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FORTNIGHTLY CASE LAW BULLETIN

(01-05-2023 to 15-05-2023)

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

JUDGMENTS OF INTEREST

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1. **Supreme Court of Pakistan**
Snamprogetti Engineering B.V. thr. its special attorney v. Commissioner of Inland Revenue Zone-II, L.T.U, Islamabad, etc.
Civil Petitions No.3286 to 3289 of 2017
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3286 2017.pdf

Facts: The petitioner a company incorporated in the Netherlands, entered into an engineering contract with a company incorporated in Pakistan, to provide “engineering services” and filed tax returns for tax years 2007, 2008 and 2009, declaring that the income arising from such engineering services was exempt from being taxed under the domestic tax regime of Pakistan. The tax returns were treated as assessment orders deemed to have been issued in terms of Section 120(1) of the Ordinance. The department took exception to the exemption claimed by the petitioner. Show cause notices were issued to the petitioner. The Assessing Officer amended the assessment orders. Tax was consequently ordered to be charged on the income which had been declared exempt by the petitioner. The decision of the Assessing Officer was set aside by the Commissioner (Appeals) which was reversed by the Tribunal and it was then maintained by the High Court. Hence, the petitioner seeks leave of Court to appeal against the decision of the High Court.

Issues:

- i) What is aim of international taxation treaties and how their provisions can be interpreted?
- ii) When the business profits of an enterprise of one of the states can be taxable in the other state?
- iii) How the term ‘permanent establishment’ can be defined under Convention signed and enforced by Pakistan and the Netherlands in 1982?
- iv) How time period can be calculated to constitute permanent establishment as per clause 4 of article 5 of the Convention, 1982?

Analysis: i) International taxation treaties aim to avoid and relieve double taxation through equitable (and acceptable) distribution of tax claims between the countries. The purpose of these treaties has significant relevance as to how their provisions are to be interpreted. The reason is that the efficacy of such treaties depends on common and workable interpretation of the treaty terms. Such an interpretation requires taking into consideration the international tax language and terminology and placing reliance on legal decisions and practices in other countries, where appropriate, because these materials form part of the legal context. Model treaties developed by the Organisation for Economic Co-operation and Development (“OECD”) and the United Nations (“UN”) to provide standard frameworks of guidance for treaty negotiation, and official commentaries thereon, are of high persuasive value in terms of defining the parameters of double taxation treaties and have world-wide recognition as basic documents of reference in the

negotiation, application and interpretation of multilateral or bilateral tax conventions. Most countries accept the common interpretation principles of the Vienna Convention on the Law of Treaties of 23rd May 1969 (“VCLT”) under customary international law, and thus the VCLT and not the domestic law of the contracting states, usually governs the interpretation of such treaties.

ii) The Convention involved in the present case was signed and enforced by Pakistan and the Netherlands in 1982. Its Article 7 provides that the business profits of an enterprise of one of the states shall be taxable in the other state only if the enterprise maintains a permanent establishment in the latter state and only to the extent that the profits are attributable to the permanent establishment.

iii) The term ‘permanent establishment’ is dealt with under Article 5 of the Convention. The structure of this Article as per the OECD and UN Model Conventions has been explained in Klaus Vogel’s treatise, which is regarded as the international gold standard on the law of tax treaties, as a multi-level structure and can be read from more than one starting point. Clause 1 of Article 5 of the Convention gives a general or classic definition of the term permanent establishment as a fixed place of business through which the business of an enterprise is wholly or partly carried on. Clause 2 contains a non-exhaustive list of examples which could be regarded as permanent establishments. Clause 3 expressly provides that a building site, construction, installation, assembly project or supervisory activities constitute a permanent establishment only if they last more than six months. Clause 4 relates to services and provides that the furnishing of services would fall in the ambit of permanent establishment if activities of that nature continue for a period or periods aggregating more than four months within any twelve-month period. Clause 5 lists a number of business activities which are treated as exceptions to the general definition. Clauses 6 and 7 are deeming provisions referring to situations where an enterprise is deemed to have a permanent establishment in one of the states. And, clause 8 provides an instance that a company which is a resident of one of the states and controls or is controlled by a company which is a resident of the other state or which carries on business in the other state shall not of itself constitute either company a permanent establishment of the other.

iv) The language used in Clause 4 of Article 5 of the Convention with respect to time period shows that there may be a number of periods, interspersed with breaks, during which services are furnished by an enterprise. If the aggregate of these periods crosses the threshold of four months within any twelve-month period, a permanent establishment will stand constituted.

Conclusion: i) The aim of international taxation treaties is to avoid and relieve double taxation and interpretation of their provisions require taking into consideration the international tax language and terminology and placing reliance on legal decisions and practices in other countries.

ii) The business profits of an enterprise of one of the states shall be taxable in the other state only if the enterprise maintains a permanent establishment in the latter

state and the profits are attributable to the permanent establishment.

iii) Permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on as per clause 1 of article 5 of the Convention and other clauses give list and instances of permanent establishment.

iv) As per clause 4 of article 5 of the Convention, 1982 if the aggregate of these periods crosses the threshold of four months within any twelve-month period a permanent establishment will stand constituted.

**2. Supreme Court of Pakistan
Syed Zahid Hussain Shah v. Mumtaz Ali and others
Civil Appeal No. 2015 of 2022**

Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi

https://www.supremecourt.gov.pk/downloads_judgements/c.a. 2015_2022.pdf

Facts: Petitioner purchased land regarding which a suit for declaration was filed claiming therein the owners of land (subject matter of suit) being Benami owners but petitioner was not made party to said suit. The petitioner filed an application u/s 12(2) of CPC which was allowed and petitioner was made party to suit. Against this decree the petitioner filed an appeal but he did not affix the applicable court fee on the appeal, as according to him he was suffering from Covid-19, and upon recovery moved an application to condone the delay, which was declined by the learned Judge of the Appellate Court, whose order was assailed before the High Court in Civil Revision and the learned Single Judge of the High Court sustained the order of the Appellate Court.

Issues:

- i) Whether non-payment of court fees infringes the rights or undermines interest of opposite party in suit etc.?
- ii) Whether the cases in which money is due to the opposite-party, such as sale consideration in a suit seeking specific performance of contract, can be equated with cases in which court-fees is not paid or belatedly paid?
- iii) Whether judgment should be given without applicable court fee having been paid and time given for payment of court fee in judgment?

Analysis: i) Supreme Court in *Provincial Government v Abdullah Jan* and in *Abdul Khaliq v Haq Nawaz* held that the Court-Fees Act, 1870 is a taxing statute which collects revenue for the State, and that it does not create any right in a party nor extinguishes any party's right. If the court-fees was a right vesting in a party then a court could not waive its payment. However, if a person is financially incapable of paying court-fees the CPC permits filing of a suit without payment of court-fees and the plaintiff therein is enabled to submit an application under Order XXXIII of the CPC to sue as a pauper, that is, without paying court-fees; there is no reason not to apply the same principle to appeals too. If payment of court-fees had created a right in the opposite-party the law would not have permitted entertaining an application (under Order XXXIII CPC) seeking permission to sue

as a pauper and file a suit without court-fees nor empowered the court to grant such application.

ii) The cases in which money is due to the opposite-party, such as sale consideration in a suit seeking specific performance of contract or a statutory provision requiring deposit of the amount in a preemption suit to secure the interest of the purchaser, cannot be equated with cases in which court-fees is not paid or belatedly paid; payment of court-fees is not received by the opposite-party. Non-payment or belated payment of court-fees does not adversely affect the interest of the opposite party.

iii) Legal complications arise if a judgment is given without applicable court-fees having been paid, and parties alter their positions pursuant thereto, for instance the appellant may have proceeded to sell the land which he had purchased and thus create third-party interest therein, which may give rise to additional litigation. Such litigation can be avoided if the matter of court-fees is first settled. Moreover, when courts are inundated with cases, and of those who are keen to proceed with them, it does not stand to reason to waste court-time by deciding a case in which court-fees has not been paid.

- Conclusion:**
- i) Non-payment of court fees does not create any right in a party nor extinguishes any party's right.
 - ii) The cases in which money is due to the opposite-party, such as sale consideration in a suit seeking specific performance of contract, cannot be equated with cases in which court-fees is not paid or belatedly paid.
 - iii) Judgment should not be given without applicable court fee having been paid and time given for payment of court fee in judgment.

**3. Supreme Court of Pakistan
Pakistan Electronic Media Regulatory Authority (PEMRA), Islamabad v.
Pakistan Broadcasters Association and another
Civil Appeal No.11 of 2022
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed
Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 11_2022.pdf**

Facts: This civil appeal is filed against the judgment of High Court of Sindh, whereby the constitutional petition moved by the respondents was accepted and the authority to delegate power of suspension of Broadcast Media licences to the chairman PEMRA was strike down.

Issue: What is the legal requirement to delegate power of suspension of a Broadcast Media licence under section 13 read with section 30 of the PEMRA Ordinance 2002 to the chairman PEMRA?

Analysis: The first proviso had expressly disallowed delegation of four kinds of powers: the grant, suspension, revocation or cancellation of a broadcast licence. The amendments of 2007 reduced the disallowed powers to three, the power of

suspension being excluded. In other words, the power to suspend the licence can now be delegated. The power of suspension, especially in the context of the provision of subsection (3) of s. 30 whereby such power can be exercised without prior notice or hearing “for reason of necessity in the public interest” is simply too powerful and broad an instrument to be entrusted to anyone other than where the statute places it (i.e., in the hands of the Authority itself) on a ground so flimsy as the desire to take “prompt action”. In the context of a power to suspend a licence without prior notice or hearing, both “public interest” and “necessity” can be rather malleable terms either of which can be bent hither or thither. The need or desire to take “prompt action”, even if legally sustainable, is not to be confused or equated with the “necessity” to take action, especially when such necessity can only exist in the context of public interest. A strong case must be made out and there must be very serious application of mind by the Authority for it to be satisfied that the power of suspension ought to be delegated. Even if the power of suspension is delegated to the Chairman for legally valid and sustainable reasons, the “threshold” for not exercising its “discretion” in relation to the imposition of conditions in relation to such delegation is so high that, as explained, it effectively vanishes. Conditions had to be imposed, and that had to be done by rules.

Conclusion: The delegation could only be in terms of, and subject to, legally relevant and sustainable conditions imposed by rules.

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4. **Supreme Court of Pakistan**
Federation of Pakistan through Secretary, Ministry of
Defence Rawalpindi & another v. M/s Farrukh International (Pvt) Ltd
through its Proprietor Mrs. Firdous Munawar
Civil Petition No. 3185 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail,
Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3185_2020.pdf

Facts: The Petitioners filed a suit for recovery of an amount of Rs.912,801.60/- against the Respondent. The Respondent did not contest the suit, therefore, was proceeded against ex parte and the petitioners were asked to produce evidence. Subsequently, the trial court vide judgment and decree dismissed the suit. The appeal filed against the judgment and decree of the trial court was dismissed by the Additional District Judge. Thereafter, the petitioners filed a Civil Revision before the Lahore High Court, which too was dismissed through the impugned judgment, hence, this petition for leave to appeal.

Issues:

- i) When defendant is proceeded against ex parte, whether court is bound to record evidence or can pass decree without recording evidence?
- ii) Whether the term “decree” includes rejection of plaint as well?
- iii) Whether requirement to produce two marginal witnesses to prove the documents as required under Article 79 of the Order, 1984 is applicable in cases where the defendant is proceeded against ex parte as well?

iv) If the procedure for production of the document is not followed in the manner prescribed by law, whether the same can be taken into consideration?

Analysis:

i) Where on the date of hearing, only the plaintiff appears and the defendant despite being duly served does not appear, the Court by exercising powers under Order IX, Rule 6 of the Code of Civil Procedure (“CPC”) may proceed against the defendant ex parte and pass a decree without recording evidence. (...) The Court after proceeding with the defendant ex parte, may determine the rights of the parties either without recording evidence or may call the plaintiff to produce evidence, in order to satisfy itself on arriving at a proper conclusion of the matter presented before it, for the safe administration of justice. Thus, despite non-appearance of the defendant, the Court should not act mechanically, rather ought to consider the legal and factual aspects of the case, on the basis of the material available before it.

ii) As per section 2(2) of the CPC, a “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint as well.

iii) A document which pertains to financial and future obligations is required to be attested by at least two witnesses, as provided by Article 17(2)(a) of the Qanun -e-Shahadat Order, 1984 (“Order , 1984 ”). Article 79 of the Order, 1984 mandates that any such document required by law to be attested by two witnesses shall not be used as evidence, save for two attesting witnesses appear before the Court to prove its execution, unless the same is admitted by the contesting parties, as stipulated by Article 81 of the Order, 1984. If the question of execution and attestation of any such document is put in issue by the Court, the party relying upon such document is required to produce its two marginal witnesses in order to prove its execution in accordance with the law. This principle is applicable to all such documents executed between private and/or public parties as well as in cases where the defendant is proceeded against ex parte.

iv) The law has provided a procedure for production of documents through the person concerned along with its original record. If the procedure for production of the document is not followed in the manner prescribed by law, the same cannot be taken into consideration.

Conclusion:

i) The Court after proceeding with the defendant ex parte, may determine the rights of the parties either without recording evidence or may call the plaintiff to produce evidence.

ii) “Decree” deems to include the rejection of a plaint as well.

iii) Requirement to produce two marginal witnesses to prove the documents as required under Article 79 of the Order, 1984 is applicable in cases as well where the defendant is proceeded against ex parte.

iv) If the procedure for production of the document is not followed in the manner

prescribed by law, the same cannot be taken into consideration.

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- 5. Supreme Court of Pakistan
Higher Education Commission H/9, Islamabad through its Project Director
v. Allah Bakhsh, etc.
Civil Petition No.5877 of 2021
Mr. Justice Syed Mansoor Ali Shah Mrs. Justice Ayesha A. Malik Mr.
Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5877_2021.pdf**

Facts: This civil petition for leave to appeal was filed against the judgement of Islamabad High Court whereby the regular first appeal of the petitioner was dismissed on account of being time-barred.

Issue: Whether the Higher Education Commission has the attributes of a Government and would be governed by Art. 149 of the Limitation Act 1908?

Analysis: A careful reading of Article 149 of the Limitation Act, 1908 clearly reveals that in any suit by or on behalf of the Federal Government or any Provincial Government except a suit before the Supreme Court in the exercise of its original jurisdiction, the period of limitation would be sixty years. The period of limitation time from which the period begins to run is mentioned under Column 3 of the above Article, which reads as follows. “When the period of limitation would begin to run under this Act against a like suit by a private person.” This brings us to consider whether the Higher Education Commission, has the attributes of a Government? The Higher Education Commission Ordinance, 2002 brings into being the Higher Education Commission, which is a statutory corporation. It has many qualities, for instance, defined powers that it cannot exceed, and it is directed by a group of persons, collectively known as the Commission, whose function it is to see that those powers are properly used. It may acquire, hold and dispose of property, both movable and immovable, and may sue or be sued. The day-to-day control of the administration is vested in the Chairperson assisted by other officers. It makes its own appointments and has its own recruitment rules. It has an independent account. Its Chairperson, members and officers, servants, consultants and advisers are public servants. All these attributes make it clear that although the Higher Education Commission is owned and funded by the Government, and its Chairperson and members are appointed by the Prime Minister, it is, in the eye of the law, still a separate legal entity and has a separate legal existence. It is its own master and is answerable as fully as any other person or corporation of the State. It is not the Government, nor does it act on behalf of the Government, and as such, does not enjoy any immunity or privileges of the Government.

Conclusion: The Higher Education Commission is an independent legal entity and has an independent legal existence, and thus, would not be governed by Art. 149 of the Limitation Act, 1908.

- 6. Supreme Court of Pakistan**
Salman Zahid v. The State through P.G. Sindh
Criminal Petition No. 263 of 2023
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi,
Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 263 2023.pdf

Facts: The petitioner through the instant petition has assailed the order passed by the learned Single Judge of the learned High Court, with a prayer to grant post-arrest bail in case FIR registered under Sections 302/337-J/109/34 PPC, in the interest of safe administration of criminal justice.

Issues:

- i) Whether the statement of the prosecution witnesses recorded at a belated stage has any sanctity?
- ii) What is the fundamental principle of universal application in cases dependent on circumstantial evidence?
- iii) Whether the benefit of doubt can be extended to the accused at bail stage?

Analysis:

- i) This is now a well settled proposition of law that any statement of the prosecution witnesses if recorded at a belated stage, it loses its sanctity. Reliance is placed on the judgments reported as Abdul Khaliq Vs. The State (1996 SCMR 1553) and Noor Muhammad Vs. The State (2020 SCMR 1049).
- ii) The fundamental principle of universal application in cases dependent on circumstantial evidence is that in order to justify the inference of guilt of an accused, the incriminating fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.
- iii) It is settled principle of law that benefit of doubt can be extended even at bail stage. Reliance is placed on Muhammad Ejaz Vs. The State (2022 SCMR 1271), Muhammad Arshad Vs. The State (2022 SCMR 1555) & Fahad Hussain Vs. The State (2023 SCMR 364).

Conclusion:

- i) The statement of the prosecution witnesses recorded at a belated stage loses its sanctity.
- ii) In cases dependent on circumstantial evidence, the incriminating fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.
- iii) It is settled principle of law that benefit of doubt can be extended even at bail stage.

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- 7. Supreme Court of Pakistan**
Sardar Muhammad (deceased) through LRs v. Taj Muhammad (deceased)
through LRs and others
Civil Appeal No. 840 of 2017
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 840 2017.pdf

Facts: The predecessor-in-interest of the appellants filed a suit for possession through pre-emption. The learned trial court dismissed the suit. Then he filed an appeal before the learned Additional Sessions Judge who accepted the appeal and set aside the judgment and decree of the learned Trial Court. Being aggrieved, the respondents/defendants filed Regular Second Appeal before the learned Lahore High Court, who vide impugned judgment accepted the same, set aside the judgment and decree of the learned Appellate Court and restored that of the learned Trial Court. Hence, this appeal.

Issues: i) Whether the right of pre-emption is a very weak right and what are the prerequisites to file the suit for pre-emption?
ii) Who is to prove that the notice of Talb-e-Ishhad has been delivered to all the defendants and what will be the effect, if not proved?

Analysis: i) There is no denial to this fact that the right of pre-emption is a very weak right. To succeed in a suit for pre-emption the first and the foremost condition is that the plaintiff has to plead that before filing of suit he had fulfilled the requirements of Talabs and thereafter he has to prove the performance of Talb-e-Muwathibat and Talb-e-Ishhad. For proving Talb-e-Muwathibat there must be specific time, date and place of knowledge pleaded in the plaint. Thereafter, the same shall be followed by sending of notice through registered post, which shall be served on the defendants.
ii) In view of the law laid down by this Court, it is the plaintiff/pre-emptor who has to prove that the notice has been delivered to all the defendants. The service of Talb-e-Ishhad is a prerequisite and if the performance of the same is not proved beyond any shadow as well as in the prescribed form, then the whole structure falls on the ground.

Conclusion: i) The right of pre-emption is a very weak right, the pre-emptor has to fulfil the requirements of Talabs and thereafter he has to prove the performance of Talb-e-Muwathibat and Talb-e-Ishhad.
ii) It is the plaintiff/pre-emptor who has to prove that the notice has been delivered to all the defendants and if the performance of the same is not proved then the whole structure falls on the ground.

8. Supreme Court of Pakistan
Muhammad Usman v. The State
Jail Petition No. 148 of 2022
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._148_2022.pdf

Facts: The Petitioner along with co-accused was tried by Judicial Magistrate, Section 30, pursuant to a case registered under Sections 324/337-F(v)/34 PPC for attempting to take life of the complainant and his wife. The Trial Court convicted the petitioner and co-accused and sentenced on various charges. In appeal the Additional District Judge, while acquitting the co-accused, maintained the

conviction of the petitioner and the same was upheld by the High Court. Hence, this petition has been filed by the petitioner against the judgment of High Court.

Issues:

- i) Whether promptness of FIR excludes possibility of deliberation and consultation?
- ii) Whether testimony of an injured eye witness carries more evidentiary value?
- iii) What is evidentiary value of a recovered weapon when same is not sent to the Forensic Science Laboratory?

Analysis:

- i) Promptness of FIR shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation.
- ii) The testimony of an injured eye witness carries more evidentiary value.
- iii) Although, the weapon of offence i.e. a pistol was recovered from the petitioner but as the same was not sent to the Forensic Science Laboratory, therefore, the recovery is inconsequential.

Conclusion:

- i) Promptness of FIR excludes possibility of deliberation and consultation.
- ii) Testimony of an injured eye witness carries more evidentiary value.
- iii) There is no evidentiary value of a recovered weapon when same is not sent to the Forensic Science Laboratory.

9. Supreme Court of Pakistan
Muhammad Ali v. The State and Another
Criminal Petition No. 328 of 2023
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 328_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the learned Single Judge of the Lahore High Court with a prayer to grant post-arrest bail on the statutory ground in a case registered under sections 324/148/149/337-L(i)/337-D/337- F(v)/337-F(iii)/336 PPC.

Issue: What is the first point of consideration for the courts deciding post-arrest bail filed on the statutory ground?

Analysis: The perusal of the record reflects that the complainant party is producing the witnesses before the learned Trial Court on each and every date but the petitioner is avoiding getting their evidence recorded. While deciding bail petition on statutory grounds, the courts must examine the available material to first form an opinion that such delay is not occasioned due to any act of the accused himself or any other person acting on his behalf. If that be so, the bail even on the ground of statutory delay can be declined. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the petitioner has not been able to point out any legal or factual error in the impugned

order, which could be made basis to take a different view from that of the learned High Court.

Conclusion: While deciding bail petition on statutory grounds, the courts must examine the available material to first form an opinion that such delay is not occasioned due to any act of the accused himself or any other person acting on his behalf.

10. Supreme Court of Pakistan
Zaffar Afzal & others v. Ashiq Hussain
Civil Appeal No. 415 of 2018
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 415 2018.pdf

Facts: Through this Civil Appeal, appellants have challenged the judgments and decrees of learned first Appellate Court and the High Court whereby their suit for declaration and cancellation of the disputed mutation on the pretext that it was a result of fraud, was dismissed which was originally decreed by the learned Trial Court.

Issues:

- i) Whether any person who appears to be of unsound mind, mentally infirm, or intellectually disabled, can protect and safeguard his rights and interests?
- ii) How the transaction in respect of rights and interests of a person who is hard of hearing and non-verbal, communicates through signs and expressions and is not intellectually disabled, should be made?

Analysis:

- i) Any person adjudged or if not so adjudged, appear to be of unsound mind, mentally infirm, or intellectually disabled, is incapable of protecting and safeguarding their rights and interests themselves. Under such circumstances, transaction in respect of rights and interests of such persons must be through next friend or guardian as the case may be, as provided by Order XXXII, Rule 15 of the Code of Civil Procedure (“CPC”).
- ii) Any transaction in respect of rights and interests of a person(s) who is hard of hearing and non-verbal, communicates through signs and expressions and is not intellectually disabled, must be in the presence of witnesses who can understand, interpret, and express their views. The witnesses to the transaction should preferably be close relatives or anyone who is fully acquainted with such persons. The witnesses to the transaction should be apprised of the consideration of such transaction. It must be ensured that the persons who deal, assist and witness the transaction have no conflict of interest in the matter.

Conclusion:

- i) Any person adjudged or if not so adjudged, appears to be of unsound mind, mentally infirm, or intellectually disabled, is incapable of protecting and safeguarding his rights and interests himself.
- ii) The transaction in respect of rights and interests of a person who is hard of hearing and non-verbal, communicates through signs and expressions and is not intellectually disabled, must be in the presence of witnesses who can understand,

interpret, and express their views.

11. Lahore High Court
Muhammad Abdul Rehman v. Punjab Public Service Commission etc.
Writ Petition No.64123/2022
Mr. Justice Abid Aziz Sheikh
<https://sys.lhc.gov.pk/appjudgments/2023LHC2463.pdf>

Facts: The petitioners in all these petitions applied for the posts of Assistant Director and posts of Deputy Director of Agriculture and also passed the written test, however, the petitioners' interview calls were cancelled on the ground that the petitioners do not have the required experience for the posts. The petitioners filed Writ Petitions in which as an interim relief, the petitioners were provisionally allowed to appear for interview subject to final outcome of writ petitions. However, in the meanwhile, the Agricultural Department, requested the PPSC to withdraw the requisition of the aforesaid posts through a letter. Some of the petitioners being aggrieved have filed separate writ petitions challenging the letter for withdrawal of requisition.

Issues:

- i) Whether requisition of any post can be withdrawn by the department which advertised the said post?
- ii) Whether any vested right accrues in favour of any applicant against the withdrawal of post before issuance of recommendation?

Analysis:

- i) Plain reading of aforesaid Regulation shows that department can withdraw the requisitioned vacancies altogether for valid reasons, however, approval of Additional Chief Secretary (S&GAD) shall be required and said withdrawal must be before sending recommendations by the PPSC to the concerned department.
- ii) Regarding the vested right in favour of the petitioners, suffice it to note that though the petitioners have applied for the post of Assistant Director & Deputy Director and also appeared in the written test and interview but thereafter, neither they have been recommended for the post nor any merit list was issued or any appointment letter was issued in favour of the petitioners. In absence of any of the aforesaid incidents, no vested right accrued in favour of the petitioners. This legal position also coincide with the Regulation 12 (a) of the Regulation under which the department could withdraw the requisition altogether for valid reasons before any recommendations made by the PPSC.

Conclusion:

- i) Requisition of any post can be withdrawn by the department which advertised the said post for valid reasons, however, approval of Additional Chief Secretary (S&GAD) shall be required and said withdrawal must be before sending recommendations by the PPSC to the concerned department.
- ii) No vested right accrues in favour of any applicant against the withdrawal of post before issuance of final recommendation by the PPSC.

12. Lahore High Court
Mazhar Hussain Asif v. Province of Punjab etc.
Writ Petition No.26698/2023
Mr. Justice Abid Aziz Sheikh
<https://sys.lhc.gov.pk/appjudgments/2023LHC2504.pdf>

Facts: The petitioner has challenged two impugned transfer orders through this petition issued by respondent No.4 on behalf of Director General (DG), Lahore Development Authority (LDA), whereby the petitioner has been transferred and posted as Chief Engineer, TEPA, LDA and through the second impugned transfer order, respondent No.6, has been given the additional charge of the post of Chief Engineer II. The petitioner has also challenged the order passed by respondent No.2, whereby his representation has been dismissed.

Issues: i) Whether the LDA Regulations are statutory or non-statutory?
 ii) Whether Notification of Election Commission of Pakistan regarding ban on transfer and posting in the Punjab Province where schedule for General Election to the Provincial Assembly has been issued is not applicable to LDA?

Analysis: i) One of the tests to determine that whether the Rules or Regulations under any enactment are statutory or otherwise, laid down by the honorable Supreme Court from time to time, is that when the Rules or Regulations are framed or approved by the Government then the same have force of law and are statutory in nature, however, where the Rules or Regulations are made by the Authority or concerned department for internal control or management without approval of the Government, the same are non-statutory and does not have statutory force behind it... The Regulations in-question when examined in the light of the law settled in afore-noted judgments, no doubt the same have been framed under Section 45 of the Act by the Authority and no approval of the Government is required under said provision, however, the perusal of LDA Regulations shows that vide letter dated 30.04.1978 by government of Punjab (Local Government Social Welfare and Rural Development Department), the same were approved by the Martial Law Administrator, Punjab (MLA) on 16.04.1978. Under Article 270A(1) of the Constitution, all Proclamations, President's orders, Ordinances, Martial Law Regulations, Martial Law Orders and all other laws made between 05.07.1977 and the date when Article 270A of the Constitution came into force, were affirmed, adopted and declared to have been validly made by the competent authority. Further, under Article 270A(2) & (3) of the Constitution, all orders made, proceedings taken and act done by any authority or any person which was made, taken or done between 05.07.1977 and the date on which Article 270A of the Constitution came into force (30.01.1985), in exercise of powers derived from Proclamation, President's Orders, Ordinance, Martial Law Regulations, Martial Law Orders, enactments Notifications, Rules, Orders or Byelaws be deemed to be and always to have been validly made, taken or done and remain in force unless altered, repealed or amended by the competent authority... Though the LDA

Regulations framed under Section 45 of the Act were neither required nor approved by the Government, however, these Regulations were approved by the MLA on 16.04.1978, who was exercising the powers of the Provincial Government for all intent and purposes under Proclamations, including the Martial Law Regulations and Martial Law Orders, which were subsequently validated under Article 270A of the Constitution, therefore, the approval of MLA has the same status as approval of the Government. The necessary corollary and conclusion of the above discussion is that LDA Regulations are statutory in nature and it will be a fallacy to hold it otherwise.

ii) Regarding applicability, the perusal of the ECP's Notification manifests that same was issued under Article 218(3) of the Constitution read with Section 230(2)(f) of the Elections Act, 2017 (Elections Act) and was made applicable not only to the Government but also to the Authorities. The LDA admittedly being an Authority under the Act, the ECP's Notification is also applicable to the LDA.

Conclusion: i) The LDA Regulations are statutory in nature.
ii) Notification of Election Commission of Pakistan regarding ban on transfer and posting in the Punjab Province where schedule for General Election to the Provincial Assembly has been issued is applicable to LDA.

13. Lahore High Court
Dr. Asghar Ali v. Muhammad Ali
Civil Revision No.42583 of 2022
Mr. Justice Masud Abid Naqvi
<https://sys.lhc.gov.pk/appjudgments/2023LHC2586.pdf>

Facts: The petitioner/plaintiff filed the instant civil revision to challenge the validity of the judgments and decree passed by the learned courts below whereby his suit for specific performance of an agreement to sell was dismissed due to non-deposit of balance sale consideration.

Issue: What court must ensure before dismissing the suit for non-deposit of balance sale consideration in a suit for specific performance of an agreement to sell?

Analysis: Perusal of the record reveals that the plaintiff/petitioner filed a suit for specific performance of an agreement to sell against defendants No.1 and 2 and learned trial court directed the plaintiff/petitioner to deposit the balance sale consideration amount on the next date of hearing but the plaintiff/ petitioner failed to deposit the same. However, on the said date the learned counsel for the plaintiff/petitioner withdrew the suit to the extent of defendant No.1 but the learned trial court passed the impugned judgment and decree on the same date and dismissed the plaintiff's suit for non-deposit of balance total sale consideration amount. The High Court observed that instead of passing any order to clarify the specific balance sale consideration amount by deducting the amount to the extent of the share of defendant No.1, the learned trial court passed the judgment for not depositing the

balance total consideration. It is also important to mention here that the learned trial court failed to pass an order for the deposit of the specific remaining amount along with the consequences of non-compliance of the order with clarity in advance before passing the impugned judgment and decree and learned appellate court has also failed to appreciate the above-mentioned facts while dismissing the plaintiff/petitioner's appeal.

Conclusion: Before dismissing the suit for non-deposit of balance sale consideration, the court must specify the exact amount of balance sale consideration required to be deposited along with consequences for non-deposit in clear terms.

14. Lahore High Court
Dr. Asma Nighat Zaidi & others v. Syeda Safoora Begum & others
Writ Petition No.7073 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
<https://sys.lhc.gov.pk/appjudgments/2023LHC2591.pdf>

Facts: The petitioners called into question vires of order and judgment, passed by Civil Judge and Additional District Judge, Lahore, respectively, whereby petitioner No.1's application under Section 476 Cr.P.C. for initiation of criminal proceedings against respondent No.1 regarding concealment of facts while obtaining succession certificate was allowed with certain directions concurrently.

Issues:

- (i) What is meant by the term *Tarka*?
- (ii) Whether in the event of death of either of the account holders of a joint bank account, the survivor shall be entitled to have sole ownership of the full amount available in the joint account?
- (iii) Whether in nomination cases, a nominee is entitled to receive the entire amount of a deceased?

Analysis:

- (i) All moveable and immoveable properties owned and possessed by the deceased at the time of death including a property which is due to the deceased from any other person (though not received by the deceased during his life time, but the deceased was legally entitled to raise a claim in respect of the same in his life time) and distributable among his legal heirs as per their respective shares is called *Tarka*.
- (ii) The fact that account opening application / form is bearing characteristic of "either or survivor" neither gives any authority to the Bank to disburse the available amount to the survivor of the joint account holder nor makes the survivor sole owner of the amount available in joint account...Even otherwise, under the law with the death of one of the account holders of a joint account any authorization/authority given by the deceased co-account holder stood automatically revoked and even a validly authorized person is denuded of such power after death of the principal as all assets of the deceased by operation of law stood vested in the ownership of legal heirs of the deceased and the Bank or the joint account holder are not empowered to unilaterally operate the account or

withdraw any amount until and unless as per law a declaration regarding succession or letter of administration or probate is issued by the Court of competent jurisdiction.

(iii) Even in nomination cases, nominee is not entitled to receive the entire amount of deceased. Such nomination would neither be a will nor a gift nor a trust. It would merely be a mandate, the validity of which would expire with death and the amount available in the account would be undisposed estate of the deceased. Such nomination cannot override the provisions of Islamic Law of Inheritance, therefore, no legal heir could be deprived from receiving their respective share.

- Conclusion:** (i) All moveable and immovable properties owned and possessed by the deceased at the time of death including a property which is due to the deceased from any other person is called *Tarka*.
- (ii) In the event of death of either of the account holders of a joint bank account, the survivor shall not be entitled to have sole ownership of the full amount available in the joint account.
- (iii) In nomination cases, a nominee is not entitled to receive the entire amount of a deceased.

15. Lahore High Court
Sarfraz Ali v. The State, etc.
CrI. Misc. No. 82227-B of 2022
Mr. Justice Sardar Muhammad Sarfraz Dogar
<https://sys.lhc.gov.pk/appjudgments/2023LHC2497.pdf>

Facts: The petitioner, through this petition, seeks pre-arrest bail after his first bail petition was dismissed as having been withdrawn following arguments at some length in the same court.

Issues:

- i) What ground would make a second pre-arrest bail petition of an accused maintainable before the same court subsequent to the dismissal as withdrawn of his first pre-arrest bail petition after arguing it at some length?
- ii) Whilst dealing with pre-arrest bail of an accused ascribed role identical to the role of co-accused, what would be effect of the earlier order of the court granting post-arrest bail to said co-accused?
- iii) If accused had withdrawn earlier pre-arrest bail petition after he was opined as innocent in earlier investigation, whether apprehension of his arrest based upon new finding of his involvement in occurrence in subsequent investigation constitutes a fresh ground for his second pre-arrest bail petition in the same court?

Analysis: i) Second bail petition cannot be filed before the same court on the basis of a ground having been available at the time of withdrawal of earlier bail petition, but such ground was abandoned or not pressed. Dismissal of a bail petition of an accused following arguments at some length amounted to rejection of all the

grounds available or in existence at the time of such dismissal, notwithstanding situations that such grounds were actually taken, argued and expressly dealt in the order of dismissal or not.

ii) The role ascribed to accused and co-accused is identical i.e. abetment. Role of accused cannot be distinguished from that of his co-accused having already been granted post-arrest bail.

iii) First pre-arrest bail petition of accused was withdrawn on score that he was opined as innocent in earlier investigation and his arrest was deferred by the then investigating officer. However, he was found involved in the case as abettor of the occurrence in subsequently conducted investigation. Apprehension of the arrest on the basis of said new finding was based by accused for his second pre-arrest bail petition in the same court.

- Conclusion:**
- i) If earlier pre-arrest bail petition was dismissed after arguing it at some length, the subsequent petition for the same relief could be filed before or entertained by the same court only if it was based upon a fresh ground, i.e. a ground which was not available or in existence at the time of decision of the earlier bail application.
 - ii) If co-accused attributed role identical to accused have already been granted post-arrest bail, then an order passed making basis upon technical ground, that the considerations for pre-arrest bail and post-arrest bail are different, would be limited only up to the arrest of the accused as he would be entitled for the concession of post-arrest bail on the plea of rule of consistency soon after his arrest.
 - iii) Apprehension of arrest based upon new finding in subsequently conducted investigation constitutes a fresh ground for filing of second bail petition in the same court, as said new finding was neither available nor was in existence at the time of withdrawal of earlier bail petition.

16. Lahore High Court
Mohmad v. S.H.O. etc.
Writ Petition No.70407/2021
Mr. Justice Asjad Javaid Ghural
<https://sys.lhc.gov.pk/appjudgments/2023LHC2489.pdf>

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has questioned the legality and validity of impugned orders passed by the learned courts below. Through the former, Area Magistrate dismissed his application U/S 176 Cr.P.C. for disinterment of corpse and through the latter Revisional Court dismissed revision against the said order on account of maintainability.

Issue: Whether disinterment proceedings before a Magistrate falls within a meaning of 'judicial proceedings'?

Analysis: Wisdom behind conferring such powers upon a Magistrate is apparently to have a check upon the inquiry held by the police or to dispel doubt in the mind of public against a particular person. In order to achieve this purpose, the Magistrate holding an inquiry as a part of “inquest” is empowered with all the powers which he possessed while doing an inquiry into an offence. He is supposed to record the evidence taken by him in connection with the inquest in any of the manners hereinafter prescribed according to the circumstances of the case. This fact leads me to the conclusion that disinterment proceedings before a Magistrate falls within a meaning of ‘judicial proceedings’ provided in Section 4(1)(m) of the Cr.P.C.

Conclusion: Yes, the disinterment proceedings before a Magistrate fall within a meaning of ‘judicial proceedings’.

17. Lahore High Court
Mian Tariq Aziz v. The State etc.
CrI. Misc. No. 60825/M/2021
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2023LHC2572.pdf>

Facts: This petition under section 561-A Cr.P.C. challenges the judgment of the Additional Sessions Judge, affirming the order of the Judicial Magistrate which dismissed the plea of the petitioner to stop the proceedings under section 249 Cr.P.C. on account of the pendency of civil suits regarding the disputed property.

Issue: What is the guiding principle to stop/stay the criminal proceedings under section 249 Cr.P.C 1898 when civil litigation on the same subject is also pending?

Analysis: Civil law deals with the rights, duties, and obligations that individuals, governments, and organizations have to one another. Civil cases usually involve private disputes between them regarding those rights and obligations. On the other hand, criminal law is the foundation of the criminal justice system. It concerns crimes and their punishment. It seeks to preserve society’s values, morality, and norms by checking inappropriate behaviour. It is trite that a single act can simultaneously trigger both civil and criminal legal action. “Proceedings for a civil wrong or a public wrong (offence) are independent and not mutually exclusive. Each set of proceedings has its own procedures, standards, and consequences.” The standard of evidence to determine civil liability is the preponderance of evidence. In contrast, a criminal conviction is predicated on a higher standard of guilt, i.e., beyond a reasonable doubt, because it results in the loss of liberty. People in our country frequently try to have recourse to civil and criminal law contemporaneously to settle their disputes. It is settled law that both proceedings may run concurrently and in appropriate cases, the criminal proceedings may be stayed till the decision of civil suit. The decision to stay the criminal proceedings is entirely at the court’s discretion. The guiding principle,

however, is whether the accused would be prejudiced if the proceedings continue. If his criminal liability is dependent on the outcome of civil litigation or is so inextricably linked with it that there is a danger of grave injustice if there is a conflict of decisions, criminal proceedings must be held in abeyance.

Conclusion: The guiding principle for the stay of criminal proceedings under section 249 Cr.P.C 1898 is to consider the element of prejudice caused to the accused if the proceedings continue, in particular, when his criminal liability is dependent on the outcome of civil litigation or is so inextricably linked with it that there is a danger of grave injustice if there is a conflict of decisions.

18. Lahore High Court
Imran Ahmad Khan Niazi v. Syed Asim Ghaffar etc.
CrI. Misc. No.19997/B/2023
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Anwaar Hussain
<https://sys.lhc.gov.pk/appjudgments/2023LHC2608.pdf>

Facts: The petitioner has filed the application for the extension of time period in his protective bail granted by the Court on previous date. The institution branch of the High Court raised the office objection on its maintainability on the ground that protective bail is a one-time grace and no rule or practice allows for filing a second application or an extension of time granted in the first.

Issue: Whether the protective bail is a one-time grace, therefore, neither a second application may be filed nor time granted in the first may be extended?

Analysis: There is no provision in the Cr.P.C. 1898 for protective/transitory bail. Still, the High Courts in our country have invoked section 561-A Cr.P.C. and Article 199 of the Constitution to accommodate the accused and allow them to approach the court concerned for a remedy. The High Courts do not touch the merits of the case while considering such requests. Thus, protective bail serves a specific purpose and is granted for a fixed time. It is not the same as anticipatory or pre-arrest bail granted under section 498 Cr.P.C. When the accused appears before the court concerned, it deals with him independently, and protective bail does not automatically entitle him to pre-arrest bail. It merely restrains the police from arresting the accused for a certain period. So, technically it is not bail. The concept of protective/transitory bail is rooted in fundamental rights. Therefore, the High Court cannot short shrift an accused's second request. It must judicially assess and determine if he has legitimate grounds to justify it. The High Court should ensure that the accused does not obstruct the investigation by playing hide and seek with the criminal justice system.

Conclusion: Protective bail is not a one-time grace, hence a second application may be filed and time granted in the first may also be extended.

19. Lahore High Court
M/s. Shamim & Company (Pvt) Ltd v. Malik Ghulam Mustafa Tahir, etc.
Civil Revision No.1792 of 2016
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2017LHC5688.pdf>

Facts: This civil revision was directed against the order passed by the learned Addl. District Judge, whereby the application for leave to appear and defend filed by the respondents No.1 and 2 was allowed subject to furnishing of surety bond and unconditional leave to appear and defend was allowed to respondents No.3 to 5 and the application for temporary injunction filed by the petitioner was dismissed as not maintainable.

Issue: Whether court while granting leave to defend can attach any condition?

Analysis: As per law, it is for the court having cognizance of the matter to see under what condition it is inclined to grant leave to defend to the defendants. For this purpose order 37 Rule 3(2) of the C.P.C is relevant, wherein leave to defend may be given unconditionally or subject to such terms as to payment into court, giving security or otherwise as the court thinks fit. It is for the court having cognizance of the matter to decide the term on which leave to defend is to be given.

Conclusion: Leave to defend could be given unconditionally or subject to such terms as to payment into Court, giving security or otherwise as the Court deems fit.

20. Lahore High Court
Muhammad Iqbal v. District Judge, Vehari etc.
W.P.No.15299/2019
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2019LHC5089.pdf>

Facts: Through this petition, the petitioner has called in question order passed by the learned Civil Judge, whereby his application for submission of list of witnesses has been dismissed and has also called in question judgment passed by learned Additional District Judge, dismissing his civil revision against the said order.

Issues:

- i) Whether the petitioner through record has to support his version that the list of witnesses filed by him earlier immediately after framing of issues has been misplaced?
- ii) Whether the reason for non-submission of list of witnesses mentioned in the application for submission of list of witnesses has to be sufficient?

Analysis: i) Both the Courts below have observed that although the petitioner stated that he had filed application for submission of list of witnesses earlier immediately after framing of issues which has been misplaced due to change of different courts to

which case was successively transferred but there is nothing available on the record to support such version of the petitioner. Even today although the petitioner has vehemently argued the case but could not dislodge the said findings of facts recorded by the learned Courts below. Even the assertion of the petitioner that list of witnesses was earlier available on the record, has not been established from the record.

ii) The petitioner filed the application for placing on record the list of witnesses after more than two years of framing of issues and the reason mentioned in the said application has not found to be sufficient by the courts below and the said findings of facts are not found to be erroneous by this court also.

Conclusion: i) The petitioner through record has to support his version that the list of witnesses filed by him earlier immediately after framing of issues has been misplaced?
ii) The reason for non-submission of list of witnesses mentioned in the application for submission of list of witnesses has to be sufficient.

21. Lahore High Court
Muhammad Mujtaba Khan v. Rahat Siddiq, etc.
RSA No.83/2015
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2017LHC5703.pdf>

Facts: This Regular-Second appeal under Section 100 of Code of Civil Procedure, 1908 is directed against judgment and decree passed by Additional District Judge, whereby the appeal filed by respondent No.1 was allowed and the judgment and decree, passed in favour of the appellant by Civil Judge 1st Class, was set aside with the result that the suit for declaration and Specific Performance filed by the appellant was dismissed.

Issues: i) Whether Memorandum of understanding is a valid contract between the parties?
ii) Whether the agreement meaning of which is not certain, is enforceable at law?
iii) Whether the solitary statement of a single marginal witness is sufficient to prove valid execution of an agreement?
iv) Whether for the purpose of proof of a document attesting witnesses had to be compulsorily examined as per requirement of Article 79 of the Qanun-e-Shahadat, 1984?
v) Whether the scribe of a document could be a competent witness in terms of Articles 17 and 79 of Qanun-e-Shahadat, 1984?
vi) Whether the presumption of regularity is attached to official acts and same can be annulled on vague allegations?
vii) Whether an agreement to marry in future is enforceable as an ordinary agreement under the Law of Contract?
viii) Whether in case of gift by grandparents or parents in favour of grandchild or child physical delivery of possession is necessary?

- Analysis:**
- i) It is by now settled that a Memorandum of understanding is not a valid contract unless a final contract is concluded between the parties.
 - ii) Section 29 of the Contract Act, 1872 provides that agreements the meaning of which is not certain or capable of being made certain are void.
 - iii) It is by now settled that the solitary statement of a single marginal witness is not sufficient to prove valid execution of an agreement and both the marginal witnesses have to be produced in evidence to prove the same.
 - iv) In *Hafiz Tassaduq Hussain v. Muhammad Din through legal heirs and others* (PLD 2011 SC 241) it has been held that for validity of instruments falling within Article 17 of the Qanun-e-Shahadat, 1984, the attestation as required therein was absolute and imperative. For the purpose of proof of a document attesting witnesses had to be compulsorily examined as per requirement of Article 79 of the Qanun-e-Shahadat, 1984, otherwise it cannot be considered and taken as proved and used in evidence.
 - v) Scribe of a document could only be a competent witness in terms of Articles 17 and 79 of Qanun-e-Shahadat, 1984 if he had fixed his signature as an attesting witness of the document and not otherwise. Signing of document in the capacity of writer did not fulfil and meet mandatory requirement of attesting by him separately. Scribe of document could be examined by concerned party for corroboration of evidence of marginal witnesses or in the eventuality those were conceived by Article 79 of Qanun-e-Shahadat, 1984, itself not as a substitute.
 - vi) Besides under the Article 129 Illustration (e) of the Qanun-e-Shahadat, 1984, presumption is that official acts have been regularly performed. Reliance is placed on *Mrs. Kausar A. Ghaffar v. Government of Punjab and others* (2013 SCMR 99) wherein it has been observed that Presumption of regularity was attached to official acts and the same could not be annulled on vague allegations.
 - vii) Although the marriage is a civil contract between the parties but an agreement to marry in future is not enforceable as an ordinary agreement under the Law of Contract and marriage can only take place by consent of parties given at the time of marriage.
 - viii) The parent or grandparent may transfer the property in favour of a child or grandchild without actually transferring the physical possession of the property to the minor and the possession may be retained as constructive possession on behalf of the minor. Gift or Tamleek would not be incomplete in favour of a minor if physical possession has not been given and constructive possession has been transferred.

- Conclusion:**
- i) Memorandum of understanding is not a valid contract unless a final contract is concluded between the parties.
 - ii) The agreement of which meanings and terms are not certain; is not enforceable at law.
 - iii) The solitary statement of a single marginal witness is not sufficient to prove valid execution of an agreement.

- iv) For the purpose of proof of a document attesting witnesses had to be compulsorily examined as per requirement of Article 79 of the Qanun-e-Shahadat, 1984, otherwise it was not to be considered and taken as proved and used in evidence.
- v) Scribe of a document could only be a competent witness in terms of Articles 17 and 79 of Qanun-e-Shahadat, 1984 if he had fixed his signature as an attesting witness of the document and not otherwise.
- vi) The presumption of regularity is attached to official acts and the same cannot be annulled on vague allegations.
- vii) An agreement to marry in future is not enforceable as an ordinary agreement under the Law of Contract.
- viii) In case of gift by grandparents or parents in favour of grandchild or child physical delivery of possession is not necessary.

22.

Lahore High Court**Salman Ahmad Khan. v. Judge Family Court, Multan, etc.****Writ Petition No.17899 of 2016****Mr. Justice Muzamil Akhtar Shabir**<https://sys.lhc.gov.pk/appjudgments/2016LHC4827.pdf>**Facts:**

The respondent no. 02 filed a suit for dissolution of marriage through special attorney against petitioner. The petitioner raised objection regarding genuineness of signatures of respondent no. 02 on special power of attorney. The court, after recording the statement of attorney, passed an order for recording statement of respondent no. 02 through video link/skype which order has been challenged by petitioner through this Writ Petition.

Issues:

- i) Who can raise objection regarding genuineness of signatures on special power of attorney when special power has been attested by consulate general of Pakistan in country of residence of such person and whether statement of such person can be recorded for resolving such objection?
- ii) Whether a woman living overseas can get her statement recorded in suit of dissolution of marriage if that woman in suit for custody of minor had removed the minor from jurisdiction of court?
- iii) What is requirement for invocation of Constitutional Jurisdiction against order passed by court below?

Analysis:

i) When the power of attorney has been attested by the Consulate General of Pakistan in country of residence of person executing attorney, only person executing attorney can contest the genuineness of power of attorney. This objection can be resolved by the Family Court after the statement of person executing attorney is recorded... The Family Court in order to satisfy itself that the attorney was authorized to file the suit and proceed with the same can inquire about genuineness of Power of Attorney and if for that purpose court has decided to clarify the situation by recording the statement of witness through video

link/skype, the evidence received through modern devices is admissible under Article 164 of the Qanoon-e-Shahadat Order, 1984... It is settled proposition of law that a family court can adopt its own procedure and is not bound by the rigors of C.P.C. A family court could proceed on the premise that every procedure is permissible unless prohibited. Although Qanoon-e-Shahadat Order is not strictly applicable to family courts but the family court is not barred from receiving such evidence under any provision of law. Moreover, the technicalities should not stand in the way of justice...

ii) As regards the ground that respondent No.2 is not entitled to get her statement recorded because she has removed the minor from the jurisdiction of the court and should appear in person if she wants to get her statement recorded, suffice to say that the Family Court may regulate its own procedure and violation of the undertaking cannot deprive court of its own jurisdiction. Besides the undertaking not to remove the minor from the jurisdiction of court was not given in the case of dissolution of marriage rather it was given in the case for custody of minor which is pending adjudication before the Family Court and the court can determine vires of the same in the case for custody of minor.

iii) For invoking constitutional jurisdiction of vested in High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the aggrieved person is bound to show that the court below has exercised the jurisdiction not vested in it by law or there is jurisdictional defect in the order impugned or that the order is illegal or perverse.

- Conclusion:**
- i) When the power of attorney has been attested by the Consulate General of Pakistan in country of residence of person executing attorney, only person executing attorney can contest the genuineness of power of attorney. This objection also can be resolved by the Family Court after the statement of person executing attorney is recorded.
 - ii) Family Court may regulate its own procedure and violation of the undertaking cannot deprive court of its own jurisdiction. The woman living overseas can get her statement recorded in suit of dissolution of marriage as the undertaking not to remove the minor from the jurisdiction of court was not given in the case of dissolution of marriage.
 - iii) For invoking constitutional jurisdiction vested under Article 199 of the Constitution, the aggrieved person is bound to show that the court below has exercised the jurisdiction not vested in it by law or there is jurisdictional defect in the order impugned or that the order is illegal or perverse.

23. Lahore High Court
Munir Ahmed. V. The State, etc.
Writ Petition No.8217/2023
Mr. Justice Farooq Haider
<https://sys.lhc.gov.pk/appjudgments/2023LHC2484.pdf>

Facts: Through this constitutional petition filed under Article 199 of Constitution of

Islamic Republic of Pakistan, 1973, petitioner has challenged the vires of impugned order and has prayed that the application of the petitioner for the constitution of Provincial Standing Medical Board to re-examine the petitioner-injured may kindly be accepted in the interest of justice.

Issue: Whether District Standing Medical Board can observe possibility of fabrication as “Yes” merely on the basis that small bone was fractured?

Analysis: District Standing Medical Board cannot observe possibility of fabrication as “Yes” merely on the basis that small bone was fractured because if such opinion of District Standing Medical Board is accepted, then in future if some small bone will be fractured or if any bone will be fractured which is easy to fracture, then it will be straightway observed that there is possibility of fabrication, which would be against the spirit of medical jurisprudence.

Conclusion: District Standing Medical Board cannot observe possibility of fabrication as “Yes” merely on the basis that small bone was fractured.

24. Lahore High Court
Shoukat Hussain v. Addl. District Judge, etc.
W. P. No.1077 of 2020
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2023LHC2518.pdf>

Facts: Through instant writ petition, the petitioner has called in question the validity of judgment and decree passed by learned Judge Family Court as well as judgment and decree passed by learned Addl. District Judge.

Issue: When the plaintiff/lady cannot prove the location/ description of area or alternate price of plot mentioned in column No. 16 of the Nikah Nama, whether in such situation it is the Court to thrash out the grain from the chaff?

Analysis: Perusal of record reveals that in the headnote and prayer clause of the plaint, the lady has claimed alternate price of the said plot as Rs.1,000,000/- without mentioning the detail thereof in the plaint. In order to resolve controversy between the parties, Nikah Nama is the basic document which Column No.16 only disclosed ‘Three Marla Plot’ but no location/description/detail of area/alternate price or anything else about plot has been mentioned. The onus to prove the alternate price of the said plot as claimed was on the shoulder of the lady. Despite the fact that respondent No.3 had claimed alternate price of the plot as Rs.10,00,000/- in headnote and prayer clause of plaint only and petitioner had also admitted fixation of said dower i.e. 3-Marla plot but she could not prove its location or alternate price by producing cogent and convincing evidence. In such situation it was the Court to thrash out the grain from the chaff.

Conclusion: When the plaintiff cannot prove the location/ description of area or alternate price

of plot mentioned in column No. 16 of the Nikah Nama, in such situation it is the Court to thrash out the grain from the chaff.

25. Lahore High Court
Zahid Hussain v. Senior Civil Judge etc.
Writ Petition No.6437 of 2020
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2023LHC2547.pdf>

Facts: Through this petition the petitioner has assailed the order and the judgment, whereby application seeking dismissal of the execution petition as well as the appeal filed by him were dismissed by the learned Senior Civil Judge and learned Additional District Judge.

Issues: i) Whether the new owner of the rented property has a right to prosecute the pending matter in the court?
 ii) Whether second execution petition should plausibly be treated as continuation of the earlier one?

Analysis: i) When the title of property stands transferred, new owner has a right to prosecute the matter and since the ejectment order is to be executed like a decree, the powers contained in the Code of Civil Procedure can be invoked by an executing Court.
 ii) Second execution petition should plausibly be treated as continuation of the earlier one or ancillary thereto in view of the principle laid down by the Hon'ble Supreme Court in the case of United Bank Limited vs. Fateh Hayat Khan Tawana and others (2015 SCMR 1335).

Conclusion: i) The new owner of the rented property has a right to prosecute the pending matter in the court.
 ii) Second execution petition should plausibly be treated as continuation of the earlier one.

26. Lahore High Court
Muhammad Tahir v. Muhammad Sharif etc.
W.P. No.4949 of 2014
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2022LHC9517.pdf>

Facts: The petitioner has filed instant constitutional petition against the civil revision which was accepted and case was remanded for decision of the application under section 12(2) CPC after framing the issues and recording evidence of the parties.

Issue: Whether constitutional petition is an appropriate remedy against remand order or otherwise?

Analysis: It is settled law that it would not be appropriate to exercise constitutional jurisdiction to interfere with an order of remand as writ lies against final adjudication and remand order is not a final order.

Conclusion: Constitutional petition is not an appropriate remedy against remand order or otherwise.

27. Lahore High Court
Abdul Rehman Amjad v. University of Health Sciences etc.
Writ Petition No.493 of 2023
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2023LHC2529.pdf>

Facts: The petitioner, through instant writ petition has challenged the validity and legality of the order passed by Vice-Chancellor, University of Health Sciences, Punjab,/respondent No.2 and seeks issuance of direction to the said respondent to allow him admission in MBBS course on open merit seat.

Issues:

- i) What is the definition of “Domicile”?
- ii) How many stages of Domicile?
- iii) What is the purpose for submission of domicile along with admission form in the University and whether the time could be relaxed even if the said documents are not submitted within the prescribed period?

Analysis:

- i) The issuance of Domicile certificate is governed by the provisions of Section 17 of the Pakistan Citizenship Act, 1951 and Rule 23 of the Pakistan Citizenship Rules, 1952. The afore-quoted provisions of statutes do not prescribe the definition of the term ‘Domicile’. The Black’s Law Dictionary (Seventh Edition), defines the word „Domicile“ as a person’s true, fixed, principal and permanent home, to which that person intends to return and remain even though currently residing elsewhere. Plain reading of the definition gives the meaning of a domicile as proof of a permanent residence of a person. The concept of a permanent residence as defined in the terms of a domicile is of two types, one by birth and the other by choice. A person, who desires to select his permanent residence by choice means that he intends to relinquish his original place of abode and to choose another place for the purpose of his permanent residence. Once the facts of relinquishment and acquisition are established, a domicile undergoes a change and the person acquires a new domicile and has a permanent home, at least in the notional sense at the new place. The domicile has to be considered a synonym for home. Thus, the domicile certificate is, prima facie, a proof of the place of permanent residence of a person, who intends to permanently reside at a particular place.
- ii) There are two stages of a domicile certificate, one is, that when the person intended to permanently reside at a particular place, as such, applies for a domicile certificate. Secondly, after obtaining a domicile certificate, the holder of a

certificate continues to permanently reside at a particular place. Thus, in the first circumstance, when a person applies for a domicile certificate, the authority has to consider as to whether the applicant relinquished his earlier permanent place of residence before selecting his new place of domicile. As far as the second circumstance is concerned, the authority on its own or on the objection of any person concerned can conduct an inquiry with regard to a permanent residence of a holder of a certificate for a particular place.

iii) The submission of a domicile certificate along with the application form is for the purpose of supporting evidence of the status and eligibility of the candidate, and therefore, it does not relate to the inherent qualification of the candidate to be admitted to the course applied for. In appropriate cases therefore, even if the documents are not submitted within the prescribed period, the time could be relaxed.

- Conclusion:**
- i) The domicile certificate is, prima facie, a proof of the place of permanent residence of a person, who intends to permanently reside at a particular place.
 - ii) There are two stages of a domicile certificate, one is, that when the person intended to permanently reside at a particular place, as such, applies for a domicile certificate. Secondly, after obtaining a domicile certificate, the holder of a certificate continues to permanently reside at a particular place.
 - iii) The purpose for submission of domicile along with admission form in the University is supporting evidence of the status and eligibility of the candidate and the time can be relaxed even if the said documents are not submitted within the prescribed period.

28. Lahore High Court
Muhammad Asghar v. Sikandar Mehmood Dai
R.F.A No. 207 of 2018
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2023LHC2550.pdf>

Facts: Instant appeal is preferred against the judgment and decree passed by learned Addl. District Judge whereby a suit filed by respondent/plaintiff for recovery on the basis of cheque U/O 37 Rule 1,2 CPC was decreed.

Issues:

- i) Who is to discharge the initial burden of proof where the Negotiable Instrument is executed against consideration?
- ii) Whether the presumption attached with Negotiable Instrument is always rebuttable?

Analysis: i) Where a claim is propounded on the basis of a negotiable instrument, it is necessary and imperative in all such cases that the defendant should prove in negative, that he has not drawn the instrument and that it is without consideration or it is for the plaintiff to discharge the initial burden of proving his case especially when he has undertaken to prove that the negotiable instrument has been duly executed for the consideration. As per the judgment reported as Salar

Abdul Rauf vs. Mst. Barkat Bibi (1973 SCMR 332), the respondent/plaintiff is precluded in law to urge in this case that it was for the respondent to prove to the contrary.

ii) The presumption attached with negotiable instrument is always rebuttable and the Hon'ble Supreme Court of Pakistan has held that if a plaintiff fails to produce creditworthy evidence then he cannot be allowed to turn around and invoke the presumption contained under section 118 of the Negotiable Instrument, 1881.

Conclusion: i) Initially burden of proving that Negotiable Instrument is executed against consideration is on the plaintiff.
ii) The presumption attached with negotiable instrument is always rebuttable.

29. Lahore High Court
Abdul Mateen v. Govt. of Punjab through Secretary etc.
W.P. No.6528 of 2022/BWP
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2023LHC2559.pdf>

Facts: Through this constitutional petition, the petitioner has challenged the validity of order passed by the respondent No. 2 whereby a fresh Inquiry Officer was appointed to conduct inquiry proceedings against the petitioner and other officials on the charges of inefficiency and misconduct as set forth in earlier order under Punjab Employees Efficiency, Discipline & Accountability Act, 2006.

Issue: Whether a matter finally adjudicated by a competent authority can be re-opened?

Analysis: It is an admitted fact that after final adjudication of the matter by the competent authority the same cannot be permitted to re-open. This fundamental principle of law which has been embodied in our constitution that once a person was prosecuted and acquitted from charges, he cannot be subsequently prosecuted repeatedly for same allegation. Article 13 of the Constitution sanctifies the well settled principle of law that no person will be tried for the charges on the same set of facts on which he has already been exonerated or convicted.

Conclusion: After final adjudication of the matter by the competent authority the same cannot be permitted to re-open.

30. Lahore High Court
Dr. Shahid Mehmood v. Chairman PPSC etc.
Writ Petition No.4397 of 2021
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2023LHC2538.pdf>

Facts: Through this petition, the petitioner has challenged the vires of formation of interview panel constituted for the post of assistant professor orthopedic surgery.

Issue: Whether formation of an interview panel constituted by the public service commission can be challenged on the score that any member of it is either near relative, close associate or immediate subordinate of a candidate?

Analysis: Through Regulation No.52 of the Punjab Public Service Commission Regulations, 2016 dealing with the constitution of a panel/commission for conducting interviews of the candidates, if any candidate is a “near relative”, “close associate” or “immediate subordinate” of any Presiding Member/Member(s), the said member(s) shall not be allowed to participate in the proceedings of interview of that candidate and the said member(s) shall inform the Chairman to nominate some other member(s) to interview such candidate...

Conclusion: Yes, formation of an interview panel constituted by the public service commission can be challenged on the score that any member of it is either near relative, close associate or immediate subordinate of a candidate.

31. Lahore High Court
Jamshaid Maqbool v. The Province of Punjab etc.
Writ Petition No.9046 of 2021
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2022LHC9586.pdf>

Facts: Through this constitutional petition, petitioner has challenged the validity of order whereby respondent No.3/Tehsildar Khanpur District Rahim Yar Khan sine die adjourned the application of the petitioner for partition of land.

Issue: Whether mere institution of a suit by any parties on their own option can restrict the Revenue Officer to proceed in the matter of partition of a jointly held land?

Analysis: Section 141 of the Punjab Land Revenue Act 1967 clearly depicts that if the ownership of the party seeking partition is disputed and the Revenue Officer concerned could not decide the dispute, being intricate question of right, then Revenue Officer shall direct the parties to approach the competent Court for resolution of the dispute but mere institution of a suit by any parties on their own option could not restrict the Revenue Officer to proceed in the matter of partition of a jointly held land. The Revenue Officer without perusing the relevant record sine die adjourned the proceeding of partition which is against the spirit of law. The respondent No.3 was required to inquire into the substance before passing an appropriate order. The basic principles of natural justice and equity including Easement Rights of the parties (co-sharers) attached with their respective owned properties/business was not considered in view of the articles 4,8,9,18, 23, 24 & 38 of the Constitution.

Conclusion: Mere institution of a suit by any parties on their own option cannot restrict

the Revenue Officer to proceed in the matter of partition of a jointly held land.

32. Lahore High Court
Mst. Samina Bibi v. Govt. of Punjab through Secretary etc.
W. P. No.5231 of 2022/BWP
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2023LHC2566.pdf>

Facts: Through this constitutional petition, Mst. Samina Bibi petitioner has challenged the validity of order passed by District accounts Officer, Bahawalpur, whereby representation of the petitioner for release of financial benefits of her deceased husband (civil servant) in her favour was dismissed.

Issues:

- i) When the sentences of fine awarded to the deceased civil servant have already been set aside and his appeal to the extent of corporal punishment has also been abated and no departmental inquiry is pending against him, whether the widow of the deceased civil servant is entitled for grant of any financial benefits?
- ii) Whether abatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will deprive the decedent civil servant, as well as, his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial?

Analysis:

- i) Admittedly no departmental inquiry/ proceedings were pending against the deceased civil servant whereas fine awarded to him was set aside and the appeal of the deceased civil servant was abated to the extent of corporal punishment. The competent authority (respondent No.4) has already sanctioned the various financial claims in favour of the family of the deceased official. The respondent No.4 in his report has categorically stated that pension and gratuity is the asset of the deceased widow and children. The Department also issued the retirement notification in favour of the petitioner being the widow of the deceased employee for drawing pecuniary benefits as admissible under the rules. In the instant case the sentences of fine awarded to the deceased civil servant have already been set aside by this Court in the appeal where his appeal to the extent of corporal punishment has also been abated and no departmental inquiry is pending against him, therefore the question of affecting the property/assets of deceased official on account of sentence of fine does not arise. If no adverse final action at the Department level has been taken so far against the deceased official, the abatement of criminal appeal to the extent of a portion of sentence of an imprisonment cannot provide a ground to initiate it now because the death even stops the pending department inquiry.
- ii) Under our constitutional scheme, abatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will unduly deprive the decedent civil servant, as well as, his legal heirs

of their constitutional rights to livelihood, property, dignity and fair trial.

- Conclusion:**
- i) When the sentences of fine awarded to the deceased civil servant have already been set aside and his appeal to the extent of corporal punishment has also been abated and no departmental inquiry is pending against him the widow of the deceased civil servant is entitled for grant of financial benefits.
 - ii) Abatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will unduly deprive the decedent civil servant, as well as, his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial.

33. Lahore High Court
Muhammad Saleem etc. v. Muhammad Akram etc.
Civil Revision No. 48-D of 2011
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2022LHC9547.pdf>

Facts: Through instant civil revision the petitioners/defendants have challenged the findings of the learned appellate court whereby the judgment and decree passed by learned Civil Judge was set aside and the suit of the plaintiff/respondent for Declaration alongwith Possession was decreed in his favour.

- Issues:**
- i) Whether general power of attorney which creates any interest in immoveable property is required to be attested by two witnesses as required under Article 17 of Qanune Shahadat Order 1984?
 - ii) Whether registration of a document will provide its valid execution?
 - iii) Whether power of attorney is title document?
 - iv) If an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, whether he has to consult with principle before exercising his that right?
 - v) Whether merely by tendering a document in evidence gets evidentiary value?

Analysis:

- i) General power of attorney which purports to create interest in any immovable property is not only required to be registered under the Registration Act but is also required to be attested by two witnesses as required under Article 17 of the order.
- ii) It is settled principle of law that mere registration of a document will not prove its valid execution as the contents of same are to be established through manner and mode as provided by the order.
- iii) Power of attorney is not a title document even if it is coupled with interest. It is a just a document of convenience. The protection under section 202 of the Act of 1872 read alone or with section 53-A of the Act of 1882, does not render any ownership or title to his holder in any manner whatsoever but only grants limited protection as provided in section 202 of the Act of 1872 for possession or specific performance as envisaged under section 53 only against the transferor.

iv) It is settled law by now that if an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, he/she had to consult the principal before exercising that right. The consistent view of Hon'ble Supreme Court is that if any attorney on the basis of power of attorney, even if 'general' purchases the property for himself or for his own benefit, he should firstly obtain the consent and approval of principal after acquainting him with all the material circumstances.

v) It is also to be noted that merely by tendering a document in evidence gets no evidentiary value unless its contents are proved according to law.

- Conclusion:**
- i) Yes, General power of attorney which purports to create interest in any immovable property is also required to be attested by two witnesses.
 - ii) Mere registration of a document will not prove its valid execution as the contents of same are to be established through manner and mode as provided by Qanune Shahdat order 1984.
 - iii) Power of attorney is not a title document even if it is coupled with interest.
 - iv) If an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, he/she had to consult the principal before exercising that right.
 - v) Merely by tendering a document in evidence gets no evidentiary value unless its contents are proved according to law.

34. Lahore High Court
Abdul Majeed etc. v. Member (Colonies) etc.
Writ Petition No.53 of 2022
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2023LHC2523.pdf>

Facts: Through the instant writ petition petitioners have assailed the legality and validity of orders passed by the Member (Colonies), Board of Revenue and Member (Judicial-IV), Board of Revenue Punjab, respectively.

Issues:

- i) Whether the order which is non-speaking and unreasoned is sustainable?
- ii) Whether Review Petition can be dismissed on the ground of limited scope of review and non-raising new ground, where the earlier order is passed without discussing any ground taken in the petition and going through the record produced therein?

Analysis:

- i) It appears that respondent No.1 made efforts to collect the record for and against the petitioners by constituting a scrutiny committee in order to comply with the direction of the Hon'ble Supreme Court, which was also produced in the shape of reports of different officers, but unfortunately failed to consider the same while passing the order dated 02.10.2010. Respondent No.1 did not discuss any document produced by the petitioners or any of the reports attached with the report of the scrutiny committee and passed the impugned order in a slipshod manner only with the observation "the self cultivation of land is not proved".

Furthermore, the petitioners' case also falls within the criteria evolved by the Board of Revenue with the consultation of functionaries of Cholistan Development Authority, but respondent No.1 did not even discuss or consider the said criteria while passing the impugned order. In the circumstances, the order is non-speaking and unreasoned and as such is not sustainable.

ii) Since the order dated 02.10.2010 was passed without going through the record and discussing the same and the petition filed by the petitioners was dismissed through a single sentence "the self-cultivation of the land is not proved", the observations made in the order dated 18.11.2021 regarding limited scope and non-raising new ground are against the facts for the reason that the earlier order was passed without discussing any ground taken in the petition and going through the record produced therein.

Conclusion: i) The order which is non-speaking and unreasoned is not sustainable.
ii) Review Petition cannot be dismissed on the ground of limited scope of review and non-raising new ground, where the earlier order is passed without discussing any ground taken in the petition and going through the record produced therein.

35. Lahore High Court
Danish Saleem v. Province of Punjab etc.
Writ Petition No.7881 of 2021/BWP
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2022LHC9558.pdf>

Facts: Through instant petition, petitioner challenged the validity of order passed by Director General Social Welfare & Bait- ul-Maal Punjab, Lahore, whereby representation of the petitioner for afresh appointment as "Junior Clerk" or against any of the posts for BS-12 to BS-16 under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 was dismissed.

Issue: Whether benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules 1974 provide any exception or relaxation for afresh appointment when once the benefit is availed for?

Analysis: Perusal aforesaid Rule clearly depicts that in case of death of a civil servant while in service or who has been declared incapacitated for further service, one of his unemployed children or his widow/wife may be employed by appointing authority against a post to be filled under rules 16 & 17 for which he/she possesses the prescribed qualification and experience. In the instant case the petitioner has already availed the benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules 1974 at his own request and Rule *ibid* does not provide any exception or relaxation for afresh appointment. (...) Keeping in view the facts and circumstances of the case, this Court has reason to believe that after accepting the post of 'Chowkidar' and serving against the said post for a considerable period, the petitioner has claimed re-availing facility of

Rule 17-A of the Rules 1974 through his fresh appointment as 'Junior Clerk' or against any of the post of BS-12 to BS-16 which Rule ibid does not provide any exception or relaxation for afresh appointment in case where the benefit of the same rule has already been availed. During the course of arguments a specific query was put to learned counsel for the petitioner that whether the word used 'employed' in Rule 17-A ibid can be used for re-employment twice, learned counsel remained unable to assist this court on this point.

Conclusion: When once the benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules 1974 is availed, claim for afresh appointment is foreign to the rule, as Rule ibid does not provide any exception or relaxation for afresh appointment.

**36. Lahore High Court,
Raees Muhammad Javed v. Muhammad Kashif etc.,
Civil Revision No. 894 of 2018/BWP
Mr. Justice Safdar Saleem Shahid.
<https://sys.lhc.gov.pk/appjudgments/2022LHC9527.pdf>**

Facts: Through this Civil Revision the petitioner assailed the order the Additional District & Sessions judge whereby he directed the return of the relevant plaint for being filed before the civil court.

Issue: Whether the event of death of the plaintiff/defendant, after institution/filing and during proceeding of a suit under Order XXXVII, Rule 2 of CPC, would abate it or the trial court would seize to have jurisdiction to further try said suit?

Analysis: The procedure for the suit filed under Order XXXVII of CPC is given in Rule 7 thereof as that the procedure in relevant suits shall be the same as of suits instituted in the ordinary manner. As per Order XXII Rule 1 and 2 CPC, the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue otherwise survives and the legal heirs of defendant are bound to be impleaded in case of the death of the defendant. Order VII Rule 10 CPC requires that the plaint shall be returned to be presented to the court in which suit should have been instituted, which word "instituted" means that if the court at the time of institution is not competent to entertain the matter, then the plaint should be returned to be presented before the proper court. Moreover, even if the jurisdiction is ousted during the proceedings because of some legal provision, then the plaint could be returned as well but the jurisdiction of the court will not be changed only because of death of the plaintiff or the defendant. The word "proceedings" is a comprehensive expression which includes every step taken towards further progress of a cause in a court or tribunal from its commencement till its disposal.

Conclusion: The death of the plaintiff/defendant, after institution/filing and during proceeding of a suit under Order XXXVII, Rule 2 of CPC, will neither abate the proceedings thereof nor will it make any change in the jurisdiction of the court.

37. Lahore High Court
Mst. Shahida Perveen etc. v. Muhammad Akram Baig
Civil Revision No.2335 of 2016
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2023LHC2603.pdf>

Facts: This revision petition has been directed against the judgment and decree, whereby the learned Additional District Judge, accepted the application for additional evidence as well as appeal filed by the respondent and remanded the case to the trial Court for recording additional evidence and its rebuttal (if any) and decide the same afresh after considering the additional evidence.

Issues:

- i) Whether the application for additional evidence can be allowed where the required document is to be helpful for just decision of the case?
- ii) Whether the factum of reversal of a decree in appeal along with necessity of its re-trial is one of the pre-condition for remand of case?
- iii) Whether the appellate Court can set aside the judgment and decree of the trial Court while remanding the case to the Court whose decree was under appeal for having the additional evidence recorded?

Analysis:

- i) A perusal of record depicts that legal notices sought to be brought on record through additional evidence were duly mentioned in the list of reliance filed under Order VII rule 14 CPC and the said notices had a specific reference to the agreement to sell arrived at between him and the predecessor-in-interest of the petitioners, as such the same were helpful for the Court to reach at a fair and just decision. As such the learned appellate Court feeling the required documents to be helpful for just decision of the case rightly allowed the application moved by the respondent.
- ii) As regards remand of the case by the first appellate Court under Rule 23 of Order XLI, C.P.C., it appears to be the result of some misconception in relation to the very applicability of Rule 23 as also of the Lahore High Court Amendment therein adding Rule 23-A. When the afore-referred Rules are read in conjunction with Rule 1 of Order XLII, CPC, which provides for application of the rules of Order XLI, CPC to appeals from appellate decrees, it becomes abundantly clear that one of the preconditions for remand is that "the decree is reversed in appeal and a re-trial is considered necessary".
- iii) Provision of Order XLI, Rule 28, CPC prescribes the mode of taking additional evidence and lays down that where the additional evidence is allowed to be produced, the appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred or any other subordinate court, to take such evidence and to send it when taken to the appellate Court, meaning thereby, that the effect of the additional evidence is to be considered by the appellate court and not by the Court whose decree is under appeal. It leaves no doubt that the appellate Court is required to decide the application for adducing

additional evidence itself and has to give the reasons for allowing such application and that too within the parameters of Rule 27. In case the application is allowed then the appellate court may record the additional evidence itself or direct the trial court to record such evidence and to remit the same to the appellate Court. However, under no circumstances the appellate Court could set aside the judgment and decree of the trial Court while remanding the case to the Court whose decree was under appeal for having the additional evidence recorded.

- Conclusion:**
- i) The application for additional evidence can be allowed where the required document is to be helpful for just decision of the case.
 - ii) Yes the factum of reversal of a decree in appeal along with necessity of its re-trial is one of the pre-condition for remand of case.
 - iii) Under no circumstances the appellate Court can set aside the judgment and decree of the trial Court while remanding the case to the Court whose decree was under appeal for having the additional evidence recorded.

38. Lahore High Court
Moeen Akhtar v. District Education Authority etc.
Writ Petition No. 7583 of 2022
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2022LHC9522.pdf>

- Facts:** Through this constitutional petition, petitioner has assailed the order of the respondent whereby his application for appointment in place of her deceased wife under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 was turned down.
- Issue:** Whether widower of a deceased female civil servant can be appointed under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974?
- Analysis:** The main object of the Rule 17-A ibid of the Act ibid is to provide bread and butter to the deserving then how such benefit cannot be extended to an unemployed previously dependent widower of a female civil servant. The widower deserves such relief as like a widow or child for providing help to the bereaved family without any regard of gender. The distinction drawn in the Rule ibid between a widow and widower seems unconstitutional and discriminatory on gender based. The self-assumed presumption that a widower can never be dependent upon a deceased wife and facility of benefit of the Rule 17-A ibid of the Act ibid should not be extended to him is unwarranted in the prevailing circumstances of the society. ... The Rule may allow for compassionate employment for a widower who is unemployed or employed to inferior rank to the deceased female civil servant.

Conclusion: Widower of a deceased female civil servant can be appointed under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974.

39. Lahore High Court
Riffat Sultana etc. v. Addl. District Judge etc.
Writ Petition No.1828 of 2019
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2022LHC9535.pdf>

Facts: Through instant petition, petitioner has called into question concurrent findings of trial court and lower appellate court whereby suit filed by the respondent no.3/ plaintiff for declaration has been decreed whereas application u/s 12(2) CPC instituted by the petitioners/defendants for setting aside the decree passed by learned civil judge has been dismissed.

Issue: Whether an adverse presumption can be drawn if secondary evidence on behalf of the deceased witness has not been produced?

Analysis: i) Under the law, a document can be proved through adducing primary or secondary evidence in terms of Article 75 and 76 of Qanoon-e- Shahadat Order 1984. If the marginal witness has been died, then secondary evidence can be led to prove the document. In case of non producing secondary evidence, an adverse presumption can be drawn that if secondary evidence is summoned on behalf of the deceased marginal witness, they might not support the version.

Conclusion: An adverse presumption can be drawn if secondary evidence on behalf of the deceased witness has not been produced.

40. Lahore High Court
Muhammad Shabbir v. Nazir Ahmed etc.
Civil Revision No. 262-D of 2013
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2022LHC9566.pdf>

Facts: Through instant civil revision the petitioners have challenged the validity and legality of the concurrent findings of the courts below whereby the suit of the plaintiff /respondent No.1 for Specific Performance of Contract was decreed in his favour.

Issues: i) What is the definition of “Agreement”?
 ii) Whether it is necessary for a power of attorney to be without any uncertainty or vagueness?
 iii) Whether an agreement is a binding contract if it lacks certainty due to vagueness or because its terms cannot be ascertained?
 iv) Whether the plaintiff can seek specific performance of a contract where the requisites of a contract are found to be deficient?

- v) Whether a photocopy can be admitted as secondary evidence unless under the law conditions provided under Article 78 of Qanun-e-Shahdat are fulfilled?
- vi) Whether a document in evidence gets evidentiary value merely by tendering it?
- vii) Whether an admission made by a co-defendant is binding on the other even if made in the written statement?
- viii) Whether grant of decree for specific performance comes within the sole discretionary power of the Court?

Analysis:

- i) Under the contract Act under section 2(e): “Agreement defined as every promise and every set of promises, forming the consideration for each other is an agreement” It means that no more than concord a transaction between two parties, that may lead to a contract. It consists of mutual expressions, though not of harmonious intentions or state of mind. It is by the conduct of the parties by their bodily manifestations, that the court determines the existence of the agreement. Indeed, an agreement is nothing more than a manifestation of mutual assent by two or more legally competent persons to one another. According to clause (e) of section 2 of the Contract Act, 1872 every promise and every set of promises, forming the consideration for each other in order to constitute an agreement. There must be proposal from the, second party and response of the other party constitute an agreement.
- ii) it is settled principle of law that there must not be any uncertainty or vagueness in the power of attorney but when the same is lacking and non-mentioning of complete particulars with specifications of the properties in the alleged power of attorney than makes it doubtful and it can be said that it is the result of fraud and fabrication just usurp the property...
- iii) It is settled that an agreement is not a binding contract if it lacks certainty due to vagueness or because its terms cannot be ascertained. Section 29 of the Contract Act also provides that ‘Agreements’ the meaning of which is not certain or capable of being made certain, are void...
- iv) In order to succeed in a suit for specific performance of a contract, the plaintiff has to assert that a valid and enforceable contract existed between him and the other side besides specifically and clearly pleading the terms and conditions on the basis of which the contract was executed which he desired to be specifically performed. Where the requisites of a contract are found to be deficient, the plaintiff cannot seek specific performance of a contract. Even otherwise, the decree for specific performance is a discretionary relief which can be refused in case the Court is not satisfied either on the merits or on equities of the case.
- v) Being photocopy cannot be admitted as secondary evidence admissible unless under the law conditions provided under Article 78 of Qanun-e-Shahdat are fulfilled.
- vi) It is also to be noted that merely by tendering a document in evidence gets no evidentiary value unless its contents are proved according to law.

- vii) The plaintiff cannot rely upon and take advantage of any admission made by the vendor, because according to the law an admission made by a co-defendant is not binding on the other even if made in the written statement.
- viii) The grant of decree for specific performance comes within the sole discretionary power of the Court which can refuse to grant the relief on the principle of equities even if the suitor has proved the case

- Conclusion:**
- i) An agreement is nothing more than a manifestation of mutual assent by two or more legally competent persons to one another.
 - ii) Yes, it is necessary for a power of attorney to be without any uncertainty or vagueness.
 - iii) An agreement is not a binding contract if it lacks certainty due to vagueness or because its terms cannot be ascertained.
 - iv) The plaintiff cannot seek specific performance of a contract where the requisites of a contract are found to be deficient.
 - v) A photocopy cannot be admitted as secondary evidence unless under the law conditions provided under Article 78 of Qanun-e-Shahdat are fulfilled.
 - vi) A document in evidence gets no evidentiary value merely by tendering it unless its contents are proved according to law.
 - vii) An admission made by a co-defendant is not binding on the other even if made in the written statement.
 - viii) Yes, grant of decree for specific performance comes within the sole discretionary power of the Court.

41. Lahore High Court
Nadeem Akhtar v. Prosecutor General, Punjab etc.
W.P. No. 2812 of 2022
Mr. Justice Safdar Saleem Shahid
<https://sys.lhc.gov.pk/appjudgments/2022LHC9578.pdf>

Facts: The petitioner, through instant writ petition has sought direction to respondents for considering the petitioner against the vacant posts of junior clerk in BPS-11 being qualified eligible and fit to hold the said post in all respect.

Issues:

- i) What is meant by “Disability” and who is called disabled?
- ii) Whether a disable person can be made subject to any discrimination while considering him for promotion?
- iii) Whether the Constitution of Pakistan applies equally to persons with disabilities, while guaranteeing them full enjoyment of their fundamental rights without discrimination?

Analysis: i) Disability means lacking one or more physical powers, such as the ability to walk or to coordinate one’s movements, as from the effects of a disease or accident or through mental impairment. A disabled person is defined as a person who on account of injury, disease or congenital deformity, is handicapped for

undertaking any gainful profession or employment in order to earn his livelihood and includes a person who is blind, deaf, physical handicapped or mentally retarded. Disabilities is an umbrella term, covering impairments, activity, limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations.

ii) A disable person shall not be made subject to any discrimination while considering him for promotion rather every possible effort needs to be taken so as to accommodate him. In short, it shall be at discretion of the disable person to apply for his promotion on disability ground. Such choice of the disabled persons however would not relive the department of its obligation to consider all possible means to accommodate such disable persons.

iii) Our Constitution, as a whole, does not distinguish between a person with or without disabilities. It recognizes inherent dignity of a human being; equal and inalienable rights of all the people as the foundation of freedom, justice and peace. Every person is entitled to all the rights and freedoms set forth therein, without distinction of any kind. It, therefore, applies equally to persons with disabilities, guaranteeing them full enjoyment of their fundamental rights without discrimination. The triangular construct of the right to life, dignity and equality under the Constitution provides a robust platform for mainstreaming.

- Conclusion:**
- i) Disability means lacking one or more physical powers and a disabled person is defined as a person who on account of injury, disease or congenital deformity, is handicapped for undertaking any gainful profession or employment in order to earn his livelihood and includes a person who is blind, deaf, physical handicapped or mentally retarded.
 - ii) A disable person shall not be made subject to any discrimination while considering him for promotion rather every possible effort needs to be taken so as to accommodate him.
 - iii) Yes, the Constitution of Pakistan applies equally to persons with disabilities, with guaranteeing them full enjoyment of their fundamental rights without discrimination.

42.

Lahore High Court

Asma Abbasi etc. v. Bilqees Bibi etc.

Civil Revision No. 432 of 2016

Mr. Justice Safdar Saleem Shahid

<https://sys.lhc.gov.pk/appjudgments/2022LHC9592.pdf>

Facts:

Through instant civil revision petitioners have challenged the validity of judgment passed by Addl. District Judge, whereby the application under section 12(2) C.P.C filed by the petitioners was dismissed.

- Issue:** Whether High Court can interfere in order passed by the court below, if the petitioners fail to convince this Court regarding any illegality, material irregularity or jurisdictional defect?
- Analysis:** If the petitioners fail to convince this Court regarding any illegality, material irregularity or jurisdictional defect, requiring interference through civil revision then this Court will not interfere in the order passed by the learned court below.
- Conclusion:** If the petitioners fail to convince High Court regarding any illegality then High Court will not interfere in the order passed by the court below.

43. Lahore High Court
Sirat Naeem v. Province of Punjab, etc.
Writ Petition No.53882/2022
Mr. Justice Muhammad Amjad Rafiq
<https://sys.lhc.gov.pk/appjudgments/2023LHC2473.pdf>

- Facts:** Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has questioned the vires of order, whereby his application for setting-aside the report of medical board and re-examination through provincial medical board was dismissed by Judicial Magistrate.
- Issues:**
- i) What is medico-legal case (MLC) and what is the difference between fixation of responsibility and falling ill?
 - ii) Whether the responsibility assigned to a medical officer and jail superintendent is amenable to check?
 - iii) What is the effect of managerial scheme of prisoners' health maintenance and double check of concerned officers?
 - iv) Whether the medical board can be constituted in the cases other than mentioned in rule 146 of the Pakistan Prison Rules, 1978?
- Analysis:**
- i) The medico-legal case (MLC) applies to any case of injury or medical condition in which law enforcement agencies seek to investigate and fix the responsibility regarding the said injury or medical condition. Fixation of responsibility connotes that injury or medical condition should be result of any criminal activity whereas falling ill being misfortune could be result of any epidemic, or system failure due to any internal disease wherein if no criminal act is involved is hardly a subject of medicolegal work.
 - ii) The responsibility assigned to the medical officer and jail superintendent though amenable to a check by Inspector General of Prison who can be approached upon in case of any flagrant violations of duty by them, yet an oversight mechanism is also in place whereby District Coordination Officers and Sessions Judges are authorized to ensure that the law and rules applicable on the subject be followed in letter and spirit.

iii) The managerial scheme of prisoners' health maintenance is obvious from the rules cited above; the double check of Medical Staff and Jail Superintendent within the jail premises and an oversight mechanism by Inspector General of Prison, Sessions Judge and District Coordination officer (now Deputy Commissioner) ensures that no prisoner should be deprived of his right to treatment.

iv) Though constitution of board figures only in Rule 146 above, yet there is no specific prohibition for constitution of medical board in other cases as well.

- Conclusion:**
- i) The medico-legal case (MLC) applies to any case of injury in which law enforcement agencies fix the responsibility and fixation of responsibility connotes that injury is a result of any criminal activity whereas falling ill being misfortune could be result of any epidemic, or system failure due to any internal disease.
 - ii) The responsibility assigned to a medical officer and jail superintendent is amenable to check.
 - iii) The effect of managerial scheme of prisoners' health maintenance and double check of concerned officers ensures that no prisoner should be deprived of his right to treatment.
 - iv) The medical board can be constituted in the cases other than mentioned in rule 146 of the Pakistan Prison Rules, 1978.

44. Lahore High Court
Province of Punjab and 05 others v. Jaffar Ahmed and 02 others
W. P. No. 15270 / 2023
Province of Punjab and 04 others v. Mubashar Ali Shahzad and 02 others
W. P. No. 15295 / 2023
Mr. Justice Abid Hussain Chatha
<https://sys.lhc.gov.pk/appjudgments/2023LHC2596.pdf>

Facts: The constitutional petitions are directed against the impugned judgments passed by Labour Court and the Labour Appellate Tribunal, respectively, whereby, the grievance petitions filed by the respondents under Section 33 of the Punjab Industrial Relations Act, 2010 were accepted and the respondents were regularized in the service as "permanent employees" against the posts for which they were already serving on work charge basis under the Petitioner Department from the date of appointment.

Issues:

- i) Whether the PIRA Act and the Standing Order are applicable to the case of daily wagers?
- ii) Whether seeking of regularization based on length of service is the vested right of the government employee?

Analysis:

- i) The first proviso of Section 1(4) (c) of the Standing Order provides that it shall not apply to industrial and commercial establishments carried on by or under the Federal or any Provincial Government, where statutory rules of service, conduct or discipline are applicable to the workmen employed therein. There is no denial

on the part of the Respondents that the temporary employment was governed by statutory rules. Similarly, Section 1(3) (b) of the PIRA Act specifically provides that it shall not apply to any person employed in the administration of the state other than those employed as workmen by the Railway and Pakistan Post.

ii) A government employee must advance his claim of regularization under the Regularization Act and if the claim of the employee was prior to its enforcement, then on the strength of the policy and the notification that addresses the issue of regularization in contrast to merely seeking regularization based on the length of service under the PIRA Act or the Standing Order for the reason that regularization prerequisites existence of a sanctioned post with budget. Similarly, in case titled, “Parks and Horticulture Authority and others v. Ejaz Ahmad Sial” (2020 PLC (C.S.) 214), it was held that there is no vested right to be regularized in the service and regularization in the first instance is an executive function requiring sanctioned post as it involves financial considerations upon Government exchequer.

- Conclusion:**
- i) A daily wager employed in Government Department is excluded from the application of the PIRA Act.
 - ii) Regularization is not a vested right of any employee but is dependent on a right based on law or policy. Moreover, mere length of service is not the sole basis to seek regularization.

LATEST LEGISLATION/AMENDMENTS

1. The Environmental Protection Council, in exercise of powers conferred under clause (b) of sub-section (1) of section 4 of Punjab Environmental Protection Act, 1997 approved the Plastic Management Strategy, Punjab.
2. The Punjab Environmental Protection Council approved Punjab clean Air policy (with phased action plan)
3. Punjab place of Provision of Service Rules, 2023 prescribed by the Punjab Revenue Authority with approval of Government in relation to determination of place of provision of the taxable services.
4. In exercise of powers conferred under section 48 of Punjab Public Financial Management Act, 2022, Punjab Medium-term Fiscal Framework and budget strategy Rules, 2023 are made.
5. Inter-Boards Coordination Commission Act, 2023 has been enacted to re-constitute the Inter-Board Committee of Chairman as Inter-Boards Coordination Committee.
6. Section 16 of Pakistan Council of Research in Water Resources has been substituted vide Pakistan Council of Research in Water Resources (Amendment) Act, 2023.
7. The National University of Pakistan Act, 2023 has been enacted to establish National University of Pakistan.

8. Vide the Tax Laws (Amendment) Act, 2023 amendments have been made in certain laws relating to taxes and duties.
 - a. Amendments have been made in section 2 & 3 and new serial number has been added after serial number 54 in column (1) of Table-2 in Sixth Schedule of Amendments of the Sales Tax Act, 1990.
 - b. In Income Tax Ordinance, 2001, section 99A has been substituted, sub-section (1A) in section 235 has been omitted, First Schedule is amended (in Part IV, in division III in clause 2 and in Division IV, clause 3 omitted), in Second Schedule clauses (5A), (105C) are inserted and in Tenth Schedule, in Rule 10 clause (ha) has been inserted.
 - c. In the Federal Excise Act, 2005 amendments made in First Schedule in Table-1, in column (1).
 - d. Amendments have been made in section 8 of the Finance Act, 2022.

SELECTED ARTICLES

1. CAMBRIDGE INTERNATIONAL LAW JOURNAL

https://www.researchgate.net/profile/Agustin-Ruiz-Robledo/publication/329460150_The_construction_of_the_right_to_free_elections_by_the_European_Court_of_Human_Rights/links/5e838c56a6fdcca789e57b18/The-construction-of-the-right-to-free-elections-by-the-European-Court-of-Human-Rights.pdf

The Construction of the Right to Free Elections by the European Court of Human Rights by Agustín Ruiz Robledo

As Rousseau observed, citizens would lose their right to vote if the elections in which that right was exercised were not genuinely free but manipulated by power. In the words of the European Court of Human Rights (ECtHR): the right to free elections, guaranteed by Article 3 of Protocol No 1, is ‘crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law’. The aim of this article is to study this fundamental right by analysing the jurisprudence of the ECtHR which, in my view, has succeeded in converting what in the Additional Protocol was only a mandate for states (to hold free elections) into a genuine subjective right of citizens, which the states have ended up accepting. This eventually resulted in the change of the title of Article 3 in 1994.

2. ACADEMIA

https://www.academia.edu/40688080/Expanding_the_Debate_over_Internet_Access_as_a_Human_Right

Expanding the Debate over Internet Access as a Human Right by Will Wojcik Shook

Should access to the internet be considered a human right? The debate has continued since the 2011 report to the United Nations Human Rights Council (UNHRC) recommending access to the internet be ensured on the basis of enabling free speech and its unique status as a platform to exercise numerous other human rights (United Nations Human Rights Council, 2011). A particularly interesting position on the debate comes from Brian Skepys, who believes the best case for internet access as a human right can be made through the right to assembly, though this argument is one he ultimately rejects. This essay has three aims. First, it will address critics in their denial of the right to access the internet. Second, it will argue that due to its function as a community, access to the internet should be considered a human right via the right to assembly. Finally, it will outline some of the additional duties and obligations governments have regarding the internet.

3. HUMAN RIGHTS LAW REVIEW

<https://academic.oup.com/hrlr/article/22/2/ngac009/6562805>

Tinker, Tailor, Twitter, Lie: Government Disinformation and Freedom of Expression in a Post-Truth Era by Katie Pentney

The spread of disinformation has received significant attention in recent years, yet little has been paid to government disinformation, and whether governments may violate freedom of expression not only in how they regulate disinformation, but also in how they facilitate, sow and spread it. This article analyses whether and to what extent Article 10 of the ECHR is engaged by government disinformation. It extends the analysis from well-established violations of freedom of expression—overt censorship and withholding information—into novel forms of government interference in the ‘post-truth’ age: false claims of ‘fake news’ levelled at the press and intentional lies about matters of public importance. These latter categories warrant further attention, as governments can cause just as much harm to public discourse and debate by intentionally injecting falsehoods as by censoring truth. A purposive approach to freedom of expression is needed to protect not only the means of expression, but also the ends—vibrant democratic discourse and meaningful public debate.

4. STATUTE LAW REVIEW

<https://academic.oup.com/slr/article-abstract/41/1/89/5203269?redirectedFrom=fulltext>

‘May’ and ‘Shall’ and ‘Must’: Power or Duty? by Alec Samuels

The words ‘may’ and ‘shall’ and ‘must’ appear in many statutes. Not surprisingly, over the years, a myriad of particular instances has appeared in the law reports. From all this body of law can any principles be deduced? Are there any authoritative texts?

5. HUMAN RIGHTS LAW REVIEW

<https://academic.oup.com/hrlr/article/21/3/696/6206835>

Human Rights Protections in Drawing Inferences from Criminal Suspects' Silence by Yvonne Daly, Anna Pivaty, Diletta Marchesi and Peggy ter Vrugt

This article sheds comparative and contextual light on European and international human rights debates around the privilege against self-incrimination and the right to silence. It does so through an examination of adverse inferences from criminal suspect's silence in three European jurisdictions with differing procedural traditions: Ireland, Italy and the Netherlands. The article highlights the manner in which adverse inferences have come to be drawn at trial in the three jurisdictions, despite the existence of both European and domestic legal protections for the right to silence. It also explores differing approaches to the practical operation of inference-drawing procedures, including threshold requirements, varying evidential uses of silence and procedural safeguards. The authors argue that human rights' standard-setting institutions ought to provide clarity on the conditions under which adverse inferences may be tolerated, including the purpose(s) for which inferences may be used, and the necessary surrounding safeguards.

