

LAHORE HIGH COURT B U L L E T I N



Fortnightly Case Law Update *Online Edition*

Volume - IV, Issue - XV

01 - 08 - 2023 to 15 - 08 - 2023



Published By: Research Centre, Lahore High Court, Lahore

Online Available at: <https://researchcenter.lhc.gov.pk/Home/CaseLawBulletin>

Disclaimer

Due care and caution has been taken in preparing and publishing this bulletin. Where required, text has been moderated, edited and re-arranged. The contents available in this Bulletin are just for Information. Users are advised to explore and consult original text before applying or referring to it. Research Centre shall not be responsible for any loss or damage in any manner arising out of applying or referring the contents of Bulletin.



FORTNIGHTLY CASE LAW BULLETIN

(01-08-2023 to 15-08-2023)

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

JUDGMENTS OF INTEREST

Sr. No.	Court	Subject	Area of Law	Page
1.	Supreme Court of Pakistan	Constitutional jurisdiction of Supreme Court regarding fundamental rights containing questions of public importance; Right of appeal under 1973 Constitution provides against the orders and judgments of Supreme Court; Effect of inserting a right of appeal through ordinary legislation and its effect on essence of review; Rationale for conferring rule making powers on the Supreme Court; Legislative power of parliament regarding any matter relating to jurisdiction of the Supreme Court; Power of Parliament to “enlarge” the review jurisdiction of the Supreme Court under the Constitution and under section 2 of the Act 2023; Constitution of Benches and fix the number of Judges and enactment of law qua this subject; difference between “jurisdiction” and “power”; Protection of law by an ouster clause; Status of ancillary provisions if gist of Act is unconstitutional	Constitutional Law	1
2.		Act, decision or omission, by the Commission and principle of judicial review; Jurisprudence of the Court in relation to such clauses (which are all variants on the “shall not be called in question...” line); The constitutional duty to hold elections and alter election programme or push elections beyond the applicable period set out in Article 224; Commission is master of all electoral matters; Power of Commission if the executive authorities fails or refuses to fulfil their constitutional duties under Article 220		5
3.		Maintainability of suo motu, second review petition or “curative review”, under Article 188 of the Constitution read with the Supreme Court Rules, 1980; Jurisdiction of Supreme Court; Transplant of a rule from a foreign jurisdiction in Pakistan’s jurisdiction		7

4.		Law of agency and common law doctrine commanding and regulating the affiliation between agent and principal; Liability of principal for misdeed of his agent; contract of sale and intention of parties; Time for payment in unconditional contract; Definition and authority of agent and principal and duties of agent; Liability of employer to indemnify agent; total income tax liability of the assessee	Civil Law	11
5.		Validity of proceedings and orders issued under Section 161/205 in the absence of proceedings under Section 177 of the Income Tax Ordinance, 2001; Rule of construction or interpretation of any statute or its provisions and intention of legislature	Tax Law	14
6.		Extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as expeditious remedy in a case where the illegality of an impugned action can be established without any elaborate enquiry or recording of evidence	Constitutional law	15
7.		Details/minutiae of Section 100 of the CPC; Points for determination and the reasons for the decision under Order XLI, Rule 31, CPC by Appellate Court; Jurisdiction of a High Court under Section 100 CPC qua substantial question of law and pure question of fact; Distinction between two appellate jurisdictions		16
8.	Supreme Court of Pakistan	Swift resolution of disputes through arbitration in comparison with Court litigation; Powers of Arbitrators or Umpires; Powers of Court regarding observation of award for making it Rule of Court; Arbitrator's misconduct; Qualities of a good Arbitrator; Power of Court to review the Award or challenge of decision of Arbitrator through parties	Civil law	18
9.		Application of Limitation Act, 1908 on petition filed under Companies Act, 2017 and application of general provisions of the Act, 1908		20
10.		Order for the confiscation of goods or for imposition of any penalty on any person can be passed without informing him in writing and without giving him opportunity of being heard and applicability of Maxim audi alteram partem to judicial as well as to non-judicial proceedings; Purpose of show cause notice, whether it is necessary to contain all the allegations and legal provisions of law	Custom Law	21
11.		Essential conditions for Adna Malkiat; Abolishment of proprietorship of Ala Maliks; Adna Maliks as full proprietors; Term Ala-cum-Adna-Maliks; Status of vague oral evidence as	Civil Law	22

		compared to documentary evidence in the form of revenue record		
12.	Supreme Court of Pakistan	Limitation from the judgment or final order sought to be appealed in criminal matters under Article 185(3) of the Constitution; Entitlement of relief for a person who is fugitive from law	Criminal Law	24
13.		Powers of trial Court under section 94 Cr.P.C read with 265-C Cr.P.C for direction to produce any document before commencement of trial; Right of accused to apply for production of any document under section 94 Cr.P.C as compared to his right under section 265F(7) Cr.P.C		24
14.		Testimonies of the police personnel as compared to any other witness; Effect of minor contradictions on trivial matters on the prosecution case; appreciating evidence of the witness to be read as a whole and its ring of truth; Time limit under Control of Narcotic Substances (Government Analysts) Rules, 2001 for Investigating Officer to send the samples		26
15.		legal value of mutation prior to its incorporation in the record of rights; Admissibility evidence of the entries in mutation; Title of beneficiary qua oral transaction; consideration of mutation as document of title	Civil Law	27
16.		Pensionary benefits as right of employee; Constitutional protection against discrimination	Service Law	28
17.		Notice of opposition to the registration of a trade mark and time limit of two months under Rule 30 of Revised Rules 1963; Special jurisdiction of Registrar of Trade Marks to extend time and its conditions i.e. proper application of rational mind, justification and satisfaction of the Registrar; Discretionary power of Registrar Trade Marks; True spirit of any provision being mandatory or directory; Requirement of law when it prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner or may be done and not otherwise; Meaning of satisfaction; statute should be read in its mundane, natural and grammatical meaning with its plain language	Civil Law	29
18.	Lahore High Court	Repealed and repealing provisions; enhancement of fees/charges during study program		31
19.		Applicability of Section 3(1A) and Section 3(5) of the Sales Tax Act, 1990, on exempted person under Serial No.53, Table 2 of the 6 th Schedule of the Sales Tax Act, 1990; Pre-condition of a person who is not engaged in taxable supplies	Tax Law	32

20.	Lahore High Court	Cancellation of tender after acceptance of bid; Accrued right cannot be taken away unilaterally; Retraction from a contract by government functionary; unconstitutional actions by executive functionaries cannot be accorded approval by the Superior Courts; Constitutional jurisdiction regarding contractual disputes between private parties and public functionaries	Civil law	33
21.		Fate of appeal if reportedly, appellant is unfit to face legal proceedings; applicability of section 465 Cr.P.C. at the trial stage	Criminal Law	35
22.		Interfere of Court into appointment of employee in autonomous body; vested right of employee for extension of his contract	Service Law	36
23.		Refusal of specific performance to a vendee who had performed substantial part of obligation; Compensation for breach of contract of immovable property; jurisdiction of court qua repugnancy of any agreement clause as against Islam; claim of liquidated damages or late payment charges	Civil Law	37

LATEST LEGISLATION/AMENDMENTS

1.	Amendment in the Punjab Transport Department (IT Wing) Employees Service Rules 2018	38
2.	Amendment in the Chief Minister's Secretariat Household Staff Rules 2012	39
3.	Amendment in the Punjab Motor Vehicle Rules 1968	39
4.	Amendment in the Punjab Police Special Branch (Intelligence cadre) Service Rules 2020	39

SELECTED ARTICLES

1.	Zero-Clicks- Is Google Abusing its Dominant Position by Apekshit Kalra	39
2.	Tracing the Cognizability of Copyright Infringement by Isabel Roy	39
3.	Analysing the types of disputes in Corporate Governance and Role of ADR in Dispute Resolution by Rushank Kumar	40
4.	Reporting Crimes and Arresting Criminals: Citizens' Rights and Responsibilities Under Their Criminal Law by R.A. Duff & S.E. Marshall	40
5.	Online Disinformation and Populist Approaches to Freedom of Expression: Between Confrontation and Mimeticism by Giuseppe Martinico & Matteo Monti	40

6.	Concerns and Considerations for Using Generative Artificial Intelligence as Part of Routine Business Operations by Gregory L. Cohen and Romaine C. Marshall	41
----	---	----

1. **Supreme Court of Pakistan**
Ghulam Mohiuddin v. Federation of Pakistan thr. M/o Law & Justice and another
Constitution Petitions No.21, 22 & 23 of 2023
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Ijaz-ul-Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/const.p.21_2023_11082023.pdf

Facts: The Petitioners have challenged the vires of the Supreme Court (Review of Judgements and Orders) Act, 2023 (Act No.XXIII of 2023) (the “2023 Act”) through the instant Petitions under Article 184(3) of the Constitution of Pakistan, 1973 (the “1973 Constitution”).

- Issues:**
- i) Whether this court has the constitutional mandate to directly entertain matters related to enforcement of fundamental rights which raise questions of public importance?
 - ii) What is the primary duty of the Supreme Court?
 - iii) Whether the 1973 Constitution Provides the right of appeal against the orders and judgments of this court passed in exercise of jurisdiction under Article 184(3)?
 - iv) What is the effect of inserting a right of appeal through ordinary legislation?
 - v) What will be the effect if the Parliament through ordinary legislation changes the very essence of review under Article 188 of the 1973 Constitution to the extent that it would for all intents and purposes stand converted into an appeal under Article 185?
 - vi) What was the rationale for conferring rule making powers on the Supreme Court?
 - vii) Whether the parliament have the power to make laws and whether the parliament can legislate regarding any matter relating to jurisdiction and powers of the Supreme Court?
 - viii) Whether the Constitution empowers the Parliament to “enlarge” the review jurisdiction of the Supreme Court under Article 188 of the Constitution?
 - ix) Whether section 2 of the Act 2023 enlarges the jurisdiction of the Supreme Court under Article 184(3)?
 - x) Who constitutes Benches and fix the number of Judges; whether the legislature can enact a law on the subject of the constitution of benches?
 - xi) What is the difference between “jurisdiction” and “power”?
 - xii) Whether any law can be saved or protected by way of an ouster clause?
 - xiii) If the gist of the Act and its very basis is declared to be unconstitutional whether the ancillary provisions can stand alone?

Analysis: i) Unlike Article 199 of the 1973 Constitution, this Court has the unique constitutional mandate under Article 184(3) to directly entertain matters related to enforcement of fundamental rights which raise questions of public importance. This jurisdiction is also to be exercised “Without prejudice to the provisions of in Article

199 ...”. Therefore, while the power of this Court to issue writs in terms of Article 199 is concurrent with that of the High Courts, it is only before this Court that questions of public importance with reference to enforcement of fundamental rights can directly be raised and entertained without being hampered by the trappings of Article 199 of the 1973 Constitution.

ii) The 2023 Act is an intrusion in the basic and fundamental feature of the Constitution namely the independence of the judiciary directly and undisputedly affects fundamental rights of citizens. The protection, preservation and enforcement of fundamental rights are the primary duty of this Court in its constitutional mandate as the guardian of fundamental rights of the citizens.

iii) It is clear and obvious from a plain reading of the 1973 Constitution that the framers did not envisage or provide a right of appeal against orders/judgements of this Court passed in exercise of jurisdiction under Article 184(3) which are final except for a right to seek review under Article 188 read with the 1980 Rules.

iv) Any attempt to insert a right of appeal through ordinary legislation, couched in whatever language, in whatever manner and through whatever device used, amounts to introducing an amendment in the Constitution and is clearly ultra vires the Constitution.

v) If the Parliament through ordinary legislation changes the very essence of review under Article 188 of the 1973 Constitution to the extent that it would for all intents and purposes stand converted into an appeal under Article 185 and thereby virtually obliterate the fundamental difference between the two. Such course of action, if permitted, would open the door for interference in the independence of judiciary through statutory instruments that the Constitution prohibits.

vi) The rationale for conferring rule making powers on the Supreme Court is a supplement to the foundational tenet of the 1973 Constitution to protect and preserve the complete independence of the Court from the possibility of any interference by other organs of the State.

vii) Under Article 142(a), the Parliament, subject to the Constitution, “shall have exclusive power to make laws with respect to any matter in the Federal Legislative List.” The Federal Legislative List is found in the Fourth Schedule to the Constitution. For the purposes of these Petitions, the relevant Entry in the Fourth Schedule is Entry No.55. The first limb of the Entry is straightforward. Parliament cannot legislate regarding any matter relating to jurisdiction and powers of the Supreme Court. It is the second limb which states that Parliament can legislate on the enlargement of the jurisdiction of the Supreme Court and the conferring thereon of supplemental powers as is expressly authorized by or under the Constitution.

viii) The said Rules have been framed in exercise of an independent Constitutional power keeping in mind a fundamentally important feature of the Constitution namely independence of judiciary and cannot be changed, modified, or overridden by ordinary legislation. Further, there is no “express authorization” anywhere in the Constitution empowering the Parliament to “enlarge” the review jurisdiction of the Supreme Court under Article 188 of the Constitution. In addition, the 2023 Act does not “enlarge” review jurisdiction, it “creates” a new appellate jurisdiction

which has no constitutional basis, sanction or authorization. Therefore, any attempt by way of ordinary legislation to interfere in the scope of its powers and jurisdiction including but not limited to its review jurisdiction would constitute a wrong and erroneous reading and interpretation of the Constitution. There can be no two opinions that the power to interpret the Constitution vests exclusively with the Supreme Court of Pakistan. The 2023 Act appears to be an overt and glaring intrusion in the independence of the judiciary, which is a grund-norm of our constitutional scheme and has been vigorously, resolutely, and robustly guarded by the framers of the 1973 Constitution as is evident from various provisions of the 1973 Constitution. The very preamble of the 1973 Constitution categorically states: "... the independence of the judiciary shall be fully secured". Any legislation interfering with the independence of the judiciary, would by its nature and from its very inception, be unconstitutional, null, void and of no legal effect.

ix) Under the Constitution, orders and judgements passed by the Supreme Court under Article 184(3) are final except to the limited extent that the same may be subject to review jurisdiction under Article 188. Section 2 by providing an appeal on facts and law against the judgements and orders passed under Article 184(3), reduces rather than enlarges the jurisdiction of the Supreme Court under Article 184(3) since such judgements and orders are now subject to a rehearing and re-appraisal by a larger bench hearing the review as an appeal thereby destroying the finality of such judgments or orders. It may be noted that looked at from another angle, an "expansion" of review jurisdiction and converting it into an appeal would necessitate amending various Constitutional Articles (including Articles 184(3), 185 and 188) as well as modification of the 1980 Rules. The 2023 Act alone, and by itself, cannot alter, modify or amend Constitutional provisions without adhering to the mandatory requirements set forth in Articles 238, 239 and 269 of the 1973 Constitution.

x) A five-member bench of this Court, in SMC No.4 of 2021 (PLD 2022 SC 306 @ para 33), has already held that: "... it is settled law that it is the Chief Justice alone who is the master of the roster and who, from time to time, constitutes Benches for the exercise of the various jurisdictions of the Court. This applies (to take the language of Order XI of the 1980 Rules) to "every cause, appeal or matter" to be heard and disposed of by the Court ..." Since this Court has declared that under the 1980 Rules, it is the sole prerogative of the Chief Justice of Pakistan to constitute Benches, to fix the number of Judges who constitute the said Benches, it would veer towards irrationality to hold that while the original exercise and invocation of jurisdiction under Article 184(3) is the sole prerogative of the Chief Justice under the 1980 Rules, the legislature has the authority to supersede the Chief Justice and enact a law taking away the prerogative of the Chief Justice of nominating and fixing the number Judges to hear a review petition.

xi) Jurisdiction of a Court is a well-understood concept which means the capacity of a court to decide a dispute arising before it. On the other hand, the "power of the Court" means the actions which a Court may take i.e. the judgement or order it may pass after assuming jurisdiction.

xii) No law that is found to offend any provision of the Constitution including the fundamental rights enshrined in the 1973 Constitution can be saved or protected by way of an ouster clause. Article 8(1) of the 1973 Constitution expressly states that: “Any law ... in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.” It is trite that ouster of jurisdiction provisions contained in statutory instruments do not and cannot affect, curtail or diminish the Constitutional powers and jurisdiction of this Court.

xiii) It is a settled principle of law that if the gist of the Act and its very basis is declared to be unconstitutional then the ancillary provisions too must go as those cannot stand alone. Parliament is deemed to have passed those ancillary provisions on the assumption that the main gist or life of the Act, namely that the review be converted into an appeal before a larger bench, is valid. If Section 2 is declared to be unconstitutional and void then the remaining sections of the Act cannot stand on their own and the entire Act ought to be declared void.

- Conclusion:**
- i) Unlike Article 199 of the 1973 Constitution, this Court has the unique constitutional mandate under Article 184(3) to directly entertain matters related to enforcement of fundamental rights which raise questions of public importance.
 - ii) The protection, preservation and enforcement of fundamental rights are the primary duty of this Court in its constitutional mandate.
 - iii) Reading of the 1973 Constitution did not envisage or provide a right of appeal against orders/judgements of this Court passed in exercise of jurisdiction under Article 184(3).
 - iv) Any attempt to insert a right of appeal through ordinary legislation amounts to introducing an amendment in the Constitution and is clearly ultra vires the Constitution.
 - v) Such course of action, if permitted, would open the door for interference in the independence of judiciary through statutory instruments that the Constitution prohibits.
 - vi) The rationale for conferring rule making powers on the Supreme Court is to protect and preserve the complete independence of the Court from the possibility of any interference by other organs of the State.
 - vii) The parliament have the power to make laws but the parliament cannot legislate regarding any matter relating to jurisdiction and powers of the Supreme Court rather can legislate on the enlargement of the jurisdiction of the Supreme Court and the conferring thereon of supplemental powers as is expressly authorized by or under the Constitution.
 - viii) There is no “express authorization” anywhere in the Constitution empowering the Parliament to “enlarge” the review jurisdiction of the Supreme Court under Article 188 of the Constitution.
 - ix) Section 2 by providing an appeal on facts and law against the judgements and orders passed under Article 184(3), reduces rather than enlarges the jurisdiction of the Supreme Court under Article 184(3) since such judgements and orders are now

subject to a rehearing and re-appraisal by a larger bench hearing the review as an appeal thereby destroying the finality of such judgments or orders.

x) It would veer towards irrationality to hold that while the original exercise and invocation of jurisdiction under Article 184(3) is the sole prerogative of the Chief Justice under the 1980 Rules, the legislature has the authority to supersede the Chief Justice and enact a law taking away the prerogative of the Chief Justice of nominating and fixing the number Judges to hear a review petition.

xi) Jurisdiction of a Court is a well-understood concept which means the capacity of a court to decide a dispute arising before it. On the other hand, the “power of the Court” means the actions which a Court may take.

xii) No law that is found to offend any provision of the Constitution including the fundamental rights enshrined in the 1973 Constitution can be saved or protected by way of an ouster clause.

xiii) It is a settled principle of law that if the gist of the Act and its very basis is declared to be unconstitutional then the ancillary provisions too must go as those cannot stand alone.

2. **Supreme Court of Pakistan**
Mohammad Sibtain Khan and others v. Election Commission of Pakistan through Chief Election Commissioner, Islamabad and others
Constitution Petition No.5 of 2023
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Ijaz-ul-Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/const.p.5_2023_detailed_reasons.pdf

Facts: This petition can be regarded as a follow up of the decision in a bunch of matters that had been taken up earlier, being SMC 1/2023 and two constitutional petitions filed under Article 184(3) of the Constitution. Those matters were ultimately heard by a five member Bench and decided by a majority of 3:2.

Issues:

- i) Whether an act, decision or omission, by the Commission is beyond the purview of judicial review?
- ii) Whether the jurisprudence of the Court in relation to such clauses (which are all variants on the “shall not be called in question...” line) where they do exist need to be set out here?
- iii) Whether the constitutional duty to hold elections as required can convert the duty into a power?
- iv) Whether the Commission is master of all electoral matters?
- v) Can the Commission, in putative exercise of a claimed constitutional power, push elections beyond the applicable period set out in Article 224?
- vi) What types of powers are conferred upon the commission to alter the election program?
- vii) What could the Commission do if the executive authorities failed or refused to fulfil their constitutional duties under Article 220?

- Analysis:**
- i) An act, decision or omission, by the Commission is not beyond the purview of judicial review. There are two reasons for this. Firstly, to repeat the oft-quoted words of Marshall, CJ in *Marbury v Madison* 5 US (1 Cranch) 137 (1803)), “[it] is emphatically the province and duty of the Judicial Department to say what the law is”. This duty applies in relation to both statutory and constitutional provisions. Secondly, it is to be noted that the Constitution does not protect any act, omission or decision of the Commission with an ouster clause.
 - ii) The jurisprudence of the Court in relation to such clauses (which are all variants on the “shall not be called in question...” line) where they do exist need not therefore be set out here. The absence of such clauses in relation to the Commission does however indicate that there is no immunity from judicial scrutiny. Of course, the decisions and acts of the Commission are not to be taken lightly and are to be given due respect and consideration. But, in the end, it is for the Court itself to decide on the correctness and legality thereof.
 - iii) The constitutional duty to hold elections as required (honestly, justly, fairly) does not, and cannot, convert the duty into a power vis-à-vis other constitutional provisions.
 - iv) On the constitutional plane, the Commission is not the master but rather the forum or organ that the Constitution has chosen to perform the task that lies at the heart of constitutional democracy.
 - v) In our view, the answer can only be in the negative. It is to be noted that both clauses of Article 224 here relevant are couched in mandatory terms: each uses the word “shall” twice, first in relation to the period in which the elections are to be held and then the period in which the results are to be declared. These clauses are mandatory and binding. They tell us when, at the latest, the elections are to be held, and when, at the latest, the result is to be declared. (Of course, elections can be held at any time within the stipulated period, and the result ought to be declared as swiftly as possible, which is what the 2017 Act, quite properly, mandates.) Article 218(3) tells us how those elections are to be held. Both provisions impose constitutional duties. They are complementary. By fixing the time period(s) in Article 224, the Constitution binds everyone, including the Commission itself. The other duty, of holding the elections, is imposed on the Commission, and binds the executive branch to assist it in this regard. In their own terms both duties are mandatory. But the Commission cannot read one constitutional duty as conferring upon it the constitutional power to negate the other, and thereby convert what is mandatory into something that is only directory. It is this conflation of, and confusion between, “duty” and “power” on the constitutional plane that underlies the Commission’s case.
 - vi) It is to be noted that the power to alter the election program is circumscribed and not open-ended. It can only be exercised if “necessary for the purposes of [the 2017] Act” and not otherwise. Furthermore, the power conferred comprises of two distinct limbs, which operate separately from each other. The first limb empowers the Commission to make “alterations in the Election Programme” “for the different

stages of the election”. In other words, the dates given for the different stages or events in the election program may be altered or varied, but the overall program must recognizably remain the same. The second limb allows the Commission to “issue” “a fresh Election Programme”, i.e., to abandon the earlier notified program and issue an entirely new one.

vii) The answer, on the constitutional and legal plane, is clear. It was not for the Commission to (metaphorically) wring its hands and then, bowed under the weight of its own professed inability to persuade or cajole the executive authorities to obey the constitutional command of Article 220, pass an unconstitutional order pushing forward the election by several months. The legal path was clear. It was for the Commission to speedily approach this Court for relief in the shape of a writ of mandamus.

- Conclusion:**
- i) An act, decision or omission, by the Commission is not beyond the purview of judicial review.
 - ii) The jurisprudence of the Court in relation to such clauses (which are all variants on the “shall not be called in question...” line) where they do exist need not therefore be set out here.
 - iii) The constitutional duty to hold elections as required (honestly, justly, fairly) does not, and cannot, convert the duty into a power.
 - iv) The Commission is not the master but rather the forum or organ that the Constitution has chosen to perform the task.
 - v) The Commission cannot in putative exercise of a claimed constitutional power, push elections beyond the applicable period set out in Article 224, and thereby defeat and deny the constitutional command therein enshrined.
 - vi) It can only be exercised if “necessary for the purposes of [the 2017] Act” and not otherwise.
 - vii) It was for the Commission to speedily approach this Court for relief in the shape of a writ of mandamus.

-
- 3. Supreme Court of Pakistan**
Khalid Mehmood v. Chaklala Cantonment Board through its CEO and others
C.M. Appeal No. 47 of 2020 in CMA Nil of 2020 in C.R.P. 664 of 2018 in C.P. 130 of 2016
**Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah,
 Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/c.m.appeal.47.2020.pdf

- Facts:** The facts leading to the filing of the present appeal, briefly, are that the appellant filed a writ petition in the Lahore High Court against the respondents regarding an auction matter, which was allowed by a Single Bench of that High Court against which respondents’ intra-court appeal before the Division Bench failed. They then filed a petition for leave to appeal in Supreme Court, which was allowed by a three-member Bench of this Court whereby impugned judgments of the High Court were set aside and the writ petition of the appellant was dismissed on the ground of

laches. The appellant filed a review petition against the said order of Supreme Court, which was dismissed by this Court, holding that no ground for review had been made out. The appellant then filed an application under Article 187 of the Constitution of the Islamic Republic of Pakistan (“Constitution”) read with Rule 2 of Order X and Rule 6 of Order XXXIII of the Supreme Court Rules 1980 (“Supreme Court Rules”), for passing appropriate orders in the interest of justice. The Institution Officer of Supreme Court returned the said application of the appellant by determining in his order that the application amounted to a second review petition which was not entertainable under Rule 9 of Order XXVI and Rule 2 of Order X of the Supreme Court Rules. The present appeal has been filed against this order of the Institution Officer.

- Issues:**
- i) Whether second review petition or “curative review”, is maintainable under Article 188 of the Constitution read with the Supreme Court Rules, 1980?
 - ii) Whether jurisdiction can be vested in Supreme Court which is otherwise not conferred on it by the Constitution or any other law?
 - iii) Whether any transplant of a rule from a foreign jurisdiction be made in Pakistan jurisdiction?
 - iv) Whether Article 187(1) of the Constitution confers jurisdiction upon Supreme Court to take cognizance of any case or matter?
 - v) Whether Supreme Court can exercise suo motu review jurisdiction to entertain a second review petition under Article 188 of the Constitution?
 - vi) Whether review jurisdiction conferred on the Supreme Court by Article 188 of the Constitution be exercised in any judgment or order made in review jurisdiction by the Court under the same Article?
 - vii) Whether correction or development of the law declared by Supreme Court can be revisited only once?

- Analysis:**
- i) The review jurisdiction is conferred on this Court by Article 188 of the Constitution, which states that the ‘Supreme Court shall have power, subject to the provisions of any Act of Majlis-e-Shoora (Parliament) and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it’. The review jurisdiction conferred by Article 188, as it is evident from the reading of that Article, is subject to the provisions of any Act of Parliament and any rules made by the Court. The Parliament has not so far passed any Act under this Article; however, the Supreme Court Rules made by this Court contain the rules that regulate its review jurisdiction... In view of the above rules, the question of maintainability of, and the jurisdiction of this Court to entertain, a second review petition has been considered and decided by this Court in many cases. The legal position as to the non-maintainability of a second review petition is so well settled by the repeated pronouncements of this Court that I consider it unnecessary to delve into this question again and reference to some of these cases here, should suffice: See *Ahmad v. Abdul Aziz* 1991 SCMR 234; *Abdul Hameed Dogar v. Federation of Pakistan* 2010 SCMR 312; *Shabbar Raza v. Federation of Pakistan* 2018 SCMR 514 (7-MB); *Akhter Lalayka v. Mushtaq Sukhaira* 2018 SCMR 1218 (5-MB);

Moinuddin v. State PLD 2019 SC 749 (7-MB). The declaration made by a seven-member larger Bench of this Court in the last mentioned case of Moinuddin is reproduced here to show what the law of the land on this matter is:

6..... There is, thus, no scope for maintainability of a second or subsequent review petition before this Court after the first review petition has been decided. It is sometimes argued that in such a situation, particularly in a case of extreme hardship, this Court may attend to the matter in exercise of its jurisdictions under Articles 184(3) or 187 of the Constitution or may resort to revisiting the earlier order or judgment in order to safeguard the interests of justice but such arguments have consistently been rejected by this Court in the past. In many previous cases this Court has consistently held that after exhausting the review jurisdiction of this Court a party to a case cannot invoke Articles 184(3) or 187(1) of the Constitution for reopening the same case.

ii) Article 175(2) of the Constitution unequivocally declares that '[n]o court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law'. I am, therefore, of the considered view that entertaining a second review petition would amount to vesting the Court with a jurisdiction not conferred on it by the Constitution or by or under any law in terms of Article 175(2) of the Constitution. It is reiterated that the courts in Pakistan enjoy jurisdiction which is conferred on them by the Constitution or by or under any law and do not possess any inherent jurisdiction on the basis of some principles of English common law, equity or good conscience.

iii) As there is no provision in the Indian Constitution similar to Article 175(2) of our Constitution, the Rupa Ashok case of the Indian jurisdiction, which held that the Indian Supreme Court has the inherent jurisdiction to act *ex debito justitiae* and can entertain in some rarest of the rare cases a second (curative) review petition, does not advance the argument of the learned counsel for the appellant in any manner. Any transplant of a rule from a foreign jurisdiction in ours can only be made after considering closely and thoroughly the difference in the constitutional texts and contexts. In view of the difference of provisions in the Constitutions of both countries, the reference to the said Indian case is misplaced.

iv) So far as the reference to Article 187(1) of the Constitution by the appellant in his application (second review petition) is concerned, the same is also misconceived. The bare reading of Article 187(1) shows that its provisions are subject to and controlled by Article 175(2) of the Constitution. It only confers power on the Court 'to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it', and does not confer jurisdiction to take cognizance of any case or matter. The phrase 'in any case or matter pending before it' used in Article 187(1) is the key to construe the provisions thereof. It leaves little doubt to find that no independent proceedings can be initiated under this Article. The Court can invoke its power under Article 187(1)

only in a case or matter that is competently filed before it under any Article of the Constitution or provision of some other law conferring jurisdiction as stated in Article 175(2) and is also pending before it. Article 187(1) of the Constitution is not applicable where the case or matter stands finally concluded and is no more pending before the Court.

v) It is true that the Supreme Court Rules bar entertaining the second review petition but are silent on the point whether this Court can exercise suo motu review jurisdiction to entertain a second review petition under Article 188 of the Constitution. In my opinion, it cannot do so for the reason that the prohibition on entertaining a second review petition is meant to put an end to litigation and ensuring finality of the judgments and orders of the apex court of the land, in the public interest. If this is the substance and purpose of the Supreme Court Rules, the prohibition operates both on the parties in moving the second review petition and on the Court as well, in exercising suo motu review jurisdiction the second time. If we assume that there is no prohibition on the suo motu exercise of its review jurisdiction the second time by the Court regarding a judgment or order, there will be no end to litigation nor will there be any finality of the judgment or orders of the Court as this suo motu review jurisdiction can then be exercisable for unlimited times and not only for the second time.

vi) More importantly, review jurisdiction conferred on the Court by Article 188 of the Constitution, is with regard to ‘any judgment pronounced or any order made by the Court’ under the preceding Articles of the Constitution, i.e., Articles 184 in its original jurisdiction or under Article 185 in its appellate jurisdiction. Article 188 is not concerned with any judgment or order made in review jurisdiction by the Court under the same Article. And unless the judgment or order passed on the first review petition or in the first suo motu review proceedings is recalled, the judgment or order passed in the original or appellate jurisdiction cannot be reviewed. If this is not the meaning and scope of the words ‘any judgment’ or ‘any order’ used in Article 188 of the Constitution but are taken to include the judgment or order passed in the review jurisdiction also, then any judgment or order passed in the second, third or fourth suo motu review proceedings will also be reviewable in the third, fourth or fifth suo motu review proceedings. Such an interpretation of the words ‘any judgment’ or ‘any order’ in Article 188 of the Constitution, if adopted, would be against the legislative intent and the public interest that lies in putting an end to litigation and ensuring finality of the judgments and orders of the apex court of the country. Article 188 of the Constitution, thus, envisages only one-time exercise of the review jurisdiction, whether made on a review petition or suo motu, by the Court in respect of any of its judgments or orders passed in its original or appellate jurisdiction.

vii) Nonetheless, it may be pertinent to underline here that revisiting, and overruling or modifying if found necessary, a decision on a question of law or enunciation of a principle of law, that is binding on all other courts in the country as per Article 189 of the Constitution, in a case other than that in which the said decision or enunciation was made, must not be confused with reviewing that very judgment or

order in which the said decision or enunciation was made. There is no limit, under the Constitution or any law, as to how many times a question of law once decided or a principle of law enunciated in one case can be revisited, if found necessary to do so, in some other case by a larger Bench or the Full Court Bench of this Court, as an exception to the doctrine of stare decisis for the correction or development of the law declared by this Court.

- Conclusion:**
- i) Second review or curative review is not maintainable before Supreme Court under Article 188 of the Constitution read with the Supreme Court Rules, 1980.
 - ii) Courts in Pakistan only enjoy jurisdiction which is conferred on them by the Constitution or by or under any law and do not possess any inherent jurisdiction on the basis of some principles of English common law, equity or good conscience.
 - iii) Any transplant of a rule from a foreign jurisdiction in ours can only be made after considering closely and thoroughly the difference in the constitutional texts and contexts.
 - iv) Supreme Court can take cognizance under Article 187(1) only in a case or matter that is competently filed before it under any Article of the Constitution or provision of some other law conferring jurisdiction as stated in Article 175(2) and is also pending before it.
 - v) Supreme Court cannot exercise suo motu review jurisdiction to entertain a second review petition under Article 188 of the Constitution for the reason that prohibition on second review is to put an end to litigation and ensuring finality of the judgments and orders of the apex court of the land.
 - vi) Review jurisdiction conferred on the Supreme Court by Article 188 of the Constitution cannot be exercised in any judgment or order made in review jurisdiction by the Court.
 - vii) Correction or development of the law declared by Supreme Court can be revisited, if found necessary to do so, in some other case by a larger Bench or the Full Court Bench of Supreme Court, as an exception to the doctrine of stare decisis for the correction or development of the law declared by this Court.

4. **Supreme Court of Pakistan**

The Commissioner of Income Tax, Companies, etc. v. M/s Pak Saudi Fertilizers Ltd., Karachi through M.D etc.

Civil Appeals no.1275 of 2009 etc.

Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1275_2009.pdf

Facts: These Civil Appeals with leave of the Court are directed against the two judgments passed by the respective High Courts two different provinces in Income Tax Appeal and in Tax Reference.

Issues:

- i) Whether the law of agency is a common law doctrine commanding and regulating the affiliation between agent and principal?
- ii) Whether principal may be held liable for the misdemeanor and misdeed of its

agent?

- iii) Whether in contract of sale of specific or ascertained goods the intentions of the parties much regarded during transfer of property to buyer?
- iv) Whether time of payment of price or delivery of goods is immaterial in case of unconditional contract for the sale of specific goods?
- v) What are the definitions of “Agent” and “Principal”?
- vi) What are the extents of agent’s authority?
- vii) What are the duties of an Agent and Principal?
- viii) Whether employer is liable to indemnify the agent when he acts in good faith?
- ix) Whether Section 80-C of the ITO 1979 articulates that any amount received under which tax is deductible under Section 50(4) was deemed to be the total income tax liability of the assessee?

Analysis:

- i) The law of agency is a common law doctrine commanding and regulating the affiliation between agent and principal. The relationship originates when the agent is conferred the authority to act for the principal through a binding agreement with an explicit authority to perform the duties and obligation as required by the principal in terms of agency to achieve the task.
- ii) The principal may be held liable for the misdemeanor and misdeed of its agent under the doctrine of vicarious liability. Agency is a series and sequence of passing on the authority by a principal to the agent to act on its behalf and under the quintessence of an agency contract the principal is legally bound by the acts performed by the agent, but the agent also owes a range of obligations to his principal and is duty-bound to adhere to the terms and conditions of agency religiously. In order to culminate the relationship of principal and agent, various avenues are available for valediction and wrap ping up the arrangement, including termination through mutual agreement , revocation by the principal , repudiation by the agent and /or annulment or retraction of authority by the principal.
- iii) In line with Section 19 of the Sales of Goods Act 1930, where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred and for the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
- iv) Section 20 of the Sales of Goods Act 1930 explicates that, where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.
- v) Section 182 of the Contract Act defines the expressions “Agent” and “Principal” which manifests that an agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal.
- vi) Section 188 of the Contract Act pertains to the extent of the agent’s authority i.e. that an agent having the authority to do an act has authority to do every lawful

thing which is necessary in order to do such act. This further elaborates that an agent having the authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

vii) The duties of an agent towards the principal are dealt with under Section 211 of the Contract Act wherein the agent is bound to conduct the business of the principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it. Whereas Section 222 is germane to the duties of the principal with regard to its agent wherein the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

viii) Taking into account the niceties of Section 223 of the Contract Act, where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it may cause injury to the rights of third persons.

ix) It is quite noticeable that Section 80-C of the ITO 1979 started with a non-obstante clause, that notwithstanding anything contained in the ITO 1979 or any other law for the time being in force, where any amount referred to in sub-section (2) is received by or accrues or arises or is deemed to accrue or arise to any person being a resident, the whole of such amount shall be deemed to be income of the said person and tax thereon shall be charged at the rate specified in the First Schedule...Sub-section (4) of Section 80-C ITO 1979, further conveys that where the assessee has no income other than the income referred to in sub-section (1) in respect of which tax has been deducted or collected, the tax deducted or collected under Section 50 shall be deemed to be the final discharge of his tax liability under this Ordinance. Whereas according to the niceties of Section 50 (4) (a) of ITO 1979, any person responsible for making any payment in full or in part to any person being resident on account of the supply of goods or for service rendered to, or the execution of a contract with the Government, or a local authority, or a company or a registered firm or any foreign contractor or consultant or consortium shall, where the total value, in any financial year, of goods supplied or contracts executed exceeds ten thousand rupees, deduct advance tax, at the time of making such payment, at the rate specified in the First Schedule, and credit for the tax so deducted in any financial year shall, subject to the provisions of Section 53, be given in computing the tax payable by the recipient for the assessment year commencing on the first day of July next following the said financial year, or in the case of an assessment to which Section 72 or Section 81 applies, the assessment year, if any, in which the said date, as referred to therein, falls, whichever is the later.

Conclusion: i) Yes, the law of agency is a common law doctrine commanding and regulating

the affiliation between agent and principal.

ii) Yes, the principal may be held liable for the misdemeanor and misdeed of its agent.

iii) Yes, in contract of sale of specific or ascertained goods the intentions of the parties much regarded during transfer of property to buyer.

iv) Yes, time of payment of price or delivery of goods is immaterial in case of unconditional contract for the sale of specific goods.

v) Section 182 of the Contract Act defines the expressions “Agent” and “Principal”.

vi) Section 188 of the Contract Act pertains to the extent of the agent’s authority.

vii) The duties of an agent towards the principal are dealt with under Section 211 of the Contract Act.

viii) Yes, employer is liable to indemnify the agent when he acts in good faith taking into account the niceties of Section 223 of the Contract Act.

ix) Yes, Section 80-C of the ITO 1979 articulates that any amount received under which tax is deductible under Section 50(4) was deemed to be the total income tax liability of the assessee.

- 5. Supreme Court of Pakistan**
M/s Islamabad Electric Supply Company Limited (IESCO) through its Finance Director, Islamabad v. The Appellate Tribunal Inland Revenue (H.Q), Islamabad through its Chairman and others
Civil Petitions No.1920 to 1924 of 2022
Mr. Justice Umar Ata Bandial, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1920_2022.pdf

Facts: The petitioner is a public limited company dealing in the supply of electricity to the consumers. The respondent No.3 initiated the proceedings under Section 161 and 205 of the Income Tax Ordinance 2001, he passed the order and created the tax demand for payment against non-deduction of withholding tax, including default surcharge under Sections 161 and 205 read with Section 124 of the Ordinance. Being aggrieved, the petitioner filed appeals before the respondent No.2 but could not succeed, thereafter; the appeals were filed before the Appellate Tribunal Inland Revenue which were also decided against the petitioner. As a last resort, the petitioner filed aforesaid Income Tax References in the learned High Court but the question of law framed in the Tax References was also answered in negative, while upholding the order passed by the learned Appellate Tribunal Inland Revenue.

Issues:

- i) Whether the proceedings and order passed under section 161/205 is justified without proceedings under Section 177 of the Income Tax Ordinance, 2001?
- ii) What is the rule of construction or interpretation of any statute or its particular provision?

Analysis:

- i) The legislature has not put into effect any precondition under Section 177 of the Ordinance to embark on an audit exercise first, and then start off proceedings under Section 161 of the Ordinance. The course of action and benchmark enumerated

under Section 161 of the Ordinance is not contingent upon the compliance of pre-audit requirements mentioned under Section 177, nor does Section 177 of the Ordinance override or overlap the provisions contained under Section 161 of the Ordinance as a precondition of audit, rather both the provisions are, in all fairness, seemingly independent with self-governing corollaries. So far as Section 205 of the Ordinance is concerned, it is by and large related to default surcharge which obviously emanates the characterization of defaults in different scenarios, including where a person who fails to collect tax as required or fails to pay an amount of tax collected or deducted as required under section 160 on or before the due date for payment is liable for default surcharge at a rate mentioned in the Section.

ii) The well recognized rule of construction or interpretation of any statute or its particular provision is that the intention of the legislature must be discovered from the words used. If the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction. If the words of a statute or its any provision are readily understood without any ambiguity, then obviously, it is not for the court to raise any doubt as to what they mean for any contrary view, rather than implementing the same without any hesitation. A statute or any enacting provision must be so construed as to make it effectual and operational. The legislature doesn't use superfluous or insignificant words in a provision or statute and therefore, while interpreting any word or terms in a statute a construction that makes the statute operative and the words pertinent must be preferred to the one that renders the words ineffective, void and useless.

- Conclusion:**
- i) The legislature has not put into effect any precondition under Section 177 of the Ordinance to embark on an audit exercise first, and then start off proceedings under Section 161 of the Ordinance. So far as Section 205 of the Ordinance is concerned, it is by and large related to default surcharge.
 - ii) The well recognized rule of construction or interpretation of any statute or its particular provision is that the intention of the legislature must be discovered from the words used.

6. Supreme Court of Pakistan
Government of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat, Peshawar and others v. Shah Faisal Wahab and others
Civil Petition No.614-P of 2022
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p.614_p_2022.pdf

- Facts:** This Civil Petition for leave to appeal has been brought to challenge the Judgment passed by the High Court whereby directions have been issued to the petitioners to adjust the respondent No.1 in the upcoming admissions for the Session 2022-2023 on the basis of the test already conducted and qualified by him.

Issue: Whether the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has jurisdiction to provide expeditious remedy without any elaborate enquiry or recording of evidence?

Analysis: The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is intended to provide an expeditious remedy in a case where the illegality of an impugned action can be established without any elaborate enquiry or recording of evidence, but if some complicated or disputed question of facts are involved, the adjudication of which could only possible to be resolved and decided by the Courts of plenary jurisdiction after recording evidence of the parties, then obviously the High Court should not embark on to decide convoluted issues of facts.

Conclusion: The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is intended to provide an expeditious remedy in a case where the illegality of an impugned action can be established without any elaborate enquiry or recording of evidence.

7. Supreme Court of Pakistan
Muzafar Iqbal v. Mst. Riffat Parveen and others.
Civil Appeal No.307 of 2017
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 307 2017.pdf

Facts: This Civil Appeal is directed against the judgment passed by High Court, whereby Regular Second Appeal filed by the respondents was allowed by upsetting the concurrent findings recorded by the lower fora.

Issues:

- i) What are the minutiae of Section 100 of the CPC?
- ii) Whether judgment of the Appellate Court shall state the points for determination and the reasons for the decision under Order XLI, Rule 31, CPC?
- iii) Whether jurisdiction of a High Court under Section 100 CPC is meant to decide substantial question of law and not pure question of fact?
- iv) What are the distinctions between the appellate jurisdictions under Section 96 and 100 CPC?

Analysis: i) According to the minutiae of Section 100 of the CPC, a second appeal may be preferred in the High Court against a decree passed in appeal on the grounds such as (a) the decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law, or (c) a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force, which may possibly have produced an error or defect in the decision of the case upon merits. It is categorically provided under Section 101, CPC that no second appeal shall lie except on the grounds mentioned in Section 100 and, consistent with Section 103, CPC, the High Court in any second appeal may, if the evidence on the record is

sufficient, determine any issue of fact necessary for the disposal of the appeal which has not been determined by the lower Appellate Court or which has been wrongly determined by reason of illegality, omission, error or defect as alluded to under sub-section (1) of Section 100.

ii) The procedure for dealing with appeals from original decrees as provided under Order XLI, CPC is made applicable in terms of Section 108, CPC for hearing second appeal against the appellate decrees and orders made in the Civil procedure Code or under any special or local law in which a different procedure is not provided. The prerequisites and rudiments of the Order XLI, Rule 31, CPC is that the judgment of the Appellate Court shall state (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

iii) The jurisdiction of a High Court under Section 100 CPC is constricted to appeals encompassing a substantial question of law rather than causing interference on a pure question of fact and, while taking cognizance by means of second appeal under Section 100 CPC, it is a foremost fragment of jurisdiction to formulate the question of law which is inherent in the spirit of such jurisdiction, hence, for all intents and purposes, the requirements of Order XLI, Rule 31, CPC must be complied with, however, if it is conceivable from the judgment that substantial compliance has been made whereby the cause of justice has not suffered or depreciated, that would be sufficient for the safe administration of justice despite non-adherence to the said Rule *stricto sensu*.

iv) The right of appeal gives rise to a notion of accentuating by twofold and threefold checks and balances to prevent injustice, and ensuring that justice has been done. There is also marked distinction between two appellate jurisdictions; one is conferred by Section 96 CPC in which the Appellate Court may embark upon the questions of fact, while in the second appeal provided under Section 100 *ibid*, the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the jurisdiction is somewhat is confined to the questions of law which is *sine qua non* for the exercise of the jurisdiction under Section 100 CPC.

- Conclusion:**
- i) The incidental details of section 100 of the CPC are mentioned in the analysis portion.
 - ii) Yes, judgment of the Appellate Court shall state the points for determination and the reasons for the decision under Order XLI, Rule 31, CPC.
 - iii) Yes, jurisdiction of a High Court under Section 100 CPC is meant to decide substantial question of law and not pure question of fact.
 - iv) There is marked distinction between two appellate jurisdictions; one is conferred by Section 96 CPC in which the Appellate Court may embark upon the questions of fact, while the second appeal is provided under Section 100 CPC.
-

8. **Supreme Court of Pakistan**
Injum Aqeel v. Latif Muhammad Chaudhry, etc.
Civil Petitions No. 3059 & 3060 of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3059 2021.pdf

Facts: These Civil Petitions for leave to appeal are directed against the consolidated judgment passed by the High Court in RFAs, whereby both the Regular First Appeals filed by the petitioner were dismissed and the ex-parte award was maintained, however the additional claim of the respondent No.1 referred to in the local commission report was found to be beyond the scope of the Arbitration Proceedings which could be agitated through separate proceedings.

Issues:

- i) Whether resolution of disputes through arbitration often proves to be speedier than Court litigation?
- ii) What are the powers of Arbitrators or Umpires?
- iii) What are the powers of Court regarding observation of award for making it Rule of Court?
- iv) When Arbitrator misconducts the proceedings of Arbitration?
- v) What are the qualities of a good Arbitrator?
- vi) Whether a Court can review the Award or parties can challenge the decision of Arbitrator?

Analysis:

- i) Due to somewhat moderate and flexible procedural rigidities, the resolution of disputes through arbitration often proves to be speedier and more cost-effective than Court litigation which passes through different stages or rounds of litigation from original to appellate forums. It is also a form of alternative dispute resolution (ADR) in which the parties may adopt to settle their disputes or differences outside the courts of law which sometimes runs faster to its logical end and proves to be more expeditious rather than litigating in court.
- ii) Under Section 13 of the Arbitration Act, 1940, the arbitrators or umpires, unless a different intention is expressed in the agreement, may exercise (a) the powers to administer oath to the parties and witness appearing; (b) state a special case for the opinion of the Court on any question of law involved; (c) make an award conditional or alternative; (d) correct in an award any clerical mistake or error arising from any accidental slip or omission; and (e) administer to any party to the arbitration such interrogatories as may in the opinion of arbitrator or umpire be necessary...
- iii) The Court is not supposed to act in a perfunctory manner in this regard, rather it should look into the award and, if any patent illegality is found, the Court may remit the award to the arbitrator for reconsideration or set aside the same... As per scheme of the Arbitration Act, 1940, it divulges that the Court has been vested with ample powers to render judgment in terms of the award, or modify or correct it, remit the award for reconsideration, or set aside the award. According to Section

30 of the Arbitration Act, 1940, the Court may set aside the award if (a) an arbitrator or umpire has misconducted himself or the proceedings; (b) an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35; or (c) that an award has been improperly procured or is otherwise invalid. Merely filing an objection under Section 30 of the Arbitration Act, 1940 carries no great weight and is inconsequential unless some substantial grounds are alleged in the objections warranting and deserving the setting aside of the award which the petitioner failed to underline.

iv) It is a well settled exposition of law that the significance and connotation of the term 'misconducting the proceedings' is broader than the arbitrator's personal misconduct. Simply making an erroneous decision would not automatically be tantamount to misconduct unless it is proved that the arbitrator has failed to decide all the issues or objections; or decided such issues not included in the scope of the arbitration agreement, or the award was inconsistent, uncertain or vague; or there was some mistake of fact, if this mistake is either admitted or is clear beyond any reasonable doubt; or the arbitrator had some pecuniary interest in the matter... To sum up, an arbitrator misconducts the proceedings when (a) there is a defect in the procedure followed by him; (b) he commits breach and neglect of duty and responsibility; (c) he acts contrary to the principles of equity and good conscience; (d) he acts without jurisdiction or exceeds it; (e) he acts beyond the reference; (f) he proceeds on extraneous circumstances; (g) he ignores material documents; or (h) he bases the award on no evidence. Above are some of the omissions and commissions which constitute legal misconduct or, in other words, that an arbitrator has misconducted the proceedings within meaning of clause (a) of Section 30 of the Arbitration Act, 1940. In the case of "moral misconduct" it is difficult to define exhaustively or determine exactly what amounts to "misconduct" on the part of an arbitrator... A deliberate departure or conscious disregard of the contract not only manifests a disregard of his authority or misconduct on his part, but it may also be tantamount to mala fide action and vitiate the award.

v) It is essential that there must be abundant good faith, and the arbitrator must be absolutely disinterested and impartial, as he is bound to act with scrupulous regard to the ends of justice. An arbitrator must be a person who stands indifferent between the parties. An arbitrator should in no sense consider himself to be the advocate of the cause of the party appointing him, nor is such party deemed to be his client. When a claim or matter in dispute is referred to an arbitrator, he is the sole and final Judge of all questions, both of law and of fact. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract.

vi) The Court cannot review the award, nor entertain any question as to whether the arbitrators decided properly or not on a point of law or otherwise. It is not open to the Court to re-examine and reappraise the evidence considered by the arbitrator to hold that the conclusion reached by the arbitrator is wrong. Where two views are possible, the Court cannot interfere with the award by adopting its own interpretation. The general principle underlying the concept of arbitration as

translated in the scheme of the Arbitration Act, 1940 is that, as the parties choose their own arbitrator to be the Judge in the dispute between them, they cannot, when the award is good on the face of it, object to his decision, either upon law or fact. The error or infirmity in the award which rendered the award invalid must appear on the face of the award and should be discoverable by reading the award itself. The arbitrator is the final Judge on the law and facts and it is not open to a party to challenge the decision of the Arbitrator, if it is otherwise valid.

- Conclusion:**
- i) Yes, resolution of disputes through arbitration often proves to be speedier than Court litigation.
 - ii) The powers of Arbitrators or Umpires are mentioned in the analysis portion provided under section 13 of the Arbitration Act,1940.
 - iii) As per scheme of the Arbitration Act,1940, it divulges that the Court has been vested with ample powers to render judgment in terms of the award, or modify or correct it, remit the award for reconsideration, or set aside the award.
 - iv) An arbitrator misconducts the proceedings under certain circumstances as mentioned in the analysis portion within meaning of clause (a) of Section 30 of the Arbitration Act,1940.
 - v) Along with other qualities the arbitrator must be absolutely disinterested and impartial, as he is bound to act with scrupulous regard to the ends of justice.
 - vi) A Court cannot review the Award or parties cannot challenge the decision of Arbitrator unless there is any error, factual or legal, which floats on the surface of the award or the record.

9. Supreme Court of Pakistan
M/s Bentonite Pakistan Limited v. Bankers Equity Limited and others.
Civil Petition No.1123 of 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1123_2020.pdf

- Facts:** Through this petition filed under sub-Section (14) of Section 6 of the Companies Act, 2017 (the Act of 2017), leave has been sought against the order passed by the High Court, whereby C.M.A. in J.C.M. being misconceived was dismissed.
- Issues:**
- i) Whether all the proceedings under the Companies Act, 2017 are subject to the Limitation Act, 1908?
 - ii) Whether general provision of the Limitation Act, 1908 dealing with the applications would be applicable to the applications filed under the Companies Act, 2017 for which limitation period is three years?
- Analysis:** i) Subsection (2) of section 1 of the Limitation Act, 1908 (the Act of 1908) provides that it extends to the whole of Pakistan. Thus, by virtue of said provision, all the proceedings under the Act of 2017 are subject to the Act of 1908, except where any proceeding is expressly brought out of the purview of the said Act. The only provision in this regard in the Act of 2017 is Section 410, which speaks only about

limitation regarding filing of suit by a liquidator for the recovery of any debt due to the company. Thus, the exclusion is only to the extent of the said suit; however, for all other applications and proceedings, the Act of 1908 would be applicable.

ii) There is no specific provision in the Act of 1908 which deals with the applications or proceedings filed under the Act of 2017, except Article 112 thereof, which deals with "a call by a company registered under any Statute or Act"; therefore, the general provision dealing with the applications would be applicable to the applications filed under the Act of 2017. The general provision, which deals with the applications, where no period of limitation is provided in the Act of 1908, etc., is Article 181...any application filed under the Act of 2017 would be governed by Article 181 *ibid* and there would be a period of limitation of three years for such applications.

- Conclusion:**
- i) Yes, all the proceedings under the Companies Act, 2017 are subject to the Limitation Act, 1908.
 - ii) Yes, general provision of the Limitation Act, 1908 dealing with the applications would be applicable to the applications filed under the Companies Act, 2017 for which limitation period is three years.

**10. Supreme Court of Pakistan
Collector Customs, Model Customs Collectorate, Peshawar v. Muhammad Ismail and others
Civil Petition No.2682 of 2022
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2682_2022.pdf**

Facts: The seized goods were confiscated along with the vehicle vide order-in-original by the Adjudicating Authority. Against this the respondents preferred an Appeal before the Customs Appellate Tribunal which was allowed and, the Order-in-original was set aside and the seized vehicle was released unconditionally. Being aggrieved, the petitioner filed Custom Reference before High Court which was also dismissed; hence the petitioner brought this civil petition for leave to appeal.

Issues:

- i) Whether the order for the confiscation of goods or for imposition of any penalty on any person can be passed without informing him in writing and without giving him opportunity of being heard?
- ii) What is the purpose of show cause notice, whether it is necessary to contain all the allegations and legal provisions of law?
- iii) Whether the Maxim *audi alteram partem* is applicable to judicial as well as to non-judicial proceedings?

Analysis: i) Under Section 180, no order can be passed for the confiscation of any goods or for imposition of any penalty on any person unless the owner of the goods, if any, or such person is informed in writing of the grounds on which it is proposed to confiscate the goods or to impose the penalty. No doubt under Section 168, the letter of law articulates that the appropriate officer may seize any goods liable to

confiscation, but he cannot pass the order for the confiscation of any goods, or for imposition of any penalty on any person unless the owner of the goods, if any, or such person is informed in writing of the grounds on which it is proposed to confiscate the goods or to impose the penalty and he shall also be given an opportunity of making a representation in writing with reasonable opportunity of being heard personally or through a counsel or duly authorized agent.

ii) A show cause notice is served by an authority under the relevant provisions of law in order to provide a reasonable opportunity to defend the allegations and to explain as to why any penal action should not be taken against him. In essence, it is a well-structured process to provide a fair chance to the accused to respond to the allegations and explain their position within the stipulated timeframe or, in other words, it provides a level headed course of action to ensure impartiality, justness and rectitude to the person in receipt of notice with an opportunity to explain why he is not guilty of any violation of law. The show cause must contain all the allegations categorically and unambiguously, including the legal provisions related to the transgression of law or default.

iii) In the *Mrs. Anisa Rehman vs. P.I.A.C. and another* (1994 SCMR 2232), it was held by this Court that there is judicial consensus that the Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read in as a part of every statute if the right of hearing has not been expressly provided therein.

Conclusion: i) The order for the confiscation of goods or for imposition of any penalty on any person cannot be passed without informing him in writing and without giving him opportunity of being heard.

ii) A show cause notice is served by an authority under the relevant provisions of law in order to provide a reasonable opportunity to defend the allegations and to explain as to why any penal action should not be taken against him. The show cause must contain all the allegations categorically and unambiguously, including the legal provisions related to the transgression of law or default.

iii) The Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings.

11. Supreme Court of Pakistan
Tassaduq Hussain Shah & others v. Allah Ditta Shah & others
Civil Appeals No.8-L to 10-L of 2009
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 8 1 2009.pdf

Facts: Through the present Appeals, the Appellants have challenged a judgment of the Lahore High Court, Lahore passed in Civil Revision. Through the Civil Revision Petition, the Appellants challenged the judgment and decree of the Additional District Judge whereby, the appeal of the Respondents was allowed and the judgment of the trial Court, through which the suit of the Respondents was

dismissed, was set aside, and the suit was decreed.

- Issues:**
- i) What are the essential conditions for Adna Malkiat?
 - ii) When the proprietorship of Ala Maliks was abolished?
 - iii) When the Adna Maliks were made full proprietors?
 - iv) What does the term Ala-cum-Adna-Maliks denotes?
 - v) If PWs evidence is found to be vague, whether a mere oral assertion on other part is sufficient to rebut and dislodge documentary evidence in the form of Revenue Records?

- Analysis:**
- i) The conditions which must be fulfilled in order to be declared an Adna Malik were discussed by this Court in Muhammad Ahsan v. Pathana (PLD 1975 Supreme Court 369). The two essential conditions for Adna Malkiat are, cultivating possession and, payment of land revenue to the State.
 - ii) Previously, land revenue was paid to Ala Maliks, who were superior owners, having a superior proprietary interest over the land either by virtue of settlement as first migrants or, as Jagirdars Ala Maliks then gave their land for tilling/cultivation to Adna Maliks and received tilling/compensation from them. However, their proprietorship was abolished after the promulgation of MLR 1959. As such, Ala Malkiat and similar other interests stood abolished and, Ala Maliks were held not entitled to any compensation from Adna Maliks.
 - iii) Subsequently, the West Pakistan Land Commission on 03-03-1960 issued a notification to the effect that Adna Maliks shall be made full proprietors of the land "held by them as such" and they shall discontinue payment of any compensation to Ala Maliks.
 - iv) The only exception provided in the said notification was that if there were no Adna Maliks then, Ala Maliks would be considered as full proprietors if they were in cultivating possession. This in effect made them Ala-cum-Adna-Maliks.
 - v) It is pertinent to mention here that even if PW-1's evidence was found to be vague, a mere oral assertion on part of the Appellants was not sufficient to rebut and dislodge documentary evidence in the form of Revenue Records and long standing entries therein. (...) It is settled law that documentary evidence takes precedence over oral evidence.

- Conclusion:**
- i) Two essential conditions for Adna Malkiat are, cultivating possession and, payment of land revenue to the State.
 - ii) Proprietorship of Ala Maliks was abolished after the promulgation of MLR 1959. As such, Ala Malkiat and similar other interests stood abolished and, Ala Maliks were held not entitled to any compensation from Adna Maliks.
 - iii) Through a notification issued by West Pakistan Land Commission on 03-03-1960 Adna Maliks were made full proprietors of the land "held by them as such".
 - iv) The term Ala-cum-Adna-Maliks denotes that if there were no Adna Maliks then, Ala Maliks would be considered as full proprietors if they were in cultivating possession.
 - v) Even if PW's evidence is found to be vague, a mere oral assertion on other part

is not sufficient to rebut and dislodge documentary evidence in the form of Revenue Records and long standing entries.

12. Supreme Court of Pakistan
Zafar Iqbal v. The State etc.
Crl.P.497 -L/ 2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p.497_1_2023.pdf

Facts: Through this criminal petition the petitioner sought leave to appeal against the impugned order, whereby pre-arrest bail in case FIR under Section 379 PPC, was denied to the petitioner.

Issues: i) Whether there is any limitation from the judgment or final order sought to be appealed in criminal matters under Article 185(3) of the Constitution?
 ii) Whether fugitive from law is entitled to any relief?

Analysis: i) Rule 2 of Order XXIII of the Supreme Court Rules, 1980 (“Supreme Court Rules”) provides that a petition for leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) in criminal matters has to be filed within thirty days from the judgment or final order sought to be appealed from. The law of limitation is fully applicable to petitions for leave to appeal in matters related to pre-arrest bail like in other criminal petitions filed under Article 185(3) of the Constitution, and a delay in a petition filed beyond the limitation period must be supported by an application for condonation of delay which is to be examined by the Court on its own merits.
 ii) Failure to surrender before the authorities after dismissal of the pre-arrest bail petition by the High Court and then filing a time barred petition, impugning the decision of the High Court and seeking pre-arrest bail, before this Court could be indicative of an intent to remain a fugitive from the law. Such conduct could also be considered as a deliberate attempt to thwart the investigation, resulting in the loss of valuable evidence which is now simply lost or is impossible to collect due to afflux of time by failing to join the investigation.

Conclusion: i) Yes, there is limitation of thirty days from the judgment or final order sought to be appealed in criminal matters under Article 185(3) of the Constitution provided in Rule 2 of Order XXIII of the Supreme Court Rules, 1980.
 ii) Fugitive from law is not entitled to any relief.

13. Supreme Court of Pakistan
The State v. Chaudhry Muhammad Usman
Criminal Petition No.112 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.p.112_2020.pdf

- Facts:** The petitioner seeks leave to appeal against a judgment whereby the High Court has accepted the revision petition of the respondent filed against an order of the trial court. The trial court dismissed an application of the respondent filed under Section 265-C read with Section 94 of the Code of Criminal Procedure, 1898 for the production of certain documents.
- Issues:**
- i) Whether before the commencement of the trial, an accused can apply to the trial court to exercise its power under Section 94, CrPC, and direct the prosecution or the complainant to produce any document, in its or his possession or power, which is not covered under Section 265-C, CrPC?
 - ii) Whether before entering on his defence, an accused can make an application for the production of any document under Section 94 despite the provisions of Section 265-F(7), CrPC, which provides a similar opportunity to him at the stage of defence evidence?
- Analysis:**
- i) Section 94 does not restrict as to whose point of view, whether of the prosecution or the accused, the required document may be necessary or desirable for the purposes of the inquiry or trial. A court being a neutral arbiter does not act for either the prosecution or the accused but for the dispensation of justice. And for the dispensation of justice, the court is to ascertain the truth in respect of the matter under inquiry or trial before it. The production of a document that would facilitate the court in this regard is to be considered necessary or desirable for the purposes of the inquiry or trial. It is immaterial whether the production of such a document would support the prosecution case or the defence of the accused. Therefore, any party may at any stage of the inquiry or trial apply to the court, under Section 94, for the production of a document and is entitled to its production if it satisfies the court that the production of that document is necessary or desirable for the purposes of such inquiry or trial.
 - ii) The provisions of Section 94(1) have not been made subordinate by the legislature by the use of the expression, 'Subject to the other provisions of this Code', nor have the provisions of Section 265-F(7) been given any overriding effect by using therein the expression, 'Notwithstanding anything contained in other provisions of this Code'. Section 265-F(7), therefore, neither controls nor limits the power of a court under Section 94(1). In essence, the provisions of these two Sections differ from each other in their extent and scope. They are not opposed to each other. Section 94(1) affords both the parties to an inquiry or trial (not to the accused alone) the opportunity of causing the production of any document at any stage of such inquiry or trial, with the condition that the party applying for it must satisfy the court that the production of the required document is necessary or desirable for the purposes of the inquiry or trial. Section 265-F(7), on the other hand, only gives the accused another similar opportunity at the stage of his defence subject to a lesser condition, which is that his application should not be for the purpose of vexation or delay or defeating the ends of justice.

- Conclusion:** i) Even before the commencement of the trial, an accused can apply to the trial court to exercise its power under Section 94, CrPC, and direct the prosecution or the complainant to produce a document, in its or his possession or power, which is not covered under Section 265-C, CrPC, if the production of that document is necessary or desirable for the purposes of the inquiry or trial and on question.
- ii) Even before entering on his defence, an accused can make an application for the production of a document under Section 94 despite the provisions of Section 265-F(7), CrPC, which provides a similar opportunity to him at the stage of defence evidence.

14. Supreme Court of Pakistan
Zain Ali v. The State.
Criminal Appeal No. 208 of 2022
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.a. 208_2022.pdf

- Facts:** Through this criminal appeal the appellant has assailed conviction order maintained by the High Court under Section 9(c) of the Control of Narcotic Substances Act, 1997 in which he was sentenced to life imprisonment.
- Issues:**
- i) Whether testimonies of the police personnel are required to be treated in the same manner as the testimony of any other witness?
 - ii) Whether minor contradictions on trivial matters can affect the core of the prosecution case and can be ground to reject evidence in its entirety?
 - iii) Whether during appreciating evidence of the witness it must be read as a whole and appears to have a ring of truth?
 - iv) Whether Control of Narcotic Substances (Government Analysts) Rules, 2001 place bar on the Investigating Officer to send the samples within a certain/specified period of time?
- Analysis:**
- i) It is well settled that testimonies of the police personnel are required to be treated in the same manner as the testimony of any other witness and there is no principle of law that without corroborating by the independent witnesses, their testimonies cannot be relied upon...The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds.
 - ii) It is also settled that minor contradictions, inconsistencies, embellishments or improvements on trivial matters, which do not affect the core of the prosecution case, should not be made a ground, on which the evidence can be rejected in its entirety. The Court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Mere marginal variations in the statement of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier...When the prosecution is able to prove its case on its salient features then unnecessary technicalities should not be allowed to hamper the very purpose of the law on the

subject.

iii) While appreciating the evidence of a witness, the approach must be whether evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the discrepancies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. However, as stated above, the prosecution witnesses of recovery remained firm on each and every material particular of the prosecution story and their testimony could not be shaken.

iv) In *Liaquat Ali Vs. The State* (2022 SCMR 1097), Supreme Court candidly held that the Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples within a certain/specified period of time. These Rules are *stricto sensu* directory and not mandatory in any manner. It does not spell as to whether in case of any lapse, it would automatically become instrumental to discard the whole prosecution case. The Rules cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997 and cannot in any manner frustrate the salient features of the prosecution case...

- Conclusion:**
- i) Yes, testimonies of the police personnel are required to be treated in the same manner as the testimony of any other witness.
 - ii) Yes, minor contradictions on trivial matters cannot affect the core of the prosecution case and cannot be ground to reject evidence in its entirety.
 - iii) Yes, during appreciating evidence of the witness it must be read as a whole and appears to have a ring of truth.
 - iv) Control of Narcotic Substances (Government Analysts) Rules, 2001 place no bar on the Investigating Officer to send the samples within a certain/specified period of time.

15. Supreme Court of Pakistan
Rehmat Noor v. Zulqarnain
Civil Appeal No. 2121 of 2017
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 2121_2017.pdf

Facts: The petitioner seeks to retain the property through this petition, claiming that her brother had validly gifted the same to her during his life time, and she had accepted the same, as was validated by the trial and appellate court, thus though, such findings of fact were for alien consideration set at naught by the revisional court vide impugned judgment.

Issues:

- i) What is the legal value of mutation prior to its incorporation in the record of rights?

- ii) Whether the entries in mutation are admissible in evidence?
- iii) Whether an oral transaction establishes a title in favour of the beneficiary?
- iv) Whether a mutation is considered as document of title?

Analysis:

- i) A mutation is always sanctioned through summary proceedings and to keep the record updated and for collection of revenue such entries are made in the relevant Register under Section 42 of the Land Revenue Act, 1967. It has no presumption of correctness prior to its incorporation in the record of rights.
- ii) It is settled law that entries in mutation are admissible in evidence but the same are required to be proved independently by the persons relying upon it through affirmative evidence.
- iii) An oral transaction reflected therein does not necessarily establish title in favour of the beneficiary.
- iv) A mutation cannot by itself be considered a document of title and proving of the mutation can never vest title in a party over immovable property. At best, it may be considered as evidence in support of the material produced by a party to prove the transaction of gift.

Conclusion:

- i) Mutation has no presumption of correctness prior to its incorporation in the record of rights.
- ii) Entries in mutation are admissible in evidence but the same are required to be proved independently.
- iii) An oral transaction reflected therein does not necessarily establish title in favour of the beneficiary.
- iv) A mutation cannot by itself be considered a document of title.

16. Supreme Court of Pakistan
Muhammad Yaseen v. Secretary, Ministry of Interior & Narcotics Control, Narcotics Control Division, Islamabad and another
Civil Petition No. 873 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 873 2021.pdf

Facts: The petitioner has called in question the legality of the judgment, passed by the learned Federal Service Tribunal whereby the service appeal filed by the petitioner was dismissed and the penalty of dismissal from service imposed by the departmental authority was upheld through this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan.

Issues:

- i) Whether the pensionary benefits are the right of an employee?
- ii) Whether the constitution protects discrimination?

Analysis:

- i) After serving the department for a long period, the pensionary benefits are the right of an employee, which enable him to spend rest of his life peacefully.
- ii) Article 25(1) of the Constitution ordains defiance of discrimination. However, by dismissing the one of accused officials from service while awarding minor penalties to the other officials, that one official discriminated against.

- Conclusion:** i) The pensionary benefits are the right of an employee, which enable him to spend rest of his life peacefully.
ii) Article 25(1) of the Constitution ordains defiance of discrimination.

17. Supreme Court of Pakistan
M/s Tri-Star Industries (Pvt.) Limited v. TRISA Burstenfabrik AG Triengen & another
Civil Petition No.1496-K of 2021
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 1496 k 2021.pdf

Facts: The facts leading to the filing of the present civil petition for leave to appeal, briefly, are that Registrar, Trade Marks allowed extension of time to file opposition and condoned the delay against alleged trademark and that order was assailed in Sindh High Court, wherein Sindh High Court vide impugned judgment allowed the appeal and the decision passed by the Registrar, Trade Marks was set aside.

- Issues:**
- i) Whether notice of opposition to the registration of a trade mark should be given within two months from the date of advertisement of the application for registration in the Journal in the light of Rule 30 of Revised Rules 1963?
 - ii) Whether Rule 76 of the Revised Rules 1963 grant a special jurisdiction to the Registrar of Trade Marks to extend time for doing any act or taking any proceeding under the Revised Rules 1963, subject to satisfaction of the Registrar on proper justification?
 - iii) Whether grant of extension of time by the Registrar Trade Marks is discretionary?
 - iv) How true spirit of any provision can be apprehended, whether it is mandatory or directory?
 - v) What does term “satisfied” require?
 - vi) When the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner or may be done other way round?
 - vii) What is fundamental cannon of interpretation of a statute?

Analysis:

- i) The stratagem and guiding principle for tendering a notice of opposition is articulated under Rule 30 of the Revised Rules 1963 which robustly sets down the precondition that a notice of opposition to the registration of a trade mark should be given within two months from the date of advertisement of the application for registration in the Journal which shall be on Form TM-55.
- ii) A perusal of Rule 76 clearly expounds that, while exercising power to grant the extension of time, the Registrar must be satisfied that the circumstances are such as to justify an extension of time with a further rider that the extension granted shall not exceed a period of more than one month at a time, provided that the total period of such extensions shall not exceed six months against each statutory period prescribed. The exactitudes of the aforesaid rule accentuate that before granting

extension, the Registrar should act with proper application of mind inasmuch as the powers conferred by the Rule do not permit the Registrar to entertain and grant extension in a mechanical or perfunctory manner, rather he should be satisfied that the extension is justified... The jurisdiction and powers to grant extension up to six months period is not an automatic or unstructured exercise but it should be justiciable and rational coupled with the precondition of “satisfaction” of the Registrar before granting any extension. According to the assiduousness of the aforesaid Rule, no extension could be accorded longer than a month at a time which reckons that the extension should have been sought on a monthly basis and after satisfying himself the Registrar could consider the grant of extension or refuse the same.

iii) The Registrar has been vested with the power to grant the extension within a prescribed procedure and parameters that should be adhered to while considering applications for extension. The discretion is not unbridled but it is controlled by the ambiance of rule purposely and due to deviation and noncompliance of it in *stricto sensu*, the other side had rightly invoked the appellate jurisdiction of the High Court.

iv) In order to comprehend the true spirit of any provision, whether it is mandatory or directory, the conception, acumen and stratagem of the Act and the enabling Rules should be considered for proper resolution. If we virtually converse in the differentiation and eccentricity flanked by ‘mandatory’ and ‘directory’ provisions, then we have to scrutinise the pith and substance and not exclusively the form. Sometimes a provision in the legislation seems to be mandatory, but substantially it is directory and, inversely, sometimes a provision seems to be directory but in quintessence it is found to be mandatory for compliance therefore, for all practical purposes, it is the fundamental nature which counts and should take preference and affinity more than the form. If a provision gives a power as well as a duty, it is mandatory and the enabling text of law and rules should be interpreted as obligatory so that the underlying principle and *raison d'être* is not contravened or flouted.

v) The connotation and import forming the constituents of the word “satisfied” has been used in various laws and interpreted and deciphered in a number of judgments of our own as well as foreign jurisdiction. On close appraisal and scrutiny of numerous judgments, the true meaning and import of this expression is deducible as under:-...

4. The word "satisfied" means existence of mental persuasion much higher than mere opinion; a mind not troubled by doubt; 'a mind which has reached a clear conclusion.

vi) Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure, and where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all... If a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

vii) It is a fundamental canon of interpretation and understanding that the statute should be read in its mundane, natural and grammatical meaning in order to give effect with proper construction. If the language of the statute is plain and instantly recognizable then there should be no question of its construction or interpretation by the Court. A construction which diminishes the statute to a futility has to be avoided rather it should be construed as a workable instrument. It is the foremost sense of duty of the Court to figure out the intention of the legislature through word for word meaning and if it admits only one meaning, no further interpretation is required except that meaning which should be put into effect in view of the legal maxims '*absoluta sententia expositore non indiget*' (clear and unambiguous text should be read according to its plain meaning rather than with reference to secondary sources of interpretation) and '*ut res magis valeat quam pereat*' (An enacting provision or a statute has to be so construed to make it effective and operative); *A verbis legis non recedendum est.* (A provision of the law shall not depart or from the words of law, there must be no departure).

- Conclusion:**
- i) Notice of opposition to the registration of a trade mark should be given within two months under Rule 30 of Revised Rules 1963.
 - ii) Registrar of Trade Marks has special jurisdiction to extend time for doing any act or taking any proceeding under Rule 76 but subject to proper application of rational mind, justification and satisfaction of the Registrar.
 - iii) Power of Registrar Trade Marks is discretionary within a prescribed procedure and parameters that should be adhered to. Such discretion is not unbridled but it is controlled by the ambiance of rule.
 - iv) As above.
 - v) The word "satisfied" requires mental persuasion with existence of reasonable ground.
 - vi) Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure and not otherwise.
 - vii) The statute should be read in its mundane, natural and grammatical meaning with its plain language.

18. Lahore High Court
Judicial Activism Panel, etc. v. The Federation of Pakistan, etc.
Case No. W. P. No. 26651 of 2023
Mr. Justice Shahid Jamil Khan
<https://sys.lhc.gov.pk/appjudgments/2023LHC4329.pdf>

Facts: This judgment decides upon the issue of enhanced tuition fee and other charges, during a study program by private Medical Colleges.

Issues:

- i) Whether the repealed and repealing provisions will continue if there is no inconsistency between them?
- ii) Whether the tuition fee and other charges can be enhanced during entire program of study?

- Analysis:**
- i) In judgment *Matli Town Committee v Abdul Majeed and others* (1991 SCMR 878) the august Court held that there was no inconsistency between the repealed and repealing provisions, therefore, action taken, liability or obligation accrued, would continue.
 - ii) The decision or policy of prohibiting the enhancement in tuition fee and other charges are protected. It is, therefore, held that the decision taken by or under the regulation are saved unless the contrary is expressly shown in the repealing Act of 2022. Prohibition against enhancement in the fee or charges, now being part of the Act of 2022, under Section 20(7) cannot even be undone through a regulation.

- Conclusion:**
- i) If there is no inconsistency between the repealed and repealing provisions, therefore, action taken, liability or obligation accrued, will continue.
 - ii) The tuition fee and other charges cannot be enhanced during entire program of study.

19. Lahore High Court
Dawat Saraye v. Federation of Pakistan and others
Writ Petition No.67081 of 2022
Mr. Justice Shahid Jamil Khan
<https://sys.lhc.gov.pk/appjudgments/2023LHC4338.pdf>

Facts: The Commissioner Inland Revenue charged the petitioner further tax under Section 3(1A) and extra tax under Section 3(5) of the Sales Tax Act, 1990.

- Issues:**
- i) Whether Section 3(1A) and Section 3(5) of the Sales Tax Act, 1990, are applicable to a person who is exempted under Serial No.53, Table 2 of the 6th Schedule of the Sales Tax Act, 1990 (“Act of 1990”) as his supplies are not taxable ?
 - ii) Whether obtaining registration number and being enrolled on active taxpayer list is mandatory for a person who is not engaged in taxable supplies?

- Analysis:**
- i) The emphasized part of the provisions, are not ambiguous as the tax is envisaged where taxable supplies are made to a person who has not obtained registration number or is not on active taxpayer list. The condition of taxable supply being electricity is though fulfilled, but the petitioner being recipient of supply is not required to be registered compulsorily. Phrase “who has not obtained registration number” implies that a person, required to be registered under Section 14(1) of the Act of 1990 or any other provision or law has not obtained registration number, shall be burdened with Further tax. This court is not in agreement with the interpretation by the respondent-Commissioner that a person falling under Section 14(2) of the Act of 1990 would also be caught by the phrase “not obtained registration”, for not opting for registration and only way to avoid it is to get registration.
 - ii) Section 14 of the Act of 1990 deals with registration and requires every person

engaged in making taxable supplies in Pakistan including zero rated supplies to register himself if he falls within the categories noted in subsection (1) as (a) to (f). Subsection (2) of Section 14 of the Act of 1990 envisages an option for a person who is not engaged in making taxable supplies in Pakistan.

- Conclusion:**
- i) Section 3(1A) and Section 3(5) of the Sales Tax Act, 1990, are not applicable to a person who is exempted under Serial No.53, Table 2 of the 6th Schedule of the Sales Tax Act, 1990 (“Act of 1990”) as his supplies are not taxable.
 - ii) Subsection (2) of Section 14 of the Act of 1990 envisages an option for a person who is not engaged in making taxable supplies in Pakistan.

20. Lahore High Court
Pir Muhammad Construction Company Private Limited v. Water and Development Authority through its Chairman, Lahore & others
Writ Petition No.25808 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
<https://sys.lhc.gov.pk/appjudgments/2023LHC4292.pdf>

Facts: Through this writ petition, petitioner has called into question order passed by respondent No.2 / General Manager (Coordination) Power, WAPDA House, whereby letter of acceptance for tender belonging to Chief Engineer (Power) Tarbela Power Station, was cancelled.

- Issues:**
- i) Whether issuing Authority of a tender can withdraw/cancel the tender after acceptance of a bid?
 - ii) Can a right accrued in favor of a person be unilaterally taken away by an authority without involving the said person?
 - iii) Can a government functionary retract from a contract once its offer has been accepted, even though the contract has become a ‘concluded contract’?
 - iv) Whether actions of executive functionaries be accorded approval by the Superior Courts if the same are besides the law, mandate of the constitution and principle of natural justice?
 - v) Whether after acceptance of a bid, the issuing authority of a tender can withdraw or cancel it without affording an opportunity of hearing to the aggrieved person?
 - vi) Whether contractual disputes between private parties and public functionaries are open to scrutiny under the Constitutional jurisdiction?

Analysis:

- i) As per terms of General Conditions of Tender for Disposal of Unwanted Store, an invitation of a tender would not constitute any liability on the part of the Authority until a Letter of Acceptance was issued. It is nowhere provided that after acceptance of bid, tender could have been cancelled / withdrawn. Respondents have not cited any provision of applicable law or placed any document on record to show that such prerogative was vested with them.
- ii) Under the celebrated principle of *locus poenitentiae*, a right was accrued in petitioner’s favour, thus, the same could not have been taken away unilaterally by respondents without associating the petitioner.

iii) Law on the subject is very clear that where Government controlled functionaries made a promise which created a right to anyone who believed in it and acted under the same, then such functionaries were precluded from acting detrimental to the rights of such person/citizen... Even otherwise, once an offer has been accepted, a concluded contract has come into being and it is not open in the person who has accepted the offer to retract from the same as provided by the Contract Act, 1872.

iv) It is well settled law with the mandate of the dictums of the superior courts of the country that inaction, slackness and dubious acts of executive functionaries cannot be accorded approval by the superior courts more particularly when suchlike actions on face of it are besides the law, mandate of the constitution and principle of natural justice.

v) The other defect from which the impugned order suffers is that the petitioner was not granted any opportunity of showing cause or of hearing before passing the impugned order, which is against the global principle of natural justice i.e. "*Audi Alteram Parterem*".

vi) So far as the objection regarding maintainability of instant petition for enforcement of concluded contract is concerned, admittedly the High Court in exercise of its Constitutional jurisdiction is possessed of power to examine the validity of the order in regard to grant of a concluded contract and strike it down on the grounds of *mala fide*, arbitrary exercise of discretionary power, lack of transparency, discrimination and unfairness etc. provided the challenge is made promptly and contentious questions of fact are not involved. It has consistently been held that while routine contractual disputes between private parties and public functionaries are not open to scrutiny under the Constitutional jurisdiction, breaches of such contracts, which do not entail inquiry into or examination of minute or controversial questions of fact can adequately be addressed. In this case, no factual dispute exists between the parties with regard to floating of tender, acceptance of offer and partial payment by petitioner. Needless to say that remedy of Constitutional petition would be permitted to be resorted to in cases involving contract between private persons and State statutory functionary for such remedy was considered to be more efficacious and speedy remedy as compared to civil suit or arbitration proceedings.

- Conclusion:**
- i) No, the issuing authority of a tender cannot withdraw or cancel the same if no such term is there in General Conditions of Tender for Disposal of Unwanted Store and also without any legal prerogative.
 - ii) No, such accrued right in favour of a person, cannot be taken away unilaterally by an Authority without associating the said person under the principle of *locus poenitentiae*.
 - iii) No, when a concluded contract comes into being upon acceptance of an offer, a government functionary cannot retract from such contract specially when a right has been created in favour of a person.
 - iv) No, Superior Courts cannot accord approval to inaction, slackness and dubious acts of executive functionaries especially when such actions are prima facie besides

the law, mandate of the constitution and principle of natural justice.

v) No, after acceptance of a bid, the issuing authority of a tender cannot withdraw or cancel the same without extending prior opportunity of showing cause or of hearing on the basis of principle of natural justice i.e. “*Audi Alteram Parterem*”.

vi) High Court can exercise constitutional jurisdiction against contractual disputes of concluded contracts between private parties and public functionaries when no factual dispute exists between the parties on the grounds of *mala fide*, arbitrary exercise of discretionary power, lack of transparency, discrimination and unfairness etc.

21. Lahore High Court
Iqbal Ansari v. The State
Criminal Appeal No.2066/2016
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2023LHC4322.pdf>

Facts: The Appellant has challenged his conviction and sentence through appeal. During appeal, medical board reported that the Appellant suffers from mental disorder and is unfit to face legal proceedings.

Issues: i) Whether the appeal should be decided if reportedly, appellant is unfit to face legal proceedings?
 ii) Whether section 465 Cr.P.C. apply only during trial stage?

Analysis: i) ...if a convict’s appeal is heard while he is of unsound mind, he may be prejudiced and result in a failure of justice... In such situations, the convict would be unable to give appropriate instructions to his lawyer... a convict may be prejudiced if the Appellate Court rules on his appeal while he is of unsound mind because doing so denies him the right to a hearing.
 ii) ...indicates that it only apply to inquiries or trials. If the issue of the convict’s soundness of mind and incapacity arises before the High Court at the appellate stage, since there is no specific provision dealing with that situation, it may, at its discretion, take one of the following courses (i) It may determine the fact of such unsoundness and incapacity itself following the procedure specified in section 465 Cr.P.C...or (ii) it may refer the matter to the Court of Session/Special Court concerned for determination according to the same principles, or (iii) it may direct the Medical Superintendent, PIMH, to form a medical board and seek a report from it. The High Court would decide on the options considering the facts and circumstances of each case.

Conclusion: i) The Appellate Court should postpone the hearing of the appeal when the convict is mentally incapacitated. However, the court may proceed if the case is such that the convict would be acquitted.
 ii) Although section 465 Cr.P.C does not apply on appeal proceedings. However, the court cannot act arbitrarily while hearing the appeal and can opt the procedure

provided in section 465 Cr.P.C to determine the mental incapacity of appellant or may refer the matter to court below to determine the same.

22. Lahore High Court
Hashim Raza v. Federation of Pakistan etc.
Writ Petition No. 2528/2023
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2023LHC4342.pdf>

Facts: The Petitioner has challenged the appointment of Respondent No.5 in SMEDA (an autonomous body) under Article 199 of the Constitution and seeks a directive to the Federal Government to consider an extension of his service in accordance with section 12(2) of the Ordinance due to his “exemplary performance.”

Issues: i) Whether court can interfere into appointment of senior officer of autonomous body if same has been made without recommendations of Board constituted u/s 6 of ordinance XXXIX of 2002 and also without mentioning his/her tenure?
 ii) Whether an employee has vested right in extension of his contract?

Analysis: i) In the present case, SMEDA has no Board in accordance with section 6 of the Ordinance because the six private members have not been nominated. As a result, the Board made no recommendations, and the Federal Government appointed Respondent No.5 without them. The purpose of regulating the appointment process of CEOs in public sector companies is to promote merit and good governance and eschew favouritism and nepotism. Sections 12, 13 and 14 of the Ordinance read with section 7 (xxxvii) thereof and Rule 4(1) and Regulation 16 are mandatory. The Board has an important role in appointing a CEO, and its recommendations are vital. The Impugned Notification gives the impression that it is a routine transfer of an officer (Respondent No.5) awaiting posting in the Establishment Division to SMEDA as its CEO. Moreover, it does not mention his tenure and says the transfer/appointment is “with immediate effect and until further orders.” As per section 12(2) of the Ordinance, the CEO’s appointment has to be for three years. It is trite that when the law requires a thing to be done in a particular manner, it must be done in that manner and not otherwise. The appointment of Respondent No.5 as the CEO of SMEDA is without lawful authority and of no legal effect...
 ii) The Petitioner wishes to be considered for a second term as CEO under section 12(2) of the Ordinance. The Deputy Attorney General states that the Federal Government is not interested in him because of several complaints against him. He has placed on record copies of some of them. Admittedly, the Petitioner has retired after completing his three-year tenure. He has no vested right to claim an extension if the competent authority is not interested owing to legitimate or justifiable reasons. It is also well-settled that an employee cannot seek an extension of his contract in a constitutional petition...

- Conclusion:** i) The court can interfere into appointment of senior officer of autonomous body if same has been made without recommendations of Board constituted u/s 6 of ordinance XXXIX of 2002 and also without mentioning his/her tenure.
ii) An employee has no vested right to claim an extension in contract if the competent authority is not interested owing to legitimate or justifiable reasons.

23. Lahore High Court
Muhammad Ali Housing Scheme, etc. v. Kamran Latif, etc.
C.R. No.76121 of 2022
Mr. Justice Raheel Kamran
<https://sys.lhc.gov.pk/appjudgments/2023LHC4314.pdf>

Facts: The respondent no. 01 filed a suit for confirmation of possession through specific performance of agreement to sell which was dismissed. Feeling aggrieved, respondent No.1 preferred appeal there-against and the same was accepted by the Appellate Court while decreeing the suit, hence, this civil revision.

- Issues:** i) Whether specific performance of an agreement to sell immovable property can be refused to a vendee who has substantially performed his part of obligations under the contract?
ii) Whether a contractual provision for late payment charges or liquidated damages could be refused to be enforced by the District Court in appeal for the reason that the same is repugnant to injunctions of Islam?
iii) What is the scope of a claim for liquidated damages or late payment charges under section 74 of the Contract Act 1872?

Analysis: i) There is legal presumption in view of explanation to section 12 of the Specific Relief Act, 1877 that the breach of contract to transfer an immovable property cannot be adequately relieved by compensation in money. The burden to dislodge the above legal presumption is on the one who avers contrary to it. No doubt the jurisdiction to decree specific performance is discretionary; however, the exercise of such discretion is not arbitrary but reasonable and is guided by the judicial principles. In the suit for specific performance, if plaintiff makes any express averment in the pleadings of his readiness and willingness to perform his part of the contract and deposits the balance sale price as per direction of the Court then it would not be deemed to be his incapability of performing his part of the contract as envisaged under section 24(b) of the Specific Relief Act, 1877 rendering the contract non-enforceable, the suit cannot be dismissed.
ii) It is noteworthy that clause (2) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”) provides that no Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. The jurisdiction to declare any law or provision of law repugnant to the injunctions of Islam, as laid in the Holy Quran and the Sunnah of the Holy Prophet, is vested in the Federal Shariat Court under Article 203D of the Constitution whereas Article 203G of the Constitution imposes a bar upon any other

Court or Tribunal including the Supreme Court, except for appeal before the Shariat Appellate Bench of the Supreme Court under Article 203F, to entertain proceedings or to exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Shariat Court. The Appellate Court clearly lacked jurisdiction to declare any provision of the agreement/allotment letter to be repugnant to the injunctions of Islam. Validity and enforceability of any such provision is to be adjudicated on the touchstone of section 74 of the Contract Act...

iii) Section 74 of the Contract Act, 1872 deals with a contract which provides the amount of compensation in the form of penalty or liquidated damages in case of breach. It postulates that in such cases, the party complaining of the breach, whether or not actual damage or loss is proved to have been caused thereby to receive from the party who has broken the contract, reasonable compensation not exceeding the amount so named or as the case may be the penalty stipulated for the breach. This Court, however, finds the amount of compensation specified in clause 15 *ibid*, to be oppressive and highly penal in the facts and circumstances of instant case which cannot be allowed to the petitioners inasmuch as undisputedly respondent No.1 had paid well in time the first six installments and the delay was in relation to remaining two installments of Rs.489,491/- constituting 25% of the sale consideration for which late payment charges at the rate of Rs.1000/- per day (i.e. Rs.365,000/- per annum) are manifestly extortionate. No other reasonable amount of compensation has been claimed in the written statement and established by the petitioners in the instant case. Since there was no determination by the courts below of reasonable compensation, this Court deems it appropriate to hold the petitioners entitled to compensation in total of Rs.150,000/- for delay in the payment of last two instalments.

- Conclusion:**
- i) Suit for specific performance of an agreement to sell immovable property cannot be refused to a vendee (deeming his incapacity) who has pleaded his readiness and willingness to perform his part of contract and deposits balance sale consideration on court direction.
 - ii) District Court in Appeal lacks jurisdiction to declare any provision of the agreement/allotment letter to be repugnant to the injunctions of Islam. The jurisdiction to declare any law or provision of law repugnant to the injunctions of Islam, as laid in the Holy Quran and the Sunnah of the Holy Prophet, is vested in the Federal Shariat Court under Article 203D of the Constitution
 - iii) Section 74 of the Contract Act, 1872 deals with a contract which provides the amount of compensation in the form of penalty or liquidated damages in case of breach of any provision of contract. The amount of liquidated damages mentioned in contract arrived between parties can be declared by court as oppressive.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in “The Punjab Transport Department (IT Wing) Employees Service Rules 2018” vide notification no. SOR –III (S&GAD) 1-5/2018.

2. Amendment in “The Chief Minister’s Secretariat Household Staff Rules 2012”, vide notification no. SOR –III (S&GAD) 1-3/2020.
3. Amendment in “The Punjab Motor Vehicle Rules 1968”, vide notification no. SO(P-I) 2-2/23 (RPBW) Government of the Punjab, Transport Department.
4. Amendment in “The Punjab Police Special Branch (Intelligence cadre) Service Rules 2020”, vide notification no. 5575/Ad-VII of Government of the Punjab, Provincial Police Officer.

SELECTED ARTICLES

1. MANUPATRA

<https://articles.manupatra.com/article-details/Zero-Clicks-Is-Google-Abusing-its-Dominant-Position>

Zero-Clicks- Is Google Abusing its Dominant Position by Apekshit Kalra

Though Google began as a research project for two Ph.D. Scholars, it is today one of the most valuable companies in the world by a long shot. Along with the dominance enjoyed comes a fiduciary duty to not exploit the dominant position enjoyed by the entity in the relevant market, a duty with whose violation Google has been accused of multiple times by various stakeholders across multiple jurisdictions. One such case is that of Digital News Publishers Association v. Alphabet Inc. & Ors., alleging violations under Section 4 of the Competition Act, 2002 (hereinafter referred to as "The Act"). The informants contended that Google has abused its dominance by unilaterally deciding not to pay the news publishers for the snippets used by such publishers in search. The other contentions are that the publishers are being paid only 51% of what is being spent by the advertisers and that Google is abusing its dominance as a web browser to establish itself in the advertisement market.

2. MANUPATRA

<https://articles.manupatra.com/article-details/Tracing-the-Cognizability-of-Copyright-Infringement>

Tracing the Cognizability of Copyright Infringement by Isabel Roy

In the realm of intellectual property, copyright, trademark, and patent infringements are the most common forms of violation. With respect to this, copyright infringements have been a point of contention for the Courts for more than a decade. The issue in the present paper is considering the nature of the offence - whether copyright infringements are cognizable or non-cognizable offences.

3. **MANUPATRA**

<https://articles.manupatra.com/article-details/Analysing-the-types-of-disputes-in-Corporate-Governance-and-Role-of-ADR-in-Dispute-Resolution>

Analysing the types of disputes in Corporate Governance and Role of ADR in Dispute Resolution by Rushank Kumar

Corporate Governance refers to a mechanism that helps in effective and efficient functioning of a company, while maintaining a harmonious relationship between all the stakeholders of a company and protecting the interest of all stakeholders. It lays down the roles and responsibilities of each and every member in the corporation bringing in place a mechanism that ensures the proper and smooth functioning, decision making and planning.

4. **SPRINGER LINK**

<https://link.springer.com/article/10.1007/s11572-023-09701-8>

Reporting Crimes and Arresting Criminals: Citizens' Rights and Responsibilities Under Their Criminal Law by R.A. Duff & S.E. Marshall

Taking as its starting point Miri Gur-Arye's critical discussion of a legal duty to report crime, this paper sketches an idealising conception of a democratic republic whose citizens could be expected to recognise a civic responsibility to report crime, in order to assist the enterprise of a criminal law that is their common law. After explaining why they should recognise such a responsibility, what its scope should be, and how it should be exercised, and noting that that civic responsibility must include a responsibility to report one's own crimes; it discusses whether that civic responsibility could ground at least a limited legal duty to report certain types of crime. It then turns to the question of whether a civic responsibility to assist the criminal law's enterprise of bringing wrongdoers to account could include a responsibility to arrest suspected or known offenders if the police cannot or will not do so—a responsibility to make a citizen's arrest, and the legal power to discharge that responsibility: how far should citizens feel entitled, or duty-bound, thus to 'take the law into their own hands'.

5. **SPRINGER LINK**

<https://link.springer.com/article/10.1007/s10991-023-09343-9>

Online Disinformation and Populist Approaches to Freedom of Expression: Between Confrontation and Mimeticism by Giuseppe Martinico & Matteo Monti

In this article, we shall explore how digital populists in Italy and the United States approach the 'regulation' of online disinformation in order to understand their approach to constitutions. The field of the measures adopted to combat disinformation seems to us an excellent case study to verify the populists' constitutional approach. In this article, we will focus on the manipulative and instrumental approach that Italian and US digital populists employ with regard to constitutional texts by looking at the relationship between

the instrumental use of freedom of expression clauses by digital populists and the attempts to fight online disinformation by private and public actors.

6. **THE NATIONAL LAW REVIEW**

<https://www.natlawreview.com/article/concerns-and-considerations-using-generative-artificial-intelligence-part-routine>

Concerns and Considerations for Using Generative Artificial Intelligence as Part of Routine Business Operations by Gregory L. Cohen and Romaine C. Marshall

As artificial intelligence and machine learning (collectively “AI”) models continue to develop, become more sophisticated, and generate significant media coverage, companies are increasingly considering the integration of AI applications and tools into their routine operations. These powerful language models offer a range of possibilities, from streamlining customer service to automating content generation.
