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Supreme Court of Pakistan

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1. *Muhammad Sibtain Khan v. Election Commission of Pakistan*

https://www.supremecourt.gov.pk/downloads_judgements/s.m.c._1_2023_01032023.pdf

Present: Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Jamal Khan Mandokhail and Mr. Justice Muhammad Ali Mazhar

In this case, the question before the august Supreme Court was who had the constitutional responsibility and authority for appointing the date for the holding of a general election to a Provincial Assembly, upon its dissolution in the various situations envisaged by and under the Constitution. How and when was this constitutional responsibility to be discharged? What was the constitutional responsibilities and duties of the Federation and the Province with regard to the holding of the general election?

Constitutional responsibility and authority for appointing the date for the holding of a general election to a Provincial Assembly

Hon'ble Chief Justice Mr. Justice Umar Ata Bandial speaking for the majority observed that in situations where the Assembly was dissolved by an order of the Governor, the constitutional responsibility of appointing a date for the general election that must follow was to be discharged by the Governor as provided in terms of Article 105(3)(a). In situations where the Assembly was not dissolved by an order of the Governor, the constitutional responsibility of appointing a date for the general election that must follow was to be discharged by the President as provided in terms of s. 57(1) of the Election Act 2017.

2. *Shahbaz Akmal v. The State*

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1496_2022.pdf
2023 SCMR 421

Present:
Mr. Justice Qazi Faez Isa and Mr. Justice Muhammad Ali Mazhar

Court does not have to wait for the complainant's advocate to attend court, much less adjourn a case due to his absence

Hon'ble Mr. Justice Qazi Faez Isa, speaking for the bench observed that 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. 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(s), 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. (Para 6)

His lordship further observed that 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. That at times a case is adjourned because the complaint's advocate is not in attendance. 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. (Para 8)

3. Zulfiqar Ahmed Bhutta v. Federation of Pakistan

https://www.supremecourt.gov.pk/downloads_judgements/c.m.appeal._44_2022.pdf

Present:
Mr. Justice Qazi Faez Isa

Three Constitution Petitions were filed under Article 184(3) of the Constitution of the Islamic Republic of Pakistan. The petitions 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 was against the said office objections that these three civil miscellaneous appeals were filed.

For maintainability of a petition U/A 184(3) the petitioner has to state which fundamental right was sought to be enforced

Hon'ble Mr. Justice Qazi Faez Isa dismissed the chamber appeal while observing that the appellants and the learned counsel state that the said petitions came within the purview of Article 184(3) of the Constitution. Therefore, they were asked to state which Fundamental Right was sought to be enforced, and they said it was Article 9 of the Constitution. Article 9 of the Constitution states that 'no person shall be deprived of life or liberty save as in accordance with law'. However, it is not even alleged that the public's life or liberty has been affected, nor that of the appellants, nor can one envisage it. They also referred to Articles 4 and 5 of the Constitution, but these articles have no relevance to the instant matter. (Para 3)

His lordship further observed: "[A]rticle 175(2) of 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'. Therefore, it was enquired whether any law has conferred jurisdiction on this Court which can be invoked to order an inquiry with regard to the said cypher. One of the learned counsel referred to the Pakistan Commissions of Inquiry Act, 2017 ('the Act') and stated that an inquiry should have been conducted pursuant to the Act in respect of the said cypher which the former Prime Minister had mentioned in his public speeches. 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. The learned counsel then stated that the former Prime Minister was empowered under the Act to initiate an inquiry but did not do so, therefore, this Court should do so now. 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."

4. Ahmed Ali v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.a._48_2021.pdf

Present:

Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan and Mr. Justice Syed Hasan Azhar Rizvi

Stringent proof standards in CNSA cases, necessitating unassailable evidence and preserving the accused's right to benefit of doubt

The Court underscored the imperative of adhering to stringent standards of proof in cases arising under the Control of Narcotic Substances Act, 1997 (CNSA). Invoking the precedent Ameer Zeb v. the State (PLD 2012 SC 380), the Court reiterated that, in light of the severity of the sanctions prescribed by the

CNSA, the onus lies on the prosecution to substantiate guilt via incontrovertible, unassailable, and confidence-inspiring evidence, eliminating any vestige of reasonable doubt.

Hon'ble Justice Sardar Tariq Masood, speaking for the Court elucidated that even a solitary reasonable doubt in the prosecution's case can entitle the accused to the benefit of doubt, which is to be construed as a matter of right rather than a discretionary concession. A plethora of jurisprudential authorities have been adduced to buttress this tenet, including but not limited to Tajamal Hussain v. the State (2022 SCMR 1567) and Mst. Asia Bibi v. the State (2019 PLD 64 SC).
In the matter at hand, the Court determined that the prosecution's failure to substantiate its case beyond a reasonable doubt stemmed from the non-production of crucial case property, specifically the narcotics substance and the vehicle, absent any plausible justification. As a corollary, the appellants were accorded the benefit of the doubt, culminating in their acquittal and the subsequent nullification of their convictions and sentences. This decision accentuates the salience of the standard of proof and the safeguarding of the rights of the accused in cases where the CNSA imposes stringent penalties.

5. *Amir Faraz v. The State*

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._475_2022.pdf

Present:

Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan and Mr. Justice Syed Hasan Azhar Rizvi

Consistency, Corroboration, and Abuse of Bail: An Analysis of Bail Cancellation in Double Murder Cases

In the instant judgment, the court delved into several legal principles while adjudicating upon the cancellation of bail granted to the respondent, Nadeem Zulf, in a double murder case. The primary legal principle examined was the rule of consistency, necessitating analogous treatment for similarly situated individuals concerning bail determinations.

Hon'ble Justice Sardar Tariq Masood, speaking for the Court scrutinized the discrepancies between the cases of Hasan Iqbal and the respondent, accentuating that the non-lethal injury ascribed to Hasan Iqbal rendered his case distinct from that of the respondent, who was accused of inflicting a fatal injury. The respondent's learned counsel was unable to establish parity between both cases.
Another legal principle explored was the relevance of corroborative evidence at the bail stage. The Court held that the absence of such evidence cannot vitiate the ocular account recorded on the day of the occurrence.
Additionally, the court considered the respondent's alleged abuse of bail, purportedly impeding the trial process by postponing the cross-examination of witnesses. This factor buttressed the argument for cancelling the respondent's bail.
Upon examining the High Court's decision, the Court ascertained that the failure to consider critical evidence constituted a perverse order, necessitating the annulment of the respondent's bail. The petition was accordingly converted into an appeal, and the bail granted to the respondent was cancelled. The Court underscored that its observations are tentative and shall not influence the trial court, which was required to adjudicate the case on merits and evidence presented during the trial.

6. *National Highway Authority v. Rai Ahmad Nawaz Khan*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._140_l_2015.pdf

Present:

Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar and Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

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 Land Acquisition Act 1894 constitutes riba and goes against the injunctions of Islam

Hon'ble Mr. Justice Ijaz Ul Ahsan, speaking for the bench observed that the intention of the legislature behind Section 23 of the Land Acquisition Act 1894 ("Act") 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, 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. Unlike riba/interest that arises/accrues in a financial transaction between parties, the word "interest" in Section 34 of the Act 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. Section 34 is therefore compensatory in nature and allows the Courts to cover that property owner (as far as possible) for the loss that he may have suffered by reason of compulsory acquisitions of his property and delayed payment of compensation. 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 Act constitutes riba and goes against the injunctions of Islam.

7. Pakistan Television Corporation v. Noor Sanat Shah

https://www.supremecourt.gov.pk/downloads_judgements/c.a._284_2017.pdf

Present:

Mr. Justice Ijaz Ul Ahsan and Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

In the absence of any law regulating tortious breaches resulting in pure economic loss, the Civil Court as a Court of plenary jurisdiction had the power as well as jurisdiction to entertain, adjudicate and decree suits for damages

In this case the trial court decreed a sum of Rs. 2,000,000/- in favour of the Respondent for the mental agony and torture suffered by the Respondent due to the actions of the Appellant. The judgment was upheld by the Appellate and High Court. Supreme Court dismissed the appeal and upheld the findings recorded concurrently by three lower fora.

Hon'ble Mr. Justice Ijaz Ul Ahsan, speaking for the bench observed that since the suit for damages is not regulated by any specific law for the time being in Pakistan, section 9 of the Civil Procedure Code 1908 would operate and vest jurisdiction in the Civil Court to adjudicate the suits for recovery of damages of the nature filed by the Respondent. The nature of the damages claimed by the Respondent on account of the Appellant's conduct fall within the ambit of a civil tort. A basic definition of tort is an act or omission that gives rise to an injury either to person or property. Without putting too fine a point on it, a tortious breach is where one party breaches legally protected rights of another party.

8. Saadat Khan v. Shahid-ur-Rehman

https://www.supremecourt.gov.pk/downloads_judgements/c.p._262_p_2017.pdf

Present: Mr. Justice Umer Ata Bandial, **Mr. Justice Syed Mansoor Ali Shah** and Mr. Justice Muhammad Ali Mazhar

Applicability of law of limitation in inheritance cases

The case involved the enforcement of an alleged right of inheritance of some women who were the predecessors of the petitioners. The suit property was initially owned by one Isa Khan, who died, leaving his inheritance to his son, Abdur Rehman, and two daughters,

Mst. Mehro and Mst. Afsro. His inheritance mutation in favour of his son was sanctioned in the year 1935. Then, in the year 1960-61, some portion of the suit property was acquired by the Small Industries Corporation and the said Abdur Rehman received the compensation therefor. The petitioners, claiming to be the legal heirs of the two daughters of Isa Khan, instituted a suit in the year 2004 against the successors of Abdul Rehman (respondents No. 1 to 6) who had sold most of the remaining suit property, which they had acquired in inheritance on the death of Abdul Rehman, to other respondents. The suit prayed for a declaration that the inheritance mutation and subsequent transfers made were void and ineffective against the petitioners' rights. The trial court decreed the suit but the appellate court non-suited the petitioners on the issue of limitation. The High Court upheld the decision of the appellate court in revision.

The Supreme Court held that a suit instituted by a female legal heir for declaration of her ownership rights as to the property left by her deceased father against her brother who denies her rights is governed by the provisions of Article 120 of Schedule-I to the Limitation Act 1908 and 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. 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. However, 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. 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. Because of the fiduciary and protecting relation of the brothers to their sisters, they cannot claim their possession of the joint property adverse to the rights of their sisters; possession of the brothers is taken to be the possession of their sisters. 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. 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 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.

The Court said that the acts of acquisition of a part of the suit property by the Small Industries Estate and receiving of the compensation therefor by Abdur Rehman, the predecessor of respondents No. 1 to 6, in the year 1960-61 were open acts and were admittedly also in the knowledge of Mst. Mehro and Mst. Afsro, the predecessors of the petitioners. The act of receiving compensation for the acquired portion of the suit property by Abdur Rehman was equal to selling that portion of the suit property by claiming him to be the exclusive owner thereof. It was his express overt act whereby he repudiated the rights of his sisters, Mst. Mehro and Mst. Afsro, in the suit property and ousted them from the ownership thereof. By the said act of Abdur Rehman, the right accrued to his sisters to sue for declaration of their rights, and the six-year limitation period provided in Article 120 started to run from the date of knowledge of Mst. Mehro and Mst. Afsro, of that act of Abdur Rehman and expired in the year 1967-68. Similar was the effect of the acts of selling out the remaining portion of the suit property by respondents No. 1 to 6 to respondents No.12 to 74 and others. The Court dismissed the petition for leave to appeal.

9. *Imran Ahmad Khan Niazi v. Main Muhammad Shahbaz Sharif*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3436_l_2022.pdf

Present: Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan and Mrs. Justice Ayesha A. Malik

Grant of leave to appeal under Article 185(3) of the Constitution is discretionary and the conduct of a petitioner has a substantial bearing on the question of granting or declining such leave to him

The respondent instituted a suit for recovery of damages against the petitioner alleging the commission of his defamation by the petitioner. After the close of the pleadings, the trial court fixed the case for pre-trial proceedings of discovery and inspection under Order XI of the Code of Civil Procedure 1908 (CPC). Both the parties delivered their respective interrogatories. The respondent filed the answers to the interrogatories of the petitioner. The petitioner, however, filed objections (application) for rejection of the interrogatories of the respondent, instead of filing the answers thereto. The trial court observed that an application for rejection of the interrogatories could be filed under Rule 7 of Order XI, CPC within seven days after service of the interrogatories, while the petitioner had first sought several adjournments for submitting the answers to the interrogatories and then filed such application (objections) after the lapse of about two months without any lawful justification and without seeking condonation of the delay. With these observations, the trial court overruled the objections of the petitioner and directed him to submit his answers to the interrogatories of the respondent, vide its order dated 20.10.2022. The petitioner was, thereafter, provided with several opportunities to file the answers to the interrogatories, but he failed to avail them. Consequently, the trial court struck out the right of defence of the petitioner under Rule 21 of Order XI, CPC, vide its order 24.11.2022, due to his non-submission of the answers to the said interrogatories. The petitioner challenged both the orders of the trial court by filing two revision petitions in the High Court, which petitions were dismissed by the impugned order and order of trial court was upheld.

Justice Syed Mansoor Ali Shah in his majority judgment held that the jurisdiction of Supreme Court under Article 185(3) of the Constitution to grant leave to appeal is discretionary and the conduct of a petitioner has a substantial bearing on the question of granting or declining such leave to him. It was observed that the suit was instituted by the respondent on 07-07-2017. The petitioner appeared in the suit through his counsel on 09-09-2017. The parties filed several applications during proceedings of the case, wherein the petitioner was given warnings of

"last and final" and "absolute last and final" opportunities to advance his arguments. The petitioner was provided with nine opportunities to file his written statement, again with warnings of "last and final" and "absolute last and final" opportunities. At last, the petitioner filed his written statement on 27-07-2021 after a period of about four (4) years since his appearance in the suit on 09-09-2017, which should have been filed by him till 09.10.2017 within a period of thirty days from the day of his appearance in the suit. Summary of the proceedings of the case in the trial court made during a period of four years, from the date of appearance of the petitioner on 09-09-2017 till 22-09-2021, gave credence to the contention of the respondent that the conduct of the petitioner had remained contumacious throughout the proceedings of the case in the trial court. The way the proceeding was prolonged by the petitioner at every stage of the case in the trial court, to delay the decision of the case, was more than evident. Survey of the proceedings of the trial court as to delivering and answering the interrogatories by the parties under Order XI, C.P.C., from 05-01-2022 to 20-10-2022, showed the same delaying tactics of the petitioner by which he had been hindering the progress of the suit earlier. Trial court had provided the petitioner with more than sufficient opportunities to submit his answers to the interrogatories of the respondent, before taking the penal action under Rule 21 of Order XI, CPC. Overall conduct of the petitioner showed that he had protracted the proceedings of the case at every stage in the trial court, to delay the decision of the case. Conduct of the petitioner had remained willfully contumacious and disobedient throughout the proceedings of the case in the trial court. Trial court had not committed any illegality or material irregularity in the exercise of its jurisdiction by dismissing the objections (application) of the petitioner for rejection of the interrogatories of the respondent and directing him to submit the answers to those interrogatories and subsequently by striking out the right of defence of the petitioner due to non-submission of the answers to the said interrogatories. Petitions for leave to appeal were dismissed and leave was refused.

Justice Ayesha A. Malik, in her dissenting opinion, observed that the case was not a case of willful default and the failure on the part of the petitioner to file his answers was due to circumstances beyond his control.

10. Commissioner Inland Revenue v. Mian Liaqat Ali Proprietor

https://www.supremecourt.gov.pk/downloads_judgements/c.p._648_l_2021_detailed.pdf

Present:

Mr. Justice Ijaz ul Ahsan, **Mr. Justice Munib Akhtar** and Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

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The respondent declared rental and business income from practicing homeopathic medicine in their tax returns. However, a complaint was received by the income tax authority that the respondent had underreported their sales from the practice of homeopathy. Show cause notices were issued to the respondent, and when the respondent sought to produce evidence for costs incurred for the undeclared sales, the income tax authority intimated that the concealed sales attracted provisions under section 111(1)(d) of the Ordinance. The respondent's replies were found unsatisfactory, and the deemed assessment orders were amended under section 111(1)(d). Being aggrieved by the foregoing, the respondent filed appeals before the CIT (Appeals), which were dismissed. He further took the matter to the Appellate Tribunal, and there met with success. Being aggrieved by the decision of the learned Tribunal the Commissioner filed tax references before the High Court, which were dismissed. It is against the said orders that the Commissioner sought leave to appeal from this Court. The question before the Hon'ble Supreme Court was: "Whether, in the facts and circumstances of the case, the

Commissioner has properly interpreted and applied section 111(1)(d) of the Ordinance?"

Only production or sales chargeable to tax can be brought within the ambit of clause (d) to section 111(1) of the Ordinance

Hon'ble Mr. Justice Munib Akhtar speaking for the bench observed that the words "chargeable to tax" as used at the end of sub-clause (i) of section 111(1)(d) of the Income Tax Ordinance, 2001 applied to the whole of the sub-clause (i), i.e., also to the suppressed production and/or sales. If "any amount" can be brought within the scope of sub-clause (i) 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) to section 111(1) of the Ordinance. Both under section 122(5) and section 111(1)(d) of the Ordinance, 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. And, the appeal was dismissed, accordingly.

11. Commissioner, Inland Revenue, Karachi v. Messrs Attock Cement Pakistan Limited, Karachi

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1422_2019.pdf
2023 SCMR 279

Present: Mr. Justice Qazi Faez Isa, **Mr. Justice Yahya Afridi** and Mr. Justice Jamal Khan Mandokhail

Input Tax Adjustment

The dispute between the parties related to the time and manner of claiming the adjustment of 'input tax'. The appellant-tax authority asserted that the adjustment of input tax could be claimed in the same tax period and that too in the monthly returns, while the respondent-company affirmed it as a right enforceable beyond the tax period in which the input tax was paid. The Court considered the following questions of law in the overall tax regime envisaged under the Sales Tax Act 1990:

i. Whether the adjustment of 'input tax' from the 'output tax' provided under section 7(1) of the Sales Tax Act could be availed without any limitation of time?

ii. Whether section 66 of the Sales Tax Act was applicable in the facts of the present case, if so, whether the applications seeking the refund or, in the alternative, the adjustment of input tax made by the respondent-company can be considered as refund applications under section 66 of the Sales Tax Act?

The Supreme Court held that section 66 of the Sale Tax Act provided for refund of tax claimed to have been 'paid or over paid' through 'inadvertence, error or misconstruction' and prescribed a period of one year for preferring such claims. In the case before the Court, the respondent-company, during the relevant period, was not obliged to pay 'output tax' equivalent to the amount of 'input tax' paid on imports, but it overlooked to avail the facility of adjustment of the 'input tax' afforded under section 7(1) of the Sales Tax Act. Such omission, as asserted by the respondent-company, was due to 'confusion' and 'misunderstanding' on its part and would thus come within the purview of the word 'inadvertence' envisaged under section 66 of the Sales Tax Act. The facility of making adjustment of the 'input tax' was available to the respondent-company till 1st July 1997 when the taxable supply of cement (the product manufactured by the respondent-company) was exempted from payment of sales tax by the Finance Act 1997. Obviously, after the said exemption of cement from payment of sales tax, there was no question of payment of 'output tax', and hence 'input tax' paid could not have been

adjusted by the respondent-company. The only remedy, thus, available to the respondent-company was to seek the refund of the excess amount of 'output tax' paid by the respondent-company under section 66 of the Sales Tax Act. The period of limitation prescribed for seeking the refund under section 66 was 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'. The respondent-company was held entitled under Section 66 of the Sales Tax Act to claim refund of an amount of the overpaid 'output tax', equivalent to the 'input tax' not adjusted in the monthly returns filed during the period of one year preceding 11-06-1997, that is, from 11-06-1996 till 10-06-1997.

12. National Highway Authority v. Mazhar Siddique and others

https://www.supremecourt.gov.pk/downloads_judgements/c.p._819_2017.pdf

Present:

Mr. Justice Sardar Tariq Masood, **Mr. Justice Amin-Ud-Din Khan** and Mr. Justice Jamal Khan Mandokhail

Compound interest would continue to accrue till such time that the entire compensation is paid in its entirety. Once the original amount has been deposited the matter goes out of the penal consequences of section 34 of the Land Acquisition Act 1894.

Hon'ble Mr. Justice Amin-Ud-Din Khan, speaking for the bench observed that after the remand of the case by the High Court to the Collector the subject matters squarely fell within the domain of Land Acquisition Act, 1894, and afterwards the High Court should not have extended its extraordinary jurisdiction under Article 199 of the Constitution. The Act provides adequate and comprehensive mechanism for the determination of the compensation amount and recourse to the judicial forums to the aggrieved and interested parties. In case of disputed facts, High Court cannot exercise its extraordinary constitutional jurisdiction. Moreover, relevant starting date for the payment of compound interest on compensation amount in terms of section 34 of Land Acquisition Act, 1894 is the date of taking possession of the acquired land till the date of payment by collector where normal statutory procedure has been observed. Compound interest would continue to accrue till such time that the entire compensation is paid in its entirety. Once the original amount has been deposited the matter goes out of the penal consequences of section 34 of the Act.

13. Irfan Azam v. Mst. Rabia Rafique

https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._649_l_2021.pdf

Present:

Mr. Justice Sardar Tariq Masood, **Mr. Justice Amin-Ud-Din Khan** and Mr. Justice Syed Hasan Azhar Rizvi

If permission to change counsel in review petition is liberally granted, it would not only be against the Order XXVI Rule 6 of Supreme Court Rules but would also make the rule redundant and lead to endless litigation

Hon'ble Mr. Justice Amin-Ud-Din Khan speaking for the bench observed that neither are there in 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 Order XXVI Rule 6 of Supreme Court Rules but would make the said rule redundant and would further lead to endless litigation.

14. Amir Muhammad Khan v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.a._297_2020.pdf

Present:

Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail and Mr. Justice Athar Minallah

Importance of scrutinizing evidence and affording benefit of doubt: an acquittal in a murder case under section 302(b) PPC

The present case involves the appellant who was convicted for the murder of Adam Khan under Section 302(b) PPC. The High Court upheld the conviction but converted the death sentence to life imprisonment. The appellant then filed an appeal before this Court.

Several legal principles and observations led to the appellant's acquittal. The Court highlighted the unexplained delay in lodging the First Information Report (FIR), which cast doubt on the complainant's honesty. Furthermore, inconsistencies and contradictions in the prosecution witnesses' statements, particularly the sole eyewitness, medical evidence, and site plan, created reasonable doubt in the prosecution's case, warranting the benefit of the doubt for the appellant.

Hon'ble Justice Sayyed Mazahar Ali Akbar Naqvi, speaking for the Court emphasized that the heinousness of the offense alone is not sufficient grounds for punishment if not proven beyond a reasonable doubt. Additionally, the court stressed the importance of scrutinizing the appellant's evidence, which the High Court failed to do, and the prosecution's inability to prove the motive for the crime. The recovery of the blood-stained hatchet was also deemed inconsequential in sustaining the appellant's conviction.

In light of these observations, the court concluded that the appellant is entitled to the benefit of the doubt. The court reiterated that a single doubt in the prosecution's case is sufficient to afford the accused this benefit as a matter of right. Consequently, the Supreme Court allowed the appeal, set aside the impugned judgment, and acquitted the appellant of the charge.

15. Sarfraz, and Allah Ditta v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.a._560_2020.pdf

Present:

Mr. Justice Ijaz Ul Ahsan, **Mr. Justice Sayyed Mazahar Ali Akbar Naqvi** and Mr. Justice Athar Minallah

Key legal principles in criminal cases: reliability of witnesses, non-production of evidence, and benefit of doubt - a murder case analysis

In the case involving the murder of Haq Nawaz, the appellants were charged with the crime, and the prosecution's case was primarily based on the testimony of two witnesses who were not residents of the locality and had a history of enmity with the deceased. The prosecution also failed to produce the son of the deceased, who was present at the time of the incident, and to establish a clear motive for the murder. The recovery of the crime weapon and other evidence was questionable, raising further doubts in the prosecution's case.

In the judgment, several key legal principles were held. Firstly, the Court emphasized the importance of the reliability of witnesses and their presence at the scene of the crime. If there is a reasonable doubt regarding the presence of witnesses, their testimony may be considered unreliable.

Hon'ble Justice Sayyed Mazahar Ali Akbar Naqvi, speaking for the Court noted that adverse inference for non-production of evidence is one of the strongest presumptions known to law. The law allows it against the party who withholds the evidence, and this presumption may be applied to the prosecution's case if they fail to produce a material witness.

Additionally, the judgment underlined that when the prosecution alleges a specific motive for the crime, it is their duty to

establish it through cogent and confidence-inspiring evidence. Failure to do so would result in the motive working in favor of the accused.

The Court also observed that the timing of the submission of crime empties and the weapon of offense to the forensic laboratory is crucial to the evidentiary value of the report. If the crime empties are sent after the arrest of the accused or together with the crime weapon, the positive report may lose its evidentiary value.

Furthermore, the Court stressed the principle of law and equity that dictates it is better to let off 100 guilty persons than to punish one innocent person. This means that the heinousness of the offense, if not proved to the hilt, is not a ground to punish an accused.

The judgment also emphasized that the benefit of the doubt must be afforded to the accused, not as a matter of grace and concession, but as a right. If a single circumstance creates a reasonable doubt in a prudent mind about the guilt of an accused, they shall be entitled to such benefit.

Lastly, the Court reiterated that a conviction must be based on unimpeachable, trustworthy, and reliable evidence. Any doubt arising in the prosecution's case must be resolved in favor of the accused, with the burden on the prosecution to prove its case beyond any reasonable shadow of doubt.

16. Federation of Pakistan v M/s Farrukh International (Pvt) Ltd

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3185_2020.pdf

Present: Mr. Justice Syed Mansoor Ali Shah, **Mr. Justice Jamal Khan Mandokhail** and Mr. Justice Shahid Waheed

Ex-parte proceedings and burden of proof

The petitioners filed a suit, for recovery of an amount of Rs. 912,801.60/- against the respondent on account of breach of a contract awarded to the latter for supply of certain food items which was dismissed by the trial court vide an ex-parte judgment holding that the petitioners had failed to prove their claim. The appeal and civil revision filed by the petitioners met the same fate.

The Supreme Court ruled that if only the plaintiff appears in court while the defendant, despite being properly served, does not appear, the court can proceed ex parte under Order IX, Rule 6 of the Code of Civil Procedure. The court, in such cases, has the authority to determine the rights of the parties either without recording evidence or by calling the plaintiff to present evidence to ensure a fair conclusion. According to Article 17(2)(a) of the Qanun-e-Shahadat Order 1984, it was further said, a document related to financial and future obligations must be attested by two witnesses. Article 79 of the same Order states that such a document cannot be used as evidence unless the two attesting witnesses appear before the court to prove its execution, unless the document is admitted by the contesting parties as per Article 81. If the court raises questions regarding the execution and attestation of such a document, the party relying on it must produce the two marginal witnesses to establish its execution. The Supreme Court held that the petitioners relied on a contract involving financial obligations, and it was their responsibility to prove the case and the documents. Despite the defendant being absent, the trial court exercised its discretion by asking the petitioners to provide evidence to support the document's execution. However, the petitioners failed to follow the proper procedure for producing the document, including presenting the original record and the marginal witnesses. As a result, they were unable to prove the execution of the documents and the contents of the plaint. The Supreme Court refused to grant leave and dismissed the petition.

17. Collector of Customs, Model Customs Collectorate, Peshawar v. Waseef Ullah

https://www.supremecourt.gov.pk/downloads_judgements/c.p._389_2022.pdf

Present:

Mr. Justice Umar Ata Bandial, Mr. Justice Amin-Ud-Din Khan and **Mr. Justice Muhammad Ali Mazhar**

By and large, the exemption notification should be interpreted rigidly and when it is found that the assessee has satisfied the exemption conditions, a liberal construction should be made

Hon'ble Mr. Justice Muhammad Ali Mazhar, speaking for the bench observed that the respondents were exempted from customs duty, sales tax and with-holding tax under the tax exemption Circular and both the learned Appellate Tribunal and learned High Court have rightly discarded subsequent Circular which was unjustifiably and irrationally approved in the Appellate Order while describing the Circular as clarificatory in nature. The doctrine of substantial compliance, though on one hand premeditated to avoid hardship, simultaneously safeguards the essential compliance of the prerequisites in which the exemption in tax or customs duty are invoked. 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. By and large, the exemption notification is interpreted rigidly, but when it is found that the assesse has satisfied the exemption conditions, a liberal construction should be made.

18. M/s DW Pakistan (Private) Limited, Lahore v. Begum Anisa Fazl-i-Mahmood

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3989_2022.pdf

Present:

Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, **Mr. Justice Muhammad Ali Mazhar** and Mr. Justice Athar Minallah

The deposit of the balance consideration in the Court is not an automatic requirement but there must be an order of the Court for deposit. The Trial Court should afford reasonable time to deposit the money in Court along with the consequences of non-compliance of the order.

Hon'ble Mr. Justice Muhammad Ali Mazhar, speaking for the bench observed that 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.

19. Saif Power Limited v. Federation of Pakistan

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3263_2022.pdf

Present:

Mr. Justice Syed Mansoor Ali Shah and **Mrs. Justice Ayesha A. Malik**

Supreme Court clarifies SECP's powers: distinguishing inspections and investigations under the Companies Ordinance

In the recent judgment by the Supreme Court, the Court addressed the scope of the Securities and Exchange Commission of Pakistan's (SECP) powers to inspect and investigate the affairs of a company under the Companies Ordinance. The Court provided an in-depth analysis of the legal principles governing the distinction between inspections and investigations, and the requirements that must be met to exercise these powers. This decision offers significant guidance on the proper application of the relevant provisions of the Companies Ordinance and the limitations imposed on the SECP.

Hon'ble Mrs. Justice Ayesha A. Malik, speaking for the Court emphasized that there

is a clear distinction between inspections and investigations under the Companies Ordinance. Inspections, as per Section 231, are administrative in nature and limited to examining a company's books of account and related records to ensure regulatory compliance. Investigations, on the other hand, delve deeper into the affairs of a company and require a higher threshold of evidence to initiate.

The Court held that the SECP cannot initiate an investigation under the guise of an inspection, as it would exceed its authority under Section 231 of the Ordinance. The SECP must adhere to the appropriate legal provisions and requirements when exercising its powers of inspection or investigation.

The Court determined that the SECP, in the present case, had sought to investigate allegations beyond the scope of an inspection under Section 231. The SECP's order contained specific allegations and sought to scrutinize aspects of the company's affairs beyond its books of account.

The Court found that the High Court had erred in its judgment by misconstruing the requirements of an inspection under Section 231 and blurring the distinction between inspections and investigations. The High Court's reliance on the absence of a statutory auditor's report as justification for the SECP's actions was deemed misplaced.

Based on these legal principles, the Supreme Court set aside the High Court's judgment and declared the SECP's order and actions illegal, as they exceeded the authority granted under Section 231 of the Companies Ordinance.

20. Federal Government of Pakistan v. Mst. Zakia Begum

https://www.supremecourt.gov.pk/downloads_judgements/c.a._2150_2019.pdf

Present:

Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah and **Mrs. Justice Ayesha A. Malik**

Assessment of compensation in land acquisition

The instant case revolves around the acquisition of land for a public purpose and the assessment of compensation for the landowners. The dispute arose from disagreement over the method of calculating compensation and the value assigned to the land. The Court's decision sheds light on the proper assessment of compensation, emphasizing the relevance of market value and potential value, and the need for legislative reform to ensure just and fair compensation for landowners.

Hon'ble Mrs. Justice Ayesha A. Malik, while speaking for the Court held the following legal principles:

Assessment of Compensation: The Court emphasized that the assessment of compensation should be based on both the market value and potential value of the land, considering its location, physical attributes, and the potential for economic growth, urbanization, and infrastructure development.

Potential Value: The Court held that potential value should be considered in addition to the market value, especially in cases of large-scale land acquisition for a single project. Potential value refers to the value of the land with reference to the use it is reasonably capable of being put to. The potential value should reflect the expected reasonable capacity of land use, and landowners should be compensated accordingly.

Constitutional Protection to Property Rights: The Court underlined that compulsory acquisition of land for public purposes must be accompanied by meaningful constitutional protection to property rights. Landowners should be compensated fairly and in accordance with the law, ensuring that they do not lose any financial advantage on account of their property rights.

Need for Legislation: The Court observed a dire need for legislation and a methodology to calculate potential value and market value, in order to avoid arbitrary valuation and reduce litigation on this issue. The government should prioritize the establishment of a standardized and

transparent process for assessing the value of land in land acquisition cases.
The judgment reaffirms the importance of fair and just compensation for landowners in cases of land acquisition for public purposes. The Court rejected the appellants' arguments and dismissed their appeals, reiterating the significance of considering both market value and potential value in determining compensation. The judgment also highlights the urgent need for legislative reform to ensure a standardized, transparent, and fair process for assessing compensation in land acquisition cases.

21. Muhammad Yousaf v.Muhammad Ishaq Rana

https://www.supremecourt.gov.pk/downloads_judgements/c.a._801_2021.pdf

Present:
Mr. Justice Ijaz ul Ahsan and **Mr. Justice Shahid Waheed**

The subject-matter of the present dispute was a two-marla house purchased by Sakina Bibi and presently in possession of the appellants; the legal heirs of Sakina Bibi filed a suit for its partition on the basis of the registered sale-deed, alleging that their brother gave the sale-deed to one of the appellants, who refused to return it and sold the house to Zahid for Rs.200,000. The appellants also instituted a counter-suit claiming that their predecessor, Imam-ud-Din, purchased the house and transferred it to Sakina Bibi's name as benamidar. The trial Court consolidated the suits and dismissed the appellants' suit, while partially accepting the respondents' suit. The appellants appealed, and the first appellate Court reversed the judgment in their favour. The respondents then sought revision of the decree to the High Court, which held that the appellants failed to prove that Sakina Bibi was a Benamidar, and set aside the first appellate Court's decree, thereby restoring the trial Court's decree.

Burden of proof---evidentiary requirements for proving a benami transaction

In the case under examination, the Court was tasked with determining the validity of a benami transaction. The legal principles held in the judgment can be summarized as follows: The burden of proving that a transaction is benami rests upon the person alleging it. To establish a benami transaction, the party asserting the claim must demonstrate: the source of purchase money, motive behind the transaction, possession of the property, and custody of the title document. The Court emphasized the importance of direct evidence under Article 71 of the Qanun-e-Shahadat, 1984, and the need to rebut the presumption attached to the recitals of the sale-deed. Furthermore, the interpersonal relationships between the parties and the surrounding circumstances must be taken into account when evaluating the evidence. In this case, the appellants failed to provide sufficient evidence to prove the benami nature of the transaction, and the Court dismissed the appeal, upholding the findings of the High Court.

Foreign Superior Courts

Supreme Court of UK

1. Jalla v. Shell International Trading and Shipping Co Limited

https://www.supremecourt.uk/cases/docs/uksc-2021-0050-judgment.pdf

Coram
Lord Reed, President, Lord Briggs, Lord Kitchin, Lord Sales and **Lord Burrows**, JJ.

Continuing nuisance can arise from repeated conduct which causes damage, including substantial interference with the use and enjoyment of neighboring land and there will be no continuing nuisance simply by virtue of the continuing effects of that damage

The case concerned an oil spill off the coast of Nigeria in 2011, which lasted around 6 hours, leaking crude oil into the sea. Appellants argued that oil reached their land,

causing damage and this was a continuing nuisance and therefore, while the oil remained on their land, a fresh right to bring a claim arose each day. This was significant because, without a "continuing nuisance", the limitation period to bring a claim would have long expired. Hence this appeal. The Supreme Court unanimously rejected the appeal by holding that there was no continuing nuisance in this case because there was no repeated activity by respondent, or an ongoing state of affairs for which they were responsible. The Supreme Court also rejected the idea of a "continuing nuisance" in these circumstances as it would undermine the law of limitation and extend the limitation period indefinitely, meaning companies like respondent could be pursued for damages many years after one-off events. It would also change the nature of nuisance from liability for the damage caused to a responsibility to restore the affected land. Continuing nuisance can arise from repeated conduct which causes damage, including substantial interference with the use and enjoyment of neighboring land. However, in the absence of repetition, the right to bring a claim arises when damage is suffered, and there will be no continuing nuisance simply by virtue of the continuing effects of that damage.

2. *Fearn v. Board of Trustees of the Tate Gallery*

https://www.supremecourt.uk/cases/docs/uksc-2020-0056-judgment.pdf

Coram

Lord Reed, Lord Lloyd-Jones, Lord Kitchin, Lord Sales, **Lord Leggatt**, JJ.

The Supreme Court extended the scope of private nuisance by holding that abnormal use of property causing "visual intrusion" amounted to a nuisance

A nuisance claim was brought by the leasehold owners of several flats on the South Bank of the River Thames. The complaint was that their neighbour, the Tate Modern Gallery/respondent, had built a viewing platform which, as well as giving its visitors great views over London, also gave them a direct view into the flats. Fed up with being overlooked and photographed by visitors to the Tate, the owners of the affected flats brought a claim in nuisance. The High Court and Court of Appeal both dismissed the flat owners' claim. Hence this appeal. The Supreme Court allowed the flat owners' appeal, and for the first time, widened the law of private nuisance to include being overlooked. The Supreme Court established that being overlooked by visitors from the Tate amounted to a "substantial interference" with the flat owners' use and enjoyment of their properties "much like being on display in a zoo". In determining whether this amounted to a nuisance, the Supreme Court then considered whether the Tate's viewing gallery amounted to a "common and ordinary" use of the property. The key principle, the Supreme Court said, is that there should be some "give and take" between neighbours, and that each can be expected to tolerate the other's "common and ordinary use" of its property, but no more. What amounts to "common and ordinary use" will depend on the locality and while, in this case, both properties were in a built-up, Central London tourist location, the Supreme Court viewed the Tate's use of its property as so abnormal that the overlooking amounted to a nuisance.

3. *Trustees of the Barry Congregation of Jehovah's Witnesses v. BXB*

https://www.supremecourt.uk/cases/docs/uksc-2021-0089-judgment.pdf

Coram

Lord Reed, Lord Hodge, Lord Briggs, **Lord Burrows**, Lord Stephens, JJ.

Two stages of the inquiry to find vicarious liability

Mrs. B was a congregant at the Barry Congregation of Jehovah's Witnesses. She became friendly with Mark Sewell, who was a ministerial servant in the congregation. Not

long after, he became an elder. He behaved inappropriately with Mrs. B, but she was encouraged by the teachings of the congregation and those around her that elders' actions and decisions are generally not to be questioned and to be regarded as unimpeachable. Later on, Mr. Sewell raped Mrs. B in the back of his house, and was convicted and sentenced to a term of imprisonment. Mrs. B commenced an action for damages for personal injury, including psychiatric harm, against the Trustees of the Barry Congregation, alleging that they were vicariously liable for the rape committed by Mr. Sewell. The trial judge found them vicariously liable for the rape and awarded Mrs. B general damages of £62,000. The Court of Appeal upheld the trial judge's decision. The Trustees of the Barry Congregation appealed to the Supreme Court.

The Supreme Court unanimously allowed the appeal and held that the appellant is not vicariously liable for the rape committed by Mr. Sewell. The Court held that vicarious liability is an unusual form of liability by which the defendant is held liable for a tort (a civil wrong) committed by a third party. There are two stages of the inquiry, both of which have to be satisfied to find vicarious liability. The same two tests apply to cases of sexual abuse as they do to other cases on vicarious liability. The first stage test is whether the relationship between the defendant and the tortfeasor was one of employment or akin to employment. In applying the "akin to employment" aspect of this test, a court needs to consider carefully features of the relationship that are similar to, or different from, a contract of employment. The "akin to employment" expansion does not undermine the traditional position that there is no vicarious liability where the tortfeasor is a true independent contractor. The test at stage two asks, whether the wrongful conduct was so closely connected with acts that the tortfeasor was authorised to do that it can fairly and properly be regarded as done by the tortfeasor while acting in the course of the tortfeasor's employment or quasi-employment. The application of this "close connection" test requires a court to consider carefully on the facts the link between the wrongful conduct and the tortfeasor's authorised activities. At the second stage of the inquiry, the courts below erred by failing to set out the correct "close connection" test and taking into account incorrect factors.

SUPREME COURT OF CANADA

4. R. v. Hills

2023 SCC 2
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/19638/index.do

Coram
Wagner, Richard; Moldaver, Michael J.; Karakatsanis, Andromache; Côté, Suzanne; Brown, Russell; Rowe, Malcolm; Martin, Sheilah; Kasirer, Nicholas; Jamal, Mahmud

Four-year mandatory minimum sentence for discharging an air-powered pistol or rifle at a house is unconstitutional `

On May 6, 2014, Mr. Jesse Dallas Hills consumed a large amount of prescription medication and alcohol. The intoxicated man later left his Lethbridge, Alberta home with a baseball bat and a loaded rifle designed for hunting big game. Mr. Hills proceeded to swing his bat at a passing car and then fire a shot at it. The driver called 9-1-1. Before police arrived, Mr. Hills turned his attention to an unoccupied parked car. He smashed its windows and then approached a house. He fired a round that went through the home's living room window and through a wall into a computer room before it stopped in a drywall stud and bookcase.
At the time Mr. Hills fired his shots, the home was occupied by a couple and their two children. The father called 9-1-1, then went to the basement with the rest of the family where they waited for police to arrive. The officers discovered that several rounds had penetrated the walls and windows, into parts of the home where someone could have been hit.

After a preliminary inquiry, Mr. Hills pled guilty to four offences, including discharging a firearm into or at a house contrary to section 244.2(1)(a) of the Criminal Code. At the time, this offence carried a four-year mandatory minimum sentence set out in section 244.2(3)(b). Mr. Hills challenged the sentence under section 12 of the Charter, which guarantees the right not to be subjected to cruel and unusual punishment. He argued the mandatory minimum sentence was grossly disproportionate and therefore constituted cruel and unusual punishment. His challenge relied on a hypothetical scenario, where a young person intentionally discharges an air-powered pistol or rifle at a residence that is incapable of perforating the walls of a home.

The sentencing judge found that the sentence in the hypothetical scenario was grossly disproportionate. He sentenced Mr. Hills to three and a half years in prison. The Crown appealed the judge's finding and the sentence. The Court of Appeal allowed the appeal on both grounds. It restored the mandatory minimum sentence and sentenced Mr. Hills to four years in prison. Mr. Hills then appealed to the Supreme Court of Canada.

The Supreme Court allowed the appeal.

Writing for a majority of the judges, Justice Sheilah L. Martin ruled that the four-year mandatory minimum sentence set out in section 244.2(3)(b) is grossly disproportionate in the hypothetical scenario raised by Mr. Hills. It infringes section 12 of the *Charter* and cannot be saved by section 1. It is immediately declared of no force or effect and this declaration applies retroactively. The three-and-a-half-year sentence imposed on Mr. Hill by the sentencing judge is reinstated.

The evidence showed that many air-powered rifles, such as paintball guns, are considered "firearms", even though they could not perforate the wall of a typical residence. The majority found that the provision applies to a wide spectrum of conduct, ranging from acts that present little danger to the public, to those that pose a grave risk. It is also reasonably foreseeable that a young person could intentionally discharge such a "firearm" into a home. As Justice Martin said, "it would shock the conscience of Canadians to learn that an offender can receive four years of imprisonment for firing a paintball gun at a home".

In arriving at this conclusion, Justice Martin further developed the framework applicable to challenges to the constitutionality of a mandatory minimum sentence under section 12 of the Charter. To determine if a mandatory minimum sentence is grossly disproportionate, the court must take two steps. First, a court must determine a fit and proportionate sentence for the offence, in line with the objectives and principles of sentencing in the Criminal Code. The court must then decide if the mandatory sentence is grossly disproportionate to the fit and proportionate sentence. The outcome will depend on the scope and reach of the offence, the effects of the punishment on the offender, as well as the penalty and its objectives.

FEDERAL CONSTITUTIONAL COURT OF GERMANY

5. In the proceedings on the constitutional complaints, ...

1 BvR 1547/19, 1 BvR 2634/20
https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2023/02/rs20230216_1bvr154719.html

Coram
Harbarth President, and Bear, Britz, Ott, Christian, Radtke, Härtel and Wolff JJ.

Legislation regarding automated data analysis for the prevention of criminal acts (predictive algorithms for policing) is unconstitutional

Section 25 a (1) first alternative of the Security and Public Order Act for Hesse and Section 49 (1) first alternative of the Act on Data Processing by the Police for Hamburg allow the police to link automated databases and access data across sources through searches. These provisions authorize the

automated analysis of stored personal data to prevent serious crimes or protect certain legal interests. These powers have been used frequently in Hesse through the 'hessenDATA' platform, while Hamburg has not utilized Section 49 of its Act on Data Processing by the Police. Palantir, a US data analytics firm, provides the technology. The complainants argued that the software could be used for predictive policing, raising the risk of mistakes and discrimination by law enforcement.

The Federal Constitutional Court questioned the legal basis of the Palantir software's use and raised concerns about data sources and mining conducted by law enforcement. It was held that the impugned provisions violate the general right of personality (Article 2(1) in conjunction with Article 1(1) of the Basic Law) in its manifestation as the right to informational self-determination, because they do not contain sufficient thresholds for interference. They allow the further processing of stored data by means of automated data analysis or interpretation in certain cases, subject to a case-by-case assessment, when necessary as a precautionary measure to prevent specific criminal acts. Given the particularly broad wording of the powers, in terms of both the data and the methods concerned, the grounds for interference fall far short of the constitutionally required threshold of an identifiable danger. The Court declared Section 25 a (1) first alternative of the Security and Public Order Act for Hesse and Section 49 (1) first alternative of the Act on Data Processing by the Police for Hamburg unconstitutional.

FEDERAL CONSTITUTIONAL COURT OF GERMANY

6. *In the process of constitutional review,…*

1 BvL 7/18
https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2023/02/ls20230201_1bvl000718.html

Coram
Harbarth President, and Bear, Britz, Ott, Christian, Radtke and Hardener JJ.

National ban on child marriages is unconstitutional

The German government passed a law in 2017 (Art. 13(3) no. 1 of the Introductory Act to the Civil Code) that states that minors under 16 cannot marry, and any marriages of minors conducted abroad would be considered void in Germany. A Syrian couple, who later fled to Germany, had married in 2015 in Syria when the husband was 21 years old and the wife was 14. Their marriage had been legally recognized under the Syrian law before a Shariah court. Upon arriving in Germany, they were separated, and the wife was placed in a youth welfare facility. The husband sought her repatriation and turned to the family court for a review of the guardianship appointment. The Federal Court of Justice sought guidance from the Federal Constitutional Court to resolve the issue. The main question was whether constitutional requirements, particularly those related to the freedom of marriage in Article 6(1) of the Basic Law, apply to laws regarding the recognition of marriages contracted abroad involving underage spouses.

The Federal Constitutional Court held that in principle, the legislature is authorised to make the applicability of domestic law to marriages validly concluded outside of Germany subject to a minimum age at the time of marriage. It may also generally

classify marriages as void, if the minimum age at the time of marriage is not met, without a case-by-case assessment. However, it must then enact provisions addressing the consequences of invalidity, such as maintenance claims, and offering the possibility for a marriage concluded under foreign law and deemed invalid to become valid under German law once both partners have reached the age of majority. Because the law to prevent child marriages does not contain such provisions, the Federal Constitutional Court held that Article 13(3) no. 1 of the Introductory Act to the Civil Code is incompatible with the freedom of marriage under Article 6(1) of the Basic Law. The provision remains temporarily in force subject to the conditions specified by the Court relating to maintenance claims. The legislator has until 30 June 2024 to enact legislation that meets all of the constitutional requirements.

EUROPEAN COURT OF HUMAN RIGHTS

7. J.A. and Others v Italy

ECHR 097 (2023)
https://hudoc.echr.coe.int/eng/#{%22itemid%22:[%22001-223716%22]}

Coram
Marko Bošnjak, President, Péter Paczolay, Krzysztof Wojtyczek, Lətif Hüseynov, Ivana Jelić, Gilberto Felici, Raffaele Sabato, JJ and Liv Tigerstedt, Deputy Section Registrar.

Detention of migrants at Lampedusa "hotspot" and removal from Italy violated Convention

The applicants, four Tunisian nationals, left Tunisia in makeshift vessels. They encountered trouble at sea and were rescued by an Italian ship. They were taken to the Italian island of Lampedusa, where migrants are initially processed. The applicants claimed that during their ten-day stay, they were unable to leave or interact with authorities, and conditions were inhumane and degrading. Later, they were taken to the airport, given documents to sign, which they did not understand, and later found out they were refusal-of-entry orders. They were flown to Tunisia from Palermo Airport against their will. The applicants complained about the conditions in Lampedusa, being deprived of liberty without a clear decision, their expulsion being a collective action, and restrictions on their freedom of movement.

The European Court of Human Rights (ECtHR) ruled that, having regard to the elements submitted by the applicants, supported by photographs and several reports, the applicants' poor material conditions in Lampedusa violated Article 3 (prohibition on inhuman or degrading treatment) of the European Convention on Human Rights (ECHR). The ECtHR reiterated that difficulties deriving from the increased inflow of migrants do not exonerate states from their obligations under Article 3. The ECtHR then stated that the impossibility for the applicants to lawfully leave the closed area of the hotspot clearly amounts to a deprivation of liberty under Article 5 of the ECHR, all the more so considering that the maximum duration of their stay in the crisis centre was not defined by any law and that the regulatory framework did not allow the use of the Lampedusa hotspot as a detention centre for foreigners. The applicants were neither informed of the legal reasons for their deprivation of liberty nor able to challenge the grounds of their de facto detention. Hence, the ECtHR held that Italy violated Article 5 §§ 1, 2 and 4 of the ECHR. The ECtHR determined that the applicants had experienced collective expulsion as their individual cases were not assessed separately. The refusal-of-entry orders lacked individual

information, and the applicants had limited opportunity to appeal. Thus, there was a violation of the ECHR. As a result, the ECtHR did not examine the complaints under other articles and protocols. Italy was ordered to pay each applicant EUR 8,500 for non-pecuniary damage and EUR 4,000 jointly for costs and expenses.

EUROPEAN COURT OF HUMAN RIGHTS

8. *Sanchez v France*

ECHR 145 (2023)
https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22ENG%22],%22documentcollectionid2%22:[%22JUDGMENTS%22],%22itemid%22:[%22001-224928%22]}

Coram

Georges Ravarani, President, Marko Bošnjak, Gabriele Kucsko-Stadlmayer, Krzysztof Wojtyczek, Faris Vehabović, Egidijus Kūris, Branko Lubarda, Armen Harutyunyan, Georgios A. Serghides, Lətif Hüseynov, María Elósegui, Gilberto Felici, Erik Wennerström, Saadet Yüksel, Ana Maria Guerra Martins, Mattias Guyomar, Andreas Zünd, Judges,and Marialena Tsirli, Registrar.

Conviction for not promptly deleting unlawful comments on Facebook did not breach right to freedom of expression

The case concerned the criminal conviction of Julien Sanchez, a French national and mayor of the town of Beaucaire and standing for election to Parliament at the time of the events, for incitement to hatred or violence against a group or an individual on grounds of religion. In October 2014, he wrote on his publicly accessible Facebook account a brief post about his political opponent and a member of the European Parliament (MEP). Fifteen people commented on this post, two of them accusing the said MEP of allowing the town to be "run by Muslims" and allowing drug dealing and prostitution by them. The MEP's partner, Leila T. became aware of these posts the next day and lodged a criminal complaint against Sanchez, and the two commentators with the public prosecutor. Although Sanchez later warned his followers to be careful with the content of their comments, he did not remove the impugned comments from his Facebook wall. Sanchez and the commentators were subsequently found guilty of incitement to hatred or violence against a group or individual. After he exhausted domestic remedies, Sanchez took the case to the European Court of Human Rights (ECtHR), arguing that the conviction violated his right to freedom of expression, under Article 10 of the European Convention on Human Rights (ECHR).

The Grand Chamber of the ECtHR ruled in favour of France and found that Sanchez's rights had not been violated. The Court based its conclusions on the fact that, although Sanchez's original post had not been at issue, he lacked vigilance and failed to react in respect of comments posted by others. By making his Facebook wall publicly accessible, he had authorised his friends to post comments and he could not have been unaware, in view of the local tensions and ongoing election campaign around that time, that his choice was clearly not without certain potentially serious consequences. There had therefore been no violation of Article 10 of the Convention.

Supreme Court of India

9. *Sundar v. State by Inspector of Police*

https://indiankanoon.org/doc/157261512/

Coram

Dr. D.Y. Chandrachud, C.J.I., Hima Kohli and Pamidighantam Sri Narasimha, JJ.

Death penalty should be handed down to a convict only if there is no possibility of his or her reformation

The petitioner was a convict on death row. He moved the Court for a fresh look at his petition seeking a review of his conviction for the offence of murder and the award of the sentence of death. The Court allowed the petition and commuted the death sentence to life imprisonment by holding that it is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death. There is a bounden duty cast on the Courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent. A scrutiny of the judgments of the trial court, the High Court and this Court would indicate that the sentence of death is imposed by taking into account the brutality of the crime. There is no reference to the possibility of reformation of the Petitioner, nor has the State procured any evidence to prove that there is no such possibility with respect to the petitioner. It is the duty of the court to enquire into mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation before imposing the death penalty has been highlighted in multiple judgments of this Court. Despite this, in the present case, no such enquiry was conducted and the grievous nature of the crime was the only factor that was considered while awarding the death penalty.

10. The State of Punjab v. Dil Bahadur

https://indiankanoon.org/doc/81016777/

Coram

M.R. Shah and C.T. Ravikumar, JJ

The quantum of punishment in a given case must depend upon the atrocity of the crime and it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was committed

The State of Punjab preferred appeal against the impugned judgment passed by the High Court in criminal revision by which the High Court upheld the conviction of accused but reduced the sentence from two years to eight months. The Court allowed the appeal, set aside the order of High Court regarding reducing the sentence and upheld the sentence imposed by the learned Trial Court i.e. two years of imprisonment. The Court observed that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.

11. M/S. N.N. Global Mercantile Private Limited v. M/S. Indo Unique Flame Ltd.

https://www.livelaw.in/pdf_upload/2392620203150144044judgement25-apr-2023-470017.pdf

Coram

K.M. Joseph, Ajay Rastogi, Aniruddha Bose, Hrishikesh Roy and C.T. Ravikumar, JJ.

An instrument which contains an arbitration clause and is amenable to stamp duty but is not stamped cannot be said to be a contract enforceable in law within the meaning of S. 2(h) of the Contract Act and

is not enforceable under S 2(g) of the Contract Act

The petitioner and the respondent in the matter had entered into a sub-contract which contained an arbitration clause. Certain disputes arose and the respondent invoked the Bank Guarantee furnished by the petitioner. A suit was filed regarding the said invocation. The respondent filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 in the suit and sought for reference of disputes to arbitration. However, the Commercial Court rejected the application. A writ petition was filed by the respondent before the High Court but it was held non-maintainable. Hence this appeal. The Court dismissed the appeal by holding that an arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act attracts stamp duty and if not stamped or insufficiently stamped cannot be acted upon in view of Section 35 of the Stamp Act unless following impounding requisite duty is paid. The provisions of Section 33 and the bar under Section 35 of the Stamp Act would render the arbitration agreement contained in such instrument as being non-existent in law until the instrument is validated under the Stamp Act. The Apex Court noted that to say that non-payment of stamp duty on the commercial contract would invalidate even the arbitration agreement, and render it non-existent in law, and unenforceable, is not the correct position in law.

Supreme Court of Bangladesh

12. Secretary, Ministry of Education, Bangladesh v. Char Elisha Junior High School

https://supremecourt.gov.bd/resources/documents/1674752_C_A_No_336_of_2019.pdf

Coram

Hasan Foez Siddique, **M. Enayetur Rahim** and Jahangir Hossain, JJ.

No mandamus can be issued upon the Government in regard to the policy matter or decision

The Respondents filed writ petition before the High Court for a direction that their institution be given Monthly Payment Order (MPO) for giving Government portion of salary. The petition was allowed, consequently the appellant filed this appeal. The Supreme Court allowed the appeal and set aside the order of High Court by holding that it is well settled that MPO benefit depends upon the financial capacity of the Government as well as its policy and thus, no mandamus can be issued upon the Government in regard to the policy matter or decision. Further, since no vested and legal right have been created in favour of the writ petitioners, thus there is no scope to hold that the petitioners have legitimate expectation to be enlisted in MPO. The petitioners can approach and pursue with the Government.

13. Noor Mohammad v. Mahohar Ali

https://supremecourt.gov.bd/resources/documents/2003543_C.A.No.35of2008.pdf

Coram

Hasan Foez Siddique, **M. Enayetur Rahim** and Jahangir Hossain, JJ

It is a cardinal principle of law that plaintiff has to prove his own case and he cannot be entitled to get a decree on the weakness of the defendant

The plaintiffs filed a suit for declaration regrading suit property and the same was dismissed by the trial court. The first appellate court reversed the decision and decreed the suit. Later on, High Court reversed the decision of first appellate court and dismissed the suit. The Supreme Court dismissed the appeal by holding that High Court committed no error in dismissing the suit. The Court further observed that it is true that the defendants failed to produce the documents regarding settlement of the suit land from the original owners. But it is a cardinal principle of law that plaintiff has to prove his own case and he cannot be entitled to get a decree on the weakness of the defendant(s), if any. The burden lies on the plaintiff to prove his case and he must

succeed on his own strength only and not at the weakness of the adversary.

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Disclaimer--The legal points decided in the judgements other than that of the Supreme Court of Pakistan have been cited for benefit