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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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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.