exercise of Constitutional jurisdiction under Article 199 of the Constitution.

iii) The presumption of regularity is attached to official acts and the same cannot be dislodged on bald assertions.

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45. **Lahore High Court**
Umar Farooq etc. v. Province of Punjab and others
R.F.A. No.80638 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC5905.pdf

Facts: The appellants have preferred this appeal against judgment and decree passed by Civil Judge dismissing their suit seeking decree of declaration challenging legality of mutations, seeking incorporation of their names as owners of suit land in implementation of the exchange between the predecessors of appellants and the school as well as seeking decree for possession.

Issue: Whether the successors may be allowed to question the validity of transactions after the real owner of the property remained alive for number of years having knowledge of the transactions, but he never raised any claim qua the property?

Analysis: When the real owner of the property, who could have a cause of action to file the litigation or to challenge the act or document against his interest, remained alive

for number of years but, despite having knowledge of the transactions, he neither raised any claim qua the property nor challenged the documents of sale in respect of property nor raised the objection, then the successors will have no *locus standi* to question the validity of those transactions.

Conclusion: The successors are not allowed to question the validity of the transactions, when the real owner of the property remained alive for number of years having knowledge of the transactions and he never raised any claim qua the property.

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46. **Lahore High Court**
Zafar Ali and others v. Rashid Ahmad and others.
C.R. No.19540 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC6098.pdf

Facts: Through this civil revision as well as civil revision No.21353 of 2021 against consolidated judgment and decree of the learned Addl. District Judge, wherein by allowing appeals of the respondents against consolidated judgment and decree of the Civil Judge, suit for specific performance of the petitioners was dismissed while the suit for declaration, cancellation and injunction filed by the respondents was decreed.

Issues: i) Whether non-appearance of attesting witnesses of an agreement to sell is fatal in the peculiar circumstances of the case?
ii) Can evidence be led on the facts neither pleaded nor incorporated in the plaint?
iii) Whether withholding of material evidence raises adverse presumption against the beneficiary of an agreement?

Analysis: i) … it was for the petitioners/plaintiffs to prove the existence and execution of sale agreement, the settlement of terms and conditions of the sale and other prerequisites in terms of Articles 17 and 79 of Qanun-eShahdat Order, 1984 which mandated to the effect that if a document is required by law to be attested it shall not be used as evidence until two attesting witness at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive and subject to the process of the court and capable of giving evidence (…) the production of these two persons cited as marginal witnesses was necessary. They were not produced as such Ex. P-1 could not be deemed to be admissible in evidence or have been proved as the said provisions of law being mandatory no exception could be taken thereto.
ii) It is settled rule that on the facts neither pleaded nor incorporated in the plaint, no evidence shall be allowed to be led to prove such facts and that the evidence can be led on facts founded in the pleadings only. It is also a rule that no party can be permitted to lead evidence different from the facts mentioned in the plaint and even if such evidence comes on record the same could not be considered or looked into being inadmissible and against the rule secundum allegata et probata.

iii) To succeed in their case for enforcement of sale agreement the petitioners were required as a matter of law to produce the deed-writer/stamp-vendor in their evidence as they were beneficiary of the agreement and would obviously fail if material evidence is withheld particularly when some of the executants of the alleged documents were claimed to be females and belonged to rural area and were also illiterate. No explanation whatsoever could be given for non-production of the witnesses who were most material to establishing the case which raises serious adverse presumption against the petitioners.

Conclusion: i) Non-appearance of attesting witnesses of an agreement to sell is fatal in the peculiar circumstances of the case.
ii) The evidence cannot be led on the facts neither pleaded nor incorporated in the plaint.
iii) Withholding of material evidence raises adverse presumption against the beneficiary of an agreement.

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47. **Lahore High Court**
Mst. Bhagan Bibi, etc. v. Addl. District Judge, etc.
Writ Petition No.7718 of 2017
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC5886.pdf

Facts: Petitioners assailed the order of Revisional court through the Writ petition wherein Trial Court dismissed the application of the petitioners under Section 12(2) C.P.C, for want of evidence while invoking Order 17 Rule (3) of C.P.C. Their Revision petition was also dismissed.

Issues: i) What is the object of Lahore High Court Amendment of Order XVII, Rule 3(1) of the C.P.C?
ii) When the Rule (3) of Order 17 of C.P.C, applies to a case?
iv) Whether adherence to apply the law is a mere technicality?

Analysis: i) It is clear from the wording of the Order XVII, Rule 3(1) of the C.P.C that on the failure of a party to produce its evidence or to do any other act necessary for the purpose of the case, for which time had been allowed to him, the court shall proceed to decide the suit forthwith.
ii) Rule (3) of Order 17 of C.P.C. 1908 applies to a case where time has been granted to a party at his instance, to produce evidence or to cause the attendance of witnesses or to perform any other act necessary for the progress of the suit and will not apply unless default has been committed by such party in doing the act for which the time was granted.
iii) To apply and to adhere to law is not a mere technicality rather it is duty cast upon the court as per Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 to do so.

Conclusion: i) The object of Lahore High Court Amendment of Order XVII, Rule 3(1) of the C.P.C. is that on the failure of a party to produce its evidence or to do any other act necessary for the purpose of the case, for which time had been allowed to him.
ii) It applies to a case where time has been granted to a party at his instance and default has been committed by such party in doing the act for which the time was granted.
iii) To apply and to adhere to law is not a mere technicality rather it is duty cast upon the court.

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48. **Lahore High Court**
Muhammad Saleem v. The State and another.
Criminal Appeal No. 395 of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC6139.pdf

Facts: Trial court, for offence under Section 376 P.P.C, at the conclusion of trial convicted the appellant under Section 376(1) PPC and sentenced to 14-years rigorous imprisonment with fine of Rs.1,00,000/- and in default thereof to further undergo simple imprisonment for six months. Benefit of section 382-B, Cr.P.C. was, however, extended to him. Feeling aggrieved, the appellant has filed the titled appeal against his conviction and sentence.

Issues: i) What is the definition of "Consent"?
ii) Whether consensual intercourse on the false promise of marriage falls within the definition of rape?
iii) Whether FIR can be registered for an offence of Fornication?
iv) Whether complaint can be termed as police report?

Analysis: i) The term 'consent' has been defined in section 90 of Pakistan Penal Code which is hereby described as-Consent known to be given under fear or misconception-Consent is not such a consent as is intended by any action of this Code, if the consent is given by a person under fear of injury or under a misconception of fact and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception: or-Consent of insane person—If the consent is given by a person Who from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or. Consent of child. Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.
ii) When neither in the crime report nor in the statement of complainant, it has been mentioned that any force was used by the accused for the act of Rape. More so, prosecution evidence is also silent on the point that the victim had allowed the appellant for commission of rape due to putting her in fear of death or hurt. Similarly,when there is no evidence that the accused committed rape with complainant/victim while showing himself as her husband. it is not a case of rape

in terms of section 375, PPC punishable under section 376, PPC rather it is abundantly clear that it is a case of 'fornication'…
iii) It is noteworthy that no FIR can be registered under the offence of fornication as envisaged under section 203(c), Cr.P.C.
iv) The term complaint has been defined in section 4(h), Cr.P.C. Even otherwise, it is a well settled principle of law that complaint and police report have distinctive features. Report of police has been described in Section 173, Cr.P.C. A comparative study of above mentioned sections i.e. 4(h) and 173 Cr.P.C. it is palpable that complaint cannot be termed as police report...

Conclusion: i) See analysis portion.
ii) Consensual intercourse on the false promise of marriage does not fall within the definition of rape rather it amounts to fornication.
iii) FIR cannot be registered for an offence of Fornication.
iv) Complaint cannot be termed as police report.

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49. **Lahore High Court**
Silk Bank Limited v. M/s Haseeb Waqas Sugar Mills Limited and 14 others
C. O. S. No. 16637 / 2020
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC6084.pdf

Facts: This suit is instituted by the Plaintiff Bank for recovery of Rs. 472,715,893.66/- with cost and cost of funds under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the "Ordinance") against contesting Defendants and Proforma Defendants.

Issues: i) When the Banking Court shall grant the defendant leave to defend the suit?
ii) What is the Memorandum of Association of a company?
iii) Whether a company as a juristic person can undertake any lawful act?
iv) Whether it is mandatory requirement for a company of having an object clause in its articles?
v) Whether the Memorandum and Articles of a company includes the power to enter into any agreement for obtaining loans, advances, finances or credit?
vi) Whether a company can carry on or undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities?
vii) What are the consequences and way forward when a suit for recovery under the Ordinance is instituted prematurely but matures during its pendency?
viii) When a suit by a 'financial institution' or a 'customer' can be instituted by one against the other?

Analysis: i) Section 10(9) unequivocally proclaims that the Banking Court shall grant the defendant leave to defend the suit, if on consideration of the contents of the plaint, the application for leave to defend and the reply thereto, it is of the view that substantial questions of law or fact have been raised in respect of which evidence

needs to be recorded. It follows from the provisions of law that in the last resort, the Banking Court can grant leave to defend only if it considers that a substantial question of law or fact has been raised which cannot be determined without recording of evidence. No distinction is made in terms of nature of the issue which can either be a question of law or fact or a mixed question of law and fact. Rather, the only test prescribed in this behalf is the opinion of the Banking Court to determine as to whether the same can be resolved with or without recording of evidence which in turn becomes the barometer to grant or refuse leave to defend to the defendant. Hence, the applicable test is liable to be employed with respect to determination of each issue depending upon its nature and the material required to answer the same.

ii) The Memorandum of Association of a company is the document which forms and constitutes the company. It defines its purposes and objectives for which it is incorporated and determines the ambit of relationship of a company with the outside world. The Articles of Association of a company deal with the internal management of the company and determine inter se relationship between the management and shareholders of the company listing rules as to how it is run, governed and owned.

iii) Increasingly, various jurisdictions in the world are moving to the concept that just like a natural person who may perform any lawful act, a company as a juristic person may also undertake any lawful act. As such, the concept of controlling the company in terms of its activities through its Memorandum of Association is fast eroding.

iv) Section 4 thereof, does away the requirement of a Memorandum and accordingly, the company needs only to submit Articles of Association at the time of incorporation and, thereby, dispenses with the ultra vires doctrine vis-à-vis the Memorandum of Association. However, although the law has removed the mandatory requirement of having an object clause, any company may specify its objects in its Articles if it wishes to do so.

v) Section 30 of the Act provides that notwithstanding anything contained in this Act or any other law for the time being in force or the Memorandum and Articles, the Memorandum and Articles of a company shall be deemed to include and always to have included the power to enter into any agreement for obtaining loans, advances, finances or credit, as defined in the Banking Companies Ordinance, 1962 and to issue other securities not based on interest for raising resources from a scheduled bank, a financial institution or general public.

vi) Section 26(1) of the Act states that a company may carry on or undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities provided that the principal line of business of the company shall be mentioned in the Memorandum of Association of the company which shall always commensurate with name of the company. Further, Section 26(2) thereof proclaims that a company shall not engage in a business which is either prohibited or is restricted by any law, rules or regulations, unless necessary license,

registration, permission or approval has been obtained or compliance with any other conditions has been made.

vii) The question of suit being premature does not go to the root of jurisdiction of the Court and as such, the Court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the Court to grant or refuse decree. The Court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been instituted a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit, a manifest injustice would be caused to the defendant. Taking into consideration, the explanation offered by the plaintiff for institution of suit before the date of maturity of cause of action, the Court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to the plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. However, certain riders are also stated in the said Judgment to the general rule to grant decree in judicial discretion upon maturity of a cause of action including when a mandatory bar is created by a statute which disables the plaintiff from instituting the suit on or before a particular date or the occurrence of a particular event or if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the jurisdiction of the Court.

viii) The Ordinance is a special law which creates specialized Courts and prescribes a summary procedure for settlement of claims between a 'customer' and a 'financial institution'. There is no cavil to the proposition that a suit by a 'financial institution' or a 'customer' can thus be instituted by one against the other only in case of a 'default' in fulfillment of any 'obligation' with respect to any 'finance'. However, the substance of the Ordinance is to determine the entitlement of a 'financial institution' or a 'customer' with respect to a right emanating with respect to 'default' in fulfillment of any 'obligation' with regard to any 'finance'.

Conclusion: i) The Banking Court can grant leave to defend only if it considers that a substantial question of law or fact has been raised which cannot be determined without recording of evidence.

ii) See above in analysis clause.

iii) A company as a juristic person may also undertake any lawful act just like a natural person who may perform any lawful act.

iv) Although the law has removed the mandatory requirement of having an object clause, any company may specify its objects in its Articles if it wishes to do so.

v) The Memorandum and Articles of a company shall be deemed to include and always to have included the power to enter into any agreement for obtaining loans, advances, finances or credit, as defined in the Banking Companies Ordinance, 1962.

vi) Section 26(1) of the Act states that a company may carry on or undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities.

vii) The Court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the Court to grant or refuse decree.

viii) A suit by a 'financial institution' or a 'customer' can thus be instituted by one against the other only in case of a 'default' in fulfillment of any 'obligation' with respect to any 'finance'.

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50. **Lahore High Court**
Nousheen Akram v. Federation of Pakistan etc.
W.P.No. 27148/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5901.pdf

Facts: The petitioner, having secured the highest marks in the written test held for the recruitment against a single post of Assistant (BS-15), in the Department of Archaeology & Museums, Government of Pakistan, Islamabad, was amongst the top five short-listed candidates to be interviewed for the said post. It is her case that she has been non-suited by abuse of process as respondent No.3, who happens to be the father of respondent No.6 and the Chairman of Departmental Selection Committee, has appointed his own son/respondent No.6, hence, the said appointment is result of nepotism and liable to be set aside.

Issue: What is required for maintaining transparency and public confidence in the recruitment process in case a conflict of interest arises before the Departmental Selection Committee?

Analysis: Integrity of a selection panel like the DSC vested with power to award marks in interview matters a lot and it is expected that if any conflict of interest arises, the disclosure is made and such member of the selection committee should recuse from proceeding further in order to lend credence and maintain transparency and public confidence in recruitment process.

Conclusion: In case of any conflict of interest before the Departmental Selection Committee, such member of the selection committee should recuse from proceeding further to lend credence and maintain transparency and public confidence in recruitment process.

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51. **Lahore High Court**
Shamsa Hameed etc. v. Additional District Judge etc.
Writ Petition No.46285/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5982.pdf

Facts: Through this Constitutional Petition the petitioner assailed the order of Trial Court and Revisional Court whereby application of petitioners No.1 and 2 under section 12(2) CPC to set aside the decree passed, while making the award Rule of Court, was dismissed.

Issues: i) If an award is obtained by collusion of the parties and/or the arbitrator appointed by them, whether the decree based upon such an award, having been made Rule of the Court, more particularly defeating the rights of third parties, can be impeached in proceedings under Section 12(2), CPC instead of filing of an application under Section 30 of the Arbitration Act 1940?
ii) Whether an oral gift of immovable property is required to be proved where an arbitration between the donor and the donee took place subsequent to the purported gift and an award was passed in favour of the donee, more particularly, when the same results into depriving the female legal heirs of the donor, from their rights in inheritance of the disputed property of the donor forming subject matter of the award?

Analysis: i) The provisions of CPC in terms of Section 41 of the Act, are applicable to the arbitration proceedings to the extent that the same are not specifically excluded by the Act. Therefore, this Court is of the opinion that if an award is obtained by collusion of the parties and/or the arbitrator appointed by them, the decree based upon such an award, having been made Rule of the Court, more particularly defeating the rights of third parties, could be impeached in proceedings under Section 12(2), CPC instead of filing of an application under Section 30 of the Act read with other provisions since there is no provision under the Act enabling such third parties (like the petitioners) to lay the challenge.
ii) The contents of the impugned award when put in juxta position with the factual background of the matter, analyzed hereinabove, propels this Court to conclude that entire stance of predecessor of the contesting respondents belies logic inasmuch as if the donor, being the real father had divested himself from the disputed property, in favour of his son, by way of an oral gift, would only refuse to incur the meager expense to give effect to the said gift and then readily agrees to refer the matter to the arbitration, in span of one day, and during the arbitration proceedings, the donee (predecessor of the contesting respondents) concedes to pay the expenses where after instead of just getting straightaway registration of the gift deed in his favour, the donee again resorted to the legal proceedings, against the donor (his father), by filing an application under Section 14 of the Act, for making the said award as Rule of the Court and the donor again readily filed a conceding written reply, through a counsel, without even appearing before the Court, in person. Moreover, the fact that the agreement to refer the matter to the arbitrator and the award passed thereon, all were made on the same day, in itself, is sufficient to show the fraud and misrepresentation on part of predecessor of the contesting respondents who was the original beneficiary of the oral gift of the disputed property that deprived the other female legal heirs of the donor (i.e., the

petitioners). As regards comparison of the signatures of the donor by the Court, certainly, there is no legal bar to prevent the Court from comparing signatures or handwriting itself, rather, Article 84 of the QSO empowers the Courts to carry out such exercise, however, the naked-eye comparison without the aid of an expert in this regard, involves fallibility and may not be the conclusive proof thereof, hence, any conclusion drawn thereof is susceptible to error and has been given undue weightage in the present case. As far as absence of evidence on part of the petitioners' side to establish lack of knowledge of the oral gift for the purposes of limitation for filing application under Section 12(2), CPC is concerned, suffice to observe that admittedly, petitioners No.1 & 2 were married step sisters of predecessor of the contesting respondents and residing in their marital abode. Therefore, possibility cannot be ruled out that they were prevented from the knowledge of making of the impugned oral gift and subsequent proceedings, hence, their stance that they came to know about the making of the oral gift only when they were denied access to the disputed property has force that has been erroneously ignored by the Courts below. The impugned oral gift, by all standards was unconscionable as it is inexplicable as to why the donor would want to deprive his daughters from his inheritance in the disputed property (residential house) when, admittedly, he had equitably distributed his other property(ies). It is trite law that the beneficiaries of a gift, more importantly oral in nature, have to establish it by giving particulars of the gift, including when and where the gift was made, which predecessor of the contesting respondents have not provided and the said failure is fatal to the case of the contesting respondents. At this juncture, it is imperative to observe that Islamic philosophy aims to end injustice and oppression of the weak and vulnerable segment of the society by conferring equal status upon the women and ordaining not to abuse and exploit the vulnerables. Glorious Quran recognizes the right of women to inherit which has a close nexus with enjoying a complete legal personality by the females. The Constitution of the Islamic Republic of Pakistan, 1973 also extends protection of rights of the women, inter alia, through Article 25 read with Aricle 37 thereof that talk about equality and special protection, respectively. Moreover, the oral gifts like one, in the present case, forming subject matter of an arbitration proceedings, and the subsequent award and decree based on it, are contracts that have been held to be against the public policy, by the Supreme Court of Pakistan and hence, not enforceable.

Conclusion: i) If an award is obtained by collusion of the parties and/or the arbitrator appointed by them, the decree based upon such an award, having been made Rule of the Court, more particularly defeating the rights of third parties, can be impeached in proceedings under Section 12(2), CPC instead of filing of an application under Section 30 of the Act read with other provisions.

ii) An oral gift of immovable property is also required to be proved where an arbitration between the donor and the donee took place subsequent to the purported gift and an award was passed in favour of the donee, more particularly,

when the same results into depriving the female legal heirs of the donor, from their rights in inheritance of the disputed property of the donor forming subject matter of the award.

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52. **Lahore High Court**
Asmat Bibi v. Addl. District Judge, etc.
W.P. No.50316 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6069.pdf

Facts: This constitutional petition is directed against judgment passed by the Additional District Judge who proceeded to accept the appeal of respondents No.3 to 5 and has suspended the order passed by the Civil Judge and the application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 ("CPC"), filed alongwith her suit for declaration and cancellation of the document as also recovery of possession and permanent injunction, was dismissed.

Issues: i) What elements are to be assessed while examining the pleadings of the parties for grant of temporary injunction?
ii) Can a plaintiff be forced to litigate a person against whom he does not seek any relief?

Analysis: i) It is settled principle of law that in order to succeed in obtaining temporary injunction in a case, a plaintiff has to establish co-existence of three conditions/ingredients i.e., (i) prima facie case; (ii) possibility of suffering irreparable loss if temporary injunction is declined; and (iii) that the balance of convenience leans in favour of the plaintiff. Of the above referred three conditions, existence of prima facie case is foundational and the other two conditions are considered only once the plaintiff establishes a prima facie case in his favour. This assessment is to be carried out by the learned Trial Court while examining the pleadings of the parties.
ii) The general rule is that the plaintiff in a suit is dominus litis and may choose the person against whom he wishes to litigate and cannot be forced to sue a person against whom he does not seek any relief… it is settled legal position regarding the distinction between the non-joinder who ought to have been joined as a party and the non-joinder of a person whose joinder is only a matter of convenience or expediency.

Conclusion: i) Prima facie case, possibility of suffering irreparable loss and balance of convenience are to be considered for grant of temporary injunction.
ii) No, a plaintiff cannot be forced to join a party in litigation against whom he does not seek any relief.

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53. **Lahore High Court**
Azhar Javaid v. Malik Mushtaq Noor
C.R No. 36908 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5955.pdf

Facts: Petitioner through this revision petition challenged the judgment and decree passed by the Additional District Judge as well as judgment and decree passed by the Civil Judge.

Issues: i) Whether time is essence of the contract when real intention of parties to agreement is clear in that behalf?
ii) Whether material fact when not pleaded, can be deposed in the evidence and whether such evidence on those material facts can be given any weight?

Analysis: i) In case titled *"Muhammad Abdur Rehman Qureshi Versus Sagheer Ahmad"* (2017 SCMR 1696), the Supreme Court of Pakistan has observed that in view of rapid increase in prices of immovable properties, seller cannot be left at the mercy of the buyer to bind him and then delay in completion of contract hiding behind an archaic legal principle that in contracts involving immovable properties, time is generally not of the essence…While relying on above judgment, in case titled *"Ms. Sara Bibi Versus Muhammad Saleem and Others*" (PLD 2021 Islamabad 236), the Court observed; *"... Gone are the days when, with respect to agreements for the sale of immovable properties, time was generally held not to be of the essence...*
ii) Order VI Rule 2 of the Civil Procedure Code requires that the pleadings should contain a statement, in a concise form, of the material facts, on which the concerned party relies for his claim or defence. The allegations of failure of condition by not retaining possession or renting out the *suit property* form *facta probanda.* It was material fact and required to be pleaded and then to be proved through evidence. Such material fact when not pleaded, cannot be deposed in the evidence. Neither the evidence in departure of pleading of those material fact(s) can be given any weight…

Conclusion: i) Time is considered essence of the contract when real intention of parties to agreement is clear in that behalf.
ii) When material facts not pleaded cannot be deposed in the evidence and such evidence on those material facts cannot be given any weight.

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54. **Lahore High Court**
Hassan Munir v. Province of the Punjab, etc.
W. P. No.70260 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC5943.pdf

Facts: The petitioner has called into question the show cause notice issued by the Vice Chancellor, University of Agriculture, Faisalabad under Section 13(4) of the

Punjab Employees Efficiency, Discipline and Accountability Act, 2006 ("PEEDA Act, 2006') whereby he has been afforded opportunity of personal hearing.

Issue: Which enactment will prevail in case of inconsistency of two legislations on the same subject?

Analysis: Harassment at workplace has been one of the major contributing factors that hamper women from joining the workforce in Pakistan. The Act of 2010 provides legal protection to women against harassment at the workplace, and reforms the existing legislation regarding women's right to work in Pakistan whereas the PEEDA Act, 2006 provides for proceedings against the employees in Government and corporation service in relation to their conduct, efficiency, discipline and accountability. The petitioner has allegedly been proceeded under the PEEDA Act for misconduct on account of harassment of a female student. Section 12 of the Act of 2010 states that the provisions of the said Act are in addition to any other law in force…It is clearly manifest from the perusal of above provision that proceedings under the Act, 2010 do not exclude possibility of proceedings in any other law, therefore, there is no illegality or jurisdictional error in proceedings against the petitioner, if allegation falls within the scope and ambit of the PEEDA Act, 2006… undisputedly the Act of 2010 is a Federal legislation whereas the PEEDA Act, 2006 has been enacted by the Provincial Assembly. Article 143 of the Constitution provides that in case of any inconsistency between the Federal and Provincial Law, the former will prevail.

Conclusion: In case of inconsistency between the Act of 2010 and the PEEDA Act, 2006, the provisions of the Protection against Harassment of Women at the Workplace Act, 2010 shall prevail in its application to the proceedings for the alleged harassment.

SELECTED ARTICLES

1. STANFORD LAW REVIEW
https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/06/Karp-75-Stan.-L.-Rev.-1431.pdf

What Even Is a Criminal Attitude? —And Other Problems with Attitude and Associational Factors in Criminal Risk Assessment by Beth Karp

This Article provides an overview of several risk assessment instruments currently used in the United States. Part II explains and critiques how risk assessment instruments quantify "criminogenic needs." Part III discusses freedom of speech and the ethical problems inherent to quantification of attitudes. Part IV addresses peer and family associational factors, delving into the constitutional quagmire that is freedom of intimate association, the reasons "criminal family" factors violate equal protection, the traces of eugenics that persist in risk assessment literature, and the ethical and statistical problems with efforts to tabulate criminal associates and family members. Finally, Part V

briefly expands the scope outward to caution against implementing poorly designed and validated instruments just because risk assessment is trendy.

2. MODERN LAW REVIEW
https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12581

What Makes an Administrative Decision Unreasonable? by Hasan Dindjer

The nature of reasonableness review in administrative law has long been obscured behind vivid but uninformative descriptions. In recent years, courts and commentators have recognised that reasonableness review involves assessment of the weight and balance of reasons bearing on a decision. Yet by itself this idea is substantially incomplete, for there are many ways in which issues of weight might be relevant. Drawing on the theory of practical reason, this article offers a new account of the reasonableness standard that explains precisely how the weight of reasons matters. It shows, negatively, that several existing accounts are mistaken. Positively, it proposes that reasonableness be understood as a requirement of 'relativized justification': a decision must be justified relative to some eligible understanding of the balance of reasons. This account explains the standard's central features and yields a coherent, workable test for courts to apply.

3. MANUPATRA
https://articles.manupatra.com/article-details/Legality-of-Recorded-Telephonic-Conversation

Legality of Recorded Telephonic Conversation by Vijay Pal Dalmia and Ankush Mangal

The Allahabad High Court recently in 'Mahant Prasad Ram Tripathi @M.P.R. Tripathi vs. State of U.P. Thru C.B.I./A.C.B. Lucknow has held that a telephonic conversation recorded between two accused, whether illegally obtained or not, would be admissible in evidence.

4. MANUPATRA
https://articles.manupatra.com/article-details/Courts-Should-Be-Inclusive-When-Dealing-with-the-Rights-of-People-with-Disabilities

Courts Should Be Inclusive When Dealing with the Rights of People with Disabilities by Nyaaya

Recently, while hearing a case of a person with color blindness who was denied the post of Assistant Engineer (Electrical) in the Tamil Nadu Generation and Distribution Corporation (TANGEDCO), the Supreme Court expressed concerns about the standards to be met to meet the criteria for "benchmark disabilities" in India.The court explained who a person with disability is, what benchmark disabilities are and what the court proposed in this case.

5. CONSTITUTIONAL COURT REVIEW

https://www.saflii.org/za/journals/CCR/2019/19.pdf

Judicial Independence and the Office of the Chief Justice by C H Powell

This article investigates the extent to which the Office of the Chief Justice (OCJ) promotes the independence of the judiciary in South Africa. Judicial independence is widely understood to be protected by security of tenure, financial independence and administrative independence, three characteristics which are meant to support the judiciary as an institution, as well as the independence of individual judges. However, current jurisprudence and scholarship fail to engage with the relationship between individual and institutional independence, and to identify mechanisms of protection for the institution as such. The factors which have received the most emphasis are the financial independence of the judiciary and the judiciary's control over its own administration. The article reveals that the OCJ has taken over broad areas of the administration of the judiciary, but questions whether the increased control enjoyed by the leadership of the judiciary has translated into improved control for individual judges. It draws on the legal philosophy of Lon L Fuller to suggest how the independence of individual judges relates to the independence of the institution. In particular, it applies Fuller's theory of 'interactional law' to suggest that a process of mutual engagement is needed within those institutions which have to uphold the rule of law. From this perspective, it appears that the OCJ may not be in a position to protect the institutional independence of the judiciary, because it does not contain the mechanisms to accommodate the input of individual judges on the best conditions for effective and independent work.

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FORTNIGHTLY CASE LAW BULLETIN

(01-12-2023 to 15-12-2023)

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

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LATEST LEGISLATION/AMENDMENTS

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1. **Supreme Court of Pakistan**
Aminullah and others v. Syed Haji Muhammad Ayub and others
Civil Petition No.116 of 2020
Justice Qazi Faez Isa, HC.J., Justice Amin-ud-Din Khan, Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._116_2020.pdf

Facts: Petitioners have sought leave against the judgement whereby the High Court, while exercising its extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has allowed the petition filed by the respondent.

Issues: i) Why proceedings under section 145 Cr.P.C are of an executive nature?
ii) What is the main object and purpose of the powers vested under section 145 Cr.P.C?
iii) What are the factors of undertaking proceedings under section 145 Cr.P.C?
iv) What is pre-condition to invoke jurisdiction under section 145 Cr.P.C.?
v) When exercise of power under section 145 Cr.P.C is not justified?
vi) Whether under section 145 Cr.P.C a magistrate is empowered to decide question of title of property or the lawfulness of the possession and when can property be attached?

Analysis: i) It is obvious from the above analysis that the nature of proceedings under section 145 of the Cr.P.C. are more in the nature of an executive function because the right of ownership nor that of possession is adjudicated. The exercise of the powers are subject to fulfilment of the jurisdictional pre-conditions, particularly the satisfaction of the Magistrate that the dispute is likely to cause a breach of the peace.
ii) The main object and purpose of the powers vested under section 145 of the Cr.P.C. is to prevent a likely breach of the peace and to maintain the status quo. The parties are provided an opportunity to resolve the dispute regarding the title or right of possession before a competent forum.
iii) The most crucial factor for undertaking the proceedings is the likelihood of breach of the peace because of the dispute. The dispute must be in respect of land or water or boundaries thereof and the subject matter must be situated within the limits of the territorial jurisdiction of the Magistrate who has to exercise the powers. The existence of these factors is a pre-requisite for making a preliminary order under sub -section (1) of Section 145 of the Cr.P.C. and the grounds required to be stated in the order must justify the satisfaction of the Magistrate.
iv) The mere existence of a dispute is not sufficient to put the powers in motion. There must be sufficient material giving rise to an imminent danger or a breach of the peace. In the absence of such an apprehension of a breach of the peace the exercise of the power would not be lawful.

v) … Moreover, the exercise of powers under section 145 will not be justified if the factor of breach of the peace can be prevented by resorting to powers vested under section 107 of the Cr.P.C.

vi) … While conducting an inquiry under section 145 of the Cr.P.C. the Magistrate does not have the power or jurisdiction to decide either the question of title of property or the lawfulness of the possession. It merely empowers the Magistrate to regulate the possession of the property in dispute temporality in order to avert an apprehension of breach of the peace. The attachment of the property under the second proviso of section 145 (4) is subject to the satisfaction of the Magistrate that a case of emergency has been made out.

Conclusion: i) Proceedings under section 145 of the Cr.P.C. are more in the nature of an executive function because the right of ownership nor that of possession is adjudicated.

ii) The main object and purpose of the powers vested under section 145 Cr.P.C. is to prevent a likely breach of the peace and to maintain the status quo.

iii) The factors for undertaking the proceedings under section 145 Cr.P.C are the likelihood of breach of the peace, dispute must be in respect of land or water or boundaries thereof and the subject matter must be situated within the limits of the territorial jurisdiction of the Magistrate.

iv) There must be sufficient material giving rise to an imminent danger or a breach of the peace.

v) Exercise of powers under section 145 will not be justified if the factor of breach of the peace can be prevented by resorting to powers vested under section 107 of the Cr.P.C.

vi) A magistrate under section 145 Cr.P.C is not empowered to decide question of title of property or the lawfulness of the possession. Property may be attached when magistrate is satisfied that a case of emergency is made out.

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2. **Supreme Court of Pakistan**
Regional Manager, NADRA RHO, Hayatabad, Peshawar and another v. Mst. Hajira and another
Civil Petition No.355 of 2020
Mr. Justice QaziFaez Isa, CJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice AtharMinallah.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3575_2020.pdf

Facts: This petition has been filed by petitioners assailing judgment, whereby the writ petition had been allowed with direction to issue Pakistan Origin Card to one of respondents.

Issue: What is status of NADRA under the National Database and Registration Authority Ordinance, 2000 and how it may sue?

Analysis: NADRA is a statutory corporate body, therefore, the Regional Manager, NADRA, Regional Head Office and Director General, NADRA, Project Directorate

NADRA Head Quarters, Islamabad, are not authorized to file the petition. Litigation on behalf of NADRA has to be conducted in accordance with the law.

Conclusion: Section 3(2) of the National Database and Registration Authority Ordinance, 2000 stipulates that NADRA is a corporate body, hence, it has to sue in its own name through the authorized person.

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3. **Supreme Court of Pakistan**
Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education Department, Peshawar and others v. Amjad ur Rahman and others
Civil Petition No.225-P of 2023
Justice Qazi Faez Isa, HCJ, Justice Amin-ud-Din Khan, Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._225_p_2023.pdf

Facts: The petitioners had advertised in the year 2018 for the selection of two computer teachers in basic pay scale of 12 and had prescribed the minimum qualification as Intermediate with one year diploma in computer sciences. The respondent No.1 held a B.Sc. and M.Sc. degree in computer science and came on the top of the merit list but still was not appointed for the reason that he was over-qualified.

Issue: Whether a person can be deprived of a post on the ground that he is over-qualified?

Analysis: The petitioners had advertised in the year 2018 for the selection of two computer teachers in basic pay scale of 12 and had prescribed the minimum qualification as Intermediate with one year diploma in computer sciences. The respondent No.1 held a B.Sc. and M.Sc. degree in computer science and came on the top of the merit list but still was not appointed for the reason that he was over-qualified. It appears that those in charge of educating the children of the province were bereft of common sense by disqualifying a person who was more qualified and thus better placed to impart computer science education and favoured one less qualified. Not only the respondent No.1 was made to suffer but the children, who would have benefited from his knowledge, were condemned.

Conclusion: A person cannot be deprived of a post on the ground that he is over-qualified.

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4. **Supreme Court of Pakistan**
Khalid Pervaiz v. Samina, etc.
Civil Petition No.2734-L of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2734_l_2023.pdf

Facts: The mehr was not paid by the petitioner to the respondent, who filed a suit, which was decided in her favour. The petitioner appealed the judgment and decree of the

Family Court and the Additional District Judge partly allowed it, by holding that the wife was not entitled to her mehr as her marriage subsisted. The wife successfully assailed the judgment of the appellate court before the High Court which restored the judgment of the learned Civil Judge.

Issues: i) Whether mehr has to be paid whenever demanded by the wife?
ii) If a decision is challenged whether it becomes ineffective?

Analysis: i) Mehr is an Islamic concept mentioned in the Holy Quran, (An-Nisa (4) verse 4 and Al-Baqrah (2) verses 236-7) and it is specifically recognised by the law of Pakistan, that is, section 2 of the Muslim Personal Law (Shariat) Application Act, 1962. Mehr has to be paid whenever demanded by the wife.
ii) The excuse put forward that, since the decision was challenged it was not complied with, is untenable. If a decision is challenged it does not mean that it becomes ineffective, and need not be complied with.

Conclusion: i) Mehr has to be paid whenever demanded by the wife.
ii) If a decision is challenged it does not mean that it becomes ineffective, and need not be complied with.

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5. **Supreme Court of Pakistan**
Muslim Commercial Bank Limited v. Rizwan Ali Khan and others
Civil Petition No.4980 OF 2021
Mr. Justice Ijaz ul Ahsan, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4980_2021.pdf

Facts: Through this Civil Petition, the Petitioner, Muslim Commercial Bank, Limited (Petitioner-Bank) impugns judgment of the High Court, whereby Constitutional petition filed by the Petitioner-Bank was dismissed, and Respondent No.1 (Respondent) was declared a workman.

Issues: i) Whether the workman can invoke the jurisdiction of the Labour Court or National Industrial Relations Commission for redressal of their grievance?
ii) Whether the designation alone is relevant and can be considered conclusive evidence for a claimant to be categorized as a workman?
iii) Who is to discharge the burden of proof to establish the claim of the workman?

Analysis: i) In the event of a grievance, by a workman, of unfair labour practices, the workman can invoke the jurisdiction of the Labour Court or National Industrial Relations Commission for redressal of their grievance. The fundamental requirement for such invocation is that the grievance must be of a person employed in an establishment as a workman.
ii) The question as to who is a workman has been considered by this Court time and again in various cases. It has been consistently held that evidence must be

produced to establish the nature of work and functions of the aggrieved claimant, particularly to show that the work is manual or clerical and not managerial or supervisory. It has been emphasized that the court has to give due consideration to the cumulative effect of the evidence in the context of the nature of work that the workman claims he was doing so as to determine if he is a workman and not rely on piecemeal evidence. For a claimant to be categorized as a workman, his designation alone is not relevant and cannot be considered conclusive evidence of his work status rather, it is the pith and substance of his duties and functions which must be manual or clerical. Manual and clerical work involves physical exertion as opposed to mental or intellectual exertion. The judicial consensus of the Court with respect to the determination of the work status is clear such that the court must analyze the nature of the actual duties and functions of the employee to ascertain whether he falls within the ambit of the definition of worker or workman for which collective evidence must be examined to ascertain whether the duties were supervisory or managerial or whether they are manual or clerical. Therefore, in determining the work status, the overall nature of duties assigned to that person along with the functions of the job and the manner in which he performs his duties must be brought onto evidence and must be duly considered.

iii) The question of burden of proof in establishing the status of the workman, this Court has consistently held that such burden lies on the person claiming to be a workman. It is the bounden duty of a person who approaches the Labour Court to demonstrate through evidence the nature of duties and functions, and to show that he is not working in any managerial or administrative capacity and that he is not an employer. In the absence of such evidence, a grievance petition would not be maintainable before the Labour Court for lack of jurisdiction. Moreover, it has been established that this burden of proof is to be discharged by the claimant through documentary and oral evidence supporting his claim that the nature of his work is, in fact, manual or clerical. This requires the production of evidence, documentary or oral, which shows the nature of duties and the functions of the claimant pursuant to his claim that he is a workman.

Conclusion: i) The workman can invoke the jurisdiction of the Labour Court or National Industrial Relations Commission for redressal of their grievance.

ii) For a claimant to be categorized as a workman, his designation alone is not relevant and cannot be considered conclusive evidence of his work status rather, it is the pith and substance of his duties and functions which must be manual or clerical.

iii) The burden of proof is to be discharged by the claimant through documentary and oral evidence supporting his claim of the workman that the nature of his work is, in fact, manual or clerical.

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6. **Supreme Court of Pakistan**
Noorullah and others. v. Ghulam Murtaza and others
dvi/Appeat No.17-Q and Civil Petition No.257-Q of 2023
Mr. Justice Ijaz ul Ahsan, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._17_q_2023.pdf

Facts: The respondents filed civil suits for declaration etc. against the appellants/petitioners, whereas the appellants/petitioners filed civil suit for declaration and perpetual injunction against the respondents, which were consolidated by the trial Court. The suits of the respondents were dismissed; whereas suit of the petitioner was decreed by the trial court through a consolidated judgment. Being aggrieved with the said judgment, both the parties filed appeals before the District Judge which met the fate of dismissal. The respondents filed civil revisions before the High Court and the same have been partially allowed, which impugned herein.

Issue: Whether a minor is competent to enter into a legal contract of sale of his property?

Analysis: Section 11 of the Contract Act, 1872 has provided that every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. So, it is obvious that a minor is incompetent to enter into a contract for sale of his property.

Conclusion: A minor is incompetent to enter into a contract of sale of his property.

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7. **Supreme Court of Pakistan**
Collector of Customs & another v. M/s. Young Tech Private Limited etc.
Civil Petitions No.890-K to 909-K/2023
Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Hasan Azhar Rizvi, Mr.Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._890_k_2023.pdf

Facts: Leave to appeal is sought against the order of the High Court. Through the impugned order a number of constitutional petitions filed by the respondents were allowed and it was held that the demand for mobile handset levy on phones other than smart phones was unlawful and without jurisdiction.

Issues: Whether without amending the charging section levy can be imposed by merely changing the same in the table?

Analysis: The learned counsel for the petitioners has argued that the intention of the legislature was clear that the phones other than smart phones were also subjected to the levy and such intention was reflected in the table. The argument has not appealed to us in view of the fact that the right to recover any levy rests in the charging section and not in the table that specifies the rates at which such charge

is to be recovered. The power to recover a levy is anchored in the charging section and the table is merely meant to prescribe the rates at which such levy is to be recovered on various goods/items. Unless the charging section confers a power to recover a levy on an article or class of goods, mere mention of a different class, types or category of goods clearly goes beyond the scope of the charging section. This, in our opinion, cannot be done. A schedule/table is merely a supplement of the charging section and cannot go beyond it and create a new and altogether different levy on a different class of goods not mentioned or contemplated by the charging section.

Conclusions: Right to recover any levy rests in the charging section and not in the table that specifies the rates at which such charge is to be recovered. A table is merely a supplement of the charging section and cannot go beyond it.

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8. **Supreme Court of Pakistan**
Liaqat University of Medical and Health Sciences (LUMHS) Jamshoro through it Registrar & another v. Muhammad Ahsan Shakeel & others
Civil Petition No.3933/2023
Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3933_2023.pdf

Facts: The Respondent No.1 got admission in Liaqat University of Medical and Health Sciences on basis of forged and fabricated mark sheet and on verification from BISE his admission was cancelled. He challenged the cancellation in High Court and the High Court ordered the instant petitioner to consider the admission on the basis of his genuine mark sheet with less marks. The petitioner challenged the said order in the instant petition.

Issue: Whether the courts should interfere in disciplinary, administrative and policy matters of the universities or educational institutions?

Analysis: It is simply prudent that the courts keep their hands-off educational matters and avoid dislodging decisions of the university authorities, who possess technical expertise and experience of actual day to day workings of the educational institutions. Every university has the right to set out its disciplinary and other policies in accordance with law, and unless any such policy offends the fundamental rights of the students or violates any law, interference by the courts would result in disrupting the smooth functioning and governance of the said universities. It is, therefore, best to leave the disciplinary, administrative and policy matters of the universities or educational institutions to the professional expertise of the people running them, unless of course there is a violation of any of the fundamental rights or any law.

Conclusion: The courts should not interfere in disciplinary, administrative and policy matters of the universities or educational institutions unless there is a violation of any of the fundamental rights or any law.

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9. **Supreme Court of Pakistan**
Govt. of Pakistan through Secretary M/o Defence Rawalpindi and another v. Akhtar Ullah Khan Khattak and others.
C.A. 538/2022 etc.
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._538_2022.pdf

Facts: The appellants/petitioners want to withdraw proceedings for the acquisition of lands initiated by them under the Land Acquisition Act, 1894, but the landowners insist that the appellants/petitioners should be directed to go ahead with the acquisition and pay them compensation. The appellants/petitioners applied to the District Court for execution of the decree and permission was sought to return the land to their owners on the ground that the acquiring department (the appellants) had no funds to make payment. This request was declined by the executing Court, which the High Court upheld. Thereafter, the appellants/petitioners issued the notification to withdraw from the acquisition. This led the landowners to invoke the constitutional jurisdiction of the High Court for an order in the nature of a writ of certiorari for quashing the said notification. This petition was granted by the judgment of the High Court which is now under our review.

Issue: Whether the Government or Collector is competent to withdraw from the acquisition of the land after taking its possession in pursuance of the award under Section 11 of the Land Acquisition Act, 1894?

Analysis: Since the appellants/petitioners had taken possession of the land in pursuance of the award under Section 11 of the Land Acquisition Act, 1894, the acquisition had become past and closed, denuding the Commissioner of the right to withdraw, rescind, recall or amend any notification regarding the acquisition. Therefore, he could not rely on Section 48 merely because the acquiring department had no funds to pay for the compensation. The Land Acquisition Act, 1894, dehors such grounds of withdrawal from the acquisition of land once possession is obtained. The landowners could not be left in a quandary. They could not be expected to wait indefinitely, as the Government had acquired their valuable right to the immovable property. If the Government or its acquiring department did not have the funds, it should have made up its mind quickly and that too before taking possession and told the landowners where they stood. The land acquisition process started in 1977 and was delayed due to ineptitude and negligence of the appellants/petitioners. Since then, the landowners have been struggling to get their legitimate rights. Based on these facts, no law can condone the indolence of the appellants/petitioners and approve the action for withdrawal of the land acquisition.

Conclusion: The Government or Collector is not competent to withdraw from the acquisition of the land after taking its possession in pursuance of the award under Section 11 of the Land Acquisition Act, 1894.

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10. **Supreme Court of Pakistan**
Jehanzeb son of Khushal Khan and others v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others
Civil Appeal No. 1444 of 2013
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1444_2013.pdf

Facts: Provincial Assembly passed a resolution wherein name of a village was changed. In pursuance of resolution, Secretary to Government passed a notification. The private respondents filed a writ petition before High Court which was accepted and notification was declared null and void. Now, appellants have challenged the judgment of High Court.

Issues: What is legal procedure for changing the name of a village?

Analysis: The procedure laid-down for assigning or renaming of a road, street, square, park or any other public place, to be adopted by the Government before issuing Notification under Para 7.69 of the Land Record Manual, in the matter of changing the name of a village as the official name of a village is used in land revenue record, postal zone and other official and private documents, therefore, objections/suggestions of the inhabitants of village need to be invited through publication in newspapers.

Conclusion: The legal procedure for changing the name of a village is to be through publication in newspapers by inviting the objections/suggestions of the inhabitants of village.

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11. **Supreme Court of Pakistan**
Chief Secretary, Government of Balochistan, Civil Secretariat, Quetta & others v. Adeel-ur-Rehman & others
Civil Appeal No.441 of 2020
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._441_2020.pdf

Facts: This appeal, by leave of the Court, is directed against judgment passed by the High Court of Balochistan, whereby the appellants were directed to regularize the services of the respondents and also to pay them the arrears of salaries and allowances.

Issues: i) Whether it is mandatory that the appointment to posts in BPS-16 and above or equivalent shall be made through the Balochistan Public Service Commission?

ii) Whether wrong concession in favour of one person entitles any other person to claim same benefit under Article 25 of the Constitution?
iii) Whether mere creation of posts on regular side does confer an automatic right of regularization to the contract employees working against said project posts?

Analysis: i) Rule 9(1)(a) of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 (the AP&T Rules) clearly provides that the appointment to posts in BPS-16 and above or equivalent, if fall within the purview of the Commission, shall be made on the basis of a test and interview to be conducted by the Balochistan Public Service Commission (the Commission). Similarly, Rule 3(i)(a) of the Balochistan Public Service Commission (Functions) Rules, 1982 (the BPSC Functions Rules), provides that the Commission shall conduct tests and examinations for initial recruitments to civil posts in BPS 16 to 22 connected with the affairs of the province, except those specified in the Schedule appended to the Rules. Sub clause (b) of Rule 3 (i) of the BPSC Functions Rules further empowers the Commission to conduct a test and interview for initial recruitment to any other post which may be referred to it by the Government, which may otherwise not fall within the purview of the Commission. (…) This Court in plethora of judgments has ruled out that the posts in BPS-16 and above shall be filled through Public Service Commission.
ii) As far as the question of regularization of similarly placed persons by the Department vide Notifications dated 26th July, 2007 and 22nd February, 2011 is concerned, suffice it to say that Article 25 of the Constitution does not envisage negative equality. Such right can only be claimed when decision is taken in accordance with law. A wrong concession in favour of one person does not entitle any other person to claim benefit of a wrong decision.
iii) As far as the regularization of contract employees subsequent to creation of posts on regular side is concerned, in number of cases it has been held by this Court that mere creation of posts on regular side does not confer, in the absence of any statutory support, an automatic right of regularization in favour of the contract employees working against project posts.

Conclusions: i) Yes, the posts in BPS-16 and above or equivalent shall be filled through Public Service Commission.
ii) A wrong concession in favour of one person does not entitle any other person to claim benefit of a wrong decision, as Article 25 of the Constitution does not envisage negative equality.
iii) Mere creation of posts on regular side does not confer, an automatic right of regularization in favour of the contract employees working against project posts.

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12. **Supreme Court of Pakistan**
Masood Ahmad Bhatti and another v. Khan Badshah and another
Civil Petition No. 5632 of 2021
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5632_2021.pdf

Facts: Through the instant petition filed under Article l85(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have assailed the judgment passed by the Islamabad High Court, Islamabad whereby Regular First Appeal filed by them was dismissed.

Issues: i) What is required from the vendee seeking a specific performance of the agreement to sell in case the vendor refuses to accept the sale consideration amount?
ii) How can a vendee seek enforcement of reciprocal obligation of the vendor?

Analysis: i) In such circumstances, we are of the firm view that Respondent No.1 has proved that he honoured his commitments and fulfilled his obligation as agreed upon in between the parties qua agreements. Even otherwise, it is now well settled that where the vendor refuses to accept the sale consideration amount, the vendee seeking a specific performance of the agreement to sell is essentially required to deposit the amount in the Court.
ii) The vendee has to demonstrate that he has been at all relevant times ready and willing to pay the amount and to show the availability of the amount with him. A vendee cannot seek enforcement of reciprocal obligation of the vendor unless he is able to demonstrate that not only his willingness but also his capability to fulfil his obligations under the contract.

Conclusions: i) Where the vendor refuses to accept the sale consideration amount, the vendee is essentially required to deposit the amount in the Court.
ii) A vendee can seek enforcement of reciprocal obligation of the vendor by demonstrating his willingness and capability to fulfil his obligations under the contract.

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13. **Supreme Court of Pakistan**
Hafsa Habib Qureshi v. Amir Hamza and others
(in C.P. No.3747 of 2023)
(in C.P. No.3748 of 2023)
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3747_2023.pdf

Facts: Through these petitions, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"), the petitioners have impugned the judgment of the High Court. The said judgment disposed of the constitution petition filed by respondent No. 1, along with 87 connected petitions,

while upholding the decision of the provincial government to retake the Medical College Admission Test ("MDCAT").

Issues: i) When a court exercises suo motu power?
ii) Whether the High Court has the power to convert and treat one type of proceeding into another type?
iii) Whether the courts can deprive the educational institutions while interfering in their internal affairs?
iv) Whether there is absolute ban on courts that they cannot interfere/intervene in the internal matters of educational institutions?

Analysis: i) When a court exercises suo motu power, it means the court is acting on its own initiative, often to address a matter it deems important or to ensure that justice is served. This authority allows the court to intervene in certain situations even if no formal complaint has been filed. Suo motu power is often invoked in cases where there is a perceived violation of law and fundamental rights, public interest, or the principles of justice as this Court is empowered under Article 184(3) of the Constitution.
ii) The High Court has the power to convert and treat one type of proceeding into another type. After doing so, it can proceed to decide the matter itself, provided it has jurisdiction over the issue, or it may remit the matter to the competent authority, forum, or court for a decision on its merits.
iii) So far as the ground of interference by the Court in the internal affairs of the educational institutions is concerned, we are of the view that educational institutions occupy a special niche in our society which provides them a substantial right of "educational autonomy," within which public higher educational institutions are insulated from legal intrusion. Within that autonomous realm, educational institutions are entitled to deference when making academic decisions related to their educational mission. Thus, any interference by Courts of law with orders passed by educational institutions in the interest of the maintenance of discipline would defeat the very purpose for which these institutions exist or it would stultify the powers of the authorities/in charge of educational institutions or prevent them from taking any action against students' misconduct. The Universities and educational institutions generally are armed with abundant powers of disciplinary action against recalcitrant students and the Courts are, in no way, minded to deprive them of their powers.
iv) While there exists a general principle of judicial restraint, implying that courts should be cautious in intervening in the internal matters of educational institutions, it is not an absolute ban. This restraint is exercised with prudence, and courts may step in when university authorities exceed the defined scope of their authority or act in violation of the statutes. In such cases, the courts play a crucial role in upholding legal standards and ensuring that educational institutions operate within the bounds of the law. The delicate balance between non-

interference and necessary intervention is maintained to safeguard the integrity of academic institutions while also holding them accountable to legal frameworks.

Conclusion: i) Suo motu power is often invoked in cases where there is a perceived violation of law and fundamental rights, public interest.
ii) The High Court has the power to convert and treat one type of proceeding into another type.
iii) The Universities and educational institutions generally are armed with abundant powers of disciplinary action against recalcitrant students and the Courts are, in no way, minded to deprive them of their powers.
iv) The courts may step in when university authorities exceed the defined scope of their authority or act in violation of the statutes.

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14. **Supreme Court of Pakistan**
Muhammad Usman v. The State & another
Criminal Petition No. 1233 of 2023
Justice Amin-ud-Din Khan, Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1233_2023.pdf

Facts: The petitioner was arrested because he was nominated in FIR, registered at the Police Station for allegedly committing the offences under sections 302, 148, 149 and 109 of the Pakistan Penal Code. The petitioner had filed his first application seeking bail on merits and it was dismissed by the High Court. He then filed another petition which was not pressed in order to avail the remedy on the fresh ground of delay in conclusion of trial. This ground had not ripened when the two petitions were filed. Since the second petition was not pressed, therefore, it was dismissed by the High Court. Consequently, a third petition was filed on the sole ground of seeking bail on statutory delay. The petition was, however, dismissed on account of non-prosecution. The petitioner filed a fresh petition and it was dismissed by the High Court vide the impugned judgment.

Issues: i) Whether a second bail petition on the same grounds that were earlier taken is competent?
ii) Whether there is any exception to the rule that grounds raised by an accused in a subsequent bail application which were available at the time of filing of the earlier petition could not be treated as fresh grounds?
iii) Whether delay caused by the co-accused of the petitioner can be attributed to him, to disentitle him for grant of bail on statutory ground?
iv) What is object behind the recognition of a right granting bail on statutory ground?
v) Whether accused becomes entitled to bail on statutory ground as of right after the statutory period or its still discretion of court?
vi) How the quantum of delay is to be calculated?
vii) Whether dismissal of bail petition for non-prosecution precludes the accused from filing fresh bail application before the same forum?

Analysis: i) It is settled law that a second bail petition repeating the same grounds that were earlier taken is not competent.

ii) Moreover, the grounds raised by an accused in a subsequent bail application which were available at the time of filing of the earlier petition could also not be treated as fresh grounds nor urged for the purposes of seeking the same relief. This Court has already highlighted the principles regarding maintainability of a subsequent bail petition. If the ground on which bail has been sought subsists when a bail petition is withdrawn then such a ground can also not be taken again. However, the exception to this rule is in the case of entitlement of bail on statutory grounds as has been held by this Court. If any act or omission of the accused has hindered the conclusion of trial within the period specified in the third proviso of section 497 (1) of the Code of Criminal Procedure, 1868 ('Cr.P.C.') then a right, as contemplated thereunder, will not accrue in the latter's favour and, therefore, he or she, as the case may be, would not become entitled to be released on bail on the statutory ground of delay in conclusion of the trial. Nonetheless, if after the rejection of the plea of bail on statutory grounds, the accused has subsequently corrected himself/herself and has abstained from doing any act or omission in the following period specified under the third proviso, then a fresh ground would accrue to the accused to invoke the jurisdiction of the court f or grant of bail. The third proviso to section 497 (1) of Cr.P.C. would thus become operative as and when the period specified therein has expired but the trial has not concluded without any fault on part of the accused.

iii) The legislature has expressly confined the delay under the third proviso to an act or omission of the 'accused' or 'any person acting on his behalf'. The accused cannot be made liable for the acts or omissions of a co accused regardless of the relationship, except when the prosecution can clearly show, based on undisputed facts that the accused seeking bail was complicit. The latter's acts and omissions, or those of a person acting on his behalf, are crucial and could be considered for the court to determine the right to be released on bail on the ground described under the third proviso. The delay caused by the co accused is not attributable to the petitioner because no act or omission on the latter's part nor a person acting on his behalf could be shown.

iv) The object of recognition of a right to be released on bail on statutory ground, subject to meeting the conditions described under the third and fourth provisos of section 497(1) of the Cr.P.C. is to ensure that criminal trials are not unnecessarily delayed and that the prosecution is not enabled to prolong the incarceration or hardship of an accused awaiting trial. The right of an accused to seek bail on statutory grounds cannot be defeated for any other reason except on the ground as has been explicitly described under the third and fourth provisos to section 497(1) of Cr.P.C.

v) The accused becomes entitled to bail as of right after the statutory period expressly stated in clauses (a) and (b), as the case may be, have expired and the trial has not concluded. This accrual of right is manifest from the language of the

third proviso. Such a right can only be defeated if the prosecution is able to show that the delay in the trial was attributable to an act or omission of the accused or a person acting on his behalf. If the prosecution succeeds in showing to the satisfaction of the court that the accused was at fault then the right stands forfeited. (…) It has been held by this Court that the right recognized under the third proviso of section 497(1) cannot be denied to an accused on the basis of discretionary powers of the court to grant bail. The right has not been left to the discretion of the court, rather, its accrual is subject to the fulfillment of the conditions mentioned under the third proviso of section 497(1) of the Cr.P.C.

vi) Moreover, while calculating the quantum of delay attributable to an accused, the court is required to consider whether or not the progress and conclusion of the trial was in any manner delayed by the act and omission on the part of the accused. While ascertaining the delay, the cumulative effect in disposal of the case has to be considered and its assessment cannot be determined on the basis of mathematical calculations by excluding those dates for which adjournments had been sought by the accused or the latter's counsel. The main factor for consideration is the attendance of the witnesses and whether, despite the matter having become ripe for the recording of evidence, whether the delay was caused by the defence. The recording of the statement of a last witness would also not defeat the right recognized under the third proviso and it would be unreasonable to conclude that the trial has been completed.

vii) The petition before the High Court was dismissed for non -prosecution and such dismissal did not prejudice his right to file a fresh petition before the High Court, which he did.

Conclusions: i) A second bail petition repeating the same grounds that were earlier taken is not competent.

ii) The grounds raised by an accused in a subsequent bail application which were available at the time of filing of the earlier petition could also not be treated as fresh grounds, however, the exception to this rule is in the case of entitlement of bail on statutory grounds.

iii) The petitioner's acts and omissions, or those of a person acting on his behalf, are crucial and could be considered by the court to determine the right to be released on bail on the statutory ground. The petitioner/accused cannot be made liable for the acts or omissions of a co accused.

iv) The object of recognition of a right to be released on bail on statutory ground is to ensure that criminal trials are not unnecessarily delayed.

v) The accused becomes entitled to bail as of right after the statutory period as provided under section 497 Cr.P.C. have expired and the trial has not concluded. This right has not been left to the discretion of the court.

vi) While ascertaining the delay, the cumulative effect in disposal of the case has to be considered and its assessment cannot be determined on the basis of mathematical calculations.

vii) See above in analysis portion.

15. **Supreme Court of Pakistan**
Muhammad Riaz. v. Khurram Shehzad and another
Criminal Petition No. 290-L of 2015.
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._290_l_2015.pdf

Facts: This Criminal Petition for leave to appeal is directed against the Judgment passed by the learned High Court, in criminal appeal whereby the respondent No.1 was acquitted of the charge against him as the prosecution had failed to establish the guilt beyond reasonable doubt.

Issues: i) What sort of standard of proof is required in a criminal trial in the light of the term "beyond reasonable doubt"?
ii) What is the credibility of ocular evidence when the presence of eye witnesses on the spot is doubtful?
iii) What is substratum and philosophy of term "the accused is the favourite child of law"?

Analysis: i) The term 'beyond reasonable doubt' is a legal fiction whereby a hefty burden of proof is required to be discharged to award or maintain a sentence or verdict of guilt in a criminal case. Id est, it connotes that the prosecution is obligated to satisfy the Court with regard to the actuality of reasonable grounds, beyond any shadow of doubt, in order to secure a verdict of guilt.
ii) When the presence of eye witnesses on the spot is doubtful then, in such situations, the ocular testimony should be excluded from consideration.
iii) The substratum of this concept is based on the farsightedness and prudence, 'let a hundred guilty be acquitted but one innocent should not be convicted'; or that it is better to run the risk of sparing the guilty than to condemn the innocent. The raison d'être is to assess and scrutinize whether the police and prosecution have performed their tasks accurately and diligently in order to apprehend and expose the actual culprits, or whether they dragged innocent persons in the crime report on account of a defective or botched-up investigation which became a serious cause of concern for the victim who was deprived of justice. The philosophy of the turn of phrase "the accused is the favourite child of law" does not imply that the Court should grant any unwarranted favour, indulgence or preferential treatment to the accused, rather it was coined to maintain a fair-minded and unbiased sense of justice in all circumstances, as a safety gauge or safety contrivance to ensure an evenhanded right of defence with a fair trial for compliance with the due process of law, which is an integral limb of the safe administration of criminal justice and is crucial in order to avoid erroneous verdicts, and to advocate for the reinforcement of the renowned doctrine "innocent until proven guilty".

Conclusion: i) The term "beyond reasonable doubt" is a legal fiction whereby a hefty burden of proof is required to be discharged in a criminal trial.
ii) When the presence of eye witnesses on the spot is doubtful then the ocular testimony should be excluded from consideration.
iii) The substratum of term "the accused is the favourite child of law"is based on the farsightedness and prudence and the Court should not grant any unwarranted favour, indulgence or preferential treatment to the accused, rather it was coined to maintain a fair-minded and unbiased sense of justice.

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16. **Supreme Court of Pakistan**
Salman Mushtaq and another v. The State through PG Punjab and another
Ahmar Ali v. The State through PG Punjab and another
Criminal Petitions no. 1121 & 1128 of 2023
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1121_2023.pdf

Facts: This Criminal Petition for leave to appeal is directed against the separate Orders passed by the High Court in two separate criminal miscellaneous petitions whereby the bail applications moved by the petitioners were dismissed.

Issues: i) Whether in rape cases negligence of prosecution for not carrying out DNA test is violation of settled principle i.e 'administration of DNA test and preservation of DNA evidence should be made mandatory'?
ii) What are the paramount factors which require consideration while granting pre-arrest bail?
iii) Whether in bail matters the atrociousness, viciousness and/or gravity of the offence are by themselves, sufficient for the rejection of bail, when nature of evidence produced creates doubt?
iv) In what circumstances bail cannot be withheld as a punishment and what other interconnected rudiments court must consider?
v) What are other interconnected rudiments, court must dwell on while considering bail application?
vi) What an accused has to show while seeking concession of bail?

Analysis: i) …No explanation was offered for this clear negligence on the part of prosecution, which is also violation of the judgment rendered by this Court in the case of Salman Akram Raja and another vs. Government of Punjab through Chief Secretary and others (PLJ 2013 SC 107) wherein it was *inter alia* directed in paragraph 16 that in rape cases, the administration of DNA tests and preservation of DNA evidence should be made mandatory.
ii) The paramount factors which require consideration while granting pre-arrest bail are whether the arrest will cause humiliation and /or unwarranted persecution or harassment to the applicant for some ulterior motives; or that the prosecution is motivated by malice to perpetrate irreparable injury to the reputation and liberty of the accused.

iii) While considering the grounds agitated for enlargement on bail, whether pre-arrest or post-arrest, the atrociousness, viciousness and/or gravity of the offence are not, by themselves, sufficient for the rejection of bail where the nature of the evidence produced in support of the indictment creates some doubt as to the veracity of the prosecution case.

iv) Therefore, where, on a tentative assessment, there is no reasonable ground to believe that the accused has committed the offence, and the prosecution case appears to require further inquiry, then in such circumstances the benefit of bail may not be withheld as a punishment to the accused.

v) The Court must dwell on all interconnected rudiments, including the gravity of the offence and the degree of involvement of the applicant /accused for bail in the commission of offence, together with the likelihood of absconding or repeating the offence and/ or obstructing or hindering the course of justice, or any reasonable apprehension of extending threats to the complainant or witnesses or winning over the prosecution witnesses.

vi) The doctrine of 'further inquiry ' refers to a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. The expression "reasonable grounds" as contained under Section 497, Cr.P.C., obligates the prosecution to unveil sufficient material or evidence to divulge that the accused has committed an offence falling within the prohibitory clause of Section 497, Cr.P.C. However, for seeking the concession of bail, the accused person has to show that the evidence collected against him during the investigation gives rise to clear-headed suspicions regarding his involvement.

Conclusion: i) Yes, in rape cases negligence of prosecution for not carrying out DNA test is violation of settled principle i.e 'administration of DNA test and preservation of DNA evidence should be made mandatory'.

ii) These paramount factors are; whether the arrest will cause humiliation and /or unwarranted persecution or harassment to the applicant for some ulterior motives; or that the prosecution is motivated by malice to perpetrate irreparable injury to the reputation and liberty of the accused.

iii) In bail matters, whether pre-arrest or post arrest, the atrociousness, viciousness and/or gravity of the offence are not by themselves, sufficient for the rejection of bail, when nature of evidence produced creates doubt as to prosecution case.

iv) Bail may not be withheld as a punishment, where, on a tentative assessment, there is no reasonable ground to believe that the accused has committed the offence and prosecution case appears to require further inquiry.

v) Court must dwell on other interconnected rudiments in bail i.e. gravity of offence, degree of involvement, likelihood of absconding or repetition of offence, obstructing course of justice any reasonable apprehension of extending threats to the complainant or witnesses or winning over the prosecution witnesses.

vi) For seeking the concession of bail, the accused has to show that the evidence collected against him during the investigation gives rise to clear-headed suspicions regarding his involvement.

17. **Lahore High Court**
Mst. Gulnaz Ajmal v. The State
Criminal Appeal No.72371-J/2019
The State Vs. Mst. Gulnaz
Murder Reference No.297/2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6219.pdf

Facts: The appellant lodged the criminal appeal assailing her conviction and sentence in case FIR registered in respect of an offence under section 302 P.P.C. and learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Why First Information Report being foundation of the criminal case needs to be promptly recorded?
ii) Whether examining the motivating factors are necessary for making extra judicial confession particularly before the persons who are closely related to the deceased?
iii) Whether the chance witnesses are required to explain valid reason regarding their presence at place of occurrence?
iv) What is the scope of medical evidence?

Analysis: i) By now it is well settled that First Information Report lays foundation of the criminal case and when it has not been promptly recorded and no reasonable explanation regarding its delayed recording has come on the record, then it is fatal for the case of prosecution.
ii) It is appropriate to examine the motivating factors for making extra judicial confession as to what has compelled the accused to confess the crime, particularly before the persons, who being closely related to the deceased might immediately become witness against the accused.
iii) The chance witnesses are required to explain and establish plausible as well as valid reason regarding their stated arrival and presence at the place of occurrence.
iv) It is trite law that medical evidence is mere supportive/confirmatory type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury.

Conclusion: i) First Information Report being foundation of the criminal case needs to be promptly recorded.
ii) It is appropriate to examine the motivating factors for making extra judicial confession particularly when it is made before the persons, who are closely related to the deceased.
iii) The chance witnesses are required to explain valid reasons regarding their presence at place of occurrence.

iv) It is trite law that medical evidence is mere supportive/confirmatory type of evidence.

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18. **Lahore High Court**
Sughran Bibi etc. v. Muhammad Nawaz etc.
C.R. No.2401 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6374.pdf

Facts: The petitioners filed Civil Revision against the concurrent findings of the Trial as well as Appellate court whereby suit for specific performance of agreement to sell, declaration and permanent injunction as a consequential relief of respondents was decreed.

Issues: i) Rule of interpretation of General Power of Attorney?
ii) Whether scribe of a document could be equated with marginal witness?
iii) Requirement of Article 79 of the Qanun-e-Shahadat Order, 1984?
iv) Pre cautions to be adopted by Court in transactions involving parda nasheen old and illiterate ladies?
v) Principles for allowing Civil Revision where there are concurrent judgments and decrees?

Analysis: i) Power of attorney is to be construed strictly. Such power would give only the authority as it would confer expressly and it could not empower beyond that, what it really conveyed. Regard must be had to the recitals which shows the scope and object of power and would control all general terms in the operative part of the instrument. Where a specific power of entering into an agreement to sell of the suit property was not given although powers of sale have been conferred upon the attorney- he was found to be incompetent to enter into any kind of agreement to sell.
ii) The scribe of the document cannot be equated with marginal witness; reliance was placed on PLD 2011 Supreme Court 241.
iii) Non-production of the second marginal witness is fatal to the case. Withholding of the best available evidence without any incapacity, attracts the adverse presumption as per Article 129(g) of Qanun-e-Shahadat Order, 1984 that had the said witness been produced, he would not have supported the stance of the plaintiffs.
iv) By relying on the cases reported as 2016 SCMR, 1225 2021 SCMR 19 and PLD 2022 Supreme Court 99, the court opined that in transactions involving parda nasheen and illiterate women, the beneficiary of it has to prove interalia that it was executed with free consent and will of the lady, she was aware of the meaning, scope and implications of the document that she was executing. She was made to understand the implications and consequences of the same and had independent and objective advice either of a lawyer or a male member of her immediate family available to her.

v) The Court is vested with ample power and jurisdiction to reverse and revise the concurrent judgments and decrees, when the same suffer from material illegalities and irregularities as well as are a result of misreading and non-reading of evidence.

Conclusion: i) Power of attorney is to be construed strictly nothing could be read in it unless the same was specifically provided therein and the attorney was to act within scope of the authority as described in instrument.
ii) Scribe of the document cannot be equated with marginal witness.
iii) Non-production of the second marginal witness is fatal to the case.
iv) In respect of a transaction germane to property with a pardanasheen, village household and rustic ladies the guidelines laid down in the following case precedents i.e 2016 SCMR 1225, 2021 SCMR 19 and PLD 2022 Supreme Court 99 need to be followed as mentioned supra.
v) Concurrent judgments/decrees could be revised if the same suffer from material illegalities and irregularities as well as are a result of misreading and non-reading of evidence.

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19. **Lahore High Court**
Asadullah v. The State etc.
Criminal Appeal No. 654/2023
Mr. Justice Abid Aziz Sheikh, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6365.pdf

Facts: The trial court during the trial, on application of prosecution passed an order to send the complete case property to the Punjab Forensic Science Agency for re-testing. The Appellant being aggrieved of the order has filed this appeal under section 48 of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether a drug case can succeed without the report of the government analyst which supports the witnesses who testify regarding the recovery and confirms that the recovered substance is contraband?
ii) Whether any test conducted without a protocol loses its reliability and during the trial, any contraband substance can be sent to the Government Analyst for re-testing?

Analysis: i) In drugs cases, it cannot succeed unless the report from the Government Analyst supports the witnesses who testify regarding the recovery and confirms that the recovered substance is contraband. The courts have issued guidelines from time to time to ensure that the report of the Government Analyst is authentic and reliable. Generally, they have opposed re-testing of the substance.
ii) In The State v. Amjad Ali (PLD 2007 SC 85), the Supreme Court observed that unscrupulous litigants are increasingly manoeuvring substitution of the substances and articles stored in the Malkhana. Following the replacement, these people request for the re-examination of the material, and the consequence is that what was originally tested as contraband is found to be something else. As a result,

offenders get acquitted…In Qaiser Javed Khan v. The State and another (PLD 2020 SC 57), the Supreme Court stated that the Government Analyst's report must show that the contraband was tested in accordance with a recognized standard protocol. Any test conducted without a protocol loses its reliability and evidentiary value. Therefore, the said report must specify (i) the test applied, (ii) the protocols applied to carry out those tests, and (iii) the results of the tests. It further stated that once these requirements, which are outlined in Rule 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, are included in the Government Analyst's report, any ambiguity can be resolved by the trial court by exercising its powers under the Proviso of section 510 Cr.P.C. which stipulates that the court may if it considers necessary in the interest of justice, summon and examine the person by whom such report has been made. Hence, while reviewing the report, the trial court can summon the Government Analyst to clarify any ambiguities. However, the Supreme Court cautioned that this does not allow the Government Analyst to conduct a fresh test or prepare a new report because doing so would provide the prosecution with an opportunity to fill the gaps and lacunas in the report…The trial court's direction for sending the entire material to the PFSA gives the prosecution a premium to fill the lacunas. Such judicial intervention is contrary to the adversarial concept. It violates the fundamental right of fair trial and due process guaranteed by the Constitution…

Conclusion: i) A drugs case cannot succeed unless the report from the Government Analyst supports the witnesses who testify regarding the recovery and confirms that the recovered substance is contraband.
ii) Any test conducted without a protocol loses its reliability and evidentiary value and generally during the trial, any contraband substance cannot be sent to the Government Analyst for re-testing.

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20. **Lahore High Court**
M/s Pak Hygienic Industries v. Federation of Pakistan etc.
Writ Petition No.75402/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6173.pdf

Facts: This Constitutional Petition is directed against the order passed by respondent No.3 under Section 38(1) and 40 of the Sales Tax Act, 1990, whereby respondent No.4 alongwith his team was duly authorized to make inspection and take into custody the record/documents belonging to petitioner-company. The petitioner has also challenged the search warrant order issued under Section 40 of the Act, 1990.

Issues: i) Whether an officer has power under Section 38 of the Act, 1990 to compel production of any record or document that is not in plain sight or that has not been voluntarily produced?
ii) Whether pendency of any proceedings against registered person or a person liable for registration is a precondition under Section 40 of the Act, 1990 for

issuance of search warrant?

Analysis: i) Plain reading of Section 38(1) of the Act shows that any officer, authorized by the Commissioner Inland Revenue, shall have free excess to the business or manufacturing premises, registered office or any other place where any stock, business record or documents required under this Act are kept or maintained belonging to the registered person or a person liable for registration or whose business activities are covered under this Act or who may be required for any inquiry or investigation in any tax fraud. Under section 38 of the Act, an officer authorized may inspect and also take into custody the record mentioned therein, as he may deem fit, against a signed receipt… there is no precondition in Section 38 of the Act that proceedings be pending for inspection or taken into custody the record, however, the Division Bench of this Court in "GHULAM HUSSAIN Vs. FEDERATION OF PAKISTAN through Ministry of Finance, Islamabad and 5 others" (2021 PTD 1379) held that purpose of visit, in terms of Section 38 of the Act, is to see whether proper record under the Act, relevant Rules and Regulations is maintained or not, and the authorized officer in this regard must produce the copy of authorization before commencing the inspection and visit must be confined to inspect the record and documents that are in plain sight or voluntarily made available for inspection by the person(s) present at the premises on request, and consequently only such record can be taken into custody within the meaning of Section 38 of the Act. The Division Bench further held that the officer has no power, under Section 38 of the Act, to compel production of any record or document that is not in plain sight or that has not been voluntarily made available as above.

ii) Whereas under Section 40 of the Act, where any officer of Inland Revenue has reason to believe that any document or things which in his opinion, may be useful for, or relevant to any proceedings under this Act are kept in any place, he may, after obtaining warrant from Magistrate, enter that place or cause a search to be made at any time…there are no proceedings pending under the Act for which the documents may be useful or relevant, which is a precondition under Section 40 of the Act for issuance of search warrant. The Supreme Court in "Collector of Sales Tax and Central Excise (Enforcement) and another Vs. Messrs Mega Tech (Pvt.) Ltd." (2005 PTD 1933) held that as per the language employed in Sections 40 & 40A of the Act, the requirement of law appears to be that where an officer of sales tax has reason to believe that any document or things, which in his opinion may be relevant to any proceedings under the Act, are concealed or kept in any place and there is a danger of removal of such documents or records, he may, after obtaining warrant from Magistrate, enter that place and cause a search to be made at any time and the search authorized shall be carried out strictly in accordance with relevant provisions of the Code of Criminal Procedure, 1898 (Cr.PC)…This Court, in "Pakistan Chipboard (Pvt.) Ltd. through Chief Executive Officer Vs. Federation of Pakistan etc." (2015 PTD 1520), also held that when there are no proceedings pending under the Act, the provision of Section 40 of the Act for

search cannot be invoked. The desk audit analysis can at best be treated as inquiry or investigation but does not amount to proceedings under the Act, therefore, the provision of Section 40 of the Act could not be invoked in the impugned order or search warrant, therefore, to that extent the impugned order & search warrant are not sustainable.

Conclusion: i) An officer has no power under Section 38 of the Act, 1990 to compel production of any record or document that is not in plain sight or that has not been voluntarily produced.
ii) Pendency of any proceedings against registered person or a person liable for registration is a precondition under Section 40 of the Act, 1990 for issuance of search warrant.

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21. **Lahore High Court**
Muhammad Akbar Ali v. ASJ & others
Criminal Misc. No.43746-M of 2023
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2023LHC6412.pdf

Facts: Through this petition, petitioner assails the order passed by the learned Additional Sessions Judge in criminal revision, whereby the order passed by the learned Magistrate regarding the summoning of certain respondents in the petitioner's private complaint stood set aside.

Issues: i)What is required by law for the purpose of issuance of process to the accused under section 204 Cr.P.C.?
ii)What is the limit of the revisional court while determining the propriety or legality of the summoning order of trial court?

Analysis: i) The Court is desired by Law only to look for the availability of sufficient ground to proceed further with the complaint, which requires tentative assessment of the evidence at hand. Till such stage, only sufficiency or insufficiency of the evidence available for the issuance of process is the matter to be decided by the Court seized with the matter. The Court is not even required to state detailed reasons in support of its order.
ii) The learned Additional Sessions Judge should not travel beyond his limit by considering the record produced by the accused/respondent, which was not the part of the record at time of passing the order summoning accused/respondent.

Conclusion: i) Evidence sufficient to establish guilt of the accused is not required for the purpose of issuance of process to the accused under section 204 Cr.P.C.
ii) The revisional court, while determining the propriety or legality of order for summoning of accused/respondent, could only look into the material or evidence available to the learned court below at the stage when such order was passed.

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22. **Lahore High Court**
Muhammad Razzaq, etc. v Federation of Pakistan, etc.
Writ Petition No.5973 of 2017
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6402.pdf

Facts: Under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has filed this petition alleging that statutory bodies i.e. Provincial Public Safety Commission and District Public Safety Commission under the provisions of Police Order, 2002 have not been constituted.

Issues: i) What is the required to be done under Subsection (2) of Section 37 of the Police Order 2002?
ii) Whether the representatives lastly elected by the people shall continue to represent the people unless newly elected representatives replace them?

Analysis: i) Under Subsection (2) of Section 37 of the Police Order 2002, independent budget shall be allocated whereafter notification of the Members of the Public Safety Commission shall be a routine wherein elected members can be notified or re-notified from time to time.
ii) It is held for the purpose of the Section 37 of the Police Order 2002 that in absence of newly elected representation, the representatives lastly elected by the people shall continue to represent the people unless newly elected representatives replace them. It is reiterated that there cannot be a gap for the people to exercise sovereignty through their elected representation.

Conclusion: i) Independent budget shall be allocated whereafter notification of the Members for the Public Safety Commission shall be a routine.
ii) The representatives lastly elected by the people shall continue to represent the people in the Public Safety Commission unless newly elected representatives replace them.

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23. **Lahore High Court**
Mahnoor Shabbir v. Additional District Judge, etc.
Case No. W. P. No.62482 of 2022
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6415.pdf

Facts: Petitioner has assailed judgment passed by Additional District Judge, exercising appellate jurisdiction, whereby suit of the petitioner for maintenance against her paternal uncle has been dismissed by reversing the judgment and decree by the trial Court.

Issues: i) Whether Muhammadan Law by D.F. Mulla is a statutory law and binding upon Courts?
ii) Whether in suit for maintenance allowance paternal uncle could be replaced as defendant against grandfather, in case of his death?

Analysis: i) “Mulla's "Principles of Muhammadan Law" is a reference or a text book as some times referred in our judgments like other books of this category and not a statutory book. Usually, when the Courts consult it, this exercise is just like consulting a book where the opinions of the great Muslim jurists are easy to get because opinions are mentioned in English language in an over simplified language and paragraphs of the book are numerically marked. The very style of composition of this book often create a confusion amongst the reader that it is a statute book which it is not. Perhaps this is the reason why the petitioner states in his petition that the book of D.F. Mulla comes within the purview of custom and usage which is absolutely wrong and incorrect.” (…) D.F Mulla’s Muhammadan Law is just a text book, which can be referred or relied upon by Courts like any other text book. Being neither a statute nor a custom or usage, the opinion in it is not binding.

ii) Learned counsel for the petitioner is asked whether Section 373 of Muhammadan Law is a statutory provision, the answer is in negative. He is also asked to produce any judgment where decree of maintenance against the distant relative is issued on the basis of Section 373, he could not produce. (…) Without prejudice to the legal position, ibid, in this Court’s opinion, the findings given by the Appellate Court are factual and based on the Section 373 holding that conditions of this Section of the text book are not met. The petitioner could not establish before the Appellate Court that she would get inheritance from the estate of her respondent-paternal uncle on his death. (…) The Appellate Court also determined that the petitioner could not prove herself to be poor distant relative. The reasons for claiming maintenance from grandfather in absence of father are on different premises whereas claim of maintenance from a relative under Section 373 and different principles of Islamic jurisprudence. (…) In this Court’s opinion, if suit was filed to claim maintenance from grandfather after death of father, the paternal uncle could not have been replaced as defendant in the shoes of grandfather.

Conclusions: i) “Mulla's "Principles of Muhammadan Law" is mere a reference or a text book which is neither a statute nor a custom or usage, therefore, not binding on Courts.

ii) Claim of maintenance from grandfather and paternal uncle is on different principles of Islamic Jurisprudence, hence paternal uncle could not replace the grandfather, as defendant, after his death.

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24. **Lahore High Court,**
M/s Hadi Developers Private Limited v. Government of the Punjab etc.,
Writ Petition No. 70681 of 2023,
Mr. Justice Shahid Jamil Khan.
https://sys.lhc.gov.pk/appjudgments/2023LHC6408.pdf

Facts: Through this writ petition, the petitioner seeks direction for decision on applications for Preliminary Planning Permission of a Private Housing Scheme

having been addressed to Administrator, Town Municipal Administration and Chief Officer, District Council.

Issues: i) Whether operation of law may be deemed suspended as outcome of suspension of judgment of High Court in which such law is referred?
ii) Whether the interim Local Government can exercise powers meant to be exercised by the elected Local Government?

Analysis: i) The effect of the suspension of judgment is "in *personum*" i.e. only to the extent of the case. The law or its interpretation mentioned/referred in the judgment, being in *rem*, cannot be suspended as outcome of suspension of operation of judgment of High Court, unless the law is otherwise interpreted and overruled by the Bench of higher strength.
ii) Sections 166 to 169 of Part 9 and Chapter XXVIII of the Punjab Local Government Act, 2022 envisage a procedure to be carried out by the Head of Local Government with other elected office-bearers. Under inevitable circumstances, if the next elected Local Government is delayed, provisions of Sections 205 and 71 of Act ibid would come into play, which need to be construed narrowly for performance of function only and not exercise of power vested in elected Local Government.

Conclusion: i) The law cannot be deemed suspended as outcome of suspension of judgment of High Court in which such law is referred, unless declared *ultra vires.*
ii) The interim Local Government cannot exercise powers meant to be exercised by the elected Local Government.

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25. **Lahore High Court**
Gujranwala Steel Industries v. Industrial Development Bank of Pakistan, etc.
E.F.A No.8251/2023
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6308.pdf

Facts: Through instant Execution Appeal the appellant has assailed the order of Banking Court, whereby, Banking Court declared allotment in favour of appellant void, upon invoking section 23 of the Financial Institutions (Recovery of Finances) Ordinance, 2001('FIO'). It further directed decree holder-cum-mortgagee to redeem subject matter property to judgment debtors-cum-mortgagor and deliver possession thereof. And also various applications of the appellant were dismissed by the Banking Court, having the effect of denying alleged rights claimed by the appellant.

Issues: Whether after satisfaction of the decree and redemption of lease hold rights Banking Court has jurisdiction to invoke section 23 of the Financial Institution (Recovery of Finance) Ordinance, 2001 to decide validity of order of cancellation of lease and/or right consequently claimed?

Analysis: Composite reading of sub-sections to section 23 of the FIO manifests the objectivity intended for protecting the interest of the mortgagee or other categories of charge holder(s) described therein. Section 23 of the FIO defines limits and restricts the exercise of rights by the customer or the judgment debtor, as situation warrants, with respect to the property / asset(s) under mortgage / charge / encumbrance. There is no cavil that sub-section (2) of section 23 of the FIO is relevant and attracted so long the decree is outstanding or the mortgage / charge / encumbrance is enforceable, depending upon the facts in each case. Under sub-section (2) of section 23 of the FIO, element of voidness is attributed to the transaction, through legal fiat, for the purpose of protecting, preserving and safeguarding the rights and entitlement of the respondent No.1 - decree holder. Once decree was adjusted in full, question of voidness of the alleged transaction would become irrelevant for the decree holder, and at that point in time jurisdiction of the Bank Court ends. According to the facts of the case at hand, question of determination of voidness of allotment, upon satisfaction of the decree, falls outside the jurisdiction of Banking Court. And subsection (2) of section 23 of the FIO has no application. Once decree stood satisfied the effect of attachment order would also disappear. Lessor, lessee and allottee each are at liberty to plead, raise or agitate their respective claims before the courts having general jurisdiction.

Conclusion: After satisfaction of the decree and redemption of lease hold rights Banking Court has no jurisdiction to invoke section 23 of the Financial Institution (Recovery of Finance) Ordinance, 2001 to decide validity of order of cancellation of lease and/or right consequently claimed.

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26. **Lahore High Court**
Fazal Hussain v. Razia Begum, etc.,
W.P.No.2998 of 2018,
Mr. Justice Mirza Viqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2023LHC6270.pdf

Facts: This constitutional petition emanates from a suit for recovery of maintenance allowance instituted by one of the respondents, which was ex-parte decreed followed by dismissal of petitioner's application for setting aside said ex-parte decree, hence this petition.

Issues: i) What is the limitation for filing an application for setting aside ex-parte decree of Family Court and when it starts?
ii) Which will prevail out of rule and the basic provision of statute, if there is an inconsistency between these?

Analysis: i) Section 9 (7) of the Family Courts Act, 1964 commands the Family Court to send a notice of passing of ex-parte decree to the defendant together with a certified copy of the decree within three days of the passing of such decree. A

defendant may apply, within 30 days of the service of said notice, to the Family Court by which the decree was passed for an order to set it aside under Section 9 (7) ibid.

ii) Rule 13 of the Family Court Rules, 1965 postulates that an ex-parte decree or proceeding may, for 'sufficient cause' shown, be set aside by the Court on application made to it within 30 days of the passing of the decree or decision, but this rule is apparently showing scorn and derogative of the basic provision of Section 9 (7) of the Family Courts Act 1964.

Conclusion: i) The limitation of 30 days for filing an application for setting aside ex-parte decree would start from the service of notice under Section 9 (7) of the Family Courts Act, 1964 as added by the Ordinance LV of 2002.

ii) It is trite law that whenever there is an inconsistency between the rule and the basic provision of statute, the latter will prevail.

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27. **Lahore High Court**
Mubarak Ahmad v. Muhammad Hayat (Deceased) Through His Legal Heirs and others,
Civil Revision No.341-D of 2017,
Mr. Justice MirzaViqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2023LHC6202.pdf

Facts: The suit of the predecessor-in-interest of respondents, seeking separate possession through partition of suit properties being joint interse parties, was resisted by the petitioner claiming to be a *bonafide* purchaser. The trial court passed the preliminary decree and consequent appeal filed by the petitioners of both these petitions as well as one of the respondents was dismissed, which verdict is now impugned in these two petitions under Section 115 of the Code of Civil Procedure.

Issues: i) How can a party claim his right relying upon private partition of joint land?

ii) Can any co-sharer sell joint property with specific boundaries,especially during the pendency of the suit?

Analysis: i) Chapter XI of the Land Revenue Act, 1967 deals with the partition of the joint land.Section 147 of the Act ibid provides a mechanism for affirmation of partitions privately effected which clearly manifests that if a party pleads some private partition affected under some family settlement with regard to partition of joint land, then such party has to apply to the revenue officer for obtaining an order for affirmation of such partition.

ii)Any transaction that took place during the pendency of the suit would be governed in terms of Section 52 of the Transfer of Property Act, 1882 on the touchstone of principle of *lis pendens*. A co-sharer has every right to transfer or sell the joint property to a third person, but such transfer or alienation is always dependent upon the actual share of such co-owner and if he transfers or alienates the property within his share, the vendee will step into his shoes accordingly.

Conclusion: i) In absence of any order of affirmation in terms of Section 147 of the Land Revenue Act, 1967, the party relying upon private partition would be precluded to claim any right thereunder.
ii) No co-sharer can sell joint property with specific boundaries and whenever any such transaction is made, that would always be the subject to the partition.

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28. **Lahore High Court**
Evacuee Trust Property Board through its Secretary v. Ghyas Ahmad Rana etc.
W.P.No.17384/2000
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC6472.pdf

Facts: Through this constitutional petition, the Evacuee Trust Property Board has challenged the validity of order passed by Wafaqi Mohtasib whereby the complaint filed by the respondent No.1 was accepted.

Issues: i) Whether a Minister holds the authority to make recommendation/proposal to the Evacuee Trust Property Board to grant an evacuee property to any specific person on lease without adopting the procedure laid down in law?
ii) Whether Wafaqi Mohtasib has jurisdiction to pass direction to any department to comply with any recommendation made by a Minister?
iii) Whether an order passed by any authority beyond its jurisdiction and against the public policy in its inception is nullity in the eyes of law?
iv) Whether it is inalienable obligation of the Courts to be very careful and cautious being custodian of the public properties, public interest and while dealing with its matters?

Analysis: i) The Evacuee Trust Properties (Management & Disposal) Act, 1975 is a special law which provides mechanism for the management, lease and disposal of the evacuee trust properties. In the Act as well as Scheme ibid no provision is available whereby any authority is vested with the Minister to make recommendations to the petitioner-Board for lease of any plot to any individual… A minister is denuded of any power to issue, any such recommendations for lease of plot and if any recommendation is so made that would be patently illegal and without lawful authority, as it is settled law that any order passed by an authority without having jurisdiction that order would be void ab-initio…Any recommendation of the Minister for grant/ lease of the plot are liable to be quashed being void ab- initio and any superstructure built on the basis whereof shall also be dismantled automatically.
ii) Suffice it to say that the office of Wafaqi Mohtasib was created under the "Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983" dated 24.01.1983 whereby under Section 9 of the Order ibid, the jurisdiction, functions and powers of Mohtasib are provided...The case for lease of plot owned

by the petitioner-Board to the respondent No.1 does not fall within the jurisdiction of Wafaqi Mohtasib as provided in Section 9 of the Order ibid.
iii) Admittedly all the affairs of the state are managed and run by the instrument of written constitution as well laws and functions/ business of each and every department is to be carried out under the well described manifest written jurisdiction and each portfolio has to exercise its powers with the described precincts of its jurisdiction and any transgression whereof would be considered as illegal. Moreover according to Section 23 of the Contract Act, 1872, if any order is passed by any authority beyond its jurisdiction and against the public policy, such order in its inception is nullity in the eyes of law and never convey any absolute title in favour of the beneficiary…It is settled law when the basic order has been passed without jurisdiction and without lawful authority, then all the superstructure built on the said order shall automatically collapse/crumble down.
iv) The Courts of law are custodian of the public properties, public interest and while dealing with matters relating to such properties/assets or interests, it is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul is being played with the state assets. An extraordinary obligation is placed upon the courts to keep abreast itself with law and facts of the case and when certain material facts unearthed before it then the matter should be decided as per law even without being influenced by respective pleadings of the parties…

Conclusion: i) A Minister does not hold the authority to make recommendation/proposal to the Evacuee Trust Property Board to grant an evacuee property to any specific person on lease without adopting the procedure laid down in law.
ii) Wafaqi Mohtasib has no jurisdiction to pass direction to any department to comply with any recommendation made by a Minister.
iii) Yes, an order passed by any authority beyond its jurisdiction and against the public policy in its inception is nullity in the eyes of law.
iv) Yes, it is inalienable obligation of the Courts to be very careful and cautious being custodian of the public properties, public interest and while dealing with its matters.

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29. **Lahore High Court**
Mst. Samina Zia v. Federation of Pakistan & others
Writ Petition No.6927 of 2021/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC6183.pdf

Facts: Petitioner sought direction for respondents to pay her the amounts present in the joint saving account, maintained by her along with her deceased husband with Pakistan Postal Services, by calculating settled profit.

Issue: Whether mere death of one of the joint account holders of saving account with Pakistan Postal Services can deprive the survivor from profits accrued on the amounts deposited in the joint account after said death?

Analysis: After amendments brought in the Rules of 1981 by way of the Post Office Savings Account (Amendment) Rules, 2014, types of Savings Accounts have been provided in Rule 4 according to which types of Individual Accounts are: Single Account, Joint Account and Pension Account. Joint Account has further two types: A-Type, payable to the depositors jointly or to two survivors jointly or to the sole survivor. It is provided that such account may be operated by all the depositors or both the survivors or the sole survivor as the case may be; B-Type, payable to any one of the depositors or either of two survivors or to the sole survivor and such account can be operated by one of the depositors or either of the two survivors or the sole survivor as the case may be. In the instant case, joint account was opened by two individuals and the survivor is one person, therefore, irrespective of the types of the joint account, sole survivor is entitled to retain and operate the account within the contemplation of Rule 4 [of the Post Office Savings Account Rules, 1981]…Similar provision is also available in the Post Office Savings Account Scheme, 2019…It is clearly deducible that the joint account, even after death of one of the joint account holders, does not cease to exist rather remains operative to be maintained by the survivor(s) and no damage is caused to the amount available in the joint account or deposited in future…Regarding interest on deposits in joint account, I am unable to see any specific provision in the Rules of 1981 and the Scheme of 2019 on the subject….*Ex facie* non-mentioning of situation of death of one of the account holders of joint accounts in the afore-referred provisions may not necessarily be construed a lacuna or gap in the legislation rather it is due to the fact that such situation does not affect the joint accounts qua its operation / running as well as interest on deposits in such accounts.

Conclusion: Mere death of one of the joint account holders of saving account with Pakistan Postal Services cannot deprive the survivor from profits accrued on the amounts deposited in the joint account after said death.

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30. **Lahore High Court**
Muhammad Akmal son of Riaz Hussain v. The State, etc.
Crl.Misc.No. 1454-B of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6429.pdf

Facts: Through this petition, the petitioner has sought post arrest bail in case FIR registered for the offence under Section 302 PPC.

Issues: i) What is the criteria of grant of bail to an accused in non-bailable case on medical ground?
ii) Whether opinion expressed by the medical board on medical report, being highly technical, can be brushed aside lightly by the Court?

Analysis: i) The criteria for grant of bail to an accused in a non-bailable case on medical

ground is that the sickness or ailment with which he is suffering is such that it cannot be properly treated within the jail premises and that some specialized treatment is needed and his continued detention in jail is likely to affect his capacity or is hazardous to his life. It has been held by the august Supreme Court of Pakistan in case titled "Mian Nazir Ahmad v. The State, etc." (2016 SCMR 1536) that if an accused is patient of acute disease, which cannot be satisfactorily treated in jail and it is not possible to provide first aid in case of emergency of said disease, then the under trial petitioner can be granted bail.

ii) It is also not out of place to mention here that learned counsel for the complainant has failed to counter the opinion/findings of Medical Board in its report. While, on the other hand, the medical report, being highly technical and opinion expressed by the medical board cannot be brushed aside lightly by the Court in the absence of any counter-opinion or any medical literature placed before the court to contradict the opinion given by the Board.

Conclusion: i) The criteria for grant of bail to an accused in a non-bailable case on medical ground is that the sickness or ailment with which he is suffering is such that it cannot be properly treated within the jail premises and that some specialized treatment is needed and his continued detention in jail is likely to affect his capacity or is hazardous to his life.

ii) No, opinion expressed by the medical board on medical report, being highly technical, cannot be brushed aside lightly by the Court in the absence of any counter-opinion or any medical literature placed before the court to contradict the opinion given by the Board.

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31. **Lahore High Court**
Mst. Rubina Khatoon v. ASJ/JOP, etc.
W.P No.5109/2020
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6438.pdf

Facts: This petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is voiced against the order whereby the Ex-Officio Justice of Peace, disposed of the petition filed by the petitioner for implementation of his earlier order for recording of statement of petitioner.

Issue: i) Whether functions of an Ex. Officio Justice of Peace, as described in clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C., are quasi-judicial?

ii) Whether an Ex. Officio Justice of Peace can pass a subsequent superseding order in conflict and in derogation with his earlier order passed by him in the same case?

iii) What does the term "*functus officio*" literally denote?

Analysis: i) It has been settled by now that functions of an Ex. Officio Justice of Peace, as described in clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C.,

are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind.
ii) At present, there exists no provision in the Cr.P.C, which enables and empowers an Ex. Officio Justice of Peace to review or revise its own order once he has passed the same in a case and has attained finality, particularly when in respect of that order of Ex. officio Justice of Peace, no adverse finding or order of this Court is in field.
iii) The term "functus officio" literally denotes 'of no further official authority or legal effect' or 'having performed his office', and is used in the context of an officer who is no longer in office or has fulfilled its purpose. This doctrine has an extensive and pervasive application to both the judicial and quasi-judicial authorities and if such doctrine is considered insignificant, it will lead to disorder, therefore, this should be given credence to bring in decisiveness and certitude to legal proceedings.

Conclusion: i) Functions of an Ex. Officio Justice of Peace, as described in clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C., are quasi-judicial.
ii) An Ex. Officio Justice of Peace cannot pass a subsequent superseding order in conflict and in derogation with his earlier order passed by him in the same case.
iii) The term "functus officio" literally denotes 'of no further official authority or legal effect' or 'having performed his office', and is used in the context of an officer who is no longer in office or has fulfilled its purpose.

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32. **Lahore High Court**
Muhammad Bilal v. The State etc.
W.P No.15198/2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6453.pdf

Facts: Through this constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section 561-A of the Code of Criminal Procedure, 1898, the petitioner has assailed the order passed by Duty Magistrate 1st Class whereby he discharged the respondent No.3 from the case registered for the offences under section 447, 511 of the Pakistan Penal Code, 1860.

Issues: i) Whether there exists any term as "Duty Judge" or "Duty Magistrate" is any provision in the Cr.P.C. which abridges the powers of a magistrate duly appointed in a district in accordance with the law?
ii) Whether the making of rules in respect of distribution of business by the Sessions Judge with respect to performance of duty by an available Magistrate, restraint the powers of such Magistrate?
iii) What does the law require from a Magistrate?

Analysis: i) There exists no "term" as "Duty Judge" or "Duty Magistrate" or any other provision in the Cr.P.C. which abridges the powers of a Magistrate duly appointed

in a District in accordance with the law and the term Duty Magistrate is nothing but alien to the provisions contained in Cr.P.C.

ii) The terms i.e. "Duty Judge or Duty Magistrate" are used in pursuance of "Distribution of Business" by the Sessions Judge of the District, who under Section 17 of Cr.P.C can also frame rules or give special orders consistent with Cr.P.C as to the distribution of business among such Magistrates because they are subordinate to the Sessions Judge by virtue of said Section. Even making of rules in respect of Distribution of business by the Sessions Judge with respect to performance of duty by an available Magistrate in case of absence of a Magistrate to whom the Sessions Judge after making rules or giving social orders has allocated a specific Police Station or category of cases, does not [restraint]s the powers of such Magistrate and also ousting of Jurisdiction of such Magistrate.

iii) Law requires Magistrate to judicially examine the police report and to act fairly, justly and honestly. He is supposed to go through the material collected during investigation, see its admissibility in evidence and then to pass an order in accordance with law. Magistrate is not supposed to rely upon the case diary or a piece of document not admissible in evidence e.g. confession of accused before the Police Officer which evidence is not admissible under articles 38 and 39 of the Qanun-e-Shahadat, Order 1984.

Conclusion: i) There exists no term as "Duty Judge" or "Duty Magistrate" or any other provision in the Cr.P.C. which abridges the powers of a Magistrate duly appointed in a District in accordance with the law.

ii) Even making of rules in respect of distribution of business by the Sessions Judge with respect to performance of duty by an available Magistrate in case of absence of a Magistrate to whom the Sessions Judge after making rules or giving social orders has allocated a specific police station or category of cases, does not restrain the powers of such Magistrate and also ousting of jurisdiction of such Magistrate.

iii) Law requires Magistrate to judicially examine the police report and to act fairly, justly and honestly. He is supposed to go through the material collected during investigation, see its admissibility in evidence and then to pass an order in accordance with law.

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33. **Lahore High Court**
Muhammad Ramzan v. The State and another.
Crl.Revision No.352 of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6420.pdf

Facts: The petitioner facing the trial of case FIR for the offence under section 376 PPC has called in question the order passed by learned Addl: Sessions Judge, whereby he not only allowed the prosecution to submit interim challan owing to receipt of supplementary PFSA report but also accepted application filed under section 540 of the Code of Cr.P.C. for re-examination of lady doctor/PW.

Issue: Whether re-summoning and re-examination of a PW and allowing the prosecution to place on record the Supplementary report of PFSA does or does not amount to fill up the lacuna of prosecution's case?

Analysis: This Court in exercise of his jurisdiction under provisions of Section 540 Cr.P.C. shall ensure that by summoning or recalling the PW.8 would meet the ends of justice but not to give illegal advantage to one party over the other and could not be used as a vehicle of exploitation. It is settled principle of law that the duty of the Court is to administer justice in just and fair manner and nevertheless, assume the status of a prosecutor, to put an accused in undue advantage (…) while exercising powers under section 510 Cr.P.C. the court if considers necessary in the interest of justice, may summon and examine the person by whom report has been made, and in case of any ambiguity in the report seek clarification thereof on the basis of existing report of the Government and to allow the Government analyst to conduct a fresh test or prepare another report, would amount for giving the chance to the prosecution for filling the gaps and lacunas in the report already submitted (…) the Court cannot allow one of the parties to fill lacunas in their evidence or extend second chance to a party to improve their case for or the quality of evidence tendered by them, any such step would tarnish the objectively and impartiality of the Court, which is hallmark, such favourd intervention, no matter how well-meaning, strikes at the very foundation of a Trial, which cannot be allowed at any cost**.**

Conclusion: Re-summoning and re-examination of a PW and allowing the prosecution to place on record the Supplementary report of PFSA does amount to fill up the lacuna of prosecution's case.

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34. **Lahore High Court**
Ghulam Nazik, etc. v. The State, etc.
Crl.Misc.No.7916-B of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6463.pdf

Facts: The petitioners sought pre-arrest bail in case FIR lodged under Section 406 PPC, on the ground that the allegations levelled by the complainant are based upon *mala fide* and that no tangible incriminating evidence whatsoever is available against the petitioners to connect them with the alleged crime.

Issues: i) What are the essential ingredients to attract the offence of criminal breach of trust?
ii) Whether mere broken promises or business terms constitute the offence under section 406 PPC?
iii) Whether to prove mala fide or ulterior motive on the part of the complainant as well as police are *sine qua non* for the confirmation of pre-arrest bail in every case?

Analysis: i) [In order] to attract the offence of criminal breach of trust punishable under section 406 PPC, the essential ingredients are:-

i. There should be an entrustment by a person who reposes confidence in the other, to whom property is entrusted.
ii. The person in whom the confidence is placed, dishonestly misappropriates or converts to his own use, the property entrusted.
iii. Dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged.
iv. Dishonestly uses or disposes of that property in violation of any legal contract, express or implied which he has made touching the discharge of such trust.

ii) It has been well settled by now that mere broken promises or business terms do not constitute the offence under section 406 PPC.

iii) Learned counsel for the complainant has argued with vehemence that the petitioners has failed to point out any mala fide or ulterior motive on the part of the complainant as well as police which are *sine qua non* for the confirmation of pre-arrest bail and these grounds are very much lacking in this case. I am not in agreement with the supra mentioned submission because it is not possible in every case to prove the same, however, these grounds can be gathered from the facts and circumstances of the case.

Conclusion: i) Above mentioned are the essential ingredients to attract the offence of criminal breach of trust.

ii) Mere broken promises or business terms do not constitute the offence under section 406 PPC.

iii) To prove mala fide or ulterior motive on the part of the complainant as well as police are not *sine qua non* for the confirmation of pre-arrest bail in every case.

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35. **Lahore High Court**
Muhammad Imran v. The State and another.
Crl.Misc.No.5878-B/2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6 448.pdf

Facts: Through the instant petition under section 497 Cr.P.C, the petitioner is seeking post-arrest bail in case FIR, registered for the offences under sections 302, 324, 337-F(iii), 337-F(i), 34 PPC.

Issues: i) What is the definition of "Accused"?

ii) Whether the opinion of investigating officer as to the innocence or guilt of the accused depends on the soundness of the material on which it is based?

iii)Whether benefit of doubt can be extended at bail stage?

iv) Whether heinousness of offence can impede the release of accused on bail if otherwise his guilt calls for further probe?

Analysis: i) The definition of an accused person has been provided in a salutary judgment

reported as “Brig.(Retd.) F. B. Ali and another Vs. The State”[PLD 1975 SC 506] according to which “the mere lodging of an information does not make a person an accused nor does a person against whom an investigation is being conducted by the police can strictly be called an accused. Such person may or may not be sent up for trial. The information may be found to be false. **An accused is, therefore, a person charged in a trial**. The *Oxford English Dictionary* defines an “accused” as a person "charged with a crime" and an "accusation" as an "indictment'. *Aiyer* in his *Manual on Law Terms* also gives the same meaning. I am of the view, therefore, that a person becomes an accused only when charged with an offence”… Perusal of the above definition clearly reflects that any person against whom an accusation is made cannot be dubbed as an accused unless and until he is found involved by the Investigating Officer and in this regard a specific order for his arrest is made by him…

ii) Although the opinion of the police is not binding upon the Courts, but being adverse to the prosecution, it creates doubt about the veracity of the prosecution case against the petitioner. The opinion of investigating officer as to the innocence or guilt of the accused depends on the soundness of the material on which it is based [1984 SCMR 429 & 1984 SCMR 521]. The same has the persuasive value, if based upon cogent and concrete material [2021 SCMR 1899 & 2023 SCMR 308] …

iii) It is settled principle of law that benefit of doubt can be even extended at bail stage.

iv) Mere heinousness of offence could not impede the release of accused on bail if otherwise his guilt call for further probe, nor bail could be withheld as a strategy for punishment.

Conclusion: i) See analysis portion.

ii) Yes, the opinion of investigating officer as to the innocence or guilt of the accused depends on the soundness of the material on which it is based.

iii) Yes, benefit of doubt can be extended even at bail stage.

iv) Heinousness of offence can not impede the release of accused on bail if otherwise his guilt calls for further probe.

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36. **Lahore High Court**
The State v. Muhammad Altaf
Criminal Appeal No.482/2022
Mr. Justice Asjad Javaid Ghural, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6388.pdf

Facts: Through instant appeal under Section 48 of the Control of Narcotic Substances Act 1997, the State has assailed the vires of judgment, passed by learned Additional Sessions Judge/MCTC, whereby the respondent/accused was convicted under section 9 (c) of the Act ibid, and sentenced.

Issues: i) Whether plea of guilt could be recorded at any stage during the trial?

ii) Whether a Court, while considering voluntary confession of an accused, can take lenient view, at the time of passing of the sentence?

Analysis: i) According to first view it is mandatory for the Court to follow all the processes in the trial once accused denies the charge because there is no intermediatory stage to record confession or second plea of accused which could only be done when the statement of accused is recorded under section 342 of the Code; of course, second view is otherwise. (…) it can safely be held that there is no specific prohibition for recording plea of guilt at any stage of trial and such arrangement in no case opposes to right to fair trial if accused opts to waive the same to cut short the process in order to avoid the agony or rigors of protracted trial. However, Court is always at guard to take a careful look why the accused is admitting his guilt and shall ensure that the trial of offence entailing capital punishment should not be terminated mere on the admission of guilt by the accused, for which recording of evidence is essential.

ii) It is a well-settled principle of law that when an accused voluntarily admits his guilt before the Court; he must be dealt with more leniently in terms of quantum of sentence. This principle is based on a celebrated legal maxim "Cum confitente sponte, mitius est agendum" which means "he who willingly confesses, should be dealt with more leniently".

Conclusions: i) Plea of guilt could be recorded at any stage of trial as there is no specific prohibition in this regard, however, trial of offence entailing capital punishment should not be terminated mere on the admission of guilt by the accused, for which recording of evidence is essential.

ii) When an accused voluntarily admits his guilt before the Court; he must be dealt with more leniently in terms of quantum of sentence on the principle of Cum confitente sponte, mitius est agendum.

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37. **Lahore High Court**
Shoaib Sohail v. Ex-officio Justice of Peace and others
Writ Petition No. 598/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6369.pdf

Facts: Consequent to the cancellation of FIR against the petitioner being false, the petitioner asked the concerned SHO to initiate proceedings under section 182 PPC against some of the respondents. The SHO refused the said request whereupon he filed an application under section 22-A Cr.P.C before the Ex-officio Justice of peace for a direction in this regard to the said SHO but the said application was also dismissed. The instant petition was directed against the said order.

Issues: i) Whether an Ex-officio Justice of Peace can direct a police officer to initiate action under section 182 PPC?

ii) Whether a person can be proceeded against under section 182 PPC without serving him with a show cause notice?

Analysis: i) Section 195(1)(a) Cr.P.C. sets out the procedure for prosecuting the offence under section 182 PPC. It states that no court shall take cognizance thereof except on the complaint in writing of the public servant concerned or some other public servant to whom he is subordinate….Section 25 Cr.P.C. provides for the appointment of Ex-officio Justice of Peace. It states that by virtue of their respective offices, the Sessions Judges and, on nomination by them, the Additional Sessions Judges are Justices of Peace within and for the whole of the district of the Province in which they are serving. Section 22-A(6) Cr.P.C. describes their powers. There is no doubt that the Ex-officio Justice of Peace can issue directions to the police authorities, and they are bound to comply with them, but they are not subordinate to him within the contemplation of section 195(1)(a) Cr.P.C. Hence, he cannot direct a police officer to initiate action under section 182 PPC….The direction given to the SHO by the learned Ex-officio Justice of Peace to initiate proceedings against the petitioner under section 182 PPC is beyond the purview of section 22-A Cr.P.C., hence in excess of the jurisdiction conferred upon him under the law.

ii) The law is very well settled that before taking action under section 182 PPC, the person sought to be prosecuted should be served with a show cause notice and he may be given an opportunity to explain his position/defence.

Conclusion: i) An Ex-officio Justice of Peace cannot direct a police officer to initiate action under section 182 PPC.

ii) A person cannot be proceeded against under section 182 PPC without serving him with a show cause notice.

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38. **Lahore High Court**
Abdul Rehman v. The State etc.
Criminal Misc. No.62271-B of 2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6469.pdf

Facts: Through instant petition, the petitioner/accused sought post-arrest bail in case FIR registered under Sections: 302, 148, 149 PPC on the ground of juvenility.

Issue: Whether an accused more than sixteen years of age on the day of occurrence against whom reasonable grounds are available that connect him with the commission of a heinous offence is entitled to post-arrest bail?

Analysis: So far as ground of juvenility of the petitioner is concerned, suffice it to say that as per birth certificate of the petitioner annexed with this petition (available at page No.16 of the instant petition), date of birth of the petitioner has been mentioned as 08.01.2007 meaning thereby that he was more than sixteen years of age on the day of occurrence i.e. 01.05.2023, therefore, when there are reasonable grounds available on the record to connect the petitioner with the commission of heinous offence then he does not deserve concession of bail even on the ground of

juvenility and in this regard, sub-Section: (4) of Section: 6 of the Juvenile Justice System Act, 2018 can be advantageously referred… Furthermore, heinous offence has been defined under sub-Section: (g) of Section: (2) of the Act…

Conclusion: An accused more than sixteen years of age on the day of occurrence against whom reasonable grounds are available that connect him with the commission of a heinous offence is not entitled to post-arrest bail.

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39. **Lahore High Court**
Robina Kausar v. Umar Majeeb Shami
C.R. No.75693 of 2022
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC6245.pdf

Facts: Plaintiff filed a suit for specific performance against the defendant. The relief of specific performance was declined by learned Civil Judge on the ground of limitation while the earnest money was directed to be returned. In cross appeals filed by the petitioner and respondent, the judgment of the trial court to the extent of refusal of grant of specific performance was affirmed while the decree for the return of earnest money was set aside. In the two revision petitions plaintiff has assailed judgments/decree of the courts below.

Issues: i) When terms of contract are reduced into writing whether any other evidence could be given except the contents of such document?
ii) Whether it is permissible in presence of written contract of sale to lead any evidence of oral agreement varying, or modifying the terms of agreement?
iii) When the period of limitation shall commence for the purposes of specific performance of a contract?
iv) Whether existence of a mortgage qua the property subject-matter of sale has any bearing on the question of limitation in suit for specific performance?
v) Whether the date stipulated in contract as provided in first part of Article 113 of the Act could be ignored on the basis of its second part on the basis of pending litigation?
vi) When main relief of enforcement of agreement or return of earnest money having been declined on the basis of bar of limitation, whether order for the return of earnest money could be passed on the equitable jurisdiction?

Analysis: i) Chapter VI of Qanun-e-Shahadat Order, 1984 relates to exclusion of oral by documentary evidence. Article 102 provides that where the terms of a contract, or a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence, upon satisfaction of conditions prescribed, is admissible.

ii) Likewise, Article 103 provides that where the terms of a contract are in writing and proved according to the mode provided no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives-in-interest, for the purposes of contradicting, varying, adding to, or subtracting from, its terms.

iii) Article 113 of the Act provides that for the purposes of specific performance of a contract limitation shall commence where the date is fixed for the performance from that date, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

iv) In Muhammad Sadiq and others v. Muhammad Mansha and others (PLD 2018 SC 692) it was observed to the effect that existence of a mortgage qua the property subject-matter of sale has no bearing on the question of limitation for specific performance of agreement to sell which proceed independently and on its own footing, therefore, limitation in suchlike cases would begin to run from the date recorded in the agreement as prescribed by the first limb of Article 113 of the Act.

v) Reference can also be made to the case of Haji Abdul Karim and others v. Messrs Florida Builders (Pvt) Limited (PLD 2012 SC 247) where it was observed to the effect that cases falling in the ambit of first part of Article 113 of the Act could not be considered on the touchstone of the second part for both being independent were meant to cater for two different type of suits for specific performance in relation to limitation and that limitation is a command of law prescribing statutory period within which the right is to be exercised and enforced as such the courts would have no lawful authority to ignore the date/period stipulated in contract which as a legal consequence is meant to regulate the period of limitation in terms of first part of Article 113 of the Act and that no exemption qua the period of limitation could be claimed in law by a party on account of pending litigation simpliciter in the absence of an order of competent court preventing such party from suing.

vi) In so far as the argument that the respondent having not proved the return of earnest money petitioner should have been allowed the return of the earnest money, suffice it to observe that the main relief of enforcement of agreement having been declined, because of bar of limitation with respect to the suit for specific performance or alternatively for the return of earnest money, the same could have been instituted within three years from the fixed date. This not having been done, both reliefs could not be allowed and were rightly so declined. The argument that the court in equitable jurisdiction could order the return of earnest money is without substance. Of course, the court could have allowed the return of money provided the suit itself was not barred by time and having recorded the findings concurrently that the suit was not within time and was filed after more than three years after the expiry of limitation, the petitioner was not entitled to any such relief.

Conclusions: i) Article 102 Qanun-e- Shahadat, 1984 excludes the oral evidence when the

terms of contract have been reduced to the form of a document.
ii) When the terms of a contract are in writing and proved according to the mode provided no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives-in-interest, for the purposes of contradicting, varying, adding to, or subtracting from, its terms.
iii) In suit for specific performance of a contract limitation shall commence where the date is fixed for the performance from that date, or if no such date is fixed, when the plaintiff has notice, that performance is refused.
iv) Existence of a mortgage qua the property subject-matter of sale has no bearing on the question of limitation for specific performance of agreement to sell.
v) First part of Article 113 of the Act could not be considered on the touchstone of the second part. Courts have no lawful authority to ignore the date/period stipulated in contract in terms of first part of Article 113 of the Act and that no exemption qua the period of limitation could be claimed in law by a party on account of pending litigation simpliciter.
vi) When main relief of enforcement of agreement having been declined, because of bar of limitation or alternatively for the return of earnest money, order for return of earnest money could not be passed on the equitable jurisdiction.

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40. **Lahore High Court**
Mst. Samina Kausar and others v. Mst. Nasreen Bibi and others
C.R. No.661 of 2012
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC6258.pdf

Facts: The petitioners in this civil revision have challenged the judgments and decree of the courts below whereby their suit for declaration with consequential relief was dismissed by the Civil Judge which judgment was affirmed in appeal by Addl. District Judge.

Issues: i) Whether the evidence of a relative is relevant?
ii) Whether the appearance of a medical practitioner in the witness-box is necessary to establish the plea of mental unsoundness or disability as claimed?

Analysis: i) In Muhammad Munir and others v. Umer Hayat and others (2023 SCMR 1339) it was observed to the effect that the evidence of layman, especially relatives like son, daughter, wife, etc. may be relevant but being biased and exaggerated it cannot be conclusive.
ii) In law where the treatment is claimed to be by a qualified medical practitioner the appearance of such expert in the witness-box is necessary and non-production of such person without any plausible explanation would amount to a serious evidentiary flaw. The plea of the petitioners of the deceased suffering from marz-ul-maut itself also could not be proved by any medical evidence or other evidence worthy of consideration. Crucial point for determination is the plea of insanity or unsoundness of mind at the time of attestation of mutations and best evidence to

prove it could be of medical attendant/expert who treated the petitioners' predecessor at the relevant time but he was not examined nor any plausible explanation was furnished as to why he was not produced in evidence. Burden of proving the alleged unsoundness of mind was in the first instance on the petitioners who had failed to discharge it by producing any credible evidence.

Conclusion: i) Evidence of layman, especially relatives like son, daughter, wife, etc. may be relevant but being biased and exaggerated it cannot be conclusive.
ii) The appearance of a medical practitioner in the witness-box is necessary to establish the plea of mental unsoundness or disability as claimed and non-production of such person without any plausible explanation would amount to a serious evidentiary flaw.

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41. **Lahore High Court**
Muhammad Munir (deceased) through L.Rs v. Muhammad Zia Ullah and others
C.R. No.63814 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC6235.pdf

Facts: Petitioners in this civil revision challenge the judgments and decree of the courts below whereby the suit of petitioners for pre-emption was dismissed and appellate court upheld the decision of the trial court.

Issues: i) What if the pre-emptor fails to make the requisite Talbs in terms of the law?
ii) What is the procedure to prove Talb-e-Muwathibat?

Analysis: i) Section 13 of the Act contemplates that right of the pre-emptor shall extinguish if the pre-emptor fails to make the requisite Talbs in terms of the law. As per said provision the right of pre-emption shall be extinguished unless a person makes the mandatory Talb-e-Muwathibat, Talb-e-Ishhad and Talb-e-Khasoomat.
ii) The pre-emptor in the first instance has to establish that Talb-e-Muwathibat (i.e. the demand to pre-empt the sale at the very spur of cognition of sale) failing which the right shall become extinct. For proving Talb-e-Muwathibat it was incumbent to prove who informed about the sale, at what date, time and place the pre-emptor received the information, who was present in the Majlis when Talbe-Muwathibat was made and further that there was no delay in this expression of intent as the very first reaction on information of sale i.e. immediate declaration by the pre-emptor that he had a right to pre-empt the reported sale which he shall enforce. In this respect, the source of knowledge i.e. the person who informed about the sale, the precise time at which he received the information and his immediate response to pre-empt the sale are integral elements that need to be established by evidence of unimpeachable probative value in the form of credible, independent and truthful witnesses. The statement of the informer in this context becomes a necessary condition to weight the value and operation of other factors. Under the law the informer is expected to show and prove that he acquired

information through reliable source, like the patwari and/or tehsildar or that he himself was present at the time of sale or had the occasion to be present in the patwarkhana for any other personal purpose but no such context was claimed to exist.

Conclusion: i) Right of the pre-emptor shall extinguish if the pre-emptor fails to make the requisite Talbs in terms of the law.
ii) See above in analysis clause.

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42. **Lahore High Court**
Manzurul Haq v. Federation of Pakistan, etc.
W.P. No.20679/2023
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6154.pdf

Facts: Through this constitutional petitioner, the petitioner has challenged the constitutionality of the first proviso to Division-VII of Part-1 of First Schedule to the Income Tax Ordinance, 2001 Ordinance, inserted through section 5(53) of the Finance Act, 2022.

Issues: i) Whether a person who acquired securities before the omission of the provisio to sub-section (1) of section 37 of the Income Tax Ordinance 2001, retained those securities for over one year and sold after the omission of the provisio to sub-section (1) of section 37 of the Income Tax Ordinance 2001can be subjected to tax on capital gains by virtue of section 37 of the Income Tax Ordinance 2001?
ii) Whether a vested right can be claimed against the right of the legislature to tax, when neither any vested right had conclusively accrued, nor subject matter transaction graduated to achieve status of a past and closed transaction?

Analysis: i) Evidently, securities were acquired in the year 2011 and sold during Tax Year 2023, and amendment was introduced through Finance Act 2022. Apparently, petitioner fails to underpin significance of omission of proviso to subsection (1) of section 37A of Ordinance, 2001 through Finance Act 2014. There is no cavil that 'proviso' provided scaffolding for the reasoning of the decision in the case of Anwar Yahya and 3 others. (supra), but said proviso was omitted through the Finance Act 2014, hence, no protection could be claimed retrospectively. The controversy is not regarding withdrawal of vested rights but it is for the petitioner to demonstrate that how protection of proviso could be extended, after being omitted from the statute book. It is evident that no protection was available to the petitioner at the time of disposal of the securities – a triggering point for the determination of tax under section 37A of the Ordinance, 2001. In absence of the proviso to section 37A – omitted since 2014 – no question of inapplicability of section 37A arises. Learned counsel for the petitioner failed to show any statutory representation / promissory estoppel, allegedly extended before amendment was introduced in Division VII. No question of availability, let alone accrual of vested

right, is made out. No inconsistency between section 37A of the Ordinance, 2001 and impugned amendment is found, since proviso to sub-section (1) of section 37A was earlier omitted through Finance Act 2014, and even the expression "held for a period of less than a year" appearing in section 37A of the Ordinance stood omitted through Finance Act 2015. It is reiterated that at the time of leviability of tax, for the purposes of gain tax accrued, no protection was available to support claim of any exemption or concession, whatsoever.

ii) In terms of the proviso, added through the Finance Act 2022, the criterion for availing benefit of zero percent of rate of tax was made permissible, where holding period exceeds six years but condition of acquisition of securities on or after first day of July 2002 was imposed. The period of holding of securities and date of acquisition for availing benefit of zero percent tax was prescribed. No vested right could be claimed against the right of the legislature to tax, when neither any vested right had conclusively accrued, nor subject matter transaction graduated to achieve status of a past and closed transaction.

Conclusion: i) A person who acquired securities before the omission of the provisio to sub-section (1) of section 37 of the Income Tax Ordinance 2001, retained those securities for over one year and sold after the omission of the provisio to sub-section (1) of section 37 of the Income Tax Ordinance 2001can be subjected to tax on capital gains by virtue of section 37 of the Income Tax Ordinance 2001?

ii) No vested right can be claimed against the right of the legislature to tax, when neither any vested right had conclusively accrued, nor subject matter transaction graduated to achieve status of a past and closed transaction.

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43. **Lahore High Court**
Jahangir Khan v. Abdul Ghaffar (deceased) through L.Rs. etc.,
Civil Revision No.485-D of 1993,
Mr. Justice Ahmad Nadeem Arshad.
https://sys.lhc.gov.pk/appjudgments/2023LHC6290.pdf

Facts: Through this Civil Revision filed U/S 115 of the Code of Civil Procedure, 1908, the petitioner has assailed the vires and legality of the judgment and decree of the appellate court, whereby the petitioner's suit for the decree of declaration and permanent injunction was dismissed by way of allowing the appeal of one of the respondents and setting aside the judgment and decree of the trial Court.

Issues: i) Whether a mutation entered on the strength of registered sale deed may be cancelled by a revenue officer on the basis of violation of Martial Law Regulation?

ii) Whether a purchaser through registered sale deed would cease to be owner of subject property due to cancellation of mutation attested in his favour for implementation of such registered sale deed?

iii) Whether a sale can be cancelled on basis of Para 24 of Martial Law Regulation 115 of 1972 after completion of alienation of the property through a registered sale deed?

iv) Whether protection under Section 41 of the Transfer of Property Act, 1882 may be extended to a subsequent purchaser, who neither specifically seeks such protection in pleadings nor establishes said fact through any evidence?

Analysis: i) The revenue officer is duty bound to incorporate registered sale deed in the revenue record through a mutation and he has no authority to cancel such mutation without affording notice and opportunity of hearing to purchaser.

ii) A mutation is not a title deed. Even if the mutation sanctioned on the strength of the sale deed is cancelled, the title deed in shape of registered sale deed still exists in favour of the purchaser, on the strength whereof he remains owner of subject property.

iii) Under Section 25(4) of the West Pakistan Lands Reforms Regulation (Martial Law Regulation No.64 of 1959) and paragraph No. 24(4) of Land Reforms Regulation, 1972 (Martial Law Regulation No.115 of 1972), there is a restriction upon the owner of a holding to alienate his holding through sale, gift or otherwise of any portion, which might reduce the size of his holding to an area below the limit of an economic holding. Provisions ibid also forbid a person owning an economic holding to reduce it to subsistence holding through alienation. The same restriction is imposed upon a person owning subsistence holding, but there is no restriction against alienation of his entire holding. In case of owning land equal to or less than a subsistence holding, provisions ibid also forbid a person from alienating any part of his holding, but he may alienate his entire holding or any part thereof to only those who are owners or land tenants of the same village, *Deh* or *Mouza*.

iv) A subsequent purchaser claiming protection under Section 41 of the Transfer of Property Act, 1882 is bound to establish that vendor to transfer was an ostensible owner, that transfer so made was with the express or implied consent of the real owner and that said transfer had been made for some consideration as well as that the he had acted in good faith to take all reasonable care and steps before entering into relevant transaction for transfer.

Conclusion: i) A mutation entered on the strength of registered sale deed cannot be cancelled by a revenue officer on the basis of violation of Martial Law Regulation.

ii) A purchaser through registered sale deed would not cease to be owner of subject property due to cancellation of mutation attested in his favour for implementation of such registered sale deed.

iii) Para 24 of Martial Law Regulation 115 of 1972 cannot be used for cancellation of sale after completion of alienation of the property through a registered sale deed.

iv) The protection under Section 41 of the Transfer of Property Act, 1882 cannot be extended to a subsequent purchaser, who neither specifically seeks such protection in pleadings nor establishes said fact through any evidence.

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44. **Lahore High Court**
Zainab Bibi v. Abdul Aziz
Civil Revision No.479-D of 2001
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC6187.pdf

Facts: This civil revision is directed against the judgments & decrees of the Courts below whereby the suit of the respondent No.1 was decreed concurrently.

Issues: i) What procedure is to be followed in case where parentage of a child cannot be easily ascertained?
ii) Whether it is necessary for a father to deny the question of legitimacy/paternity within the stipulated period?
iii) When the evidence about existence of relationship is relevant?
iv) Whether pleadings constitute evidence of their contents?
v) Whether a court can give negative declaration?
vi) Whether the High Court in exercise of revisional jurisdiction can interfere in the concurrent findings of the courts below?

Analysis: i) There is no evidence on record to suggest that Yousaf in his lifetime did not acknowledge the defendants as his daughters. It is settled law that where parentage of a child cannot be easily ascertained, it is generally presumed either from express acknowledgment by the father or from a course of treatment given by the father in his lifetime.
ii) Question of legitimacy/paternity must be denied by the father within the stipulated period.
iii) Evidence about existence of relationship is relevant only if the person has special means of knowledge on the subject. Witness testifying about relationship must led down the foundation of existence of his direct knowledge about the relationship such as being the family member or otherwise having special means of knowledge of relationship.
iv) The learned Courts below failed to consider that pleadings would not constitute evidence of their contents. The facts pleaded, unless admitted by the other party have to be proved. It is matter of record that defendant No.2 namely Mst. Aimana Bibi, who is stated to have filed the said written statement had not appeared in the witness box to support the contents thereof. Without cross-examination of the said lady, the written statement could not have been read in the evidence and even the written statement could be referred to as a piece of evidence it cannot be relied upon as an evidence of the facts stated in it.
v) Even otherwise, negative declaration cannot be given. A Court can make a declaration in a suit in favour of a person who is entitled to any legal character or

to any right, as to any property, which another is denying. Plaintiff claimed that he is sole legal heir of Yousaf and the defendants are not daughters of Yousaf, hence, not his heirs, rather they were born from the earlier wedlock of Marian with Kallu, therefore, they are not entitled to get inheritance from the legacy of Yousaf. Plaintiff seeks a negative declaration and one which has nothing to do with plaintiff‟s own legal character (…) However, a person can bring a suit to assert that he/she is someone's child if his/her legal character is denied.

vi) Although, the scope of revisional jurisdiction of this court is limited and the concurrent findings of facts of the Courts below could not be reversed. But where the concurrent findings are not in accordance with law, there is glaring illegality, non-reading or misreading of evidence, then this court can interfere in the concurrent findings of the courts. If the concurrent findings are perverse, arbitrary or fanciful the same cannot be termed as „sacrosanct' and can be interfered with.

Conclusions: i) It is settled law that where parentage of a child cannot be easily ascertained, it is generally presumed either from express acknowledgment by the father or from a course of treatment given by the father in his lifetime.

ii) Question of legitimacy/paternity must be denied by the father within the stipulated period.

iii) Evidence about the existence of relationship is relevant only if the person has special means of knowledge on the subject. A witness testifying about relationship must lead down the foundation of existence of his direct knowledge about the relationship such as being the family member or otherwise having special means of knowledge of relationship.

iv) Pleadings would not constitute evidence of their contents. The facts pleaded, unless admitted by the other party, must be proved. Without the examination of the concerned party in its support or cross-examination, the written statement could not be read in the evidence, and it cannot be relied upon as evidence of the facts stated in it.

v) A Court can make a declaration in a suit in favour of a person who is entitled to any legal character or to any right, as to any property, which another is denying but negative declaration cannot be given.

vi) Yes, if the concurrent findings are perverse, arbitrary or fanciful the same cannot be termed as „sacrosanct' and can be interfered with.

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45. **Lahore High Court**
Mst. Kaneez Fatima, etc. v. Ghulam Hussain (deceased) through Legal Hairs, etc.
Civil Revision No.751-D of 2004.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC6276.pdf

Facts: The Consolidation officer accepted the petitioners' application for review of mutation which was passed on the basis of registered will deed after obtaining permission from District Collector and appeal of the respondents was dismissed.

The respondents instituted a civil suit for declaration which was decreed and appeal of petitioners was dismissed by the appellate court. Now, petitioners have challenged the decision of lowers courts through Civil Revision.

Issues: i) Whether Consolidation officer has authority to review the mutation passed on the basis of registered will deed?
ii) Whether a will is a legal declaration and signifies the intention of the testator?
iii) What is the concept of will after the death of a person?
iv) What is the concept of will as per Holy Quran and Sunnah?
v) Which are the persons in whose favour a will can be made?
vi) How much property a Mohammadan can dispose of through will?
vii) Whether a testator has a right to make a bequest in favour of a non-heir?
viii) Which kind of consent is required by the legal heirs from the testator to make a will?

Analysis: i) The Consolidation Officer has no authority to review the mutation after lapse of long time, which otherwise had been sanctioned in accordance with law.

ii) A will is essentially a legal declaration which signifies the intention of the testator with regard to the distribution of his or her property. A will does not affect the power of the owner to transfer the property either inter vivos or by any other testamentary disposition. It is not binding upon the testator in any manner, especially before his or her death.

iii) When a person dies his/her property devolves upon his/her heirs. A person may die with or without a will. If he or she dies leaving a will, the property is distributed among his/her heirs according to the rules of Testamentary Succession. In other words, the property is distributed as per the contents of the testament or will. On the other hand if a person dies leaving no testament , that is dies intestate, the rules of intestate Succession are applied for distribution of the property among heirs.

iv) Will is declared lawful in the Quran, though the Quran itself does not provide for the testamentary restriction of 1/3rd. The permissibility of bequest upto 1/3rd is traced to a Hadiath of the Prophet which has been stated by Sa‟d Ibn Abi Waqqas and the information was reported by Bukhari.

v) A will can be made in favour of heir as well as non-heir. In case of heir, the bequest is not valid unless the other heirs consented to the bequest after the death of the testator as defined in Section 117 of D.F. Mulla‟s Mohammadan Law.

vi) A Mohammadan cannot dispose of more than third of the surplus of his estate after payment of funeral expenses and debts, but in excess of one third cannot be taken effect, unless the heirs consented thereto.

vii) A testator can bequest his entire property to a non -heir through will in the following cases i.e. where subject to the provision of any law for the time being in force, such excess is permitted by a valid custom, where there are no heirs

of the testator, where the heirs existing at the time of the testator's death, consent to such bequest after his death and where the only heir is the husband or the wife and the bequest of such excess does not affect his or her share.
viii) The consent given by the heirs may be express or implied. It may be oral or in writing. It can also be implied from conduct. Where the testator makes a bequest and on his death, the other heirs help the legatee in affecting a mutation in name or allow the legatee to take exclusive possession of the property, it is proof of the heir"s consent.

Conclusion:

i) The Consolidation Officer has no authority to review the mutation after lapse of long time.
ii) A will is essentially a legal declaration which signifies the intention of the testator with regard to the distribution of his or her property.
iii) When a person dies his/her property devolves upon his/her heirs.
iv) Will is declared lawful in the Quran, though the Quran itself does not provide for the testamentary restriction of 1/3rd. The permissibility of bequest upto 1/3rd is traced to a Hadiath of the Prophet.
v) A will can be made in favour of heir as well as non-heir.
vi) A Mohammadan cannot dispose of more than one third of the surplus of his estate after payment of funeral expenses and debts.
vii) A testator can bequest his entire property to a non-heir through will.
viii) The consent given by the heirs may be express or implied. It may be oral or in writing. It can also be implied from conduct.

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46. **Lahore High Court**
Umar Asghar Qureshi v. Federation of Pakistan and 03 others
W. P. No. 9041 of 2023
Basar Ali v. Federation of Pakistan and 03 others
W. P. No. 26490 of 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC6328.pdf

Facts:

The Petitioners, in the titled Petitions, call into question the concurrent dismissal Orders passed against them in the service hierarchy of NBP.

Issues:

i) Whether the Banks (Nationalization) Act, 1974 preempts the provisions of the National Bank of Pakistan Ordinance, 1949 in case of any inconsistency between the two enactments?
ii) Whether the Banks (Nationalization) Act, 1974 grants statutory protection to the existing employees of nationalized banks as were applicable to the employees before the commencement of the Nationalization Act?
iii) Whether the Banks (Nationalization) Act, 1974 is only applicable to NBP?
iv) Whether the Board of NBP is empowered to make Bye-laws?
v) Whether the cases already decided before the commencement of the statutory National Bank of Pakistan (Staff) Service Rules, 1973 can be reopened?

vi) Whether the non-statutory National Bank of Pakistan (Staff) Service Rules, 1980 can displace the statutory National Bank of Pakistan (Staff) Service Rules, 1973?

vii) Whether the National Bank of Pakistan (Staff) Service Rules, 2021 made by the Board of NBP are non-statutory?

Analysis: i) NBP as a statutory nationalized bank is run, operated and managed by its Board under the Ordinance and the Nationalization Act. The latter is a subsequent enactment and Section 2 of the Nationalization Act postulates that it shall have effect notwithstanding anything contained in any other law for the time being in force or in any agreement and contract, award, memorandum or articles of association or other instrument. Thus, the Nationalization Act preempts the provisions of the Ordinance in case of any inconsistency between the two enactments.

ii) The Nationalization Act has been promulgated to nationalize banks included in its Schedule. Careful and plain reading of Section 13 of the Nationalization Act makes it manifestly evident that the existing employees of nationalized banks were granted limited statutory protection regarding continuity of service on the same terms and conditions including remuneration and rights as to pension and gratuity, as were applicable to the employees of the banks before the commencement of the Nationalization Act. Section 13 of the Nationalization Act does not place an embargo or limitation upon the powers of the Board of NBP to frame service rules for its employees subject to limited statutory protection to its employees existing or in service before the date of promulgation of the Nationalization Act. The limited statutory protection granted to all existing employees of the banks at the time of promulgation of the Nationalization Act in terms of Section 13 thereof, has fully matured due to afflux of time as there would not be any existing employee after passing of 47 years since the date of enforcement of the Nationalization Act.

iii) The Nationalization Act was not only applicable to NBP as an existing statutory bank owned by the Federal Government but was applicable to all other private banks which were nationalized through the Nationalization Act.

iv) Section 32(1) of the National Bank of Pakistan Ordinance, 1949 empowers the Board of NBP, with the prior approval of the Federal Government, to make Bye-laws not inconsistent with the Ordinance to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the Ordinance. Section 32(2) of the Ordinance lists specific matters regarding which the Bye-laws can be made and clause (xxviii) thereof confers powers with respect to the recruitment of officers and staff of NBP including the terms and conditions of their service and the constitution and management of staff and superannuation funds for the officers and employees of NBP.

v) As per Rule 1(2) thereof, the statutory National Bank of Pakistan (Staff) Service Rules, 1973 came into effect on 01.01.1972 with the stipulation that the cases already decided before the commencement of the Rules, 1973 shall not be

reopened if the decision taken is in conflict with any of provisions of the statutory National Bank of Pakistan (Staff) Service Rules, 1973.

vi) The non-statutory Rules, 1980 framed by the Board of NBP could not annul, repeal, rescind or displace the statutory Rules, 1973. Since, the Rules, 1973 were in force before the commencement of the Nationalization Act with respect to terms and conditions of service of the employees of NBP, therefore, by virtue of Section 13(1) of the Nationalization Act, they were specifically safeguarded and shielded instead of having been replaced, repealed, rescinded or overridden. It was further held that language of Section 13(1) of the Nationalization Act spells out the clear intention of the legislature to preserve the earlier terms and conditions of employees of the nationalized banks which in the present case undoubtedly were the Rules, 1973. Hence, the Board of NBP constituted under Section 11 of the Nationalization Act in exercise of its management powers could not make non-statutory rules to displace or annul the statutory Rules, 1973 which were in force since the executive is not empowered to annul, invalidate or vitiate the command of the statute.

vii) The National Bank of Pakistan (Staff) Service Rules, 2021 made by the Board of NBP in exercise of its powers conferred under Section 11 of the Nationalization Act read with Bye-law 51 of the Bye-laws, 2015 without approval of the Federal Government are non-statutory. After the repeal of statutory Rules, 1973, only the Rules, 2021 are in vogue and the same indiscriminately apply to all employees of NBP employed after the date of enforcement of the Nationalization Act subject to Rule 2 of the National Bank of Pakistan (Staff) Service Rules, 2021.

Conclusion: i) The Banks (Nationalization) Act, 1974 preempts the provisions of the National Bank of Pakistan Ordinance, 1949 in case of any inconsistency between the two enactments.

ii) The Banks (Nationalization) Act, 1974 grants limited statutory protection to the existing employees of nationalized banks as were applicable to the employees before the commencement of the Nationalization Act.

iii) The Banks (Nationalization) Act, 1974 was not only applicable to NBP but is applicable to all other private banks which were nationalized through the Nationalization Act.

iv) Section 32(1) of the National Bank of Pakistan Ordinance, 1949 empowers the Board of NBP, with the prior approval of the Federal Government, to make Bye-laws not inconsistent with the Ordinance.

v) The cases already decided before the commencement of the Rules, 1973 shall not be reopened if the decision taken is in conflict with any of provisions of the statutory National Bank of Pakistan (Staff) Service Rules, 1973.

vi) The non-statutory National Bank of Pakistan (Staff) Service Rules, 1980 cannot displace the statutory National Bank of Pakistan (Staff) Service Rules, 1973.

vii) The National Bank of Pakistan (Staff) Service Rules, 2021 made by the Board of NBP are non-statutory.

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47. **Lahore High Court**
Imtiaz Hussain v. District Judge etc.
Writ Petition No.244677/2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6165.pdf

Facts: The petitioner filed guardian petition for custody of minor daughter which was dismissed and appeal against the order of family court met the same fate, hence, this writ petition.

Issues: i) Whether agreement between parents of minor about losing custody of child on remarriage of mother is enforceable under law?
ii) Whether fact of concealment of second marriage by father disentitles him from custody of minor?
iii) Why visitation schedule ought to be chalked out?

Analysis: i) The children cannot be treated as commodities and their welfare cannot be compromised by their parents by executing any agreement. Suffice to observe that such agreements are against public policy and hence, not enforceable under the law. This Court is of the view that placing a Sword of Damocles of losing the custody of the child upon remarriage on the respondent is not only illegal but also raises a logical question as why such a condition was not placed on the petitioner himself, disentitling him from keeping the custody of the minor son and seeking the custody of the minor daughter In this regard, suffice to observe that it is well settled principle of law that re-marriage of the mother is not a standalone ground for depriving her from keeping custody of her minor children.
ii) The petitioner did his best to conceal factum of his own second marriage by imparting incorrect instructions to his learned counsel, in open Court, as also by tutoring the minor son to lie about the petitioner's re-marriage and having a child from his second wedlock. An effort to conceal his own second marriage in itself adversely reflects upon the conduct of the petitioner, which disentitles him from the custody of the minor daughter. His conduct is unbecoming of a responsible parent as he tutored the minor son to lie, which act is deprecated and cannot be countenanced.
iii) Visitation schedule ought to be chalked out to cater the need of developing a strong parental bonding of the minor with non-custodial parent.

Conclusion: i) Agreement between parents of minor about losing custody of child on remarriage of mother is not enforceable under law.
ii) Fact of concealment of second marriage by father can be one of the grounds to disentitle him from custody of minor.
iii) Visitation schedule ought to be chalked out to cater the need of developing a

strong parental bonding of the minor with non-custodial parent.

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48. **Lahore High Court**
Nazar Muhammad v. DPO, etc.
Writ Petition No. 57371 of 2023
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC6318.pdf

Facts: Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner seeks recovery of the alleged detenue from the illegal and improper custody of respondents No.5 and 6.

Issues: i) Whether an accused may be held guilty of offence of rape for marrying a minor girl/detenue aged 13/14 years?
ii) How it is determined as to whether a girl has attained puberty or not?
iii) What are the consequences of marrying an underage girl?
iv) Whether a law or provision of law, may be declared by the High Court as against the injunctions of Islam?
v) What is the intent of legislature for enacting minimum marriage age as sixteen years for a girl in Child Marriage Restraint Act, 1929?
vi) Whether a minor girl of 13/14 years is competent to get her statement recorded under section 164 Cr.P.C?
vii) Whether specific set of questions in rationality test regarding competence of a child witness are required by law or it is the discretion of the court to satisfy itself and whether the same must be in writing?
viii) Whether section 364 Cr.P.C is relevant while recording statement of a witness in the similar way as it is relevant for recording of confessional statement of an accused?
ix) Whether allowing persons other than accused to cross examine a witness who recorded statement under section 164 Cr.P.C, is warranted by law?
x) Whether providing memorandum at the end of statement of a witness/victim to the effect that she was not bound by law to record the statement, is the requirement of the law?

Analysis: i) … If for the sake of arguments, the statement of the petitioner is considered correct, that she was of 13/14 years of age at the time of her Nikah with respondent, even then respondent cannot be held guilty of the offence of rape. It has been settled since long that when a girl marries after attaining puberty, said marriage cannot be considered a 'void marriage', even if she has not attained the minimum legal age provided under any law for the time being in force. The age of puberty, under different 'Schools of Thought', varies, however, as per the 'Hanafi' school of thought, the minimum age for a girl to attain puberty is 9 years.
ii) … Now the question arises as to how it will be determined whether a girl has attained puberty or not. This query was also answered in *Yousaf Masih alias Bagga* [1994 SCMR 2102] that when a girl after reaching the minimum age of

puberty declares that she has attained puberty, her declaration would be accepted as correct unless and until rebutted by cogent and convincing legal evidence…

iii) For, the consequences of marrying a girl who has not yet attained the minimum age provided by the law to enter into a matrimonial contract, suffice it to say that it is a consistent view of Constitutional Courts of our Country that if a person marries an underage girl, the relevant law providing punishment for such an act is the Child Marriage Restraint Act, 1929 (hereinafter *'the Act of 1929'*)…The Supreme Court strongly repelled the contention by holding that punishment for marrying an underage girl has been provided by the Act of 1929 but such marriage cannot be termed as invalid merely because the girl had not attained the minimum age provided under that Act…

iv) …To declare a law or provision of law against the injunctions of Islam is the sole domain of the Federal Shariat Court established under Article 203-C of the Constitution.

v) … The intent of lawmakers is obvious from the bare reading of the Act of 1929 that they wanted to punish a person solemnizing marriage with a girl less than sixteen years of age. If the legislature intended to declare such marriage as void and to punish the offender under the general law, then there was no need to provide a punishment for such an act in the said enactment and there would have been a simple mentioning that such an act would be punished under the general penal law of the land. Penal provisions cannot be attracted on the basis of analogy or presumptions in cases where there is a clear enactment available dealing with a specific situation.

vi) Regarding the second moot point that alleged victim was not competent to get her statement recorded under Section 164 Cr.P.C., such argument has no substance and highly misapprehended. The age of a witness has nothing to do with her/his competence to depose as a witness. Relevant law dealing with the competence of a witness has been provided under Article 3 of the Qanun-e-Shahadat...

vii) …While applying rationally test, no specific set of questions is required to be put to a child witness and it is sole discretion of concerned court how it would satisfy itself regarding competence of a child witness. Presumption of correctness is attached to the judicial proceedings and declaration of Magistrate/court regarding its satisfaction would be enough to qualify such witness as a competent witness… As discussed earlier, law only requires the satisfaction of the court before recording the statement of a child witness and no specific procedure has been provided by the law to be applied before reaching any conclusion regarding competence of a child witness…

viii) …The rigorous exercise needs not to be followed for recording the statement of a witness under Section 164 of the Cr.P.C. Section 364 of the Cr.P.C. is of general application as it only applies to the statement of an accused recorded during any proceeding. The confession of an accused is recorded under Section 164 read with Section 364 of the Cr.P.C. Every court is bound to comply with all the precautionary measures provided under Section 364 Cr.P.C. whenever

statement of an accused is recorded. But in the case of recording the statement of a witness, Section 364 Cr.P.C. has no relevance.

ix) As far as allowing the petitioner to cross examine alleged victim is concerned, law does not warrant any such concession when petitioner was not an accused in the case. Under sub-section (1-A) of Section 164 Cr.P.C., the opportunity of cross examination is provided to the accused only. Initially this opportunity was also not available to the accused but later sub-section (1-A) was added to Section 164 Cr.P.C. through Section 62 of the Law Reforms Ordinance, 1972... Allowing the petitioner to cross examine alleged victim would mean that Magistrate had considered and declared victim as 'a hostile witness' and allowed the petitioner to put questions to her under Article 150 of the Q.S. which was based upon wrong assumption of law because these were not the trial proceedings during the course of which a witness could be declared hostile and party producing such witness could be allowed to put questions to such a witness. Thus, act of learned Magistrate to allow petitioner to cross examine the alleged victim was not warranted by the law...

x) As far as question of providing the memorandum by the Magistrate at the end of statement of alleged victim to the effect that she was not bound by law to record the statement is concerned, I am afraid that it is not the requirement of law. Section 164(3) Cr.P.C. only requires such memorandum to be provided at the end of the confessional statement of an accused. Sub-section (3) requires that before recording confessional statement of an accused, a Magistrate should convey to the accused that she/he is not bound to make a confession and if she/he does so it may be used as evidence against her/him. It further requires that Magistrate shall put a memorandum to that effect at the foot of such confessional statement… Above referred provision of law makes it profusely clear that such memorandum is to be recorded only at the end of a confessional statement of an accused and there is no legal requirement to provide such memorandum at the end of the statement of a witness recorded under Section 164 Cr.P.C.

Conclusion: i) An accused cannot be held guilty of offence of rape for marrying a minor girl/detenue aged 13/14 years because when a girl marries after attaining puberty, said marriage cannot be considered a 'void marriage', even if she has not attained the minimum legal age provided under any law for the time being in force.

ii) When a girl after reaching the minimum age of puberty declares that she has attained puberty, her declaration would be accepted as correct unless and until rebutted by cogent and convincing legal evidence.

iii) Consequences of marrying an underage girl is punishment as provided by the Act of 1929 but such marriage cannot be termed as invalid merely because the girl had not attained the minimum age provided under that Act.

iv) To declare a law or provision of law against the injunctions of Islam is the sole domain of the Federal Shariat Court established under Article 203-C of the Constitution.

v) The intent of lawmakers is obvious from the bare reading of the Act of 1929

that they wanted to punish a person solemnizing marriage with a girl less than sixteen years of age and not to declare such marriage as void.

vi) The age of a witness has nothing to do with her/his competence to depose as a witness.

vii) While applying rationality test, no specific set of questions is required to be put to a child witness and it is sole discretion of concerned court how it would satisfy itself regarding competence of a child witness. Written question and answer in rationality test is not the requirement of law.

viii) For recording of confessional statement of accused, section 364 Cr.P.C is relevant but in the case of recording the statement of a witness, section 364 Cr.P.C. has no relevance.

ix) Act of allowing persons other than accused to cross examine a witness who recorded statement under section 164 Cr.P.C, is not warranted by law.

x) Section 164(3) Cr.P.C makes it profusely clear that such memorandum is to be recorded only at the end of a confessional statement of an accused and there is no legal requirement to provide such memorandum at the end of the statement of a witness recorded under Section 164 Cr.P.C.

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49. **Lahore High Court**
Muhammad Arshad & 4 others v. Safdar Ali
C.R No. 2048 of 2013
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC10064.pdf

Facts: This revision petition is directed against the judgment and decree passed by the learned Additional District Judge, whereby the judgment and decree passed by the learned Trial Court was set-aside and the appeal was allowed.

Issues: i) Whether in revision petition, a petitioner has right to cause delay and then seek shelter of power of court to exercise a jurisdiction at its own?

ii) Whether a certified copy of the pleadings, documents and orders of Subordinate Court are required to be appended with civil revision?

iii) Whether delay in approaching the Copying Agency extends the benefit under Section 12 of the Limitation Act, 1908.

Analysis: i) The controversy that crept up after the amendment in 1992 by adding second proviso has already been resolved by the Honourable Supreme Court of Pakistan and it has been settled that Applicant/Petitioner has no right to cause a delay and then seek the shelter of the power of the Court to exercise a jurisdiction, at its own.

ii) …The first proviso to sub-section (1) of Section 115 of the Code of Civil Procedure, 1908 does not require that a certified copy of the pleadings, documents and orders of Subordinate Court are required to be appended. It simply says that the copies of the said documents should be attached.

iii) I also disagree with the contentions of learned counsel for the Petitioners that the benefit of time should be allowed in view of the fact that certified copy of the

judgment and decree passed by the learned Trial Court was provided on 22.06.2013. … The certified copy was supplied to the Petitioners by the learned trial Court on the same day when it was requested for i.e. 22.06.2013. No benefit of period prior to 22.06.2013 is available to the Petitioners. Delay in approaching the Copying Agency has not, in any manner, extended the benefit under Section 12 of the Limitation Act, 1908.

Conclusion: i) Applicant/Petitioner in a civil revision has no right to cause a delay and then seek the shelter of the power of the Court to exercise a jurisdiction, at its own.
ii) No, a certified copy of the pleadings, documents and orders of Subordinate Court are not required to be appended with civil revision as per first proviso to sub-section (1) of Section 115 CPC. It simply says that the copies of the said documents should be attached.
iii) Delay in approaching the copying agency does not, in any manner, extend the benefit under Section 12 of the Limitation Act, 1908.

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50. **Lahore High Court**
M/s Popular Sugar Mills Limited v. District Collector, Sargodha & 2 others
Writ Petition No. 40356 of 2019
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC6342.pdf

Facts: Through instant petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has impugned the order dated 10.06.2019 passed by the respondent/revenue department whereby request of petitioner to change the name of company was turned down.

Issues: i) What is the effect of change of name of a company?
ii) What does language of section 42 of Companies Act, 2017 reflect and what the word "a person" clarify?
iii) Whether after ruling of the Board, alternate remedy before commissioner is equally effectual?

Analysis: i) A reading of above reflects that change of name does not affect any right or obligation of a company. The affect by change of name on the rights and obligations of any company remained unchanged in the current legislation on the subject and it has been adopted as such in Section 13(3) of the Companies Act, 2017.
ii) … Now coming to the next argument of Mr. Salman Asif Warraich, learned Assistant Advocate General, regarding section 46 of the *Act.* This provision of the *Act* permits the *Board* to fix the scale of fees for *an entry in any record or register* under Chapter 11 of the *Act*. The respondents have relied on section 42 of the *Act* in order to convince that the change in name of the company in revenue record constitutes an entry, as contemplated in the above provision…Language of the above provision reflects that the same is applicable on *acquiring of any right as land-owner or a tenant*. The words "*a person"* in section 42 of the *Act* further

clarifies that the legislature has envisaged the acquisition of any right or interest as land-owner or a tenant from one person to another.
iii) …It is stated that appeal before the relevant Commissioner should have been filed. However, I am of the opinion that highest revenue authority i.e. the Board has already been approached by respondent No. 1 and the Board has already given the ruling. The Commissioner concerned in view of the ruling can hardly reach to any different conclusion, thus, the alternate remedy indicated before me is not equally effectual.

Conclusion: i) Change of name does not affect any right or obligation of a company.
ii) What does language of section 42 of Companies Act, 2017 reflects that the same is applicable on acquiring of any right as land-owner or a tenant and what the word "a person" clarify "a person" in section 42 of the Act further clarifies that the legislature has envisaged the acquisition of any right or interest as land-owner or a tenant from one person to another.
iii) Yes, when commissioner concerned cannot not reach to any different conclusion as to ruling of board of revenue, then the said alternate remedy before commissioner is not equally effectual in terms of invoking jurisdiction under Article 199 of the Constitution.

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51. **Lahore High Court**
China Machinery Engineering Corporation, Pakistan Branch v. Federation of Pakistan, etc.
Writ Petition No. 29586 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6354.pdf

Facts: The petitioner has assailed recovery of Rs.759,059,945/- from the accounts of the petitioner maintained at Banks in purported exercise of authority under section 140 of the Income Tax Ordinance, 2001 without issuance of prior notice under section 138(1) of the Ordinance after dismissal of appeal of the petitioner by the Commissioner, Inland Revenue (Appeals). A prayer for the return of the aforementioned amount recovered from the petitioner has also been made.

Issues: i) Whether a notice issued to a taxpayer under section 138(1) of the Ordinance for the recovery of tax due during subsistence of a stay order is valid and lawful?
ii) Whether, after an amended assessment order has been upheld by the Commissioner Inland Revenue (Appeals) or the Appellate Tribunal Inland Revenue, the tax authorities are required to serve upon the taxpayer a fresh notice under section 138(1) of the Ordinance requiring him to pay the amount of tax due within the time specified therein before invoking coercive mechanism under section 138(2) or 140 of the Ordinance?

Analysis: i) The amount of tax liability which was disputed by the petitioner in appeal could not be deemed to have become due and recoverable under section 138(1) of the Ordinance in the presence of the stay order while appeal of the petitioner was still

pending, therefore, issuance of the recovery notice dated 26.04.2023 at that juncture was manifestly without lawful authority and the same was of no legal effect. The decision of respondent No.3 not to issue a notice under Section 138(1) of the Ordinance to the petitioner after decision of its appeal and seeking attachment of the bank accounts of the petitioner and effecting coercive recovery of tax determined in the Assessment Order (despite the law laid down by this Court declaring that a notice under Section 138(1) of the Ordinance is a mandatory requirement of law), appears to be aimed at frustrating the right of the petitioner to seek injunctive relief from the Appellate Tribunal.

ii) … regardless whether it is the Commissioner (Appeals), the Tribunal or the High Court upholding an assessment order, the tax authorities are under an obligation to issue a notice under Section 138(1) of the Ordinance before they resort to use of coercive means under Section 138(2) or Section 140 of the Ordinance. It is observed that section 138(1) of the Ordinance conceives that a reasonable timeframe is to be specified by the Commissioner within which the tax due is to be paid. It is inconceivable that such reasonable time could be a period of less than 7 days as the purpose of such provision is to put the taxpayer on notice to discharge the tax obligation within a reasonable period and also afford the taxpayer an opportunity to avail his statutory right of appeal, if so advised.

Conclusion: i) A notice issued to a taxpayer under section 138(1) of the Ordinance for the recovery of tax due during subsistence of a stay order is without lawful authority and the same has of no legal effect.

ii) After an amended assessment order has been upheld by the Commissioner Inland Revenue (Appeals) or the Appellate Tribunal Inland Revenue, the tax authorities are required to serve upon the taxpayer a fresh notice under section 138(1) of the Ordinance requiring him to pay the amount of tax due within the time specified therein before invoking coercive mechanism under section 138(2) or 140 of the Ordinance.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in the Notification No.2108-2019/755-CL(II), dated 13.09.2019 vide Notification No. 176-2023/2223/P-I dated 21.11.2023 issued by the Colonies Department, published in the Punjab Gazette through Notification No.185 of 2023.
2. Amendments in Punjab Public Service Commission Regulation No.62 during its meeting dated 11-10-2023 vide Notification No. Estt.I-4/2023-PPSC/1260, dated 16.11.2023 published in the Punjab Gazette through Notification No.186 of 2023.
3. Vide Notification No. E&A(HD)14-2/2019(P-II), dated 21.11.2023 issued by the Home Department the Governor of the Punjab made "The Punjab Charities (Registration) Rules 2023" published in the Punjab Gazette through Notification No.187 of 2023.

4. Vide Notification No. E&A(HD)14-2/2019(P-II), dated 21.11.2023 issued by the Home Department the Governor of the Punjab made "The Punjab Charities (Appeal) Rules 2023" published in the Punjab Gazette through Notification No.188 of 2023.
5. Vide Notification No. E&A(HD)14-2/2019(P-II), dated 21.11.2023 issued by the Home Department the Governor of the Punjab made "The Punjab Charities (Inspection and Audit) Rules 2023" published in the Punjab Gazette through Notification No.189 of 2023.
6. Amendments in the Punjab Chowkidara Rules, 1982 vide Notification No. 1750-2023/6855-LR-V, dated 23.11.2023 issued by the Board of Revenue, published in the Punjab Gazette through Notification No.190 of 2023.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/COMPUTATION-OF-GRATUITY-ANALYSING-OUTBOUND-SECONDMENT-CASES

Computation of Gratuity - Analysing Outbound Secondment Cases By Anshul Prakash Partner, Deeksha Malik Senior Associate, Shreya Sukhtankar Associate, Khaitan & Co

In this article, we examine eligibility and computation of gratuity in respect of internationally deputed / seconded employees of an Indian entity and analyse the challenges in this regard. We discuss the concept of 'continuous service' and the manner of determination of 'last drawn salary', navigate international secondment arrangements and the possible legal positions on the aforesaid two issues.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/THE-POWER-OF-NETWORKING-WHY-LAW-TEACHERS-SHOULD-CONNECT-AND-COLLABORATE

The Power of Networking: Why Law Teachers Should Connect and Collaborate By Manokamana, Legal Editor, Manupatra

In the profession of teaching, it is not just about imparting knowledge to the students. In the modern learning scenario, the profession of teaching demands that teacher plays an active role in ensuring that their students are skill-ready to join the profession from day 1 after graduating. This holds even truer for a profession like law. Law teachers of today do not just go to class and teach the students what they know; they also focus on the holistic development of their students through a variety of learning experiences. Teaching for law teachers is about nurturing the future generation of legal professionals, shaping their perspectives, and equipping them with the skills and values necessary for a just society.

3. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/recent-developments-artificial-intelligence-governance

Recent Developments in Artificial Intelligence Governance by Susanna Bagdasarova , Justine M. Kasznica of Babst, Calland, Clements & Zomnir, P.C

As the development of artificial intelligence (AI) systems accelerates globally and the benefits and risks of their use become evident, calls for government regulation in the U.S. and abroad have accelerated. Two significant governmental developments occurred in the past month to respond to these calls. In an executive order issued at the end of October, President Joe Biden revealed a comprehensive set of guidelines and policy goals for the future of AI development and regulation. Less than a month later, the U.S., U.K., and more than a dozen other countries unveiled the first international agreement on AI safety and security. Though differing in scope and actionable initiatives, the two documents reflect an international acknowledgment of the global impact and risks posed by AI systems, as well as an urgency to create proactive policies for their regulation.

4. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/corporate-transparency-act-through-real-estate-lens

The Corporate Transparency Act: Through a Real Estate Lens by Marisa N. Bocci , Kari L. Larson , Lysondra Ludwig of K&L Gates

Implemented to combat the use of shell corporations and other entities to facilitate illicit activities, the Corporate Transparency Act (CTA) has prompted new and unprecedented reporting obligations. Starting 1 January 2024, domestic and foreign "reporting companies" will be required to report certain identifying information about their beneficial owners to the Treasury Department's Financial Crimes Enforcement Network (FinCEN). The CTA will likely impose a substantial compliance burden on the real estate sector, which often uses complex structures compromised of numerous legal entities that own and operate real property across many asset classes. The below provides a few considerations for those operating in the real estate sector, and a more thorough summary of the CTA can be found here.

5. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/prepared-liquidation-pre-pack-sales-under-polish-bankruptcy-law

Prepared Liquidation – Pre-Pack Sales Under Polish Bankruptcy Law by Marcin S. Wnukowski , Malgorzata R

Amid the current market uncertainties, distressed asset sales are likely to rise. International investors are looking for efficient solutions, preferably ones that reflect solutions in their home jurisdictions. One popular mechanism is the use of pre-pack sales. A pre-pack sale manages the adverse impact of insolvency proceedings on the

distressed company's business, while reducing the time and cost of such proceedings, and offering greater asset realisation to be distributed among creditors.

6. THE OXFORD ACADEMIC

https://academic.oup.com/clp/article-abstract/76/1/375/7344341?redirectedFrom=fulltext

Competition Law and Policy in the Global South: Power, Coercion and Distribution by Dina I Waked

Countries in the Global South have adopted competition laws and pursued competition policies very similar to countries in the North. This arrangement can be traced to various coercive powers at play—from trading partners in the North, international organizations to development banks, among others. As a result, the adopted laws are often unsuitable to the local needs of the countries in the South and their enforcement policies are often shaped by global pressure. This has alienated countries in the Global South from pursuing competition enforcement policies that could be empowering to their firms, consumers and communities at large. One way to resist and challenge these coercive powers is to pursue alternative competition policies, not alien to the Western nations themselves. In these alternative configurations, competition laws are squared with goals of industrialization and distributive equality. Pursuing these alternative competition goals challenges the dominance of the static model of competition policy aiming to achieve allocative efficiency. Examples from many places around the world are illustrated to show how competition policy, at crucial times of their development, were broadened to encompass an industrial agenda. The latter, more suitable for countries in the South, is discussed as a means of counter-coercion. It is discussed alongside an elaborate program for distribution to assure that the benefits of industrialization do not befall upon only a few. The aim of such a distributive program, built into competition enforcement, is to bring social justice concerns within the purview of competition policy.

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FORTNIGHTLY CASE LAW BULLETIN

(16-12-2023 to 31-12-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Raja Amer Khan and another, etc. v. Federation of Pakistan through the Secretary, Law and Justice Division, Ministry of Law and Justice, Islamabad and others
Constitution Petitions No. 6 to 8, 10 to 12, 18 to 20 and 33 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Sardar Tariq Masood, Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/const.p.6_2023.pdf

Facts: A Full Court was constituted by the Chief Justice of the Supreme Court of Pakistan to decide the petitions filed in the original jurisdiction of the Supreme Court, challenging the vires of the Supreme Court (Practice and Procedure) Act, 2023.

Issues: i) Whether the Constitution of the Islamic Republic of Pakistan bestow unlimited jurisdiction on the Supreme Court?
ii) How many jurisdictions are conferred on the Supreme Court by the Constitution of the Islamic Republic of Pakistan?
iii) What is the responsibility of Judiciary?
iv) Whether the Constitution of the Islamic Republic of Pakistan grants to the Chief Justice power to decide cases unilaterally and arbitrarily?
v) Whether the Constitution of the Islamic Republic of Pakistan empowers Parliament to legislate with regard to making the practice and procedure of the Supreme Court?
vi) Whether the Supreme Court (Practice and Procedure) Act, 2023 provides the right of appeal to one who is aggrieved by a decision of the Supreme Court?

Analysis: i) The Constitution establishes the Judicature. It stipulates that, No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. The Constitution does not bestow unlimited jurisdiction on the Supreme Court, let alone on its Chief Justice.
ii) The Constitution confers the following jurisdictions on the Supreme Court: (1) original jurisdiction, (2) appellate jurisdiction, (3) advisory jurisdiction, (4) power to transfer cases jurisdiction, (5) review jurisdiction, (6) contempt jurisdiction and (7) appellate jurisdiction with regard to decisions of administrative courts and tribunals.
iii) The Judiciary has the responsibility to decide cases in accordance with the Constitution and the law, by applying due process and providing a fair trial.
iv) The Supreme Court comprises of the Chief Justice and all the Judges of the Supreme Court. The Constitution does not grant to the Chief Justice power to decide cases unilaterally and arbitrarily. The Chief Justice cannot substitute his wisdom with that of the Constitution. Nor can the Chief Justice's opinion prevail

over that of the Judges of the Supreme Court. And, the term "Master of the Roster" is not mentioned in the Constitution, in any law or even in the Rules, let alone stating therein that the Chief Justice is the Master of the Roster and empowered to act completely in his discretion.

v) The Constitution empowers Parliament to legislate with regard to making the practice and procedure of the Supreme Court as it specifically stipulated in Article 191. Parliament enacted the Act which does not in any manner infringe any of the Fundamental Rights, rather facilitates their enforcement.

vi) The Act grants an appeal to one who is aggrieved by a decision of the Supreme Court which is passed in exercise of the original jurisdiction of the Supreme Court under Article 184(3) of the Constitution. A standard good worldwide practice and the Injunctions of Islam require that an appeal be provided and when two interpretations are possible, the one that conforms to the Injunctions of Islam shall be adopted. Article 175(2) of the Constitution envisages the conferment of jurisdiction.

Conclusion: i) The Constitution of the Islamic Republic of Pakistan does not bestow unlimited jurisdiction on the Supreme Court.

ii) See above in the analysis clause.

iii) The Judiciary has the responsibility to decide cases in accordance with the Constitution and the law.

iv) The Constitution of the Islamic Republic of Pakistan does not grant to the Chief Justice power to decide cases unilaterally and arbitrarily.

v) The Constitution of the Islamic Republic of Pakistan empowers Parliament to legislate with regard to making the practice and procedure of the Supreme Court as it specifically stipulated in Article 191.

vi) The Supreme Court (Practice and Procedure) Act, 2023 grants an appeal to one who is aggrieved by a decision of the Supreme Court which is passed in exercise of the original jurisdiction of the Supreme Court under Article 184(3) of the Constitution of the Islamic Republic of Pakistan.

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2. **Supreme Court of Pakistan**
Imran Ahmed Khan Niazi etc. v. The State and another
Crl.P.1276/ 2023 and Crl.P.1320/ 2023
Mr. Justice Sardar Tariq Masood, H. ACJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1276_2023.pdf

Facts: The petitioners sought leave to appeal against the orders of the Islamabad High Court, whereby the post-arrest bail had been declined to them in case FIR for the offences punishable under Sections 5 and 9 of the Official Secrets Act 1923 read with Section 34 of the Pakistan Penal Code 1860.

Issue: Whether a Court can indulge in the exercise of a deeper appraisal of the material available on record of the case while deciding a Post-arrest bail?

Analysis: The only question, therefore, before us in the present case is that whether there are not reasonable grounds for believing, at this stage, that the petitioners have committed the offence punishable under clause (b) of Section 5(3) of the Act but rather that there are sufficient grounds for further inquiry into their guilt of the said offence. In this regard, we are cognizant of the one of the elementary principles of the law of bail that to answer the said question, the Court cannot indulge in the exercise of a deeper appraisal of the material available on record of the case but is to determine it only tentatively by looking at such material.

Conclusion: The court, while deciding a post-arrest bail, should make a tentative determination of the available material on the record rather than engaging in its deeper appraisal.

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3. **Supreme Court of Pakistan**
Gul Khan & others v. Saeed ur Rehman & others
Civil Petition No.4305 of 2023
Mr. Justice Sardar Tariq Masood ACJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4305_2023.pdf

Facts: The petitioner assailed the order of Balochistan High Court, whereby, it allowed the constitution petition of respondents No.1 to 4 and declared the delimitation order of the Election Commission of Pakistan to be void and of no legal effect. The High Court further directed the ECP to notify the final delimitation (Form-7) for both constituencies.

Issue: Whether constitutional importance of holding of General Elections in a constitutional democracy as per the Election Programme far outweighs the need for re-examining the delimitation of a constituency at this critical electoral juncture?

Analysis: Delimitation, by its nature, is a detailed and often prolonged exercise, aimed at creating constituencies that reflect current demographic realities. While this is undoubtedly important for the health of a democratic system, it is not so critical that it should impede the timely conduct of general elections. In applying the principle of proportionality, it becomes evident that the larger good the uninterrupted continuation of democratic processes and the assurance of the people's right to government formation takes precedence. Postponing general elections to address constituency delimitation could lead to a vacuum in governance and a potential crisis of legitimacy. Such a situation would be antithetical to the principles of democracy and the larger good of the populace. Therefore, the principle of proportionality and the concept of the larger good demand that general elections be given primacy. Issues concerning the delimitation of constituencies, while important, should be addressed subsequent to the elections. This approach ensures the continuity of democratic governance and upholds the fundamental rights of the electorate, while still acknowledging the need for eventual and necessary adjustments in constituency boundaries. Applying the scale of proportionality, to us the constitutional importance of

holding of General Elections in a constitutional democracy as per the Election Programme far outweighs the need for re-examining the delimitation of a constituency at this critical electoral juncture. Any intervention by us in revisiting the contours of delimitation of a constituency done by the ECP at this stage will open floodgates of similar litigation, resulting in choking the election process. Therefore, proceeding with this case at this stage when the electoral clock has started ticking, would undermine democracy and adversely affect the fundamental right to vote and form a political government of millions of voters and political workers countrywide. The importance of elections in a democracy and the fulfillment of the larger objective of holding a timely election should be given due consideration to ensure that the Court remains within its democratic remit, which in the present case necessitates organizing and conducting of free, fair and timely elections by the ECP.

Conclusion: Constitutional importance of holding of General Elections in a constitutional democracy as per the Election Programme far outweighs the need for re-examining the delimitation of a constituency at this critical electoral juncture.

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4. **Supreme Court of Pakistan**
Rafaqat Ali v. Chief Secretary, Government of the Punjab and others
Civil Petition No. 460 of 2022
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._460_2022.pdf

Facts: This Civil Petition for leave to appeal was directed against the order passed by the Punjab Service Tribunal, Lahore whereby the appeal filed by the petitioner was dismissed.

Issues: i) What is the underlying principle of appellate jurisdiction?
ii) While deciding appeal, whether Service Tribunal is deemed to be a Civil Court?
iii) What is the concept of jurisprudence of term jurisdiction?
iv) Whether the service appeal before the service tribunal is in essence the continuation of proceedings of the departmental order rendered in departmental appeal?
v) Does the service tribunals have jurisdiction against order affecting the terms and conditions of civil servants?

Analysis: i) The underlying principle of appellate jurisdiction is to ensure checks and balances by means of reevaluation and reexamination of the judgment and orders passed by the lower fora in order to scrutinize whether any error has been committed on the facts and law and, while reversing the judgment of court below, record the reasons for justifying the appellate decision.
ii) Under Section 5 (2) of the Service Tribunals Act 1973, the Tribunal for the purposes of deciding any appeal, is deemed to be a Civil Court and have the same powers as are vested in such court. As a forum of exclusive jurisdiction, the

Constitutional mandate as well as the provisions of the Service Tribunals Act articulate and command that the complete and substantial justice must be done between the parties with a judicious denouement of the case.
iii) The term jurisdiction has multifarious concepts of jurisprudence which means the study of law and the principles on which laws are based.
iv) The service appeal before the service tribunal is in essence the continuation of proceedings of the departmental order rendered in departmental appeal which is an administrative remedy and channel for alleviating the grievance of civil servant before invoking the jurisdiction of the service tribunal.
v) The service tribunals have exclusive jurisdiction in matters falling within the terms and conditions of civil servant but an order affecting the terms and conditions of service is sine qua non for entreating the jurisdiction of the Service Tribunal which has been vested in limited jurisdiction to deal with and decide matters relating to the terms and conditions of service of a civil servant.

Conclusions: i) The underlying principle of appellate jurisdiction is to ensure checks and balances by means of reevaluation and reexamination of the judgment and orders passed by the lower fora.
ii) The Service Tribunal for the purposes of deciding any appeal, is deemed to be a Civil Court and have the same powers as are vested in such court.
iii) The term jurisdiction has multifarious concepts of jurisprudence which means the study of law and the principles on which laws are based.
iv) Yes, the service appeal before the service tribunal is in essence the continuation of proceedings of the departmental order rendered in departmental appeal.
v) See above in analysis portion.

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5. **Lahore High Court**
Abid Ali and another v. The State and another
Criminal Appeal No. 29270/2019
Muhammad Nazir v. The State and others
Criminal Appeal No. 39423/2019
Muhammad Nazir v. The State and 2-others
Criminal Revision No. 39425/2019
The State v. Abid Ali
Murder Reference No. 157/2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6634.pdf

Facts: This judgment disposed of Criminal Appeal filed by appellants against their convictions and sentences, Criminal Appeal filed by complainant against order of acquittal of certain respondents, Criminal Revision filed by complainant for enhancement of sentences of appellants and Murder reference sent by trial court, as they all had arisen out of one and the same judgment passed by the trial court.

Issues: i) Whether the testimony of the complainant and eye-witnesses, including an injured eye-witness, can be doubted on score of their being the chance witnesses having no residence at the place of occurrence?

ii) What is effect of unexplained and considerable abscondence of an accused in a criminal case?

iii) Whether acquittal of a co-accused may have any adverse effect on the case of prosecution to the extent of convicted accused?

iv)What would be fate of the defense version of accused alleged in his statement under section 342 of the Criminal Procedure Code, 1898 if neither he has himself deposed under Section 340 (2) of the Code ibid nor has he produced any witness in said regard?

v) What would be the status of recovery of crime weapon if the empties collected from the place of occurrence are not proved having been fired from such weapon?

Analysis: i) If complainant and eye-witnesses give forth natural account of acceptable and valid reasons for their presence at the time and place of occurrence appealing to common prudent man as well as one of the eye-witnesses receives firearm injury during the occurrence, then their testimony can safely be relied upon.

ii) If an accused becomes fugitive from law after the occurrence and his non-bailable warrants of arrest followed by proclamation are issued as well as he is unable to offer any valid/acceptable reason to explain his abscondence, then inference would be drawn against him and in favour of prosecution.

iii) The co-accused may be acquitted for safe administrative of justice by the trial court while taking into consideration prosecution evidence in totality.

iv) The defence version of an accused alleged in his statement under section 342 of the Criminal Procedure Code, 1898 would be mere a bald assertion if neither he himself has appeared to depose under Section 340 (2) of the Code ibid nor has he produced any other witness/resident of locality in this regard.

v) Prosecution is required to prove through forensic report that the empties collected from the place of occurrence are fired from recovered crime weapon.

Conclusion: i) The testimony of the complainant and eye-witnesses, including an injured eye-witness, giving forth satisfactory reasons for their presence at the time and place of occurrence, cannot be doubted on basis of their being chance witnesses having no residence at the place of occurrence.

ii) The unexplained and considerable abscondence of an accused in a criminal case provides corroboration to the ocular account of prosecution witnesses against accused.

iii) The acquittal of co-accused cannot have any adverse effect on the case of prosecution to the extent of convicted accused.

iv) The defense version of accused in his statement under section 342 of the Criminal Procedure Code, 1898 would not be taken as proved nor may it cause any dent in in prosecution case if he neither has appeared himself to depose under Section 340 (2) of the Code ibid nor has he produced any witness in said regard.

v) The recovery of crime weapon would be inconsequential if empties collected from the place of occurrence are not proved having been fired from such weapon.

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6. **Lahore High Court**
Criminal Appeal No. 228667-J/2018
Abu Bakar alias Samosa, etc. v. The State
Murder Reference No. 04/2019
The State v. Abu Bakar alias Samosa
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6759.pdf

Facts: Appellants along with their co-accused persons were tried in complaint case and trial court after conclusion of the trial, vide impugned judgment while acquitting co-accused convicted and sentenced the appellants.

Issues: i) Whether any sanctity or evidentiary value can be attached to the FIR which is registered with unexplained and considerable delay?
ii) Whether a witness who introduces dishonest improvement or omission for strengthening the case, can be relied?
iii) Whether conversation recorded in Audio or Video can be proved without production of actual record of conversation?
iv) Whether medical evidence is mere supportive/confirmatory type of evidence?
v) Whether motive loses its significance and becomes immaterial for conviction when substantive evidence is discarded?
vi) Whether acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, capricious or arbitrary?

Analysis: i) Afore-mentioned state of affairs reflects that F.I.R. was not recorded even at the stated time rather with much delay however ante-time was mentioned in it and further suggests that none of the cited eyewitnesses was present at the "time & place" of occurrence, time was consumed for procuring, introducing, engaging eyewitnesses as well as tailoring/concocting story after deliberation and consultation for the prosecution and then getting the case registered in its present form as well as completing police papers for postmortem examination; therefore, neither any sanctity nor evidentiary value can be attached to F.I.R. in the case and it cannot provide any corroboration to the case of prosecution against the appellant rather it has lost its efficacy and damaged the case of prosecution.
ii) It is also relevant to mention here that PW-2 introduced dishonest improvements during his statement before the court regarding injury on right hand. PW-2 and PW-3 also introduced dishonest improvements regarding making of video of deceased of the case in injured condition. By now it is well settled that witness who introduces dishonest improvement or omission for strengthening the case, cannot be relied.
iii) It is also very much relevant to mention here that as per claim of CW-4, statement of deceased of the case was recorded on mobile phone, then subsequently converted to CD but admittedly said mobile was neither produced during investigation nor during trial rather only CD was produced and by now it is

well settled that though conversation recorded in Audio or Video can be proved yet production of actual record of conversation is necessary for the same. Therefore, due to non-production of mobile of CW-4 wherein statedly said conversation of deceased of the case was recorded, said conversation has not been proved and by production of afore-mentioned CD, said conversation cannot be proved; therefore, its forensic analysis is also of no avail.

iv) So far as medical evidence is concerned, it is trite law that medical evidence is mere supportive/confirmatory type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury; therefore, same is also of no help to the prosecution in peculiar facts and circumstances of the case.

v) Now coming to motive of the occurrence; it was mentioned in the application, F.I.R. and complaint that deceased of the case was an eyewitness of case arising out of F.I.R. registered under Section: 302 PPC at Police Station: Nowshera Virkan but admittedly, none of the present appellants was accused in said case; so it was not directly against them; furthermore, motive is a double edged weapon, it cuts both the ways, it can also be a reason for false implication; even otherwise, when substantive evidence has been discarded, then motive loses its significance and becomes immaterial for conviction.

vi) Hence, for the reasons mentioned in the impugned judgment, acquittal of co-accused persons is neither perverse, nor capricious nor arbitrary rather judgment in this regard has been passed perfectly in accordance with law, facts and record of the case. After acquittal, accused persons have attained double presumption of innocence and courts are always slow to disturb the same and in this regard.

Conclusion: i) Any sanctity or evidentiary value cannot be attached to the FIR which is registered with unexplained and considerable delay rather it loses its efficacy and damages the case of prosecution.

ii) A witness who introduces dishonest improvement or omission for strengthening the case cannot be relied.

iii) Conversation recorded in Audio or Video cannot be proved without production of actual record of conversation.

iv) Medical evidence is mere supportive/confirmatory type of evidence.

v) When substantive evidence is discarded, then motive loses its significance and becomes immaterial for conviction.

vi) Acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, capricious or arbitrary.

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7. **Lahore High Court**
Muhammad Aslam v. Muhammad Ismail (deceased) through L.Rs
C.R. No. 22357 of 2020
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6736.pdf

Facts: Civil Revisions were filed arising out of the same judgments/decrees of the lower fora. The matter pertained to contractual breach whereby the suit for possession through specific performance along with permanent injunction was dismissed. Being dissatisfied with the said judgment/decree, both parties preferred two separate appeals before the appellate court. The appellate court dismissed the respondent's appeal, whereas partially accepted the petitioner's appeal by modifying the judgment/ decree of trial court. However to the extent of specific performance of the agreement, the appeal of the petitioner was dismissed.

Issues: (i) Whether the mandate of law while recording of evidence was followed viz a viz exhibiting/marking the documents through statement of counsel?
(ii) What is the legality of marked documents?

Analysis: (i) The court while relying on cases reported as 2023 SCMR 730, PLD 2021 SC 715 and PLD 2010 SC 604 opined that disputed documents could not be tendered in evidence in statement of the counsel for a party, because such procedure deprives the opposing party to test the authenticity of those documents by exercising his right of cross-examination.
(ii) The court while referring to Rule 4 of Order XIII Code of the Civil Procedure, 1908 as well as case precedents of Hon'ble Supreme Court observed that when a document is not brought on record through witness (es) and duly exhibited, the same cannot be taken into consideration by the Court, as the same has no legal value and sanctity in the eye of law. Mere marking of a document as an exhibit would not dispense with requirement of proving the same and the same cannot be exhibited unless it is proved.

Conclusion: (i) The documents not brought on the record through witnesses' testimonies cannot be taken into consideration by the court.
(ii) Documents not duly exhibited cannot be taken into consideration by the Court.

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8. **Lahore High Court**
Astex (Pvt.) Ltd, etc. v. Faysal Bank Limited
R.F.A.No.216563 of 2018
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC9675.pdf

Facts: Through this Regular First Appeal filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, ("Ordinance") the appellants/judgment debtors called in question judgment and decree passed against them by a learned Single Judge of this Court in a suit for recovery of money filed under Section 9 of the Ordinance by the respondent/decree holder bank.

Issues: i) What is the definition of "adjournment sine die"?
ii) Whether a party has the right to file an application seeking hearing of a case

earlier adjourned sine die and the court has the jurisdiction to fix the case on the basis of such an application or of its own accord?

iii) What is the purpose behind filing application seeking hearing of a case earlier adjourned sine die?

iv) Whether an act of the court can prejudice any one?

v) Whether a case adjourned sine die can be resurrected by the court upon application of any party without applicability of limitation?

vi) Whether the pecuniary jurisdiction of the court is ascertained from the contents of the plaint?

Analysis: i) Although the phrase "adjournment sine die" is not mentioned in the CPC, however the same has a definite meaning in legalese i.e. legal terminology in vogue in the courts. Latin phrase 'Sine die' means 'without day' and in legal language means 'indefinitely'. 'Adjournment sine die' is a phrase from Latin language meaning 'adjournment without a day' or 'adjourned indefinitely' which in other words means that the next date for fixation of the case has not been mentioned by the court or the case has not been fixed for any particular future date. During the time a case is kept under adjournment even though without a further date, the same is still alive before the Court and cannot be declared to have come to an end as for example where a case is dismissed in default, where the case had come to an end on technical ground and has to be got restored before the same can proceed further.

ii) An application seeking hearing of a case earlier adjourned sine die was not an application for review and at the most may be treated as a request for fixation of case for a date of hearing or an early hearing. Either of the parties has the right to file such an application and the court has the jurisdiction to fix the case on the basis of such an application or of its own accord. If it is assumed that only a party can make an application within the limitation period provided under Article 181 of the Limitation Act, 1908 and thereafter cannot file application for fixation of the same, the same would result in ridiculous results and objection may be raised that the Court itself cannot also in such eventuality fix the case for hearing which interpretation if fixed on the same would result in absurdity.

iii) The purpose of filing such an application is to inform the court that due to the reasons mentioned in the application that case may be taken up for hearing for a date to be fixed by the Court and nothing else. Moreover, the power of the Court to fix a case for hearing which was earlier adjourned without a date cannot be taken away on the aforementioned ground raised by the appellants.

iv) An act of Court should not prejudice any one and all efforts are to be made to restore parties to a position pertaining prior to passing of such an order.

v) An order for adjourning any case sine die does not mean that it has been terminated rather the case is simply taken out of the active list of the Court and remains pending with the Court which can be resurrected at any time by a party by filing an application or upon order by the Court itself without any application and the order for resurrecting the suit does not amount to fresh initiation of

proceedings which would be governed by Article 181 of the Limitation Act, 1908 providing for three years limitation and no limitation would be applicable for revival of matter by the Court whether by itself or on application filed by either party.

vi) The pecuniary jurisdiction of the Court is ascertained from the contents of the plaint which was filed against the appellants seeking recovery… The Court had the pecuniary jurisdiction at the time the suit was filed and the Court shall continue to retain the pecuniary jurisdiction notwithstanding any payments made during the pendency of the suit.

Conclusion: i) See above in analysis portion.

ii) Yes, a party has the right to file an application seeking hearing of a case earlier adjourned sine die and the court has the jurisdiction to fix the case on the basis of such an application or of its own accord.

iii) The purpose behind filing application seeking hearing of a case earlier adjourned sine die is to inform the court that due to the reasons mentioned in the application that case may be taken up for hearing for a date to be fixed by the Court and nothing else.

iv) An act of the court cannot prejudice any one.

v) Yes, a case adjourned sine die can be resurrected by the court upon application of any party without applicability of limitation.

vi)Yes, the pecuniary jurisdiction of the court is ascertained from the contents of the plaint.

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9. **Lahore High Court**
Manzoor Hussain v. The State etc.
Criminal Revision No. 40476/2019
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6754.pdf

Facts: The Respondents No. 2 and 3 filed an application before the trial court, seeking permission to deposit the *Arsh* and *Daman* amount under protest, subject to their right to appeal. The trial court accepted the application whereupon the said respondents deposited the money in the government treasury after which they were released from jail. The Petitioner assailed the said order through this revision petition.

Issue: Whether it is inpermissible for the trial court to allow the convict to deposit *Diyat, Arsh, or Daman* under protest for release?

Analysis: Chapter XXVIII of the Code of Criminal Procedure 1898 (Cr.P.C.) delineates the procedure for executing orders and the punishments imposed upon a conviction… Section 382-A Cr.P.C. is relevant for our present purpose. It states that the sentence shall not be executed immediately when a person is convicted and sentenced to imprisonment for less than one year, provided they furnish bail to the court's satisfaction for their appearance at the designated time and place. This

deferral of the sentence continues until the period allowed for filing an appeal against the sentence elapses. If an appeal is filed within that duration, the implementation of the imprisonment sentence is postponed until the appellate court affirms the sentence. Nevertheless, the sentence will be carried out as soon as practicable after the expiry of the appeal filing period or, in the case of an appeal, after the receipt of the appellate court's order confirming the sentence… Section 426 Cr.P.C. addresses situations where a convict is in custody pending an appeal and is not covered by section 382-A Cr.P.C. It empowers the court to grant bail by suspending the sentence… A review of the relevant legislative provisions and case law shows that, upon conviction, the sentence of imprisonment must be carried out unless it is deferred or suspended under section 382-A or section 426 Cr.P.C. It is inpermissible for the trial court to allow the convict to deposit *Diyat, Arsh, or Daman* under protest for release. Any deviation from the prescribed course would constitute an act without lawful authority and would not be sustainable under the law.

Conclusion: It is inpermissible for the trial court to allow the convict to deposit *Diyat, Arsh, or Daman* under protest for release.

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10. **Lahore High Court**
Muhammad Saqlain v. The State etc.
Crl. Misc. No. 62426-B of 2023
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2023LHC6649.pdf

Facts: The petitioners sought post-arrest bail in case F.I.R. registered for offences under sections 302 & 34 PPC. One of the petitioners has again approached this Court for the relief of post arrest bail, after withdrawing his earlier bail petition after arguments, on the ground that his earlier bail petition was not dismissed by this Court as according to the subject order it was "disposed of".

Issue: Whether the order "Disposed of accordingly" may mean decision on merit?

Analysis: As per Black's Law Dictionary Tenth Edition, "disposal" means a patent application's termination by withdrawal, rejection, or grant. It further explains it as "A final settlement or determination/ the court's disposition of the case, while explaining the "informal disposition". The termination of a case by means other than trial is explained as any action that leads to disposition without conviction and without a judicial determination of guilt, such as guilty pleas and decisions not to prosecute, whereas; the "disposition without a trial" is explained as 'the final determination of a criminal case without a trial on the merits, as when a defendant pleads guilty or admits sufficient facts to support a guilty finding without a trial. The "Oxford Paperback Thesaurus, Indian Edition" at page 239 shows informal meaning of dispose of as "get shut of". As per the Fifth Editiion, The American Heritage Dictionary of the English Language, the word dispose also means as to determine the course of events, to finish dealing with something

and settle. The words 'dispose of' merely mean put an end to the appeal by any of the recognized methods. The order "Disposed of accordingly" means that subject petition terminated, settled, ended, concluded or closed as desired by the learned counsel for the petitioner after arguments and consideration of the merits of the case.

Conclusion: By disposing of some matter may not mean decision on merit and the order "disposed of accordingly" does mean that the matter was contested but as the petitioner agrees to withdraw his bail petition instead of getting it dismissed on merit, he preferred to get it ended without any formal, detailed and reasoned order or formal decision of the Court.

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11. **Lahore High Court**
Syed Qamar Mehdi v. Govt. of Punjab, etc.
Writ Petition No. 7449 of 2023
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6655.pdf

Facts: This public interest petition was filed by a regular visitor of Bagh-e-Jinnah to challenge an order by Parks and Horticulture Authority allowing a Skateboard Park in Bagh-e-Jinnah.

Issues: i) Whether it is statutory duty of the Government and any Statutory Authority to preserve and conserve the premises having historical and cultural value?
ii) Is it necessary while declaring any building as Special Premises shall include the appurtenant land and walls being part of it historically?

Analysis: i) … nevertheless it is important to interpret the provisos of Section 5 of the PHA Act of 2012 alongwith Sections 5 and 6 the Punjab Special Premises (Preservation) Ordinance, 1985. Under these provisions, it is statutory duty of the Government and any Statutory Authority to preserve and conserve the premises (building and land appurtenant thereto), having historical and cultural value. Rationale behind these enactments is to preserve sites and premises having cultural and historical value because the history lives in architecture and historical sites, besides representing culture and identity. The heritage inspires and unites generations. It helps to educate new generations about history by witnessing heritage buildings and gives awareness of the culture and its value.
ii) It is necessary to hold for other Special Premises also that declaring any building as Special Premises shall necessarily include the appurtenant land walls, being part of it historically. Its originality shall not be compromised on the pretext of development, or for any commercial purpose.

Conclusion: i) It is statutory duty of the Government and any Statutory Authority to preserve and conserve the premises having historical and cultural value.
ii) It is necessary while declaring any building as Special Premises shall include the appurtenant land and walls being part of it historically.

12. **Lahore High Court**
Faiz Ahmad etc. v. Chairman Federal Land Commission, Islamabad etc.
Writ Petition No. 254943 of 2018 etc.
Mr. Justice Masud Abid Naqvi, Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC6607.pdf

Facts: The petitioners challenged the vires of order passed by the Member, Federal Land Commission, Islamabad whereby resumed state land was allotted to respondents No.5 to 7 with equal share under Paragraph 18(3) of MLR 115/1972.

Issues: i) Whether a property which is situated in prohibited zone can be allotted permanently?
ii) What is meant by "outer limits"?
iii) Whether it is an inalienable obligation of the Courts to be very careful and cautious while dealing with matters of the public properties or public assets, being its custodian?

Analysis: i) As per notification dated 12th December, 1972 Martial Law Regulation No.115 the property which is situated within prohibited zone as provided in the Colonies Department's Circular memorandum No.3024-72/3946-CLIII dated 12th December, 1972 cannot be permanently allotted under Paragraph 18(3) of Martial Law Regulation 115…The main reason for imposition of ban on allotment/grant of proprietary rights of the state land falling in prohibited zone is to cater the present and future needs of the local population as well as for the use of other different public purposes…Thus, the land in question situated within the "prohibited zone" and as such the authorities are debarred to make any allotment of said land…
ii) The term "outer limits" means the piece of land which starts from the end point/boundary of territorial limits of a municipal committee/corporation etc. The limit of "prohibited zone" as per the notification reproduced above, is regarding the land stretched till 05 miles from the "outer limits" of municipal committee…
iii) The Courts of law are custodian of the public properties, assets or interest and while dealing with matters relating to such properties/assets or interests, it is inalienable obligation of the courts to be very careful, cautious and assure itself to the extent of certainty that no mischief is being played with the state assets. An extraordinary obligation is placed upon the courts to keep abreast itself with law and facts of the case and when certain material facts unearthed before it then the matter should be decided as per law even without being influenced by respective pleadings of the parties…

Conclusion: i) A property which is situated in prohibited zone cannot be allotted permanently.
ii) See analyses portion.
iii) Yes, it is an inalienable obligation of the Courts to be very careful and cautious while dealing with matters of the public properties or public assets, being

its custodian.

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13. **Lahore High Court**
Commissioner Inland Revenue v. M/s Gujranwala Electric Power Co. (GEPCO)
ITR No.73049 of 2022
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6720.pdf

Facts: This was a reference application under Section 133 of the Income Tax Ordinance, 2001 and brought a challenge to the order passed by the Appellate Tribunal Inland Revenue while framing a question of law for the opinion of High Court.

Issues: i) To whom section 113 of Income Tax Ordinance applies?
ii) What is meaning of term 'turnover' under section 113 of ITO, 2001?
iii) Whether term 'turnover' is constrained to sources from which sale or gross receipts will be derived and tax can be avoided on the basis that no sale has been made to Federal Government?
iv) Whether revised / modified uniform schedule of tariff determined by NEPRA which was merely factored in the subsidy/ cross subsidy, therefore, the portion which is reimbursed by the Federal Government, there is no sale of goods?

Analysis: i) Section 113 of the Ordinance is a regime of taxation based on minimum tax on the income of certain persons. It is triggered under circumstances mentioned in section 113 and applies to a resident company, permanent establishment of a non-resident company, an individual having turnover of 300 Million rupees or above in the tax year etc. Subsection (2) provides the formulae for classification of the income of a person who is caught by the provisions of section 113. It states that the aggregate of the person's turnover as defined in Sub-section (3) for the tax year shall be treated as the income of the person for the year chargeable to tax.
ii) According to definition u/s 133 (3) (a) of ITO, 2001 turnover means the gross sales or gross receipts exclusive of sales tax and federal excise duty or any trade discounts shown on invoices or bills derived from the sale of goods and also excluding any amount taken as deemed income. It ineluctably follows that there has to be sale of goods from which the gross receipts are derived and unless it is shown that there has been an actual sales of goods, no income can be included in the term 'turnover' as defined in section 113 (3)(a) of the Ordinance.
iii) It is an undeniable fact that sale of goods takes place to the consumers and important aspect of the term 'turnover' as defined in section 113(3)(a) of the Ordinance is for the sale of goods to take place from which gross receipts are derived. It does not constrain the sources from which those receipts will be derived which may be one or multiple sources. Discos' misplaced notion that there is in fact no sale to Federal Government has no basis. No sale need take place to the Federal Government and it is enough if it is done to the consumers. The rest is a matter of receipt of money in respect of the transaction of sale which has already taken place. The evasion of tax on this basis would be tantamount to

distortion of the concept of subsidy which is a matter between the consumers and the Federal Government.

iv) The revised / modified uniform schedule of tariff determined by NEPRA merely factored in the subsidy/ cross subsidy which was to be restituted by the Federal Government in favour of Discos. Thus, Discos charged certain portion of the tariff from the consumers whereas the other portion of the tariff as determined by NEPRA was reimbursed by the Federal Government into the accounts of Discos. At the end of it, Discos did not suffer a diminution of their income which was made up of two different streams. The learned counsel for Discos emphasized during the oral arguments that gross receipts have to be derived from the sale of goods whereas in the case of the portion which is reimbursed by the Federal Government, here is no sale of goods. This is an erroneous view and is based on a misconstruction of the entire transaction brought forth above. Doubtless, the Federal Government is a necessary party to the entire architecture under which tariff determination is made by the Authority and it is on the Motion of the Federal Government that subsidy is given to the consumers. On that basis, there is indeed a sale of goods in favour of the consumers. The only difference is that the moneys recovered in respect of sale of goods come from two different sources in the present cases.

Conclusion: i) Section 113 of ITO, 2001 applies to a resident company, permanent establishment of a non-resident company, an individual having turnover of 300 Million rupees or above in the tax year etc.

ii) See analysis no. 02.

iii) The term 'turnover' is not constrained to sources from which sale or gross receipts will be derived and tax cannot be avoided on the basis that no sale has been made to Federal Government.

iv) This is incorrect view that revised / modified uniform schedule of tariff determined by NEPRA which was merely factored in the subsidy/ cross subsidy, therefore, there is no sale of goods for the portion which is reimbursed by the Federal Government, rather there is indeed a sale of goods in favour of the consumers.

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14. **Lahore High Court**
National Transmission & Despatch Company Ltd. v. The Commissioner Inland Revenue & another
ITR No.72345 of 2023
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6773.pdf

Facts: The Commissioner Inland Revenue (Appeals) decided the appeal against the applicant which was affirmed by the Appellate Tribunal Inland Revenue. The Appellate Tribunal by its two separate orders which was under challenge in these reference applications dismissed the appeal filed by applicant while allowing the appeal of the Department (in the other case) and based its decision on similar

premises.

Issues: i) Whether the aggregate of a person's turnover can be treated as the income of the person for the year chargeable to tax?
ii) Whether Court can take notice of the documents filed during the hearing of any case?
iii) Whether grant of transmission license is distinct and separate from the issuance of a distribution license?

Analysis: i) The crucial aspect is regarding applicability of minimum tax under Section 113 of the Ordinance. For the purpose, the aggregate of a person's turnover as defined in section 113 has to be treated as the income of the person for the year chargeable to tax. The definition of turnover peculiar to section 113 has been set out above. In order to attract minimum tax on the basis of turnover the gross receipts derived from the sale of goods has to be taken into consideration. NTDC contends that it does not derive any gross receipts from sale of goods (electricity in this case) and merely acts as the agent for procurement of electricity on behalf of DISCOs. To resolve the issue engaged in these reference applications, the entire structure of regulation of electricity has to be kept in view which is the centrepiece of the system of procurement and sale of electricity put in place. Hunch or personal apprehension of an officer of income tax department is not enough. In our opinion, NTDC is a special purpose vehicle incorporated for a specific purpose and regarding which a license has been granted to it by NEPRA. It must be borne in mind that NTDC is in possession of a transmission license and its powers are hedged in by the terms of that license… Thus, the transmission business has been defined as the business of transmission of electric power and for the purpose to plan, develop, construct and maintain NTDC's transmission system and operation of such system for the transmission and dispatch of electric power. That is the whole purpose of NTDC and NTDC is not expected to travel beyond that purpose and to engage in the sale and purchase of electricity… The license is granted to NTDC to engage in the transmission business within the territory as set in the Schedule 1 to the license. Article 2 further provides that licensee /NTDC shall comply with and adhere to the rules, regulations and directions of NEPRA from time to time. The periphery of the powers of NTDC has been laid down in Article 2 which does not mention any activity relating to sale or purchase of electricity and is merely confined to the transmission business within the territory delineated in Schedule 1. Article 5 further provides the exclusivity regarding the activities in the territory specified in Schedule 1 in respect of the licensee… Article 7 mentions a competitive market operation date (CMOD) which is June 5, 2015 as stated above. Prior to that the Central Power Purchasing Agency (CPPA) of the licensee was to be established under Article 8 of the License to purchase or procure electric power to meet the demand of eight-ex-WAPDA distribution companies on behalf of those distribution companies and the terms were also given in Article 7. The entire structure under which (CPPA) was to procure electric power on behalf of DISCOs to meet their demands through

contracts with generation licensees was spelt out in Article 7. It also states in clause (2) that competitive market operation date was initially set as July 1, 2009 which was revised to a later date since the infrastructure or market was not adequately developed to support a competitive arrangement by July 1, 2009. Articles 7 and 8 read cumulatively obliged NTDC to establish a central power purchasing agency (CPPA) for the procurement of power on behalf of DISCOs and other related matters primarily relating to reorganization for the maintenance of transmission system and reliable operation, control, switching and dispatch of transmission system and generation facilities and provision of balancing services. NTDC submits that the functions of procurement of electric power on behalf of DISCOs as well as maintenance of transmission system were being undertaken jointly by NTDC and later on as explicated the business of procurement of electric power was carved out of NTDC and CPPA-G was established which now carries on the business of procurement of electric power exclusively. As adumbrated, the initial onus lay on the department to establish that NTDC was actually engaged in the business of selling of electric power and thereby gross receipts were accumulated which were derived from the sale of goods (electric power in this case). In our opinion the department has failed to establish any such activity to have been undertaken by NTDC. Seeking footing in the terms of the license which have been brought forth above and which leave it in no manner of doubt that the cardinal feature of the business of NTDC is circumscribed by the terms of the license which by Article 2 clearly states that it can only engage in the transmission business. If the allegations made in the show cause notices are taken as true then it must be established as a fact in the first instance that NTDC is in breach of its license granted by NEPRA. It is nobody's case that NEPRA has taken any action against NTDC for falling in breach of the terms of the license and, therefore, it can be presumed that NTDC is only engaged in undertaking the transmission business in accordance with the terms of the license.

ii) These documents can be looked at by this Court while deciding these reference applications, firstly because they are undisputed and secondly they are public documents and this Court can take notice of these documents in any case.

iii) Therefore, it is clear that the grant of transmission license is distinct and separate from the issuance of a distribution license and distribution company in whose favour the license has been issued has the exclusive right to provide distribution services and to make sales of electric power to the consumers.

Conclusion: i) The aggregate of a person's turnover as defined in section 113 can be treated as the income of the person for the year chargeable to tax.

ii) The Court can take notice of the documents filed during the hearing of any case when documents are public documents and undisputed.

iii) The grant of transmission license is distinct and separate from the issuance of a distribution license.

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15. **Lahore High Court**
Nadeem Shah v. The State
Criminal Appeal No. 642 of 2019
The State v. Nadeem Shah
Murder Reference No. 55 of 2019
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC6692.pdf

Facts: Feeling aggrieved of conviction and sentence awarded to him, appellant filed Criminal Appeal against it, whereas the trial court sent Murder Reference for the confirmation or otherwise of death sentence so awarded to him.

Issues: i) What is the requisite standard of circumstantial evidence for handing down a guilty verdict against an accused in a case of homicide?
ii) What is effect of the failure of prosecution to prove the proximity of time and distance with regard to evidence of last seen?
iii) If an accused makes confessional statement before a police officer whilst leading to discovery of dead body of deceased, to which extent such statement may be brought on record by the prosecution under Article 40 of the Qanun-e-ShahadatOrder,1984?
iv) What is significance of the preparation of the memo with regard to the fact that the dead body of deceased was discovered in consequence of disclosure of the accused?
v) What is the most well-known external indication upon the corpse recovered from water?
vi) What is effect of the failure of the prosecution to prove proper sampling of internal analswabs, their safe custody and onward transmission to the office of PFSA?

Analysis: i) The circumstantial evidence pertains to the facts or events from the scrutiny of which the guilt or innocence of an accused can be extracted. Circumstantial evidence is even acknowledged in Islamic Law as *'Alqarain'* which refers to an event and serves as a sign or gives traces of existence or non-existence of a fact in issue. For awarding conviction, such incriminating circumstances must so strongly be interwoven with each other as to make an unbroken chain, the one end of which must be touching the corpse and the other proving the guilt of accused.
ii) For structuring conviction upon the circumstantial evidence, it is incumbent upon the prosecution to prove two of its basic ingredients which are proximity of time as well as proximity of distance. The proximity of time to prove the evidence of last seen rests on the principle of "*de recenti*", which lays emphasis that time span between the event of last seen and death must be very short. As regards the proximity of distance, the more is the distance between evidence of last seen and the death of deceased, greater is the possibility about the hypothesis of innocence of the accused.
iii) Article 40 of Qanun-e-Shahadat Order, 1984 provides an exception to the rule

embedded in Articles 38 and 39 of Order ibid as that an incriminating fact discovered in consequence of information provided by an accused, while in the custody of a police officer, can still be proved against him which can be brought on record.

(iv) In order to prove that the accused actually made a disclosure and subsequently led to the recovery of some fact, it is essential that a memo of his disclosure be prepared.

v) Dr. B. R. Sharma in the Chapter Elementary Forensic Medicine of his book titled Forensic Science in Criminal Investigation and Trials, discussed that on occasions when the dead bodies are disposed of in the water in homicide cases and sometimes the death occurs due to drowning but in both the cases, the hands and feet acquire washer man's skin having wrinkles. Similarly, Dr. S. Siddiq Husain in his book titled Forensic Medicine and Toxicology dilated upon the external appearance of a dead body recovered from the water and opined in the Chapter Violent Deaths from Asphyxia that skins of palms and soles of feet is bleached, wrinkled having resemblance with washer man's hands.

vi) The law of individuality has been verified in various fields, the most important out of which pertains to finger prints which are never found to be identical of different persons. The doctrine of individuality which provides credence to the DNA evidence is to be read in conjunction with doctrine of analysis. Improper sampling, unsafe custody and doubtful transmission to the expert render a positive DNA report unworthy of reliance and credence.

Conclusion: i) For handing down a guilty verdict in a case of homicide, each and every incriminating circumstance forming the chain of circumstantial evidence must be clearly established so as to form an irresistible conclusion about the involvement of accused in the crime.

ii) The failure of prosecution to prove the proximity of time and distance is destined to weaken the evidence of last seen.

iii) The prosecution, through necessary implication of Article 40 of the Qanun-e-Shahadat Order,1984, could only bring on record the disclosure of an accused whereby he volunteered to lead the police and witnesses towards the recovery of dead body as this was a fact discovered through such statement.

iv) Only the preparation of the memo testified by the witnesses will prove in subsequent trial that the fact was discovered in consequence of a lead and pointing out of the accused

v) The most well-known external indication upon the corpse recovered from water is the wrinkling of skin upon hands and feet, more commonly called in normal parlance as washer women's hands.

(vi) The failure to prove proper sampling of internal anal swabs, their safe custody and onward transmission to the office of PFSA can in exorable be termed as final nail in the coffin of the prosecution case.

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16. **Lahore High Court**
State v. Muhammad Imran
Criminal Appeal No. 275/2020
Mr. Justice Asjad Javaid Ghural, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6572.pdf

Facts: The appellant/the State challenged the acquittal of accused/respondent vide judgment passed under section 265-K Cr.P.C. by Additional Sessions Judge in case FIR under section 9-C of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether law of limitation can be ignored by treating it mere a technicality?
ii) Whether period of limitation for filing appeal against acquittal by the State under section 48 of the Control of Narcotics Substances Act, 1997 is six months as per Article 157 of the Limitation Act, 1908?
iii) Whether Section 5 of the Limitation Act, 1908 can be invoked for condoning delay in any appeal against acquittal filed under the Control of Narcotic Substances Act, 1997?

Analysis: i) It is now settled that law of limitation being lex fori creates a right in favour of the parties, therefore, cannot be ignored by treating it mere a technicality.
ii) It was claimed that period of limitation for filing of appeal against acquittal by the State is six months as per Article 157 of the Limitation Act. We have examined that this appeal against acquittal is not being regulated under section 417 of Code of Criminal Procedure, 1897, rather was filed under section 48 of the Control of Narcotic Substances Act, 1997 which is a special law and is to be read for period of limitation provided therein…..No period of limitation is mentioned for filing of appeal under section 48 of the Control of Narcotic Substances Act, 1997…….Therefore, subject to section 29 of the Limitation Act, it can safely be held that Article 157 of the Limitation Act would well be available to the State for filing of appeal against acquittal.
iii) Article 29 of the Limitation Act, 1908 makes it clear that in a special law application of Sections 4, 9 to 18 and 22 shall ipso facto apply if they are not specifically excluded from that law, whereas, as per clause (b) above the remaining sections of the Act shall not be applicable in any manner, which obviously includes Section 5 of the Act, therefore, this Court has no jurisdiction to invoke section 5 of the Limitation Act for condoning delay in any appeal against acquittal filed under the Control of Narcotic Substances Act, 1997.

Conclusion: i) Law of limitation being lex fori creates a right in favour of the parties, therefore, cannot be ignored by treating it mere a technicality.
ii) Period of limitation for filing appeal against acquittal by the State under section 48 of the Control of Narcotics Substances Act, 1997 is six months as per Article 157 of the Limitation Act, 1908.
iii) Section 5 of the Limitation Act, 1908 cannot be invoked for condoning delay in any appeal against acquittal filed under the Control of Narcotic Substances Act, 1997.

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17. **Lahore High Court**
Razia Bibi v. Province of the Punjab, through the Home Secretary, and others
Writ Petition No. 24030/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6711.pdf

Facts: The Petitioner's son was serving his sentence in the Central Jail Faisalabad, but Respondent No.3 (Superintendent, Central Jail Faisalabad) shifted him to the

Adiala Jail Rawalpindi. The Petitioner filed an application before Respondent No.3 requesting him to recall his order but the Respondent No.3 did not attend to her request whereupon she approached Respondent No.2 (Inspector General of Police (Prisons), Punjab) without fruition.

Issue: Whether the Government or the Inspector General of Prisons has unfettered powers to transfer a prisoner from one jail to another within or beyond the province?

Analysis: In *Aslam Khaki's* case [PLD 2010 FSC 1], the Federal Shariat Court ruled that Rules 147 through 149 of the Pakistan Prisons Rules, 1978, as well as section 29 of the Prisoners Act, are repugnant to the Islamic Injunctions insofar as the Government has unfettered power to transfer a prisoner from one province to another province without giving notice to the prisoner or without obtaining his consent or without referring to any lawful reason by way of a speaking order conveyed to the detenue and without providing any remedy against exercise of such authority. The Federal Shariat Court declared that the power of the Inspector General of Prisons to transfer a prisoner from one prison to another within the province without notice to the prisoner or obtaining his consent and without providing a right of appeal before an independent tribunal is similarly repugnant to the Islamic Injunctions. Section 29 of Prisoners Act, 1900 and Chapter 7 of the Prison Rules should be recast so that (a) arbitrary, unbridled and unfettered powers are neither given to the Government nor the Inspector General of Prisons; (b) transfers within or beyond the province, without notice or consent, should be avoided unless the gravity of the situation truly demands it. This does not apply to a convict whose release date is approaching, and he is being relocated near his home town following Rule 148, or who is required to be produced in another court in a case being tried elsewhere, or if there are other legitimate grounds such as safety, security or health.

Conclusion: Neither the Government nor the Inspector General of Prisons have unfettered powers to transfer a prisoner from one jail to another within or beyond the province and such transfers, without notice or consent, should be avoided unless the gravity of the situation truly demands it.

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18. **Lahore High Court**
Tariq Mehmood v. Additional Sessions Judge/Ex-officio Justice of Peace and others
Writ Petition No. 68498/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6808.pdf

Facts: The Ex-officio Justice of Peace accepted an application of the Respondent No. 3 under section 22-A of the Cr.P.C. and a direction was issued to the Respondent SHO to register an FIR against the petitioner on the basis of a self-cheque issued by the petitioner. The Petitioner assailed the said order through this petition.

Issues: (i) Whether criminal proceedings under section 489-F PPC can be initiated against the issuer of a cheque made out to oneself in the event of dishonour?
(ii) Whether criminal proceedings under section 489-F PPC can be initiated against the issuer of a cheque in the event of its dishonour when the cheque is addressed as payable to "self or bearer" and the word "bearer" is not scored off?

Analysis: (i) A "self-cheque" has neither been defined by the Pakistan Penal Code nor the Negotiable Instruments Act 1881 (the "NIA"). Essentially, it refers to a cheque where the drawer is also the payee…Section 489-F PPC does not stipulate that the cheque must be in the name of a specific individual. It simply requires that the person drawing the cheque does so from his own account, and the purpose should be for loan repayment or fulfilling a legal obligation. If the cheque is made to "self" only, no offence is committed. Firstly, a person cannot dishonestly issue a cheque to pay money to himself, and secondly, a person cannot give a cheque for the payment of a loan or to fulfil an obligation that one has towards oneself.
(ii) When a cheque is addressed as payable to "self or bearer"(and the word "bearer" is not scored off), any person who qualifies as a "holder in due course" under section 9 of NIA can initiate legal action under section 489-F PPC, provided they satisfy the elements of the offence …. An individual asserting the status of a holder in due course must also substantiate their claim if challenged. Section 118 of the NIA outlines certain presumptions about negotiable instruments, but these do not extend to section 489-F PPC. The latter provision exclusively governs the prosecution of the offence. Significantly, it does not raise any statutory presumption in favour of the holder of a cheque. The Petitioner neither disputes his signature on [subject] Cheque… nor that it is drawn on his account. Instead, he challenges its validity by claiming it does not fulfil the requirements of section 5 of the NIA. In view of the law discussed above, this contention is repelled. Section 154 Cr.P.C. mandates the officer in charge of a police station to register an FIR when informed about the commission of a cognizable offence. It is a settled law that he cannot determine the veracity of the information/allegations at that stage. The application under section 22-A Cr.P.C. submitted by Respondent No.3 *prima facie* indicates the commission of a cognizable offence. Therefore, the Respondent SHO must proceed under section 154 Cr.P.C. and investigate the various aspects of the case in light of this judgment.

Conclusion: (i) Criminal proceedings under section 489-F PPC cannot be initiated against the issuer of a cheque made out to oneself in the event of dishonour.
(ii) Criminal proceedings under section 489-F PPC can be initiated against the issuer of a cheque in the event of its dishonour when the cheque is addressed as payable to "self or bearer"and the word "bearer" is not scored off.

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19. **Lahore High Court**
Ch. Shaukat Ali Noon and another v. Tehzeb Bakers (Pvt.) Limited and others
Civil Original No. 04 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6559.pdf

Facts: This petition was filed by the Petitioners under Section 5 read with Section 286 of the Companies Act, 2017 seeking annulment of fraudulent actions of the private Respondents for ousting the Petitioners from the running affairs of management/business of the Respondent Company.

Issue: i) Which Court has jurisdiction to entertain a petition under Section 5 read with Section 286 of the Companies Act, 2017?
ii) What is the basic requirement for a member or creditor of a company seeking intervention of the High Court under Section 286 of the Companies Act, 2017?
iii) What are the modes of becoming member of a company?
iv) What a member of a company is liable to prove while agitating a petition under Section 286 of the Companies Act, 2017 seeking winding up a company?

Analysis: i) Section 5 of the Companies Act, 2017 envisages that the High Court, having jurisdiction of the place at which the registered office of the company is situated, has jurisdiction under the Act ibid, which term "registered office" as defined under Section 21 of the Act ibid demonstrates the office where all communications and notices would be addressed to the company and a company is required to notify its registered office under Regulation 4 of the Company (General Provisions and Forms) Regulations, 2018.
ii) Section 286 of the Companies Act, 2017 manifests that the basic requirement for seeking intervention of the High Court by a member or creditor of a company is that such member should not have less than ten percent (10%) of issued share capital of a company or such creditor should not have less than ten percent (10%) of the paid-up capital of a company.
iii) In the case of a company limited by shares, the shareholders are the members and there can be no membership except through the medium of shareholding. However, there may be exceptions to this statement as a person may be a holder of shares by transfer, but he will not become a member of the company until such transfer is registered in the books of the company in his favour and his name is entered in the relevant register of members. In a company limited by guarantee, the persons who are liable under the guarantee clause in its Memorandum of Association are members of the company. Likewise, in an unlimited company, the members are the persons who are liable to the company in the event of its being woundup.
iv) While making an application under Section 288 of the Companies Act, 2017, a member or creditor has to satisfy the Court that the affairs of the company are

being conducted, or are likely to be conducted, in (a) an un lawful manner, or (b) fraudulent manner, or (c) a manner not provided for in its memorandum, or (d) a manner oppressive to any of the member(s) or creditor(s), or (e) a manner that is unfairly prejudicial to the public interest.

Conclusion: i) The High Court having jurisdiction over the place at which the registered office of the company is situated would have jurisdiction to entertain an application under Section 5 read with Section 286 of the Companies Act, 2017.
ii) The basic requirement for a member or creditor of a company seeking intervention of the High Court under Section 286 of the Companies Act, 2017 is that such member should hold not less than ten percent (10%) of issued share capital of a company or such creditor should hold not less than ten percent (10%) of the paid-up capital of a company.
iii) Section 2(21) of the Companies Ordinance, 1984 and Section 118 of the Companies Act, 2017 define the modes of becoming a member of a company, firstly by subscribing to memorandum; secondly by allotment of shares and thirdly by entering their name in the register of members of a company in terms of Section 119 of the Act ibid.
iv) A member of a company moving a petition under Section 286 of the Companies Act, 2017, seeking winding up a company, is required to prove that affairs of the Company are being conducted in an unlawful and fraudulent manner in violation of Section 286 of the Act ibid.

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20. **Lahore High Court**
Sui Northern Gas Pipelines Ltd v. Wafaqi Mohtasib etc.
Writ Petition No. 1791 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6628.pdf

Facts: Respondent No.3 filed a complaint before the Respondent No.1/Wafaqi Mohtasib (Ombudsman) regarding the delay on the part of Petitioner in issuance of gas connection, which was accepted by the Respondent No.1. The Petitioner called in question the vires of order passed by the President Secretariat (Public), Aiwan-e-Sadr, Islamabad whereby the findings of the Respondent No.1 were maintained.

Issue: Whether the Wafaqi Mohtasib (Ombudsman) has jurisdiction to entertain a complaint over a matter regarding installation of gas connection and to pass order thereon?

Analysis: Pertinently the office of *"Ombudsman"* was created under Article 3 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (the ***"Order"***), preamble whereof, provides for the appointment of the Wafaqi Mohtasib (Ombudsman) to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration. The object of the *"Order"* was to rectify and injustice done to a person through maladministration on the part of any Agency. The purpose thus was to undo the administrative excesses from within

the administration so that justice could be made available to the wronged persons without such persons being forced to knock at the doors of the Courts of law. Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law…..Moreover, it is emphasized that the matter agitated in the complaint was related to non-provision of new gas connection which has been denied by the Petitioner and such action of the Petitioner being "Agency" in terms of Section 2(1) of the *"Order"* if appearing to be unreasonable, unjust, oppressive and arbitrary shall amount to maladministration falling within the ambit of Article 9 of the *"Order"* for the purpose of exercise of jurisdiction by the *"Ombudsman"* in the matter to undo an act of administrative excess therefore, the *"Ombudsman"* has rightly observed that "the complainant should not be penalized of such a ban where he paid Urgent Fee before cutoff date…"

Conclusion: The Wafaqi Mohtasib (Ombudsman) has jurisdiction to entertain a complaint over a matter regarding installation of gas connection and to pass order thereon.

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21. **Lahore High Court**
Amjad Amin Lodhi v. Addl. District Judge, etc.
W.P. No. 9272 of 2021/BWP
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC6602.pdf

Facts: The petitioner challenged the impugned judgment and decree passed by learned Addl. District Judge, whereby appeal filed by the petitioner challenging the decree passed in favour of the respondent in a family suit had been dismissed.

Issues: i) Whether the Family Court can adopt any procedure which is not against the procedure prescribed by Family Court Act, 1964?
ii) Whether an undecided application going to the root of the matter causes prejudice to the rights of a party if without its decision final judgment is passed against the said party?

Analysis: i) The Family Court can adopt any procedure which is not against the procedure prescribed by Family Court Act, 1964, by treating the same as permissible.
ii) Where an application that can affect the merits of the case is left undecided, the same causes prejudice to the rights of the parties and in that eventuality the court cannot assume that such application was dismissed by the Court before which the same was pending for the reason that such presumption would cause serious prejudice to the rights of either of the parties especially the applicant and final judgment, if any passed, without decision of such like application is not sustainable and the courts in such like eventuality have time and again set-aside

the judgments and remanded the matter for fresh decision after deciding the pending applications(…)In furtherance of what has been discussed above, it is settled by now that application for permission to allow additional evidence goes to the very root of the matter especially when in the present case learned counsel for the petitioner states that the learned appellate court while dismissing his appeal had observed that the petitioner had not led any evidence and in this circumstance, it could be not assumed that the appellate court while neglecting to decide the application for permission to record additional evidence had properly exercised its jurisdiction

Conclusions: i) The Family Court can adopt any procedure which is not against the procedure prescribed by Family Court Act, 1964, by treating the same as permissible.
ii) Yes, an application that can affect the merits of the case if left undecided, the same causes prejudice to the rights of the party against whom final judgment is passed.

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22. **Lahore High Court**
Sabir Hussain v. The State, etc.
Criminal Revision No. 200 of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6503.pdf

Facts: Through criminal revision, the petitioner assailed the order of additional sessions judge, declining his request for providing him with copy of CDR mentioned in the recovery memo though was not available on the record. The learned Judge directed that CDR was collected by SI/I.O. who has yet not been examined as witness in the case, therefore, on his appearance in the dock, the petitioner can well examine the data of CDR if produced in evidence.

Issues: i) Whether documents upon which prosecution can be structured must be supplied to the accused well in time?
ii) When a party refuses to produce a document despite having notice to produce, whether he can afterwards use the said document as evidence?
iii) Whether accused can produce secondary evidence of CDR, if upon notice prosecution does not produce the same?
iv) What is meant by unused material?

Analysis: i) The Supreme Court of Pakistan while dilating upon section 94 of Cr.P.C. has categorically interpreted that the trial Court can summon any document which is essential for the purpose of an inquiry or trial and this can also be done on the application of any party. In this case, CDR of accused persons was collected by Dilawar Hussain SI/I.O. through recovery memo dated 30.11.2020 available in the police but such CDR and a recovery memo were not appended with the report under section 173 of Cr.P.C. It is expected that this evidence would be used against the accused if unfavourable to him; therefore, he cannot be embarrassed with surprise evidence without giving him time and opportunity to prepare his

defence on this evidence. Due process as guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 requires that all the processes supplemented by the legal provisions must be followed by providing a fair opportunity to the accused.

ii) It has further been noticed that once a party calls a document after giving notice to the other for its production which is in the possession of other party and if such party refuses to produce the same, then document cannot be used as evidence later in the process except with the consent of party or the Court, and notice to other party of course can be a situation when an application before the Court is filed for summoning of such document. Article 159 & 160 of Qanun-e-Shahadat Order, 1984 are referred in this respect… The Article 159 [of Qanun-e-Shahadat Order, 1984] connotes the benefits and fatalities of summoning of document for production in the evidence. In this case if CDR is unfavourable to the accused, then he cannot opt to skip its production before the Court, if prosecution demands. Whereas Article 160 [of Qanun-e-Shahadat Order, 1984] clearly speaks that if the prosecution shall not produce CDR before the Court on the notice of accused, then it cannot use such CDR as evidence during the trial except with the consent of accused or the Court. Thus, right of the accused for seeking the data of CDR should not be infringed otherwise this evidence could also not been used by the prosecution during the trial.

iii) Another situation can also be materialized in the circumstances that if on notice prosecution does not produce the CDR, then accused shall be at liberty to produce secondary evidence of such CDR as mandated through Article 76 & 77 of the Qanun-a-Shahadat Order, 1984 and in this respect he can seek the help of Court under section 265-F(7) of Cr.P.C. at later stage.

iv) There is no cavil to the proposition that for taking a prosecutorial decision, police collect material pro and contra of the allegations; some material is used considering it in line with prosecution story and rest is abandoned as irrelevant or in conflict of interest, such material is called unused material. In our law, disclosure of material to the accused under section 241-A or 265-C of Cr.P.C. is limited to one which is being used by the prosecution, but in foreign jurisdictions accused always had a chance to see or seek any unused material to build his defence or to contradict the prosecution case. Now Supreme Court of Pakistan … has widened the scope of material to be provided to the accused if it is essential to adhere to fundamental right of due process and fair trial. The only exception to this material would the 'Diary of proceedings in investigation' which is privileged under section 172 of Cr.P.C.

Conclusions: i) Documents upon which prosecution can be structured must be supplied to the accused well in time.

ii) When a party refuses to produce a document despite having notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

iii) If on notice prosecution does not produce the CDR, then accused shall be at

liberty to produce secondary evidence of such CDR as mandated through Article 76 & 77 of the Qanun-a-Shahadat Order, 1984.

iv) For taking a prosecutorial decision, police collect material pro and contra of the allegations; some material is used considering it in line with prosecution story and rest is abandoned as irrelevant or in conflict of interest, such material is called unused material.

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23. **Lahore High Court**
Muhammad Zafar alias Gulabi v. The State etc.
Criminal Appeal No.71 of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6578.pdf

Facts: Being aggrieved, the petitioner assailed the decision of the trial court through Criminal Appeal wherein he was convicted and sentenced in a murder case and his co-accused was acquitted.

Issues: i) What is the importance of motive in criminal case, if set up by the prosecution?
ii) Whether the cross examination of witnesses should be brief and to the point?
iii) What is the difference between examination-in-chief, cross- examination and re-examination?
iv) Whether there is any time-lag for the examination of witness between the three stages of examination?
v) What are the consequences of frequent appearance of a witness in court for giving evidence in piecemeal?
vi) What are the powers of a judge if defence counsel is not ready to cross examine the witness?
vii) What are the responsibilities of a court during cross examination of a witness?
viii) What is the role of a judge and an advocate towards their conduct to contribute in the legal system?

Analysis: i) Though the prosecution is not required to prove motive in every case, yet the same, if set up, should be proved through independent source of evidence other than the words of mouth and in case of failure to do so, the prosecution should have faced the consequences and not the defence.
ii) The cross examination should always be brief and to the point; practice of prolonged cross examination has been deprecated by the Supreme Court of Pakistan.
iii) In an adversarial criminal justice system, there are two parties in contest, i.e., Prosecution and Defence. Examination of witness, by the party who calls him/her, is called examination-in-chief or direct examination. Examination of that witness by opposite party is called cross examination and any question subsequent to cross examination by the party who calls the witness is called re-examination or re-direct.
iv) All three stages of examination hardly had any time-lag, therefore, any party

who does not come forward to question the witness on a day, the alternate arrangement should be made because examination of a witness is a sacred business which cannot be lingered on so as to jeopardize it through intrigues, mechanicians or invented treacherous plans to kneel down or pressurize the witness.

v) Frequent appearance of witness in court for giving evidence in piecemeal, not only derail the true facts due to fading of memory or other reasons but also had a bad impact on the economy of witness who had to earn bread for his family. It is for that reason usually actual witnesses do not come forward to help improve the quality of evidence. The Judge must understand this social problem.

vi) If the judge thinks that defence counsel is not ready to cross examine the witness, a heavy cost be imposed which is called an adjournment cost fully covered under section 344 of Cr.P.C., or to provide counsel on state expenses but not to struck off the right of cross examination. Similarly, if the lawyers are observing strike or the complainant's counsel seeks time, even then court is required to move forward with suggested measures.

vii) The court must have a close eye on the cross examination of witness and if the counsel on State expenses cannot do the job properly, judge should cross examine the witness. If on such measures of a Judge, the advocate concerned retaliates with a behaviour which attracts misconduct or professional misconduct, it can well be reported to the High Court for an action under Section 54 (2) of the Legal Practitioners and Bar Councils Act, 1973.

viii) The Judge and an advocate are for the system to strive for search of truth; both should re-think and re-define their conduct to contribute in the system, and this is high time to stand synchronized with the international best practices which help to recognize their proper and vital roles. Judges should not work for gain or appreciation; it is a divine duty and its efficient performance always finds a support from the audience, even in the form of a one man's feedback and it is learnt through age and experience that feedback is a gift; so, work, work and work, and win the gift.

Conclusion

i) Prosecution is not required to prove motive in every case, yet the same, if set up, should be proved through independent source of evidence.

ii) The cross examination of witnesses should be brief and to the point.

iii) Examination of witness, by the party who calls him/her, is called examination-in-chief or direct examination. Examination of that witness by opposite party is called cross examination and any question subsequent to cross examination by the party who calls the witness is called re-examination or re-direct.

iv) All three stages of examination hardly had any time-lag.

v) Frequent appearance of witness in Court for giving evidence in piecemeal, not only derail the true facts due to fading of memory or other reasons but also had a bad impact on the economy of witness.

vi) Judge should impose heavy cost in case of adjournment by defence counsel or to provide counsel on state expenses but not to struck off the right of cross

examination.
vii) The court must have a close eye on the cross examination of witness.
viii) The Judge and an advocate are for the system to strive for search of truth; both should re-think and re-define their conduct to contribute in the system.

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24. **Lahore High Court**
Kashif Nawaz, etc. v. State, etc.
Criminal Appeal No. 531/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6660.pdf

Facts: This criminal appeal striked against the order passed by learned Additional Sessions Judge, whereby the appellants were convicted under section 180 PPC and sentenced to undergo fifteen days' simple imprisonment along with fine in default to further undergo simple imprisonment for three days.

Issues: i) Whether obtaining signatures of the accused on the charge sheet is legal requirement and if the accused does not sign the charge sheet, whether he can be convicted under section 180 of PPC?
ii) Whether procedure under section 195 of Cr.P.C., authorizes the court to convict the accused there and then?
iii) When an offender is punished under section 180 PPC pursuant to section 480 of Cr.P.C., whether appeal against such order is provided?

Analysis: i) It has been observed that wherever the law requires obtaining the signatures of any person, it has specifically been prescribed under the law. The case reported as "THE STATE versus SARDAR AHMED" (PLD 1967 Karachi 75) throws light that according to provisions of sections 154 and 200 of the Code the complainant is required to sign the statement, whereas, sections 342 and 364 of the Code require obtaining the signatures of the accused but there is no such requirement under sections 243 or 265-E of the Code. Obtaining signatures of the accused on the charge sheet is not the legal requirement but it is in practice since long, therefore, obtaining signatures on the plea of an accused plainly conforms to his admission to charge or otherwise, therefore, it cannot be considered as an illegality; however, if the accused does not sign the charge sheet he cannot be convicted under section 180 of PPC.
ii) The argument of learned Prosecutors that procedure under section 195 of the Code authorizes the learned Judge to convict the accused there and then, is repelled in the light of legal provisions under Sections 480 and 482 of the Code, specially legislated for the purpose to deal with contempt of lawful authority of the Court. If the court considers that any disobedience to his order has been committed pursuant to sections mentioned therein then the offender can be imposed a fine of Rs.200/- only after following the procedure under section 481 of the Code but if the Court considers that more severe sentence should be imposed then of course the Court shall send the complaint to the Magistrate for

the purpose of trial under section 482 of the Code.
iii) The contention of learned Prosecutors that in petty offences no appeal lies as per mandate of section 413 of the Code is also repelled because when an offender is punished under section 180 PPC pursuant to section 480 of the Code then appeal against such order is provided under section 486 of the Code.

Conclusion: i) Obtaining signatures of the accused on the charge sheet is not the legal requirement and if the accused does not sign the charge sheet he cannot be convicted under section 180 of PPC.
ii) In the light of legal provisions under Sections 480 and 482 of Cr.P.C., procedure under section 195 of Cr.P.C., does not authorize the court to convict the accused there and then.
iii) When an offender is punished under section 180 PPC pursuant to section 480 of Cr.P.C., then appeal against such order is provided under section 486 of Cr.P.C.

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25. **Lahore High Court**
Sumera Rasheed v. The State, etc.
P.S.L.A No.07/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6664.pdf

Facts: This petition for special leave to appeal against acquittal of respondents No.2 & 3 in a private complaint under section 500 read with sections 193/195/196/211/34 PPC had been filed for setting aside the impugned order of the Additional Sessions Judge passed under section 265-K of Cr.P.C.

Issues: i) What is the concept of perjury and its difference with act of lying which is used for deception?
ii) Whether Court of Session can take direct cognizance of an offence which is not otherwise triable by it unless the case is sent to it by the learned Magistrate?
iii) Whether offence under section 500 of PPC shall be tried by Court of Sessions when the legislature has specifically inserted section 502-A in PPC vesting special jurisdiction in such Court?
iv) What is the meaning of ‘giving false evidence and “fabricating false evidence”?
v)What are the situations of punishment for giving false evidence or fabricating false evidence?
vi) What is meant by "Judicial proceeding"?
vii) Whether defamatory statement made to a police authority can be made basis of defamation?
viii) Whether trial court can proceed to take cognizance of offences under sections 193/195/196/211 PPC?
ix) Whether perjury is a vice which stigmatizes the judicial system and responsible for failure of justice mission of a country?

Analysis: i) Research shows many motivators or incentives for an individual to tell a lie. Paul Ekman (1985) theorized there are eight motives for an individual to lie: be polite, avoid punishment, gain a reward, protect someone, protect oneself, maintain privacy, or just because he or she can. Lies told to make an individual feel better or to be polite were often referred to as white lies. Ekman argued that these types of lies were not necessarily lying because the individual was not attempting to be deceitful. On occasion, lies were necessary to protect oneself or another, avoid embarrassment, or to maintain privacy. These lies could include pure lies, such as a child lying to a stranger or hospital staff refusing to answer questions about a patient.. Whereas 'Perjury' is a criminal charge. It is the act of lying or making verifiably false statements on a material matter under oath or affirmation in a court of law or in any sworn statements in writing (Black, 1990). A violation of specific criminal statutes; it is not sufficient for a statement to be false to meet the threshold of perjury; it must be an intentionally false statement regarding a material fact, – a fact relevant to the case at hand. Consequently, not all lies under oath are considered perjury...At common law, perjury was considered one of the most odious of offenses. According to William Hawkins, perjury is mother of all Crimes whatsoever the most 'Infamous and Detestable'. Under the Code of Hammurabi, the Roman law, and the medieval law of France, the punishment for bearing falsewitnesswas death; in the colony of New York, punishment included branding the letter 'P' on the offender's forehead. In recent studies of public attitudes toward crime, perjury continues to be viewed as a very serious offense.

ii) Section 500 of PPC is triable by Court of Session on complaint filed by the aggrieved person whereas offences under sections 193/195/196/211 PPC are tried differently under section 476 of Cr.P.C. only on the complaint of concerned Court or the public servant, therefore, joining of two different modes of trial in one complaint is a serious issue. Though section 502-A PPC authorizes Court of Session to try the offence under section 500 of PPC but as per section 193 of Cr.P.C. Court of Session cannot take direct cognizance of an offence unless the case is sent to it by the learned Magistrate... therefore, direct cognizance itself was a ground for dismissal of complaint or acquittal of accused as the case may be.

iii) In the second schedule of Cr.P.C. section 500 of PPC was shown as triable by Court of Session and not only this section but many offences in the second schedule of Cr.P.C. are mentioned as triable by Court of Session, and as per mandate of law if such offences are not punishable with death, shall be tried by the Magistrate Section-30. With this scope, offence under section 500 of PPC then must have been tried by Magistrate section 30 but in my view when the legislature has specifically inserted section 502-A in PPC vesting special jurisdiction in Court of Session, offence under section 500 of PPC shall be tried by Court of Session and not by Magistrate Section-30…

iv) Section 191 PPC states that;"Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a

declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence." This section talks about making of false statement in following three situations when; (1) legally bound by oath to state truth or (2) legally bound by express provision of law to state truth; (3) makes declaration upon any subject…Section 192 PPC explains the situations of 'fabricating false evidence' as under; "Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a falsestatement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to fabricate false evidence…Requirement of this section shall be met only if there is an intention to create circumstance, false entry or document with the expectation of its being used as evidence in a judicial proceeding, or in any other proceeding by law before any public servant or an arbitrator, and such circumstance, false entry or document facilitated to render an erroneous opinion for result of that proceedings.

v) The punishment for giving false evidence or fabricating false evidence has been divided into two situations; first when it is given in any stage of judicial proceedings and second in any other case.

vi) It has been defined in section 4(m) of the Code of Criminal Procedure, 1898 as under; "Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath." If by law and at the discretion of the Court evidence is taken on oath it becomes a stage of judicial proceedings. Section 193 PPC as per explanations 2 & 3 creates a room for judicial proceedings even during investigation being conducted under the law or on the direction of a Court of Justice, but obviously only those false statements during investigation would be considered as giving false evidence, which are intentionally made and the maker by law is bound to state the truth on the subject, or on the same legal premise submit any signed statement, affidavits or declarations…

vii) It has been observed that Section 499 PPC though authorizes a person to bring a complaint against a person who entirely makes defamatory statement to harm his reputation but when such statement is made to a police authority, it certainly falls within the exception of section 499 PPC, therefore, cannot be made basis of defamation and such statement at the most could be used to counter malicious prosecution if they are tested through judicial scrutiny…

viii) As per section 195 of Cr.P.C. if such offences have been committed in, or in relation to, any proceeding in any Court, cognizance can only be taken on the complaint in writing of such Court or of some other Court to which such Court is subordinate. So far statements have not been formalized as part of judicial

proceedings in the Court, therefore, Court had no authority to take cognizance of the matter. Even applicability of sections 195/196 of PPC is under question because statements as an evidence have not been used for procuring conviction nor corruptly used as evidence.

ix) Perjury is a vice which stigmatizes the judicial system and responsible for failure of justice mission of a country. Its impact on the victims of crime or the innocent accused persons psychologically or socially is immeasurable and loss is usually irreparable, therefore, it must be eradicated with sound measures within the parameters of law. It has been learnt that truthful witnesses hardly have their say in the system as clutched in the hands of powerful persons, who procure stock witnesses to lead the fate of case and Courts are to search out the truth from half-truth, based on crippled evidence. A study is necessary and required to understand how the cases are structured with the help of police by the powerful elites and are designed to set the list of witnesses of their choice to continue with the prosecution or withdraw at any time to leave astray the Court to reach out the justice

Conclusion: i) See above in analysis portion.

ii) Court of Session cannot take direct cognizance of an offence which is not otherwise triable by it unless the case is sent to it by the learned Magistrate.

iii) Yes, offence under section 500 of PPC shall be tried by Court of Sessions when the legislature has specifically inserted section 502-A in PPC vesting special jurisdiction in such Court.

iv) See above in analysis portion.

v) There are two situations of punishment for giving false evidence or fabricating false evidence i.e first when it is given in any stage of judicial proceedings and second in any other case.

vi) See above in analysis portion.

vii) Defamatory statement made to a police authority cannot be made basis of defamation.

viii) If such offences have been committed in, or in relation to, any proceeding in any Court, cognizance can only be taken on the complaint in writing of such Court or of some other Court to which such Court is subordinate.

ix) Yes, perjury is a vice which stigmatizes the judicial system and responsible for failure of justice mission of a country.

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26. **Lahore High Court**

M/s Lahore Carpet Manufacturing Company v. Muhammad Jamil & 03 others

W. P. No. 40697 / 2023

Mr. Justice Abid Hussain Chattha

https://sys.lhc.gov.pk/appjudgments/2023LHC6616.pdf

Facts: Instant writ petition along with connected writ petitions were filed against judgments passed by Punjab Labour Appellate Tribunal, Lahore involving

identical question of law and similar set of facts.

Issues: i) Whether scope of the Punjab Industrial Relations Act, 2010 is wider and broader than the Wages Act?
ii) What legislation existed prior to Punjab Industrial Relations Act, 2010?
iii) Whether PLAT has revisional jurisdiction under Section 47(5) of PIRA with respect to order of the Labour Court passed in Appeal under Section 17 of the Wages Act?
iv) What is nature of revisional jurisdiction of PLAT?

Analysis: i) The conjunctive reading of the provisions of law under the Wages Act and PIRA make it manifestly evident that the scope, canvas and area of operation of PIRA is much wider, broader and general in comparison to the Wages Act. The latter is limited to due determination of wages to certain classes of persons employed in industrial or commercial establishment, whereas, the persons employed in any establishment or industry which are not specifically excluded from the application of PIRA in the Province of the Punjab can bring host of multifarious grievances with respect to any right guaranteed or secured to a worker by or under any law before the Labour Court.
ii) The Industrial Relations Ordinance, 1969 was repealed through the Industrial Relations Ordinance, 2002 which in turn was repealed by the Industrial Relations Act, 2008. After the devolution of further subjects to the Provinces under the Constitution (Eighteenth Amendment) Act, 2010, the Industrial Relations Act, 2008 was repealed and the Industrial Relations Act, 2012 was promulgated at the Federal level. In the Province of the Punjab, the Punjab Industrial Relations Ordinance, 2010 was promulgated which was repealed by PIRA as successor law. Acknowledging the afore-noted transition, Section 79(1)(c) of PIRA with the title of 'repeal and savings' states that notwithstanding the repeal of Industrial Relations Act, 2008, every reference to the repealed Industrial Relations Act, 2008 shall be construed as reference to the Industrial Relations Act, 2008.
iii) The Labour Court under the command of Section 17 of the Wages Act is competent to hear appeals against the Authority constituted under Section 15 of the Wages Act. Similarly, PLAT constituted under Section 47 of PIRA exercises both appellate and revisional powers with respect to orders passed by the Labour Court subject to various provisions of PIRA. Section 47(5) of PIRA vests revisional power upon PLAT with respect to 'any case or proceedings' under PIRA regarding an 'order' which includes a 'final order' or 'final judgment' and may pass such order in relation thereto, as it thinks fit. As such, there is no cavil to the proposition that PLAT is vested with revisional powers with respect to an order passed by the Labour Court and the same includes such orders which the Labour Court may pass under any other law to which its jurisdiction extends such as its orders passed in appeal under Section 17 of the Wages Act.
iv) Bare perusal of Sections 47(5), (6) & (7) of PIRA reveal that revisional jurisdiction of PLAT is inherently suo motu. However, where PLAT proceeds under its revisional jurisdiction, it is required to issue notice and hear the other

side in the event of any adverse order against it and follow such procedure as may be 'prescribed'… Revisional jurisdiction vested with PLAT is supervisory in nature in order to enable PLAT placed at the apex of hierarchy of Tribunals setup by the Ordinance, 1969 to examine the legality or propriety of proceedings taken or an order passed by the Labour Court. Therefore, it follows from the above that there is no bar upon any party in laying the information before PLAT in the form of a Revision Petition not as a matter of right but in the discretion of PLAT which in turn may decide to assume revisional jurisdiction depending upon the facts and circumstances of each case warranting exercise or otherwise of revisional jurisdiction. Accordingly, if PLAT exercises its revisional powers, as it did in the titled and connected Petitions, PLAT is acting within its lawful revisional jurisdiction to examine the correctness, legality or propriety of any order passed by the Labour Court.

Conclusion: i) Scope of the Punjab Industrial Relations Act, 2010 is wider and broader than the Wages Act.
ii) See under analysis no. 02
iii) PLAT is vested with revisional powers with respect to an order passed by the Labour Court and the same includes such orders which the Labour Court may pass under any other law to which its jurisdiction extends such as its orders passed in appeal under Section 17 of the Wages Act.
iv) Revisional jurisdiction of PLAT is inherently suo motu and is supervisory in nature in order to enable PLAT placed at the apex of hierarchy of Tribunals.

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27. **Lahore High Court**
Madrissa-Tul-Madina v. Lahore Development Authority, etc.
Civil Revision No. 74007 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6496.pdf

Facts: The petitioner challenged order of the District Judge, whereby the application of one of respondents under Section 24 of the Code of Civil Procedure, 1908 was allowed to the effect that the petitioner's appeal as well as a revision of one of respondents pending before two different Courts were withdrawn by the District Judge and fixed before himself.

Issues: i) If an application under Section 24 of the Code of Civil Procedure, 1908 is made for consolidation of two cases pending before two different courts, without raising reservations against judicial officers concerned, then whether the District Judge may withdraw such cases from such courts to fix those before him?
ii) Whether District Judges or Additional District Judges must show restraint in recording any observation in respect of the conduct of the subordinate Judicial Officers, while hearing the cases before them?

Analysis: i) Section 24 of the Civil Procedure Code, 1908, does not specify any ground on

which the case can be transferred from one Court to another. There is no clog under the law debarring the District Judge from withdrawing cases from other courts subordinate to him and retaining/fixing those before himself.
ii) Judiciary at District level is the backbone of the judicial system in the country and is performing the onerous task of dispensing justice. District Judges or the learned Additional Judges, while hearing the cases before them, must show restraint in recording any observation in respect of the conduct of the subordinate Judicial Officers.

Conclusion: i) The District Judge, on his own or on the application of a litigant, is empowered to transfer the case from one Court to another Court subordinate to him or hear it himself.
ii) District Judges or Additional District Judges must show restraint in recording any observation in respect of the conduct of the subordinate Judicial Officers, while hearing the cases before them.

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28. **Lahore High Court**
Muhammad Hanif Through LRs v. Additional District Judge etc.
Writ Petition No. 19794/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6482.pdf

Facts: The predecessor-in-interest of the petitioners filed an eviction petition against one of the respondents from the rented shop under the Punjab Rented Premises Act, 2009 on grounds of default in payment of rent as well as failure of said respondent to execute formal written tenancy agreement with predecessor of the petitioners. Upon remand, in the third round of litigation, the Rent Tribunal accepted the ejectment petition followed by appeals of both sides and the Appellate Court allowed the appeal preferred by the respondent side while dismissing the appeal of the petitioners. The present constitutional petition emanated from the third round of litigation between the parties.

Issue: What would be the consequence of not mentioning alleged *pagri* amount in the tenancy agreement?

Analysis: Section 2(e) of the Punjab Rented Premises Act, 2009 defines that "*pagri*" includes any amount received by a landlord at the time of grant or renewal of a tenancy except advance rent or security. Section 6 of the Act ibid contemplates that the *pagri* amount, if any, paid by a tenant is to be recorded in the tenancy agreement and includes payment to the landlord. Absence of any reference in the tenancy agreement about the *pagri* agreement earlier executed indicates that both the agreements are not so intertwined and interrelated to form part of one and the same transaction and to be read conjunctively. This fact alone is sufficient to create an adverse inference in relation to the genuineness of the *pagri* agreement as well as the tenancy agreement.

Conclusion: The amount paid or property transferred in terms of the *pagri* agreement, which is not recorded in the tenancy agreement, cannot be treated as *pagri* under Section 2(e) read with Section 6 of the Punjab Rented Premises Act, 2009.

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29. **Lahore High Court**
Agritech Limited v. Federation of Pakistan, etc.
Writ Petition No. 41067/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6532.pdf

Facts: The petitioner challenged the pre-refund audit proceedings and the consequent show-cause notice issued by the respondent-FBR, with the averments that the same be declared illegal, unlawful and violative of the provisions of Section 10 of the Sales Tax Act, 1990.

Issues: i) What is the scope of Section 10 of the Sales Tax Act, 1990?
ii) Whether the elapse of time stipulated in Section 10 of the Sales Tax Act, 1990 ipso facto renders the refund claim admissible and due?
iii) What are the consequences of delay in deciding the refund claim?
iv) Whether Constitutional petition against a show-cause notice is maintainable?

Analysis: i) Insofar as the first legal question formulated hereinabove is concerned, it is evident from bare reading that Section 10(1) of the Act deals with the refund claim of zero-rated local supplies and/or the exports. Proviso to Section 10(1) deals with category of cases other than those provided under Section 10(1) ... While the time period envisaged under Section 10(1) pertains to the excess input tax adjustment emanating out of zero-rated local supplies or exports, proviso to Section 10(1), deals with claim of the other taxpayers. … This in itself connotes that Section 10 is not a self-containing and self-executory provision rather the admissibility of the refund claim is required to be determined before approving the same. It is further fortified by the words used in Section 10(1) i.e., "in such manner and subject to such conditions as the Board may, by notification in the official Gazette specify", shows that the provision is not self-executory rather the same is to be actualized in such manner and subject to such conditions as the Board may specify.

ii) It is the case of the petitioner that in any claim for refund under the Act, once no objection is raised by the respondent-FBR, within the stipulated time period provided under the law (i.e., Section 10 of the Act), the claim of the claimant/tax-payer (the petitioner in the instant case) crystalizes into verified and approved claim and cannot be retracted from or denied subsequently by the department and only post refund audit proceedings can be initiated. By this, the petitioner wants this Court to construe Section 10 as a self-containing and executory provision and failure to object to the claim of the petitioner within the stipulated time to operate as a deeming provision. Argument is misconceived to say the least. Section 10(3)

of the Act empowers the respondent-FBR to initiate and carry out enquiry, audit and/or investigation into any claim for input tax credit or refund in cases where the tax authorities have reason to believe that the claim for input tax credit or refund is not admissible to the claimant. It will be imperative to mention that the Rules have been promulgated to actualize and operationalize the provisions of law contained in Section 10 of the Act and Chapter V contains the relevant provisions.

iii) As a matter of fact, there is no consequence for the non- adherence to the time-limit provided for conclusion of pre-refund audit proceedings under Section 10(3) have been provided which hands out a tool to the officials of the respondent-FBR to delay the rights of the tax payers. As a result, the respondent-FBR and its officials may continue to linger on and protract the pre-audit proceedings for unlimited and unrestricted time period leaving the tax payers not only in limbo but also depriving the taxpayer of his property in violation of the Article 23 and 24 of the Constitution. It is also noted that while Section 11 and other enabling provisions of law in vogue provide for the additional tax and/or penalty for non-payment and/or short payment of tax by the tax payers, Section 67 obligates that failure to make payment within the time period provided under Section 10 would entitle the taxpayer to an additional sum equal to KIBOR on so much of the amount of refund which is not paid within the time stipulated. However, the first proviso to Section 67, as spelled out above, is a limiting proviso which eclipses the applicability of Section 67 till the proceedings (pre-refund audit) as to admissibility of the refund is accepted or rejected and thus takes back to the significance of Section 10(3) and the time-limit provided therein. (…) non-adherence by the respondent-FBR to the time-limit envisaged under Section 10(3) of the Act in concluding the refund claims amounts to concomitant violation of the fundamental rights of the tax-payers guaranteed under Articles 23 and 24 of the Constitution. No consequences of such non-adherence have been envisaged under the Act. This aspect of the matter is a policy issue and requires legislation, which is for the Federal Government to examine on priority basis. Therefore, the Federal Government is directed to consider the possibility of initiating necessary legislation on the subject by providing the consequences of non-adherence to the provision of Section 10(3) so that the rights of the tax payers can be safeguarded.

iv) It is settled law which has been re-affirmed and reiterated by the Supreme Court in case of Commissioner IR, supra that the show-cause notice is an opportunity to a person to explain a particular position, which in itself, is actualization of the principle of audi alterm partem lying on the larger spectrum of principles of natural justice. Constitutional petition against a show-cause notice can be filed only if the same is barred by law or amounts to abuse of process of the Court. As discussed above, in the present case, the show-cause notice issued to the petitioner is not barred by law rather the provisions of law provide for the pre-refund audit if the department has reasons to believe that claim of input tax credit or refund is not admissible. The term “reason to believe” has been repetitively interpreted by the Superior Courts as something on a higher pedestal

than mere suspicion and/or allegations that is tangible to trigger a prudent mind to develop reasons in his mind on a tentative pedestal fulfils the test of "reason to believe". This takes this Court to the impugned show cause notice which spells out the issues the explanation and/or reply whereupon has been sought from the petitioner to explain its position.

Conclusions: i) See analysis portion.
ii) Elapse of time stipulated in Section 10 of the Sales Tax Act, 1990 ipso facto does not render the refund claim admissible and due, as section 10(3) of the Act empowers the FBR to initiate and carry out enquiry, audit and/or investigation into any claim for input tax credit or refund.
iii) No consequences for the non-adherence to the time-limit provided for conclusion of pre-refund audit proceedings under Section 10(3) have been envisaged under the Act, however, such non-adherence amounts to concomitant violation of the fundamental rights of the tax-payers guaranteed under Articles 23 and 24 of the Constitution.
iv) Constitutional petition against a show-cause notice can be filed only if the same is barred by law or amounts to abuse of process of the Court.

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30. **Lahore High Court**
Muhammad Faisal Labar v. Federation of Pakistan, etc.
W. P. No. 80447/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6592.pdf

Facts: The petitioner challenged the appointment of respondent No.4 as Election Commissioner for holding and conducting election of the Chairman of the Pakistan Cricket Board.

Issues: i) Whether an advocate can hold office of Election Commissioner for holding and conducting election of the Chairman of the Pakistan Cricket Board if he does not get his licence suspended?
ii) What is effect if an advocate fails to get his license suspended within one month from the date of his employment in other profession or service?
iii) Which authority has power to proceed against a lawyer for misconduct in terms of the provisions of the Act, 1973?
iv) Whether assigning of task to Election Commission for the composition of the Board of Governor violates the PCB Constitution and the powers of the Management Committee?

Analysis: i) The qualifications of a person to be appointed as Judge of a High Court or the Supreme Court of Pakistan, as the case may be, has been made basis for the qualification to be appointed as the Election Commissioner. The qualification of a Judge of a High Court and Supreme Court have been stipulated under Articles 193 and 177 of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") respectively. Perusal of the said provisions of the Constitution

renders it succinctly clear that practice as an advocate for 10 years, inter alia, is condition precedent, in case of an advocate, to be qualified to be elevated as Judge of a High Court in terms of Article 193, whereas Article 177 of the Constitution envisages that a person who, inter alia, has an experience of 15 years as practicing lawyer is eligible to be appointed as Judge of the Supreme Court. It is the existence of these qualifications which are required to become Judge of a High Court or the Supreme Court, as the case may be, and the suspension of the license to practice law would ipso facto eat away the eligibility to become the Judge of the said Courts and resultantly, eligibility to be appointed as the Election Commissioner, under the PCB Constitution. The suspension of the license would thus ipso facto denude respondent No. 4 to be qualified to be appointed as the Election Commissioner. Therefore, the said interpretation as pleaded by the petitioner, will not only defeat the eligibility criteria envisaged under Paragraph 29 of the PCB Constitution but by its very nature and character, the argument of learned counsel for the petitioner is self-destructive.

ii) Rule 108 Pakistan Legal Practitioners and Bar Councils Rules, 1976 provides that an advocate shall apply to the Bar Council concerned that his license may be suspended as he intends to join some other business, service, profession or vocation. It further lays down that failure to do so within a period of one month shall amount to professional misconduct under the Pakistan Legal Practitioners and Bar Councils Act, 1973. Thus, it is clear that an advocate is required to get his licence suspended within a period of one month from date of said appointment and failure whereof may entail misconduct, if any.

iii) Proceeding against an advocate on account of the misconduct is the power of the Bar Council concerned in terms of the provisions of the Act, 1973 the Pakistan Legal Practitioners and Bar Councils Act, 1973.

iv) Perusal of Paragraph 10 of the PCB Constitution amply reveals that all the members of the BoG except the Chairman are either exofficio members and/or to be appointed from the service organization or department and/or by the Patron, as the case may be, and the Management Committee and/or the Election Commissioner has no direct role in it to play. However, the composition of the BoG is not complete till the election of the Chairman is held. Once the Chairman has been elected, only then the composition of the BoG becomes complete. Thus, the primary task assigned to respondent No.4 as the Election Commissioner by using the words “composition of BoG and the conduct of free and fair election of Chairman, PCB” clearly refers to the conduct of free and fair election of the Chairman of the PCB to complete the composition of the BoG. Therefore, no illegality or irregularity has been committed through impugned notification.

Conclusion: i) An advocate can hold office of Election Commission Election Commissioner for holding and conducting election of the Chairman of the Pakistan Cricket Board even if he does not get his license suspended.

ii) An advocate is required to get his licence suspended within a period of one month from date of said appointment and failure whereof may entail misconduct.

iii) Proceeding against an advocate on account of the misconduct is the power of the Bar Council concerned in terms of the provisions of the Pakistan Legal Practitioners and Bar Councils Act, 1973.
iv) Assigning of task to Election Commission for the composition of the Board of Governor does not violate the PCB Constitution and the powers of the Management Committee.

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31. **Lahore High Court**
State Life Insurance Corporation of Pakistan, etc. v. Mst. Undlus Begum
R.F.A No. 16370/2019
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6672.pdf

Facts: The appellant filed instant appeal u/s 96 of CPC against the judgment passed by the learned Additional District Judge whereby suit of respondent was decreed.

Issues: i) Whether it would be fair to deprive other party of a valuable right if a party has been thoroughly negligent in implementing its rights and availing its remedies before the right forum?
ii) Whether Insurance Act or Ordinance provided any time frame for the insurer to accept or reject the claim of the insured?
iii) Whether the insurer can claim insurance claim as time barred when insurer itself took seven years in repudiation?
iv) Whether a void order is required to be challenged?
v) Whether condonation of delay can be claimed as a matter of right?
vi) How the court exercises its power of granting or refusing to grant the condonation of delay/extension of time?
vii) When the defence of equitable estoppel in respect of enforcement of Article 86(a) of the Limitation Act is available to the claimant?
viii) What options are available to litigant on return of plaint under O.VII R. 11 of CPC?
ix) Whether compound interest can be awarded u/s 47-B of Insurance Act?

Analysis: i) Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable rather unjustifiable to take away that right on the mere asking of the applicant, particularly, when the delay is directly a result of negligence, default or inaction of that party. If a party has been thoroughly negligent in implementing its rights and availing its remedies before the right forum, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.
ii) Neither under the Insurance Act nor under the Ordinance, any time frame has been envisaged for the insurer to accept or reject the claim of the insured.
iii) In the present case, the claim was repudiated seven years after the death of the husband of the respondent. Argument of learned counsel for the appellant that a

claimant must approach the relevant forum within three years from the date when claim arises without waiting for the repudiation while placing reliance on case of Pak Suzuki Motors Company supra is misconceived inasmuch as the said case was related to the limitation period provided under the Punjab Consumer Protection Act, 2005 that is a special statute and not under the Limitation Act. Even otherwise, the contracts forming subject matter of the consumer protection laws are purely commercial in nature and not based on the doctrine of good faith (uberrimae fidei)… In insurance claims, more particularly one before this Court, unless a claimant is aware of reasons for rejection/repudiation of his/her claim, filing of the suit under the law becomes meaningless. Mere fact that the appellant took seven years to reject the claim of the respondent based on simple service record of the deceased that was in the custody of the appellant belies logic as to what caused the delay for the appellant to reach the conclusion that the respondent's claim is not payable and hence, the appellant cannot set up the defence on ground of limitation.

iv) It is settled principle of law that even a void order is required to be challenged by the aggrieved party.

v) The condonation of delay is a matter of concession and cannot be claimed as a matter of absolute right.

vi) It is the existence of sufficient cause for not filing the proceeding in time before the proper forum that must be justified to the satisfaction of the Court to exercise its power of granting or refusing to grant the condonation of delay/extension of time. If the condition is not satisfied, there is no room for the applicability of the power to condone the delay. Thus, where no cause has, at all, been shown that is, where no explanation has been given for filing the proceeding out of time, there arises no opportunity of considering the sufficiency or otherwise of the reasons for that fact, and there cannot be any room for the exercise of the discretion given under the law. If the condition is satisfied, then the Court gets a discretionary power to grant or refuse the prayer for extension of time. What is sufficient cause, being a question of discretion, depends upon the facts and circumstances of a particular case… Time spent pursuing the claim and/or appeal before a wrong forum, in good faith and with due diligence in the opinion of this Court constitutes sufficient cause for condonation of delay.

vii) In insurance matters, the conduct of the insurer to induce the claimant to wait for the decision and then refusal/repudiation of the claim at a belated stage provides the defence of equitable estoppel in respect of enforcement of Article 86(a) of the Limitation Act against the claimant, which has always been considered as pivotal in deciding the defence of limitation.

viii) Once a plaint is returned under Order VII, Rule 10, CPC, a litigant has option to either file the same before the proper forum or institute new suit.

ix) There is no cavil to the preposition that the compound interest cannot be awarded under Section 47-B of the Insurance Act as the same is no more on the statute books after decision in case reported as "Dr. Mahmood-ur Rahman Faisal and others v. Secretary, Ministry of Law, Justice and Parliamentary Affairs,

Government of Pakistan, Islamabad and others" (PLD 1992 FSC 1) that has been upheld by the Supreme Court of Pakistan in case reported as "Dr. M. Aslam Khaki v. Syed Muhammad Hashim and 2 others" (PLD 2000 SC 225)

Conclusion: i) It would be unfair to deprive other party of a valuable right if a party has been thoroughly negligent in implementing its rights and availing its remedies before the right forum.
ii) Neither under the Insurance Act nor under the Ordinance, any time frame has been envisaged for the insurer to accept or reject the claim of the insured.
iii) The insurer cannot claim insurance claim as time barred when insurer itself took seven years in repudiation.
iv) It is settled principle of law that even a void order is required to be challenged by the aggrieved party.
v) The condonation of delay is a matter of concession and cannot be claimed as a matter of absolute right.
vi) It is the existence of sufficient cause for not filing the proceeding in time before the proper forum that must be justified to the satisfaction of the Court to exercise its power of granting or refusing to grant the condonation of delay/extension of time. If the condition is not satisfied, there is no room for the applicability of the power to condone the delay.
vii) In insurance matters, the conduct of the insurer to induce the claimant to wait for the decision and then refusal/repudiation of the claim at a belated stage provides the defence of equitable estoppel in respect of enforcement of Article 86(a) of the Limitation Act against the claimant.
viii) Once a plaint is returned under Order VII, Rule 10, CPC, a litigant has option to either file the same before the proper forum or institute new suit.
ix) The compound interest cannot be awarded under Section 47-B of the Insurance Act as the same is no more on the statute books as being declared repugnant to injunctions of Islam by Federal Shariat Court.

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32. **Lahore High Court**
Tanveer Sarwar v. Federation of Pakistan through Ministry of Law and Justice & another
Writ Petition No. 51021 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6801.pdf

Facts: The petitioner invoked jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution') praying for a direction to the Election Commission of Pakistan ('ECP') to file complaints against all members of National and Provisional Assemblies who have not disclosed Toshakhana gifts in their statements of assets and liabilities.

Issues: i) Whether it is the obligation of every member of an Assembly and Senate to submit to a copy of his statement of assets and liabilities?

ii) What is the object of prescribing period of limitation for the offence of corrupt practice under section 137(4) of the Elections Act, 2017?
iii) What is the pre-condition for the exercise of its jurisdiction by the High Court under Article 199 of the Constitution?

Analysis: i) From perusal of section 137(1) of the Elections Act, 2017, it is abundantly clear that an obligation has been cast upon every Member of an Assembly and Senate to submit to the ECP, on or before 31st December each year, a copy of his statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June. Failure to submit the aforementioned statement of assets and liabilities by 15th January renders the Member of an Assembly or Senate dysfunctional and such penal consequences, as provided in section 137(3) of the Elections Act, 2017, which makes the requirement to file the statement clearly mandatory.
ii) The object of prescribing period of limitation for the offence of corrupt practice under section 137(4) of the Elections Act, 2017 is to quicken the prosecution of complaints and to rid criminal justice system of inconsequential cases displaying lethargy, inertia or indolence and to make it more orderly, efficient and just.
iii) Jurisdiction of the High Court under Article 199 of the Constitution is subject to limitations specified therein. A High Court may exercise jurisdiction under the said Article where it is satisfied that no other adequate remedy is provided by law to any aggrieved party for redressal of its grievance raised in his petition.

Conclusion: i) It is an obligation upon every Member of an Assembly and Senate to submit to the ECP, on or before 31st December each year, a copy of his statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June.
ii) See above in analysis clause.
iii) High Court exercises its jurisdiction under Article 199 of the Constitution where it is satisfied that no other adequate remedy is provided by law to any aggrieved party for redressal of its grievance raised in his petition.

LATEST LEGISLATION / AMENDMENTS

1. Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 is issued in superession of Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023 regarding the revised water rate for irrigation purposes w.e.f Rabi Season, 2023-2024.
2. Notification No. SOP (WL) 12-12/2022 dated 05.12.2023 issued by the forestry, wildlife and fisheries Department by which the Governor of the Punjab made rules under section 46 of the Punjab Wildlife (Protection, Preservation, Conversion and Management) Act, 1974.

3. Notification No. SO (CAB-I) 2-10/2011 issued by the Implementation and Coordination Wing of Services and General Administration Department regarding amendment in the Punjab Government Rules of Business 2011 in first schedule at serial no. 37 in column 4 and in second schedule at serial no. 3 and 13.
4. Notification No. SO (Cab-I) 2-13/2016(ROB) issued by the Implementation and Coordination Wing of Services and General Administration Department regarding the insertion of 7A after serial no.7 in second schedule of the Punjab Government Rules of Business 2011.

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/Mechanisation-of-Social-Network-on-Modern-Era

Mechanisation of Social Network on Modern Era by Kanak Shakya

*We live in the amazing era of social media, technology, and internet that has completely transformed our day to day life. Earlier as we don't have mobile phones or internet the only access we have was print media like , newspaper, radio, television but now anyone can make there own content on social media platforms, as of now we are very acknowledged with the word "**VIRAL**" which has the ability to spread the content we are dealing with to thousands of users it has been one of the major platform for the people for interaction which could be either personal or professional work, or it could be related to any entertainment purpose or academic purpose it also contains our personal details to should be properly legally govern or regulated by the government to protect the people from the cyber crime.*

2. MANUPATRA
https://articles.manupatra.com/article-details/Audi-Alteram-Partem-and-Nemo-Judex-In-Causa-Sua-The-Two-Pillars-of-Natural-Justice

Audi Alteram Partem and Nemo Judex In Causa Sua: The Two Pillars of Natural Justice by Surbhi Jindal and Anunay Pandey

Natural Justice, also known as procedural fairness, is a legal philosophy that dictates how legal proceedings should be conducted to ensure fairness and justice. In other words, natural justice is the principle of law that protects the rights of individuals to fair treatment in legal proceedings. The principles of natural justice assert that justice should be based on the law of nature rather than on the law of man. It revolves around the idea that decision-making should be fair and impartial and that all parties involved in a dispute should have an opportunity to be heard. This article deals with the principles of natural justice, including post-decisional hearing and exclusion of the principles of natural justice. The main objective of the article is to delve deeper into the topic's nuances in greater detail by understanding how these principles are applied practically in a legal context.

3. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/2023-round-state-consumer-data-privacy-laws

2023 Round-Up on State Consumer Data Privacy Laws by: Ilse P. Johnson , Michael B. Katz of Mintz

Looking back sometimes means looking forward. That is absolutely the case for new comprehensive data privacy statutes enacted in a number of U.S. states during 2023, including Indiana, Tennessee, Montana, Florida, Texas and Oregon. While these states have now codified a range of consumer rights with respect to their personal data, as well as new obligations imposed on covered businesses collecting and processing that data, the new laws do not take effect until the middle of 2024 or beyond. All the same, companies who may be subject to these laws in the future should start preparing now to comply with what are becoming increasingly standardized requirements across many U.S. states.

4. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/corporate-transparency-act-through-real-estate-lens

The Corporate Transparency Act: Through a Real Estate Lens by: Marisa N. Bocci , Kari L. Larson , Lysondra Ludwig of K&L Gates

Implemented to combat the use of shell corporations and other entities to facilitate illicit activities, the Corporate Transparency Act (CTA) has prompted new and unprecedented reporting obligations. Starting 1 January 2024, domestic and foreign "reporting companies" will be required to report certain identifying information about their beneficial owners to the Treasury Department's Financial Crimes Enforcement Network (FinCEN). The CTA will likely impose a substantial compliance burden on the real estate sector, which often uses complex structures compromised of numerous legal entities that own and operate real property across many asset classes. The below provides a few considerations for those operating in the real estate sector, and a more thorough summary of the CTA can be found here.

5. **THE OXFORD ACADEMIC**
https://academic.oup.com/ejil/article/34/1/113/7079615?searchresult=1

Discourses of Fear on Climate Change in International Human Rights Law by Anne Saab

Discourses of fear on climate change are pervasive. International human rights law frequently refers to climate change as one of the most serious threats to human rights, and this language of threat reveals a discourse of fear. Fearful representations of climate change are justified by scientific data and can be effective in drawing attention to the issue and incentivizing necessary action. However, psychologists and communications experts have demonstrated that fear can also lead to disengagement, 'climate change fatigue' and active opposition to climate change policies. By invoking a discourse of fear on climate change, human rights actors are not only reflecting accurate climate science but also engaging in emotional rhetoric. The discourse of fear that presents climate change itself as the main threat to human rights, moreover, contributes to framing

climate change primarily as a physical and scientific problem and obscures other important dimensions of climate change. Those individuals engaging with international human rights law must acknowledge the rhetorical and emotive power of the language they speak and engage more seriously with the literature on discourses of fear and their effects on a broad general audience. Only then can we truly work towards effective action on climate change, supported by international law.

6. THE OXFORD ACADEMIC
https://academic.oup.com/jids/articleabstract/14/1/4/7034618?redirectedFrom=fulltext

Pleading for international law: assessing the influence of party to proceedings on legal change in international courts by William Hamilton Byrne, Zuzanna Godzimirska

Scholars increasingly seek to understand the driving forces behind change in international law. However, these analyses often tend to provide external forms of analysis that presume change can be identified without engaging with the actors or looking at the law. This article takes the role of party pleadings in international dispute settlement as a means through which we can assess the influence of actors on law-making. Taking the development of the 'control of the crime' theory at the International Criminal Court as its object, the article scrutinizes legal change by dissecting the multifaceted role of pleadings. Adopting an interdisciplinary approach and conducting quantitative analysis of citation patterns, content analysis of case law, and interviews with practitioners, it offers a novel methodological take and empirical insights into our understanding of what makes up legal change in international law, and how we can identify its meaning through different access points.