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FORTNIGHTLY CASE LAW BULLETIN

(01-10-2024 to 15-10-2024)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Election Commission of Pakistan through Chief Election Commissioner, Islamabad. v. Salman Akram Raja & others and other Constitutional Petitions.
Civil Appeal Nos. 842 and 843 of 2024
C.M. Application Nos.5387 & 5388/24
Case Under Objection No. 72 of 2024 in Constitution Petition NIL/2024
Civil Review Petition No. 318 of 2024 in Civil Appeal No.842 of 2024.
Mr. Justice Qazi Faez Isa, CJ, Justice Amin-ud-Din Khan, Justice Jamal Khan Mandokhail, Justice Naeem Akhtar Afghan, Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._842_2024.pdf

Facts: The appeals arose from a Lahore High Court judgment questioning the authority of the Election Commission of Pakistan (ECP) to appoint Election Tribunals, arguing that the Chief Justice of the Lahore High Court should have primacy in the consultation process. The ECP contended that its appointment powers were clearly defined in the Constitution and the Elections Act, 2017. Disputes over the consultation led to present appeals.

Issues: i) How a matter between constitutional body and a constitutional officer holder could be amicably resolved?

Additional Note

ii) What is the procedure for appointment of election tribunal and the qualification criteria?

iii) What is condition precedent before appointing a sitting judge of High Court in the Election Tribunal?

Analysis: i) The ECP is a constitutional body and the Hon'ble Chief Justice is a constitutional office holder. Both are deserving of the highest respect. Therefore, we had expressed our confidence that if there had been a face to face meeting and a meaningful consultation ensued the matter could have been amicably resolved.

Additional Note

ii) To regulate the power and function of the Commission with regard to appointment of Tribunal, procedure has been provided by section 140 of the Elections Act, 2017 ('**the Act**'), which is reproduced herein below:

140. Appointment of Election Tribunals. (1) For the trial of election petitions under this Act, the Commission shall appoint as many Election Tribunals as may be necessary for swift disposal of election petitions.

(2) An Election Tribunal shall comprise----

(a) in the case of an election to an Assembly or the Senate, a person who is a Judge of a High Court; and

(b) in the case of an election to a local government, a District and Sessions Judge or an Additional District and Sessions Judge.

(3) The Commission shall appoint a sitting Judge as Election Tribunal in consultation with the Chief Justice of the High Court concerned.

iii) In case of appointing a sitting Judge of a High Court, consultation with the Chief Justice of the High Court concerned by the Commission is a condition precedent. The purpose of consultation is because of the realization that the Chief Justice is not only the administrative head of the High Court but also is in best position to know and assess the suitability and availability of the Judges. As several Judges are performing their functions in different Benches, therefore, while nominating Judges, it will be convenient for the Chief Justice to consider availability of Judges at relevant Benches. In this way, the determination of territorial jurisdiction can also be resolved suitably.

Conclusion: i) See above analysis No.(i).

Additional Note

ii) To regulate the power and function of the Commission with regard to appointment of Tribunal, procedure has been provided by section 140 of the Elections Act, 2017.

iii) In case of appointing a sitting Judge of a High Court, consultation with the Chief Justice of the High Court concerned by the Commission is a condition precedent.

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2. **Supreme Court of Pakistan**
Supreme Court Bar Association of Pakistan v. Federation of Pakistan, Islamabad and others.
Civil Review Petition No. 197/2022
in Constitution Petition No. 2 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Naem Akhtar Afghan, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p_197_2022_10102024.pdf

Facts: Under Article 184 (3) of the Constitution of Islamic Republic of Pakistan, Supreme Court Bar Association ('the Bar Association') filed a Constitution Petition No.2 for ensuring that the members of the National Assembly ('MNAs') were not prevented from coming to the National Assembly to vote on vote of "no confidence" which had been presented against the then Prime Minister. It was filed on 17.03.2022 and came up hearing before a two-member Bench of the Supreme Court on 19.03.2022 which passed an Order. On the same day, statement of the then Attorney-General was also recorded. Reference was not filed and the Bench issued direction for its fixation with the Constitution Petition No.9. Reference was filed 21.03.2022 and it was numbered. In the reference, President sought the opinion of the Supreme Court on certain questions. After vote of no confidence, PTI moved Constitution Petition No.2. The Registrar ordered for its fixation with earlier Constitution Petition and the Reference. Thereafter all the matters were heard and "short order" was passed on 17.05.2022 whose detailed

order was issued on 14.10.2022. Hence, the instant review petition.

Issues:

i) Which questions may be referred to Supreme Court by the President of Pakistan under Article 186 of the Constitution?
ii) Whether the President can act on his own volition?
iii) What is the constitutional status of the President?
iv) What is the constitutional status of the opinion given by Supreme Court in response to Presidential reference?
v) Whether the order passed by the Supreme Court under Article 184(3) of the Constitution is executable?
vi) What is the scope of "review" in light of Article 188 of the Constitution?
vii) In what circumstances a matter can be reviewed?
viii) Who is invested with the power to proceed against a member of a Parliamentary Party who votes contrary to direction or abstain from voting?
ix) What a party head to do if he elects to proceed against such a member?
x) What procedure will be adopted after declaration of defection?
xi) Can a vote of a member be counted who does not vote or avoids from voting contrary to Parliamentary Party's direction?
xii) What jurisdictions are stipulated in Article 63 of the Constitution?
xiii) Whether a judge or Court can take away the jurisdiction given by the law?
xiv) What are the settled rules of interpretation?
xv) What will the legal impact if the Court itself confer jurisdiction upon itself?
xvi) Whether the Prime Minister can advise dissolution of the National Assembly after submission of resolution of no-confidence?
xvii) Which organ of the state can remove the ambiguity if any, in the law made by Parliament?
xviii) What is the proclamation of history of Pakistan?

Analysis:

i) Article 186 of the Constitution provides that the President of Pakistan may refer a 'question of law' to the Supreme Court for 'its opinion under its *'advisory jurisdiction'*

ii) Unless any provision of the Constitution specifically empowers the President to act on his own volition he must act on advice as provided by Article 48(1) of the Constitution, which states that, '*In the exercise of his functions, the President shall act on and in accordance with the advice of the Cabinet or the Prime Minister'.*

iii) The Constitution stipulates that the President is the, '*Head of State and shall represent the unity of the Republic' (clause (1) of Article 48).*

iv) Article 186 of the Constitution enables the President to seek an *'opinion of the Supreme Court on any question of law which he considers of public importance',*

v) An order passed by the Supreme Court (on a petition filed under Article 184(3) of the Constitution) is binding (Article 189 of the Constitution), and it is also executable.

vi) Article 188 of the Constitution creates a constitutional right to seek review of any judgment or order of the Supreme Court.

vii) The matter of *review* is further attended to in the Supreme Court Rules, 1980 in its Order XXVI. Rule 1 of Order XXVI states that a review may be filed *'on grounds similar to those mentioned in Order XLVII, rule I of the Code*', that is, the Code of Civil Procedure, 1908, which stipulates that a review may be filed if there is *'some mistake or error apparent on the face of the record, or for any other sufficient reason'.*

viii) The abovementioned clauses of Article 63A are self-executory and stipulates that if a member of a Parliamentary Party votes contrary to its direction or abstains from voting then its Party Head may elect to proceed against such member.

ix) If the Party Head elects to do so the first requirement is to provide the member *'with an opportunity to show cause as to why such declaration may not be made against him'*, that is, a declaration that the member had defected. If the member offers a valid justification, or even in its absence, the Party Head may not want to proceed against the member. It is within the exclusive jurisdiction of the Party Head *to declare in writing if a member has defected*.

x) The declaration of defection if issued by the Party Head is then sent to the Presiding Officer (the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be), with a copy thereof to the Chief Election Commissioner. The Presiding Officer is also required to send the said declaration to the Chief Election Commissioner, *'who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days of its receipt by the Chief Election Commissioner.*'

xi) Article 63A does not state that the votes of any member should not be counted nor that a member who does not vote or abstains from voting contrary to the Parliamentary Party's direction would automatically be deseated.

xii) Three separate jurisdictions unequivocally stipulated in Article 63A, which were:(a) the jurisdiction of the Party Head who may or may not issue the declaration of defection, (b) the jurisdiction of the Election Commission to decide the matter of defection and (c) the appellate jurisdiction of the Supreme Court.

xiii) Neither a court nor a judge can take away jurisdiction given by the law.

xiv)—a) A five-member Bench had reiterated these rules in the case of *Muhammad Ismail v State* (PLD 1969 Supreme Court 241), and held that this Court can only interpret, and not legislate….

b) Another five-member Bench of this Court in the case of *Baz Muhammad Kakar v Federation of Pakistan* (PLD 2012 Supreme Court 923) had emphasized the importance of the words which were used and that words must be given their plain meaning….

c) Another five-member Bench of this Court in the case of *Gul Taiz Khan Marwat v Registrar, Peshawar High Court* (PLD 2021 Supreme Court 391), enumerated how the Constitution is to be interpreted, which was as under:

''… a settled rule of interpretation of constitutional provisions that the doctrine of casus omissus does not apply to the same and nothing can be "read into" the

Constitution.' (para.19, p. 407D)

'… something which is manifestly absent is tantamount to reading something into the Constitution which we are not willing to do. In our opinion, strict and faithful adherence to the words of the Constitution, specially so where the words are simple, clear and unambiguous is the rule. Any effort to supply perceived omissions in the Constitution being subjective can have disastrous consequences.' (para.19, p.407E''

xv) If a Court confers jurisdiction upon itself it vitiates the Fundamental Right of fair trial and due process.

xvi) The Constitution clearly mandates that once a resolution of no-confidence against a Prime Minister is submitted the Prime Minister can no longer advise dissolution of the National Assembly (Explanation to clause (1) of Article 58).

xvii) Parliament makes the law which the courts apply, and if there is any ambiguity in the law a judge interprets it, but this too must be done within the parameters of the law and as per the well settled rules of interpretation.

xviii) It proclaims that in the history of Pakistan and its Parliament only once did a parliamentarian come close to becoming a 'conscientious objector who took the path of defection and deseating under Article 63A.' The expression of such contempt for politicians and parliamentarians is regrettable. Let us not forget that Pakistan was achieved by politicians who had gathered under the banner of the All India Muslim League and its Quaid (leader), M. A. Jinnah, who strictly followed the constitutional path.

Conclusion: i) According to Article 186 of the Constitution, the President of Pakistan can refer only a 'question of law' to the Supreme Court for 'its opinion under its 'advisory jurisdiction'

ii)See above analysis No.ii

iii) Article 48 (1) of the Constitution stipulates that the President is the head of State and he shall represent the unity of the Republic.

iv) See above analysis No.iv

v) An order passed by the Supreme Court under Article 184(3) of the Constitution is binding in light of Article 189 of the Constitution and it is also executable.

vi) See above analysis No.vi

vii) The concept of constitutional review is also attended to in the Supreme Court Rules, 1980 in its Order XXVI. Rule 1 of Order XXVI, according to which a review may be filed on grounds similar to those mentioned in Order XLVII, rule I of the Code.

viii) See above analysis No.viii

ix) See above analysis No.ix.

x) See above analysis No.x

xi) Article 63A does not exclude the vote of a violator member from counting nor he would automatically be deseated.

xii) Article 63A of the Constitution is containing three types of jurisdiction i.e. (a) the jurisdiction of the Party Head (b) the jurisdiction of the Election Commission

and (c) the appellate jurisdiction of the Supreme Court
xiii) Statutory jurisdiction cannot be taken away.
xiv) See above analysis No xiv
xv) Self assumption of jurisdiction is violative of the principles of the Fundamental Right of fair trial and due process
xvi) In explanation to Explanation to clause (1) of Article 58) of the Constitution, after moving of resolution of no-confidence against a Prime Minister, he cannot advise dissolution of the National Assembly.
xvii) In case of ambiguity in the law, a judge is invested with constitutional and legal power to interpret it within the parameters of the law and settled rules of interpretation.
xviii) See above analysis No. xviii.

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3. **Supreme Court of Pakistan**
Federation of Pakistan and Prosecutor-General, Punjab. v. Mubarak Ahmed Sani and another.
Criminal Misc. Application No. 1113 of 2024 [For correction in judgment dated 24.07.2024], In Criminal Review Petition No. 2 of 2024
Mr. Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.m.a._1113_2024.pdf

مختصر واقعات:

یہ درخواست مجموعۂ ضابطۂ فوجداری 1898ء کی دفعہ 561-اے معہ سپریم کورٹ رولز 1980ء کے آرڈرXXXIII کے رول 6و مجموعۂ ضابطۂ دیوانی 1908ء کی دفعات 152 و 153 کے تحت دی گئی ہے۔ جو کہ فیصلہ مورخہ 24جولائی 2024ء کی تصحیح کے لئے ہے۔ اس فیصلے میں اسلامی احکامات اور آئین کی روشنی میں یہ قرار دیا گیا کہ ختم نبوت کے عقیدے پر ایمان رکھنا ہر مسلمان کی بنیادی شرط ہے، اور جو شخص ختم نبوت کا انکار کرتا ہے، وہ اسلامی تعریف کے مطابق مسلمان نہیں ہو سکتا۔ عدالت نے مذہبی آزادی کے حقوق کو آئینی حدود میں رہتے ہوئے استعمال کرنے پر زور دیا اور کہا کہ کوئی بھی شخص مذہب کے نام پر کسی اور مذہب یا اس کی مقدس ہستیوں کی تضحیک یا توہین نہیں کر سکتا۔سپریم کورٹ آف پاکستان نے 1974ء میں ہونے والی آئینی ترمیم کے حوالے سے احمدیوں کی قانونی حیثیت اور مذہبی آزادی کے بارے میں اہم فیصلہ دیا۔ اس میں واضح کیا گیا کہ آئین پاکستان کی دفعات 298-Bاور 298-Cکے تحت احمدیوں کو اپنے آپ کو مسلمان قرار دینے یا اسلامی شعائر استعمال کرنے کی اجازت نہیں ہے۔اس فیصلے نے آئین کی مختلف شقوں کی تشریح کرتے ہوئے واضح کیا کہ احمدیوں کو اپنے عقائد کی تشہیر میں آئینی حدود کا احترام کرنا ہو گا ۔

تنقیحات:

i) اسلام کی روشنی میں مسلمان کی تعریف
ii) ختم نبوت کے مفہوم اور اس پر علماء کے اجماع کے حوالے سے کیا دلائل پیش کئے گئے ہیں۔ ؟
iii) اسلامی جمہوریہ پاکستان کے آئین میں اسلامی قوانین اور قرآن و سنت کی روشنی میں قانون سازی کے اصول کیا ہیں؟
iv) آئین کی دفعہ 20کے تحت مذہبی آزادی کا حق کس حد تک محدود ہے؟
v) کیا آئین پاکستان کی دفعات 298-Bاور 298-Cاسلامی اصولوں اور شریعت کی روشنی میں جائز ہیں؟ اور ان دفعات سے احمدیوں اور قادیانیوں کو کیسے محدود کیا گیا ہے؟
vi) 1974ء میں قومی اسمبلی کی کمیٹی نے احمدیوں کے بارے میں کیا فیصلہ کیا تھا؟

vii) آئینِ پاکستان میں مسلم اور غیر مسلم کی کیا تعریف بیان کی گئی ہے؟

تجزیہ:

i) اسلام کا ایک بنیادی اصول ہے کہ مسلمان وہی ہو سکتا ہے جو قرآن مجید کو اللہ تعالیٰ کی آخری نازل کی ہوئی کتاب اور حضرت محمد ﷺ کو اللہ تعالیٰ کا آخری رسول اور نبی مانتا ہو اور آپﷺ کے بعد سلسلۂ وحی کے انقطاع پر ایمان رکھتا ہو۔

ii) امت کا اس پر اجماع کلی قطعی ہے کہ ''خاتم النبیین'' کے معنی ''آخٰر النبیین'' ہے اور یہ کلماتِ قرآنی قطعی الثبوت ہونے کے ساتھ ساتھ قطعی الدلالت بھی ہیں، غیر مؤوّل ہیں، لہٰذا لفظ ''خاتم ''پر لفظی ابحاث قطعی غیر متعلقہ ، بے محل اور ناقابلِ توجہ ہیں۔ امام غذالیؒ نے امت مسلمہ لے اس اجماعی عقیدے کی تصریح کرتے ہوئے کہ حضرت محمد ﷺ پر نبوت کے ختم ہونے پر ایمان کے بغیر کوئی شخص مسلمان نہیں ہوتا، فرمایا:

أَنَّ الأُمَّةَ فَهِمَتْ بِالْإِجْمَاعِ مِنْ هَذَا اللَّفْظِ، وَمِنْ قَرَائِنِ أَحْوَالِهِ، أَنَّه أَفهَمَ عَدَمَ نَبِيٍّ بَعْدَه أَبَداً، وَعَدَمَ رَسُولِ الله أَبَداً، وَأَنَّه لَيْسَ فِيْهِ تَأوِيْل، وَلَا تَخْصِيْص؛ فَمُنْكِرُ هَذَا لَا يَكُونُ إِلَّا مُنْكِرَ الْإِجْمَاعِ۔[8]

ترجمہ: اس لفظ (خاتم النبیین) سے اور اس کے حالات کے قرآن سے امت نے اجماعی طور پر یہ سمجھا ہے کہ آپ نے اپنے بعد کسی نبی کے اور کسی رسول کے کبھی نہ آنے کی بات سمجھائی ہے، اور یہ کہ اس کی اور کوئی تاویل نہیں ہے، نہ ہی اس کی تخصیص کی گئی ہے؛ اس لئے اس کا انکار کرنے والا امت کے اجماع کا منکر ہے۔

iii) آئین نے ملک کا نام 'اسلامی جمہوریۂ پاکستان' رکھا ہے اور تصریح کی ہے کہ پاکستان کا ریاستی مذہب اسلام ہے۔ آئین نے یہ اعلان بھی کیا ہے کہ پاکستان میں رائج تمام قوانین کو قرآن و سنت میں مذکور اسلامی احکام سے ہم آہنگ بنایا جائے گا اور یہ کہ کوئی ایسا قانون نہیں بنایا جائےگا جو ان احکام سے متصادم ہو۔ متعدد قوانین میں یہ تصریح بھی کی گئی ہے کہ ان قوانین کی تعبیر و تشریح قرآن و سنت میں مذکور اسلامی احکام کے مطابق ہوگی، اور قانونِ نفاذِ شریعت 1991ء میں تمام قوانین کے لئے یہ عمومی اصول طے کیاگیا ہے۔ چنانچہ ماضی قریب میں سپریم کورٹ (عمل اور طریق کار) ایکٹ 2023 ء کی آئین کے ساتھ مطابقت کے متعلق فل کورٹ نے فیصلہ کیا، تو اس میں اس اصول کی تصریح کی گئی کہ جہاں کسی قانون کی دو تعبیرات ممکن ہوں، تو عدالت اس تعبیر کو اختیار کرے گی جو قرآن و سنت میں مذکور اسلامی احکام اور آئین میں مذکور پالیسی کے اصولوں سے ہم آہنگ ہو۔

iv) آئین کی دفعہ 20میں مذہبی آزادی کے حق کو قانون، اخلاق اور امن عامہ کے تابع کیا گیا ہے اور مجموعۂ تعزیرات پاکستان کی دفعہ 295-اے نے مذہبی جذبات مجروح کرنے اور مقدسات کی توہین کو قابلِ سزا جرم قرار دیا ہے۔ چنانچہ آزادیِ رائے کے نام پر کسی کو یہ حق نہیں ہے کہ وہ کسی اور کی تضحیت کرے یا اس کے مذہبی جذبات کو مجروح کرے۔ حقوقِ انسانی کا بین الاقوامی قانون بھی اس کی ممانعت کرتا ہے اور اقوام متحدہ کے سیاسی و شہری حقوق کے بین الاقوامی میثاق 1966ء میں اس کی تصریح کی گئی ہے۔ اسی طرح کسی کو یہ حق نہیں ہے کہ وہ اپنے آپ کو کسی ایسے مذہب کا پیروکار ظاہر کرے جس کے بنیادی عقیدے سے ہی وہ انکاری ہو۔ لہٰذا قادیانیوں کا اپنے آپ کو ''مسلمان'' یا ''احمدی مسلمان'' کہلانا درست نہیں ہے۔

v) وفاقی شرعی عدالت نے مقدمہ بعنوان 'مجیب الرحمان بنام حکومت پاکستان'' میں تفصیلی بحث کے بعد یہ فیصلہ دیا کہ مجموعۂ تعزیراتِ پاکستان کی دفعات 298-Bاور 298-Cقرآن و سنت میں مذکور اسلامی احکام سے متصادم نہیں ہیں؛ اور سپریم کورٹ نے مقدمہ بعنوان 'ظہیر الدین بنام ریاست' کے فیصلے میں قرار دیا کہ مذکورہ دفعات اور شقوں میں کوئی بھی آئین میں مذکور بنیادی حقوق سے متصادم نہیں ہے۔ سپریم کورٹ نے یہ بھی واضح کیا کہ مذکورہ دفعات میں احمدیوں /قادیانیوں کو جن اصطلاحات اور تراکیب کے استعمال سے روکا گیا ہے، ان کا دینِ اسلام میں مخصوص مفہوم ہے اور جو لوگ مسلمان نہیں ہیں وہ اپنے مذہبی امور میں ان کے استعمال سے مسلمانوں کو دھوکے میں ڈال سکتے ہیں جس کی اجازت نہیں دی جاسکتی۔

vi) جب یہ مسئلہ کھڑا ہوا تو پارلیمان میں تفصیلی مباحثہ ہوا اور 'قادیانی گروپ اور لاہوری گروپ جو خود کو احمدی کہتے ہیں، کا موقف سننے اور سمجھنے کے لئے قومی اسمبلی کے پورے ایوان پر مشتمل خصوصی کمیٹی (**خصوصی کمیٹی**)تشکیل دی گئی کیونکہ ایوان میں صرف ایوان کے ارکان ہی بات کر

سکتے تھے، لیکن کمیٹی کسی بھی فرد کو سن سکتی تھی۔ مقننہ کی اس خصوصی کمیٹی کی کاروائی 5اگست 1974ء کو شروع ہوئی اور7ستمبر1974ء کو پوری ہوئی۔ کارروائی اس وقت کے اٹارنی جنرل جناب یحیٰ بختیار نے چلائی۔ خصوصی کمیٹی میں قادیانی گروپ اور لاہور گروپ کا موقف سامنے آیا اور نتیجتاً اس پر اتفاق ہوا کہ وہ 'غیر مسلم' ہیں۔

(vii) **ترجمہ:** آئین میں اور تمام قوانین اور قانونی دستاویزات میں، جب تک موضوع یا سیاق میں اس کے برعکس مفہوم نہ ہو:

(الف) ''مسلمان'' سے مراد وہ شخص ہے جو اللہ کی وحدانیت اور توحید پر ایمان رکھے، حضرت محمد ﷺ کی ختم نبوت پر مکمل اور غیرمشروط ایمان رکھے اور حضرت محمد ﷺ کے بعد کسی شخص پر، جس نے خود کو نبی کہا تھا یا کہتا ہے، ایمان نہ رکھے نہ ہی اسے نبی یا مذہبی مُصلِح کے طور پر تسلیم کرے؛

(ب) ''غیر مسلم'' سے مراد وہ شخص ہے جو مسلمان نہیں ہے اور اس کے مفہوم میں وہ شخص شامل ہے جو مسیحی، ہندو، سکھ، بدھسٹ یا پارسی برادری سے تعلق رکھتا ہو، قادیانی گروپ یا لاہوری گروپ (جو خود کو 'احمدی' کہتے ہیں) کافرد، یا کوئی بَہَائی، اور جَدوَلی ذاتوں سے تعلق رکھنے والا شخص۔

نتیجہ:

(i) مسلمان وہی ہو سکتا ہے جو قرآن مجید کو اللہ تعالیٰ کی آخری نازل کی ہوئی کتاب اور حضرت محمد ﷺ کو اللہ تعالیٰ کا آخری رسول اور نبی مانتا ہو اور آپﷺ کے بعد سلسلۂ وحی کے انقطاع پر ایمان رکھتا ہو۔

(ii) حضرت محمد ﷺ پر نبوت کے ختم ہونے پر ایمان کے بغیر کوئی شخص مسلمان نہیں ہوتا۔

(iii) آئین نے یہ اعلان بھی کیا ہے کہ پاکستان میں رائج تمام قوانین کو قرآن و سنت میں مذکور اسلامی احکام سے ہم آہنگ بنایا جائے گا اور یہ کہ کوئی ایسا قانون نہیں بنایا جائےگا جو ان احکام سے متصادم ہو۔

(iv) آزادیِ رائے کے نام پر کسی کو یہ حق نہیں ہے کہ وہ کسی اور کی تضحیت کرے یا اس کے مذہبی جذبات کو مجروح کرے۔

(v) مجموعۂ تعزیراتِ پاکستان کی دفعات 298-Bاور 298-Cقرآن و سنت میں مذکور اسلامی احکام سے متصادم نہیں ہیں۔

(vi) خصوصی کمیٹی میں قادیانی گروپ اور لاہور گروپ کا موقف سامنے آیا اور نتیجتاً اس پر اتفاق ہوا کہ وہ 'غیر مسلم' ہیں

(vii) اوپر تجزیہ نمبر 7دیکھیں۔

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4. **Supreme Court of Pakistan**
Bakht Biland Khan and others v. Zahid Khan and others.
Civil Petition No. 284-P of 2012
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._284_p_2012.pdf

Facts: Petitioners filed a civil petition against the dismissal of their civil revision by the Honorable High Court. The petitioners' sisters inherited property from their deceased father, but the petitioners challenged the inheritance mutation and were unsuccessful before both the trial court and the first appellate court.

Issues: i) How the frivolous litigation, depriving sisters of their inheritance, could be discouraged?
ii) Which mode for recovery of costs is to be adopted?

Analysis: i) The frivolous litigation initiated by them was undoubtedly encouraged by the fact that substantial costs were not imposed on them for putting forward an

untenable claim. And, because the revenue authorities were not directed to ensure that the shares of all the legal heirs are recorded and no legal heir is deprived of his/her share.

ii) Therefore, leave to appeal is declined and this petition is dismissed with costs in the sum of five hundred thousand rupees, to be paid by the petitioners, which they should deposit with the concerned revenue authority within three months and such authority shall distribute the same amongst those who have been deprived. If the said amount is not deposited it shall be recovered as arrears of land revenue and distributed in like manner.

Conclusion: i) The frivolous litigation could be discouraged by imposing substantial costs.
ii) The are to be recovered as arrears of land revenue by revenue authorities and distributed amongst the victims.

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5. **Supreme Court of Pakistan**
Tanvir Sarfraz Khan v. Federation of Pakistan through Director Legal, Islamabad and others
Civil Petition No. 3381 of 2024 and C.M.A. No. 7234 of 2024 in Civil Petition No. 3381 of 2024
Mr. Justice Qazi Faez Isa, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3381_2024.pdf

Facts: Predecessor of the parties passed away in 2010 leaving behind a widow, sons and daughters. When the sisters claimed their shares of inheritance in 2021, the petitioner agreed to pay the legal shares of each legal heir as per Shariah. When the property was evaluated the petitioner resiled and challenged his signed consent/joint statement by filing a suit after two months of the demand of shares by the sisters.

Issue: Safeguards implemented to prevent the exploitation of litigation that delay or deny the right of inheritance to legal heirs particularly the vulnerable members.

Analysis: The pendency of the said suit has no effect on the estate of Sarfraz Ahmad Khan nor can exclude the legal heirs from their inheritance. The property of a deceased Muslim vests in his legal heirs immediately upon his death. We have repeatedly held that the inheritance rights of the vulnerable members of society, which include females, must be protected. Unfortunately, a practice has developed whereby those defying shariah and the law, facilitated by some lawyers, adopt various nefarious means, including taking the plea of pending litigation in depriving legal heirs from what is rightfully theirs.

Conclusions: Pendency of a frivolous litigation with dishonest tactics cannot deprive legal heirs from their right of inheritance.

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6. **Supreme Court of Pakistan**
Mst. Aksar Jan and others v. Mst. Shamim Akhtar and others.
Civil Petition No. 4576 of 2023
(Against the judgment dated 03.10.2023 of the Lahore High Court, Rawalpindi Bench passed in Civil Revision No. 100 of 2010)
Mr. Justice Qazi Faez Isa, CJ Mr. Justice Naeem Akhtar Afghan Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4576_2023.pdf

Facts: Through this petition, the petitioners have assailed the order dated 03.10.2023 of the High Court and Hon'ble Supreme Court of Pakistan set aside the order of Hon'ble High Court and upheld the judgment passed by the First Appellate Court as the trial court dismissed the suit of Mst. Shamim Akhtar (respondent No.1) who has claimed her share of inheritance from the estate of her deceased husband and sought cancellation of gift mutations.

Issues: i) What is the impact of undated Razi nama (agreement) without consideration; therein, the right to inheritance surrendered by a woman, who had filed a suit?
ii) Whether the High Court adequately addressed the core issue of inheritance denial?

Analysis: i) The petitioners made an attempt to show that Mst. Shamim Akhtar had given up her claim/ right to inheritance by preparing an undated Razi Nama (agreement), which commenced by stating that it was being executed on behalf of Mst. Aksar Jan through her special attorney, namely, Muhammad Farooq son of Ch. Sultan Khan, but the same was not signed by him. A fingerprint or thumb impression purporting to be that of Mst. Shamim Akhtar was affixed on it. However, no consideration was given to Mst. Shamim Akhtar or received by her for executing the Razi Nama and giving up the claim to her inheritance. For the sake of argument, if it be assumed that Mst. Shamim Akhtar had executed the Razi Nama it was wholly without consideration which would make it inconsequential. However, it was tendered to the Court and the learned Judge without ensuring that Mst. Shamim Akhtar had executed it with knowledge of its contents assumed that all of a sudden she had surrendered her rights for which she had filed a suit.
ii) On its part the High Court did not attend to the main issue, which was the denial of inheritance, and instead concerned itself with peripheral matters. It is now the twenty-fifth year since Mst. Shamim Akhtar, a widow, has been struggling to get her inheritance. Bogus gift mutations were made and dated just before the passing of her husband and then the bogus Razi Nama emerged. There is yet another serious aspect of the case, which is that Mst. Aksar Jan joined hands with her nephews, the petitioners No. 2 to 6, even though she stood deprived of her own share in the inheritance of her husband; this constituted a clear conflict of interest which regretfully the petitioners' counsel did not consider.

Conclusion: i) The undated Razi nama (agreement) without consideration executed by a woman, who had filed a suit, has no legal value and effect upon the right of

inheritance of a woman.

ii) The High Court has not adequately addressed the core issue of inheritance denial.

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7. **Supreme Court of Pakistan**
Govt. of Punjab through Secretary Irrigation and another v.
M/S Kunjah Textile Mills Ltd.& others
Civil Appeals No. 256-266 & 438-472 of 2011
Mr. Justice Munib Akhtar, Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._256_2011.pdf

Facts: Respondents, through writ petition, challenged "Electricity Duty" imposed by the government after issuance of notification by the Governor of Punjab in exercise of powers under section 4 of the Punjab Finance Ordinance 2001. The writ was dismissed by the Hon'ble single bench but was allowed in Intra Court Appeal. The judgment was assailed before august Supreme Court of Pakistan.

Issues: (i) Which is the "taxing event" for imposing "Electricity Duty" under section 4 of the Punjab Finance Ordinance 2001 after notification issued on 25/08/2001 by the Governor of Punjab ?
(ii) Whether the person who generates electric power of 500 kw or more by means of generators for their own use are "licensee" and fall in the scope of levy?

Analysis: (i) Having carefully considered the subsection, in our view the taxing event (i.e., leviability or the first stage) comprises the following words: "there shall be levied and paid to Government, on the units of energy consumed for the purposes specified in the first column of the Fifth Schedule". In other words, the taxing event comprises of two elements: (i) the consumption of energy units, (ii) for the purposes specified in the first column of the Fifth Schedule. It is only when these words are taken together that the taxing event can be sensibly gathered from subsection (1). Reading either portion separately and (as the learned AAG would have it with regard to the first words) on a standalone basis returns an incomplete and, with respect, incoherent result. Contrary to what the learned AAG submitted, s. 13 is not a general levy on electricity consumption. Rather it is on such consumption for a specific (i.e., limited) purpose or class, as contained in the second element. It is this composite that is the taxing event.

(ii) But what of the definition of "licensee" which specifically refers to any person (such as the respondents) who generates electric power by means of a generator of more than 500 KW capacity? There can be no doubt that the respondents are within the definition of "licensee" in terms of the substitution made by the 2001 Ordinance (and are herein after referred to also as the "statutory licensee(s)"). However, that still does not bring them within the scope of the levy. It is a cardinal principle of taxing statutes that if more than one reasonable interpretation is possible of the charging, or taxing, provision, then the one more favorable to the putative taxpayer is to be adopted, i.e., the one that either takes him out of the

charge altogether or (if such be the case) results in a reduced or lessened burden. We assume for the moment that on the change in the definition of "licensee" one possible, and reasonable, interpretation of s. 13 and one which brings the respondents within the taxing event, is as put forward by the learned AAG. Even if such be the case (and, with respect, we have serious doubts on this score as already set out above) in our view there is another, also reasonable, interpretation possible which does not. The second interpretation is that if the respondents are statutory licensees, all that means is that if any of them were to supply the energy produced by its generator of more than 500 KW capacity to another person, then in respect of that supply the levy would be attracted in terms of the first entry of the Fifth Schedule. It would not however mean that the self use of the energy in and of itself would come within the levy. Put differently, the words "self use" in the substituted definition would be only descriptive of who the statutory licensee is (i.e., one whose supply of energy to another person would complete the taxing event in terms of the first column of the Fifth Schedule), and not amount to a levy of the duty on such self consumption. The levy would still require the statutory licensee to supply the energy to some other person, i.e., the consumer in terms of the Fifth Schedule. As is clear, this second interpretation is more favorable to the putative taxpayer (i.e., the respondents) and would therefore, on an application of well settled law, apply to the charge contained in subsection (1).

Conclusion: (i) See analysis (i).
(ii) The persons who generate electricity of 500 kw or above through generators for their own use would not be within the levy.

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8. **Supreme Court of Pakistan**
Chairman/Dean Sheikh Zayed Hospital, Lahore v. Amjad Mehmood Khan
Civil Petition No.1353-L of 2023
Mr. Justice Munib Akhtar, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1353_l_2023.pdf

Facts: Respondent was appointed as an Anaesthetist on contractual basis for two years, later his contract was regularized and he was promoted. Upon attaining the age of superannuation, he got retired but his contract period of 4.5 years was not included while calculating his pension benefits. First departmental representation of the respondent was dismissed whereas his second petition remained undecided by the department. The respondent invoked the jurisdiction of Punjab Service Tribunal but the appeal was dismissed for want of jurisdiction, he then filed an appeal before Federal Service tribunal which was allowed and that order is assailed through the instant petition.

Issues: i) Whether delay affects the claim of pension or any pending lawful dues?
ii) Whether the term 'temporary service' includes contractual service and whether under Article 371-A of the Civil Service Regulations contract period could be included while calculating pension?

Analysis: i) As far as issue of time barred representation is concerned, it has been rightly noted by the learned Federal Service Tribunal that pension constitutes a recurring cause of action. It has been consistently held by this court that claims constituting payment of lawful dues constituted a recurring cause of action and delay, if any, would not automatically vitiate a claim… Moreover, in the case of Umar Baz Khan vs. Jehanzeb (PLD 2013 SC 268) it has been observed that the bar of laches cannot be overemphasized in the cases where the relief claimed is based on a recurring cause of action and that no court could dismiss a lis on account of laches if such a decision would perpetuate injustice.

ii) The use of the phrase 'temporary service' in Article 371-A of CSR includes contractual service. The perusal of the Article 371-A of CSR reveals that clause (i) stipulates that government servants employed in temporary positions who have rendered more than five years of continuous temporary service are entitled to have such service counted towards their pension or gratuity. The use of the term "continuous" indicates that only uninterrupted service exceeding five years qualifies, and any prior broken periods of temporary service are to be excluded from the calculation…. Clause (ii) provides for situations where a government servant has rendered less than five years of continuous temporary or officiating service. In such instances, the period of service shall also be counted towards pension or gratuity, provided that it is immediately followed by confirmation / regularization as a permanent employee.

Conclusion: i) Claims constituting payment of lawful dues constituted a recurring cause of action and delay, if any, would not automatically vitiate a claim.

ii) Contractual period must be included towards the calculation of pension provided the case falls either under clause (i) or clause (ii) of Article 371-A of the CSR.

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9. **Supreme Court of Pakistan**
Malik Amanullah v. Haji Muhammad Essa etc.
Civil Appeal No. 1414 of 2013
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1414_2013.pdf

Facts: This appeal arises from a dispute over a property that respondent No.1 claimed to have purchased from Muhammad Ibrahim in 1990 through an oral agreement, supported by a general power of attorney. In 1997, respondent No. 1 transferred the property to his sons. After Ibrahim's death in 1995, his son, respondent No.7, canceled these transfers, leading respondents No. 1 to 6 to file a suit which resulted in their favour in 2007, declaring them the rightful owners. During the trial, respondent No. 7 sold the property to the appellant in 2003. The appellant argued that the sale was valid since the lawsuit had been dismissed briefly before the transaction. However, the court found the sale invalid, applying the doctrine of lis pendens, because the suit was reinstated shortly after the sale, meaning the property was still under legal dispute.

Issues: i) Whether the rule of lis pendence applicable during the period of dismissal and restoration of suit?
ii) The effect of cancellation of mutations without notice and without providing opportunity of hearing.

Analysis: i) It is now well settled that if a suit is dismissed and then restored, the restoration order relates back and a transfer/sale after dismissal and before restoration is subjected to the principle of lis pendens embodied in Section 52 of the Transfer of Property Act, 1882.
ii) Besides, the property-in-question was recorded in the names of Respondents No.3, 5 and 6 but the Tehsildar, request from Respondent No.7, cancelled mutations No. 167 and 170 without notice and without providing them the opportunity of hearing which act is in contravention of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 as well as contrary to the provisions of the Land Revenue Act, 1967.

Conclusions: i) Yes, rule of 'lis pendence' is applicable.
ii) It is in contravention of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 as well as contrary to the provisions of the Land Revenue Act, 1967.

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10. **Supreme Court of Pakistan**
Allah Bakhsh deceased through L.Rs & others v. Muhammad Riaz and others.
Civil Petition No.2565 of 2023
Mr. Justice Munib Akhtar, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2565_2023.pdf

Facts: Respondents No 3 to 5 filed a civil suit for declaration, specific performance and injunction claiming that respondents No 1 and 2 being owners of the suit property sold the same to them as well as to the petitioners No 1 and 2 vide an oral agreement; possession was also transferred to the buyers but it was alleged that Petitioner No 1 prepared a general power of attorney in his favour in connivance with the sellers and later transferred the suit land in favour of his sons and sons of petitioner No 2 vide a registered sale deed. The trial court decreed the suit, against which an appeal was preferred which was dismissed by the first appellate court. Thereafter the petitioners filed a Civil Revision in the High Court that too was dismissed; hence this petition.

Issue: i) What is the legal requirement if holder of a general power of attorney intends to transfer the principal's property in his own favour or in favour of his relatives?
ii) What are the legal requirements for signing a document for its validity which document consist of more than one page?

Analysis: i) It is established law that holder of a general power of attorney must obtain special permission from the principal when alienating the principal's property, either in their own favor or in the name of their relatives.. . In the absence of such permission, the legality and propriety of the alleged sale deed in favor of these individuals is highly doubtful.

ii) Disputed sale deed is not even properly signed by the alleged attorney in accordance with settled principles of law. In this regard, learned High Court has rightly observed in the impugned judgment that "The petitioners/defendants No.03 to 10 produced sale deed containing six pages and out of six pages, first five pages have neither been signed by the alleged attorney/defendant No.03 nor the alleged purchaser/defendant no.03 to 10 and even the two attesting witnesess, who have signed sixth page, have not signed first five pages wherein terms and conditions of the disputed sale deed are written. It is settled principle of law that if the document is written on more than one page, then the parties must sign or put their thumb impressions on each page of document or otherwise the defendant are/were under legal obligation to connect the unsigned pages with signed/thumb marked page by producing evidence to prove the terms and conditions of disputed sale deed.''

Conclusions: i) Holder of a general power of attorney must obtain special permission from the principal when alienating the principal's property, either in their own favor or in the name of their relatives.

ii) If the document is written on more than one page, then the parties must sign or put their thumb impressions on each page of document.

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11. **Supreme Court of Pakistan**
Moulvi Abdul Fateh v. Yar Muhammad and others
Civil Petition No.259-Q of 2020
Mr. Justice Yahya Afridi, Mr. Justice Shahid Waheed, Mr. Justice Aqeel Ahmad Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._259_q_2020.pdf

Facts: Respondents filed applications for grant of succession certificate and letter of administration, against the petitioner. Initially, the applications were dismissed by District Judge whose decision was challenged in shape of appeal before Hon'ble High Court. Matter was remanded to Trial Court and the Trial Court again dismissed the applications which order was again impugned by way of filing the appeal. Hon'ble High Court again remanded the matter with the direction to provide opportunity of producing additional evidence. After conclusion of trial, said application were again dismissed. Order was assailed through Succession Appeal before Hon'ble High Court which allowed the appeal. Resultantly, the instant civil petition for leave to appeal was filed.

Issues: i) What sort of presumption is attached to official record?
ii) Which relation is invested with the legal power to challenge the paternity?

Analysis: i) The presumption of correctness is attached to the official record in terms of Article 91 and the relevancy of entry in public record made in performance of duty in terms of Article 49 of the Qanun-e-Shahadat Order, 1984.
ii). This Court in the case of *Laila Qayyum v. Fawad Qayum and others* **(PLD 2019 SC 449)** and *Munir Hussain v.Riffat Shamim* **(2023 SCMR 6)** wherein it has been held that only a putative father, within the time prescribed in Article 128 of Qanun-e-Shahadat Order, 1984 can challenge the paternity of child.

Conclusion: i) Presumption of correctness is attached to official record.
ii) See above analysis No.i

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12. **Supreme Court of Pakistan**
National Bank of Pakistan through its President v. Roz-ud-Din and another
Civil Petition No.3649 of 2023.
Mr. Justice Yahya Afridi, Mr. Justice Shahid Waheed and Mr. Justice Aqeel Ahmad Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3649_2023.pdf

Facts: Through instant petition (or leave to appeal), the petitioner has impugned the judgment dated 30.08.2021 of the learned High Court of Baluchistan, whereby the respondent's dismissal from service Memorandum No.HRMG/EDW /F&FD/SIB1-3321, dated 15.12.2020, has been partly allowed and the impugned memorandum is modified to the extent of penalty awarded to the respondent "dismissal from service to that of down gradation by one step in his pay scale".

Issues: i) Whether the citizens, being employees of same institution, can be treated discriminately in violation of Article 25 of Constitution of Pakistan?
ii) Whether punishment should be awarded in commensuration with magnitude of guilt?

Analysis: i) Admittedly, the petitioner was employed as Officer Grade-Il, National Bank of Pakistan, whereas, on certain allegations of omissions and irregularities regarding ATM cash feeding, its maintenance and balancing, he was imposed with a major penalty of dismissal from service. Record reflects that apart from petitioner, two other employees/ officers of the Bank were also charge sheeted with same allegations, but they were then awarded with punishment of downgrading by one step in their pay scale, whereas, the petitioner who was also facing the same allegations, was surprisingly awarded with a major penalty of dismissal from service, which in our considered view is a harsh punishment and no reason whatsoever has been assigned to single out the respondent Roz-ud-Din who has been awarded the major punishment of dismissal from service which amounts to clear discrimination. It is pertinent to note that nothing has been brought on record to show that respondent Roz-ud-Din was directly responsible or has committed any gross misconduct or negligence in respect of the allegations as contained in the charge sheet/ show cause notice, whereas, the guilt regarding allegations and charges in the instant case has been duly accepted through confessional statement

by another employee of the bank namely, Baber Butt against whom a criminal case was also registered, however, such aspect has been totally ignored while awarding the major punishment of dismissal from service, which, on the face of it, was otherwise not commensurate with the magnitude of the guilt and the role assigned to respondent. Reliance in this regard has been rightly placed by the learned Division Bench in the case of Secretary to Government of the Puniab Food Department, Lahore and another v. Javed Iqbal and others (2006 SCMR 1120). It will not be out of place to refer to provisions of Article 25 of the Constitution, which guarantees equality to all citizens before law and equal protection of law.

ii) No doubt, the competent authority had jurisdiction to award any of the above punishments to a person/ employee found guilty, but for the purpose of safe administration of justice, such punishment should be awarded, which commensurate with the magnitude of the guilt otherwise the law dealing with the subject will lose its efficacy. As stated above, the other employees who were dealt with same allegations were awarded punishment of downgraded by one step in his pay scale, whereas, the petitioner was awarded with major penalty i.e. dismissal from service. The Authority vested with discretion to award punishment to an employee shall ensure that such punishment should commensurate with the magnitude of guilt.

Conclusion: i) Article 25 of the Constitution guarantees equality to all citizens before law and equal protection of law.
ii) Punishment to an employee shall ensure that such punishment should commensurate with the magnitude of guilt.

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13. **Supreme Court of Pakistan**
Ufaid Gul v. Mst. Farkhanda Ayub Khan and others
Civil Appeal No. 785 of 2022
Mr. Justice Amin ud Din Khan, Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._785_2022.pdf

Facts: Plaintiff-appellant filed a suit for specific performance which was decreed by trial court. District court while deciding appeal, preferred by defendant no.2, dismissed suit to the extent of relief qua specific performance and ordered for return of amount. Hon'ble High Court accepted Civil Revisions holding that District court had no jurisdiction to adjudicate appeal and directed parties to approach relevant forum. While deciding Regular First Appeal, Hon'ble High Court accepted the same and set aside judgment of trial court. Hence appeal before Supreme Court of Pakistan.

Issues: (i)Whether remedy of specific performance can be claimed against owner of property when he is not signatory of the agreement?
(ii)What is the effect of contributory negligence, of a party and the court, on limitation period?

Analysis: (i) On merits there is absolutely no valid claim of the appellant as he entered into an agreement with a person who has absolutely no concern whatsoever with the suit property, only the fact that cheque of Rs:5,00,000/- was deposited in the account of the owner i.e. defendant No.2/respondent herein does not make the plaintiff-appellant entitled for grant of a decree for specific performance in his favour... In these circumstances, the learned High Court has rightly accepted the appeal and set aside the judgment and decree passed by the learned trial court in favour of the present appellant and also taken care of the rights of the present appellant while asking the owner of the property to return rupees one million to the plaintiff on the ground that a cheque of Rs:5,00,000/- was deposited in the account of the owner i.e. defendant No.2.

(ii) As per the principle laid down in Sherin and others v. Fazal Muhammad and others (1995 SCMR 584), where a party, despite acting with reasonable diligence, is misled by the court or fails to receive timely guidance about jurisdictional matters, the resulting delay or error is not entirely attributable to that party. In the present case, defendant No.2/respondent No.l initially filed the appeal before a forum lacking pecuniary jurisdiction, i.e., the learned Additional District Judge (West), Islamabad. However, the court itself, despite lacking jurisdiction, entertained the appeal for a substantial period without raising the issue, thereby contributing to the delay. This situation falls squarely within the doctrine of contributory negligence, where negligence by both the appellant and the court contributed to the procedural misstep. In light of this, the contributory negligence of the court in not promptly addressing the jurisdictional defect must be considered, and the defendant No.2/respondent No.l cannot be deprived of relief solely on this ground.

Conclusion: (i) Plaintiff has no valid claim to seek specific performance if agreement was entered with a person who has no concern with suit property.

(ii) If there was a contributory negligence of the person knocking the door of the court and by the court, the person knocking the wrong door cannot be deprived of his/her legal rights available under the law.

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14. **Supreme Court of Pakistan**
Zulfiqar Ali v. The State thr. DAG Islamabad
Criminal Petition No. 498 of 2024
Mr. Justice Jamal Khan Mandokhail, Ms. Justice Musarrat Hilali, Mr. Justice Malik Shahzad Ahmad Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._498_2024.pdf

Facts: The petitioner is an employee accused of embezzlement of certain amount and was convicted under section 409 of the Pakistan Penal Code, 1860 as well as section 5(2) of the Prevention of Corruption Act, 1947. His appeal to the High Court was dismissed, leading to this petition.

Issue: i) What does ‘offer of no contest’ connotes?

Analysis: i) The offer of no contest, means that the petitioner neither agrees nor disagrees

with the charge and with his conviction.

Conclusion: i) To accept conviction without admitting guilt or disputing charge.

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15. **Supreme Court of Pakistan**
Member, Board of Revenue, Punjab etc. v. Sheraz Khan
Civil Petition No.148-L of 2024
Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._148_l_2024.pdf

Facts: Respondent's father was displaced due to a Project started for Public purpose so he was allotted a land as compensation by the Collector but due to pending civil litigation, possession of the allotted land could not be handed over. Later another alternate land was allotted to him and it was also confirmed that the allotted land was free from encumbrances and was in a suitable location; possession was also given to the allottee. The allottee later applied for proprietary rights to the allotted land, but his application was rejected by the Additional District Collector and thereafter all his appeals and revisions were dismissed till Board of Revenue. All the orders against the respondent were challenged by filing a constitution Petition before the Hon'ble High Court, which was allowed so feeling aggrieved the same order is assailed by the petitioners.

Issues: i) Would the subsequent change in the status of a prohibited area affect the previously accrued rights of an allottee under the Colonization of Government Lands (Punjab) Act, 1912?
ii) Whether denial of grant of proprietary rights to an allottee under a settlement scheme violates the fundamental right to property as guaranteed under the Constitution of Pakistan?

Analysis: i) The rights accrued in favour of an allottee were to be determined on the basis of the formulated terms and conditions at the time when the allotment was made. As a corollary, the limits of the prohibited area which existed at the time of allotment were relevant i.e when the order under section 10(4) of the Colonization Act was passed. A subsequent change in the status of the prohibited area could not affect or take away the already accrued rights…. The rights which had already accrued could not have been taken away, directly or indirectly. If the limits of the prohibited area had been extended after the allotment then it could not result in nullifying the benefits and rights accrued in favor of the allottee under the Scheme.
ii) Any action which takes away the rights accrued under the Scheme would amount to arbitrary confiscation of private property rights. If the land allotted under the Scheme is required for public purpose then the accrued rights cannot be taken away in violation of the unambiguous command of the Constitution under Article 24; no person shall be deprived of his or her property save in accordance with law and that no property shall be compulsorily acquired or taken possession

of save for a public purpose and save by the authority of law which provides for compensation. The denial of grant of propriety rights in the case before us was violative of the fundamental right guaranteed under Article 24 of the Constitution.

Conclusion: i) A subsequent change in the status of the prohibited area could not affect or take away the already accrued rights.
ii) The denial of grant of propriety rights in the case before us was violative of the fundamental right guaranteed under Article 24 of the Constitution.

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16. **Supreme Court of Pakistan**
Government of the Punjab through Secretary Primary & Secondary Healthcare Department, Lahore, etc. v. Dr. Muhammad Shahid Hussain
CPLA No.2753-L of 2023
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Shahid Waheed.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2753_l_2023.pdf

Facts: The Government of Punjab has submitted this petition under Article 212(3) of the Constitution, seeking leave to appeal against the judgment of the Punjab Service Tribunal, Lahore ("the Tribunal") announced on 27th of March, 2023. The Tribunal had granted the service appeal of the respondent under Section 4 of the Punjab Service Tribunals Act, 1974. The Additional Advocate General argued that the petition is within time, citing that the Tribunal had dispatched a copy of the judgment to the relevant departmental authority on 7th July 2023, which was received on 19th July 2023.

Issue: Whether the time consumed by tribunal to send a copy of judgment to the department can be excluded for computation of limitation period?

Analysis: The period for filing a petition for leave to appeal under Article 212(3) of the Constitution is computed from the date when the Tribunal's judgment is announced in the presence of the parties, not from the date of receiving the certified copy of the judgment. According to Section 12 of the Act, 1908, only the time taken to obtain a certified copy of the judgment appealed from can be deducted. The Act, 1908, does not take into account the time it takes for the Tribunal to send a copy of the judgment, which is announced in the presence of the parties, to the Department. It is important to note that Rule 21 of the Rules, 1975 does not specify a time frame for the Tribunal to send a copy of the judgment to the relevant competent authority after announcing it. This means that the Tribunal can send the judgment to the Department after the deadline for applying for leave to appeal has passed. In this situation, allowing this time to be excluded in the computation of the limitation period would potentially give the Department/Competent Authority the ability to create uncertainty about the rights of Civil Servants that have been established by the Tribunal and have become final over time. This could be unwholesome and violate the fair trial rights guaranteed under Article 10-A of the Constitution.

Conclusion: Time consumed by tribunal to send a copy of judgment to the department can not be excluded for computation of limitation period.Only the time taken to obtain a certified copy of the judgment appealed from can be deducted.

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17. **Supreme Court of Pakistan**
Javed Ali (in CP No.499-K/23) Sabir Ali (in CP No.519-K/23) v. Inspector General of Police, Sindh & others
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._499_k_2023.pdf

Facts: Petitioners filed Civil Petitions for leave to appeal against order passed by the Sindh Service Tribunal maintaining departmental action against petitioners. The petitioners pursuant to a publication applied for a vacancy in Police department, after scrutiny and verifications appointed by the department. They were dismissed from service due to overage at the time of appointment after 4/6 years of service.

Issues: i) What is the effect of belated dismissal from service, obtained without any illegal or fake means, without affording opportunity for personal hearing and regular inquiry?
ii) What is the stage for age calculation of an applicant in recruitment process?
iii) What is the rationale behind a standardized assessment procedure of job applications, and impact of blunders in recruitment process?
iv) How and when the shortlisting and screening of candidates should be done?

Analysis: i) What we have perceived from the record is that the petitioners were not appointed through any illegal or fake recruitment process, rather there was an issue of being overage, which was intimated to them after about 4 to 6 years from the date of their induction in service and they have been made the victim of this overage issue without being intimated of any such defect at the time of applying for the job, and after serving 4 and 6 years in the Police Department, the drastic action of dismissal from service was taken without giving any opportunity of personal hearing and conducting enquiry. There is nothing on record with regards to the present petitioners which may show that the petitioners managed their appointment through some illegal means or committed any fraud. The distress of unemployment is rampant at a large scale in the society, therefore it necessitated the department's consideration of whether the petitioners' overage by 25 days and 62 days, respectively, and their submission of job applications in hopes of receiving age relaxation, was based on mala fide or bona fide intention.
ii) One more crucial aspect that needed to be examined by the department was the age of the petitioners at the time of submitting their job applications. Sometimes, the process of recruitment is delayed for an inordinate period due to which some candidates might have crossed the age at the time of appointment but they remained in the age bracket at the time of submitting job applications…….A commonsensical approach is to consider the date of birth of a candidate at the time of submitting the job application according to job qualifications mentioned

in the advertisement.

iii) Due diligence in human resource is an all-encompassing procedure for systematically assessing the qualifications and fitness of the candidates in the organization, so the recruitment process should ensure that the recruitment is based on truthful data and the applicant fulfils the criteria required for the post, including the credentials, verification of qualification, and relevant experience, if any. A standardized assessment procedure of job applications not only safeguards the fairness and objectivity but also relegates the menace of bias and discrimination in the appointment process. The blunders in the recruitment process always have negative and deleterious impact on any organization as a whole. It is a serious business, which cannot be achieved in a slipshod or perfunctory manner. By and large, the recruitment process is triggered through public announcement/advertisements in the vernacular newspapers along with all requisite details of vacant situations and required qualifications for the post or posts so that the interested candidates may apply to join the competitive process.

iv) The process of shortlisting or screening the job applications is not a unique idea but it is a very common process which is put into action by the administration department or human resource department of any organization in order to scrutinize each application diligently to satisfy whether the application fulfils all requisite qualifications or not. In case of any lapses, the applicant may be called upon to correct the omissions or defects and in case the application is not found commensurate to the terms and conditions mentioned in the advertisement for applying the job by the candidate, then it is better to reject it at the initial stage rather than camouflaging it or keeping it under wraps intentionally or unintentionally or due to some recklessness..... It is therefore essential that recruiters should verify the details of job applicants prior to making a job offer and the ideal approach is to undertake all verifications, screening, and requisite formalities before allowing the employee to commence work.

Conclusion: i) The drastic action of dismissal from service without giving any opportunity of personal hearing and conducting inquiry is too harsh, when no fraud, concealment or illegal practice at the part of candidate.

ii) The date of birth of a candidate at the time of submission of application is to be considered for calculating the age.

iii) The recruitment process should ensure that the recruitment is based on truthful data and the applicant fulfils the criteria required for the post, including the credentials, verification of qualification, and relevant experience, if any. The blunders in the recruitment process always have negative and deleterious impact on any organization as a whole.

iv) The scrutiny of applications and shortlisting of candidates must be done at the initial stage.

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18. **Supreme Court of Pakistan**
Mst. Mussarrat Shaheen v. Mst. Verbeena Khan Afroz and others
Civil Petition No.562-K of 2024
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._562_k_2024.pdf

Facts: Petitioner(tenant) called in question order passed by Hon'ble High Court of Sindh, whereby constitutional petition of respondent(landlady) was decide against her. The eviction application of landlady, on the basis of personal needs and default in payment of rent, was allowed by Rent Tribunal under section 15 of the Sindh Rented Premises Ordinance, 1979 but dismissed by first appellate court. The Hon'le High Court upheld the order of the Rent Tribunal setting aside the order of first appellate court.

Issues: i) Whether tenant can maintain occupancy of rented premises on the ground of initiation of a suit for declaration?
ii) Whether eviction claim of landlord on grounds of personal bona fide need and non-payment of rent, could be dismissed simply by challenging ownership of the property?

Analysis: i) A tenant cannot maintain occupancy of rented premises merely because he/she has initiated a suit for declaration. In instances where the tenant asserts ownership of the property, the legally mandated procedure requires the tenant to vacate the premises, pursue the civil suit, and, upon a favorable judgment by the competent court, regain possession of the property.
ii) When a landlord pursues eviction on the grounds of personal bona fide need and non-payment of rent, such a claim cannot be dismissed simply by challenging the ownership of the property. It is pertinent to consider that the substance of the landlord's claim regarding the legitimate need for the property and the alleged default in rent payment.

Conclusion: i) A tenant cannot maintain occupancy of rented premises merely because he/she has initiated a suit for declaration.
ii) Such a claim cannot be dismissed simply by challenging the ownership of the property.

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19. **Supreme Court of Pakistan**
Muhammad Ain-ul-Haq v. Abdul Ali and another
(Civil Petition No.662-K of 2024)
Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Aqeel Ahmad Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._662_k_2024.pdf

Facts: The order passed by the rent controller in execution proceedings was challenged by the petitioner before High Court through constitutional petition, contending therein that impugned order suffers from illegality and infirmity; that petitioner entered into an agreement for permanent tenancy and has paid premium and so, he

cannot be evicted. The said constitutional petition stood dismissed which was challenged before the Supreme Court.

Issue: Whether executing court or the High Court can address the grievances of the petitioner/ tenant pertaining to the issue that original eviction order passed by the Rent Controller was illegal?

Analysis: The Rent Controller as well as the High Court was duty bound to act solely in accordance with the law and to enforce the eviction order, without the latitude to scrutinize, question, or revisit the merits of original case.

Conclusion: Execution proceedings are confined to the implementation of judicial decisions and do not extend to an examination of the substantive issues that may have been previously adjudicated.

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20. **Lahore High Court**
Qaisar Abbas v. The State etc.
Crl. Appeal No.250896 of 2018 and Murder Reference No.371 of 2018.
Ms. Chief Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC4230.pdf

Facts: The appellant was accused of shooting victim during a dispute on the night of August 25/26, 2015, in District Gujrat. The victim later died from his injuries at Mayo Hospital, Lahore, leading to the registration of an FIR under Section 302 of the Pakistan Penal Code. The appellant was convicted and sentenced to death by the trial court. Hence; this appeal

Issues: i) What are parameters for accepting a dying declaration as valid evidence?
ii) What is serious infirmity that destroys the credibility of the eye witness's evidence?
iii) What is the principle regarding proof of motive in a criminal case by credible evidence?

Analysis: i) Under Article 46 of the Qanun-e-Shahadat Order, 1984, the sanctity of a dying declaration must be evaluated with great care and caution, and the evidence of a dying declaration must be appreciated with due diligence. A dying declaration is a question of fact that has to be determined by the facts of each case. A case must be considered in all its physical environment and circumstances to discover the truth or falsity of a dying declaration. The courts below have to be extremely careful when they deal with a dying declaration, as the maker is not available for cross-examination, which poses great difficulty to the accused person. A mechanical approach of relying upon a dying declaration just because it is there is extremely dangerous. The courts insist that the dying declaration should be of such nature as to inspire the full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not a result of either tutoring or prompting or a

product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Usually, therefore, the court looks up to the medical opinion to satisfy whether the deceased was in a fit mental condition to make the dying declaration.

ii) Besides being highly interested, all the prosecution witnesses have also made irreconcilable contradictions on material points, rendering their evidence incredible. With this background, the presence of the alleged eye- witnesses on the spot seems doubtful. This is a very serious infirmity that destroys the credibility of the witnesses' evidence. If the evidence of these witnesses is rejected as untrustworthy, nothing survives the prosecution case, and it would not be safe to rely upon such evidence.

iii) The motive set up by the prosecution in the Fard Bayyan (Ex. PP) and F.I.R. (Ex.PA) and deposed about it by Salma Bibi (PW-7) and Naveed (PW-11) have been found by us to have remained un-proved. The prosecution case in this regard was vague and could hardly inspire confidence. Salma Bibi (PW-7) deposed during cross-examination that: -

> **"---I did not get record in my statement before the police that any altercation was happened in between my brother Khuram Shahzad and accused Qaiser Abbas within the area of Sarokey---"**

Therefore, the evidence led by the prosecution in connection with motive is not sufficient for placing reliance on the testimonies of the witnesses for committing the occurrence. Motive is a double-edged weapon for the occurrence and for false implications. There are always different motives that operate in the mind of the person in making false accusation. In the circumstances, we cannot avoid the conclusion that the motive, as alleged, was an afterthought and has not been proved by any credible evidence.

Conclusion: i) The sanctity of a dying declaration must be evaluated with great care and caution, and the evidence of a dying declaration must be appreciated with due diligence.

ii) Evidence of interested witnesses with contradictions render the evidence of eye witness incredible.

iii) See analysis No.iii

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21. **Lahore High Court**
The State v. Muhammad Iqbal, Muhammad Iqbal v. The State, etc. and Muhammad Arshad v. Mukhtar Ahmed, etc.
Murder Reference No.185 of 2019, Crl. Appeal No.48876 of 2019, and Crl. Appeal No.44259 of 2019
Ms. Justice Aalia Neelum, The Chief Justice and Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC4246.pdf

Facts: In this case, Muhammad Iqbal and others were accused of killing Muhammad

Shafaat and his son, Muhammad Ijaz, over a land dispute. The prosecution alleged that the accused fired at the victims, causing their deaths. The trial court convicted Muhammad Iqbal, but the High Court acquitted him, raising doubts about the credibility of the evidence, delay in lodging of FIR, and discrepancies in witness testimonies.

Issues: i) Whether the delay in lodging the First Information Report (FIR) can cast doubt on the prosecution's version?
ii) Whether the delayed postmortem affects the credibility of the prosecution's case?
iii) Whether the recovery of weapons, if not properly linked to the crime, affects the outcome of the case?
iv) Does the failure to substantiate the motive create reasonable doubt regarding the veracity of the prosecution's case??
v) Whether the double presumption of innocence applies when the trial court acquits the accused?

Analysis: i) Delay in lodging the First Information Report often result in embellishment and exaggeration, a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, but the danger of introducing a coloured version of the incident or a concocted story as a result of deliberations and consultations also creeps in, casting serious doubt on its veracity.
ii) The delay in conducting a postmortem examination from the time of the commission of the offence renders the whole of the prosecution story doubtful.
iii) On perusal of the recovery memo (Ex. PP), it is found that appellant Muhammad Iqbal got recovered the 30-bore pistol and submitted that at the time of the incident, said 30-bore pistol was used by his son Moazzam (since P.O.)... The firearms and tool marks examination report (Ex. PEE) reveals that 44 caliber rifle was submitted on 25.08.2014 by Ashiq Ali 3629/C (PW-8), which matched with seven crime empties recovered from the spot. Thus, the positive report of the Firearms and Tool Marks Examination Report (Ex. PEE) becomes inconsequential."
iv) A concocted story about the motive appears to have been cooked up, and it cannot be believed only based on the complainant and prosecution witnesses' oral statements. As is evident from the above deposition, the prosecution has failed to prove the motive part of the occurrence, which is shrouded in mystery. Thus, the prosecution has failed to provide evidence of a clear motive. Motive is a doubt-edge weapon for the occurrence and false implication.
v) Even otherwise, when a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to their case. The acquittal order cannot be interfered with, whereby a charge earns double presumption of innocence.

Conclusion: i) The delay in lodging the First Information Report affects the credibility of prosecution claim.

ii) The delay in conducting postmortem renders the whole story of prosecution doubtful.
iii) See above analysis.
iv) Motive is a doubt-edge weapon for the occurrence and false implication.
v) The acquittal order cannot be interfered with, whereby a charge earns double presumption of innocence.

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22. **Lahore High Court**
Murder Reference No.399 of 2018
The State v. Irfan Haider
Crl. Appeal No.12708-J of 2019
Irfan Haider v. The State etc.
Ms.Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC4083.pdf

Facts: Appellant was convicted and sentenced to death for committing Qatl-e-Amd by the trial court. Murder reference was sent to High Court for confirmation of the conviction and sentence while the appellant assailed his conviction through criminal appeal.

Issues: i) What is the result of lodging delayed FIR?
ii) Which conclusion can be deduced from the unnatural conduct of the prosecution witnesses?
iii) What is the legal consequence of non-signing of Inquest Report by eye witnesses?
iv) What sort of conclusion can be derived from delayed postmortem?

Analysis: i) Delay in lodging the FIR often results in embellishment, a creature of an afterthought.
ii) If their conduct is unnatural, doubt is created about the prosecution case, and their oral evidence is not believable.
iii) The absence of these details in the inquest reports may indicate that the FIR was not registered and was recorded later after due deliberations and consultation.
iv) The delay in conducting the postmortem examination also leads to the conclusion that the FIR was recorded with the delay, and the FIR was not recorded when claimed to have been recorded.

Conclusion: i) Delayed lodging of FIR results in creation of afterthought.
ii) Unnatural conduct of prosecution witnesses makes their evidence unbelievable.
iii) Non-signing of inquest report by prosecution witnesses alludes to the fact that FIR was not registered and recorded later after due deliberations.
iv) Delay in postmortem leads to the conclusion that FIR was delayed and was not recorded as claimed.

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23. **Lahore High Court, Lahore**
Commissioner Inland Revenue Sialkot v. Air Sial Limited , Sialkot
Case No. ITR No.56081/2022
Mr. Justice Abid Aziz Sheikh, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4303.pdf

Facts: The respondent is a company deriving income from air transport services. Returns of incomes filed for tax years 2017 to 2020 were treated as deemed assessment orders ITR No.56081 of 2022 3 in terms of section 120(1) of the Ordinance. Later on, Additional Commissioner Inland Revenue (ADCIR) initiated proceeding under section 122(5A) of the Ordinance and passed order on 07.4.2021. The respondent being aggrieved filed appeal before Commissioner Inland Revenue (Appeals) (CIR-A) which confirmed the order of ADCIR on 13.7.2021. The respondent being aggrieved filed appeal before the Tribunal, which was partially allowed through impugned order, hence these reference applications**.**

Issues: i) Whether the Appellate Tribunal Inland Revenue erred in holding that profit on debt from surplus funds deposited in banks was income from business under sub-section (2) of Section 18 of the Income Tax Ordinance, 2001, despite the respondent taxpayer not being a banking or financial institution?
ii) Whether the Tribunal incorrectly interpreted sub-section (5) of Section 25 regarding pre-commencement expenditure?
iii) Whether the Tribunal erred in allowing the deduction of pre-commencement expenses from profit on debt, which is classified as income from other sources?

Analysis: i) Admittedly, the primary object and purpose of respondent company is to carry on and operate air transport service and not to derive any profit on debt as required under Section 18(2) of the Ordinance. No doubt, for the purpose to achieve said object the respondent company was authorized to invest surplus money of ITR No.56081 of 2022 7 the company in shares, stocks or securities of any company, debentures, debenture stocks or in any investments, short term and long term participation, term finance certificates or any other government or semi-government securities but respondent company is specifically not allowed to indulge in non-banking finance business, banking or an investment company or any such business. The respondent company was incorporated on 06.06.2016 though certificate of commencement of business was issued on 26.08.2016, however, admittedly, date of actual commencement of business is 20.12.2020 when first sales tax return was filed, hence, the profit in question accrued on surplus money from 2017 to 2020, is before the commencement of respondent company business.... whereas, section 39 of the Ordinance provides that income of every kind received by a person in a tax year, if not included in any other head, other than exempted from the tax under the Ordinance, shall be chargeable to tax in that year under the head “income from other sources” includes “profit on debt”.
ii) From plain reading of section 25(5) of the Ordinance, it is evident that pre-commencement expenditure means any expenditure incurred before the commencement of a business wholly and exclusively to derive income chargeable to tax, including the cost of feasibility studies, construction of prototypes, and

trial production activities but shall not include any expenditure which is incurred in acquiring land, or which is depreciated or amortized under section 22 or 24 of the Ordinance. The word "including" in section 25(5) of the Ordinance established that the cost of feasibility studies, construction of ITR No.56081 of 2022 14 prototypes, and trial production activities are not the only precommencement expenditure rather the said term is wide enough to include any expenditure incurred before the commencement of the business wholly and exclusively to derive income chargeable to tax... The narrow and restrictive meaning given by the Tribunal to "precommencement expenditure" under Section 25(5) of the Ordinance is not supported by law and therefore, we are of the considered view that the expenses are covered under the head of pre-commencement expenses under section 25(5) of the Ordinance as lawfully held by ADCIR and CIR-A.

iii) As profit on surplus fund amount to income from other sources and expenses are covered under the head of pre-commencement expenses under section 25(5) of the Ordinance as discussed above, the assessing officer had lawfully disallowed and amortized expenses against interest income under the relevant provision of the Ordinance.

Conclusion: i) The respondent company is primarily engaged in air transport services and not in banking or financial activities. Therefore, the income from profit on debt does not qualify as income from business under Section 18(2) but rather falls under income from other sources as per Section 39(1).

ii) The definition of pre-commencement expenditure in Section 25(5) is broad and includes any expenditure incurred to derive income chargeable to tax, not limited to feasibility studies or trial production activities. The Tribunal's restrictive interpretation was deemed incorrect.

iii) Since the profit on debt was classified as income from other sources, the expenses incurred were appropriately disallowed and amortized by the assessing officer, aligning with the provisions of the Ordinance.

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24. **Lahore High Court**
M/s Medequips v. The Commissioner Inland Revenue and 3 others
I.T.R. No. 53185-2024
Mr. Justice Abid Aziz Sheikh, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4277.pdf

Facts: The court is addressing two reference applications together through a single order issued by the Appellate Tribunal Inland Revenue in Lahore which were filed under Section 133(1) of the Income Tax Ordinance, 2001. The applicant is requesting the court to answer legal questions that arised from the Tribunal's decision.

Issues: i) What is the duty of the Judicial or Quasi-judicial forum?

ii) What questions are required to be answered in reference applications u/s 133(1) of the Income Tax Ordinance, 2001?

Analysis: i) The proposition of law is well settled that judicial or quasi-judicial forums should record reasons for their conclusions and decide the matters through speaking judgments and / or I.T.R. No. 53185-2024 I.T.R. No. 53180-2024 3 orders. This is to enable the aggrieved parties to set up their appeals, applications or petitions as well as enabling the higher Courts to exercise their jurisdiction properly and to appreciate the controversies in correct perspective.
ii) It is already settled that the questions required to be answered in reference-applications include questions argued before the learned Tribunal on which the finding has been given as well as the questions argued but no finding has been given on such question(s).

Conclusion: i) Should record reasons for their conclusion and decide the matters through speaking judgments.
ii) See analysis No. ii

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25. **Lahore High Court**
Saba Gul & 02 others v. Additional District Judge, Faisalabad & 02 others
W. P. No. 7340 / 2024
Mr. Justice Shams Mehmood Mirza, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC4177.pdf

Facts: The petitioners filed a suit for recovery of maintenance allowance and dowry articles, which was partially decreed by the Family Court. Both parties filed cross-appeals, and the matter reached the Hon'ble Supreme Court. During execution, a dispute arose over whether the 10% annual increase in maintenance should be calculated on a compound or non-compound basis, leading to the current petition.

Issues: i) Is the statutory annual increase of 10% in maintenance allowance, as mandated by Section 17-A(3) of the Family Courts Act, 1964, applicable on a compound or non-compound basis?
ii) Does Section 17-A(3) of the Family Courts Act apply to all pending cases after its promulgation?
iii) What is the intent behind the automatic annual increase in maintenance under Section 17-A(3)?
iv) Should Section 17-A(3) be interpreted liberally in favour of the beneficiaries (wife and children)?

Analysis: i) The expression "the maintenance fixed by the Court shall automatically stand increased at the rate of ten percent each year" ordinarily imply that quantum of maintenance fixed under a decree does not remain static or constant but is a variable figure which is meant to increase after each year. After increase of 10% at the end of first year, a new quantum of maintenance comes in field and the amount gets merged or amalgamated in the quantum of maintenance fixed by Court. The process is repeated after each year till the legal entitlement of wife or children under the decree. Therefore, annual increase of each year is required to be calculated on the merged amount of last preceding year for the reason that 10%

increase is intrinsically linked with the principal amount and is an inseparable part of the decree… Hence, it is concluded that when a decree of maintenance does not prescribe an annual increase or is silent qua calculation of prescribed annual enhancement on principal or aggregate amount of maintenance, Section 17-A(3) of the Act will come into operation and the Executing Court shall calculate the due decreed amount on compound basis."

ii) " Section 17-A(3) of the Act shall apply to all pending proceedings from the date of its promulgation.

iii) The compound calculation of maintenance not only caters for inflation and rising cost of living but also allows to account for growing needs and requirements of wife and children, thus, reducing the occasions to resort to Court seeking enhancement in maintenance allowance.

iv) Maintenance must be received by those held entitled to receive the same with dignity in terms of Article 14 of the Constitution. Even the non-discrimination clause embodied in Article 25 of the Constitution proclaiming equal protection of law for all citizens, creates a conscious and conspicuous exception by proclaiming that the State is not prevented from making any special provision for the protection of women and children. The directive Principles of Policy contained in Articles 34, 35 and 37 of the Constitution particularly call upon the State to ensure full participation of women in all spheres of national life; protect marriage, the family, the mother and the child; promote special care, educational and economic interests of backward classes; and ensure inexpensive and expeditious justice… Therefore, it is abundantly clear that Section 17-A(3) of the Act is a beneficial, remedial or curative provision which calls for liberal interpretation.

Conclusion: i) Annual increase of maintenance allowance is to be computed on compound basis.

ii), iii and iv. See above analysis.

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26. **Lahore High Court**
Asghar Ali v. Muhammad Asghar
Regular First Appeal No.28132 of 2023
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC4161.pdf

Facts: This appeal challenges a trial court judgment that partially awarded damages for malicious prosecution. The respondent, a lambardar, filed a suit alleging that the appellant, motivated by political rivalry, initiated a series of legal actions aimed at revoking the respondent's government-allocated land. These actions, including appeals and revision petitions, were claimed to be dishonest and malicious, causing the respondent significant financial loss, reputational damage, and emotional distress. The trial court found merit in part of the respondent's claim, prompting the appellant to file this appeal.

Issues: i) What are the conditions required for a claim of malicious prosecution?

ii) How malicious prosecution can be defined?

iii) What constitutes 'reasonable and probable cause' in a claim for malicious prosecution?
iv)What does 'Reasonable and Probable cause' connotes?
v) What is malice and how it is proved?
vi) What is the status of 'Charagah' land?

Analysis: i) In the case of "MUHAMMAD AKRAM versus FARMAN BIBI" (PLD 1990 Supreme Court 28), the august Supreme Court of Pakistan has laid down certain principles for the grant or refusal of damages on account of malicious prosecution. The first two of these conditions are required for the issue of maintainability whereas the remaining are to be proved for success and the said conditions must exist conjointly. These conditions are as under: -

(i) that the plaintiff was prosecuted by the defendant;
(ii) that the prosecution ended in plaintiff‟s favour;
(iii) that the defendant acted without reasonable and probable cause;
(iv) that the defendant was actuated by malice;
(v) that the proceedings had interfered with plaintiff‟s liberty and had also affected his reputation and finally
(vi) that the plaintiff had suffered damage.

ii) The term „malicious prosecution‟ is defined in the 11th Edition of Black‟s Law Dictionary in the following manner: -

"The institution of a criminal or civil proceeding for an improper purpose and without probable cause. The tort requires proof of four element‟s (1) the initiation or continuation of a lawsuit; (2) lack of probable cause for the lawsuits‟ initiation; (3) malice; and (4) favourable termination of the original lawsuit.

A judicial proceeding, instituted by one person against another from wrongful or improper motives, and without probable cause to sustain it. It is usually called a malicious prosecution; and an action for damages for being subjected to such a suit is called an action for malicious prosecution. In strictness, the prosecution might be malicious, that is, brought from lawful motives, although founded on good cause. But it is well established that unless want of probable cause and malice occur no damages are recoverable. However, blameworthy was the prosecutor‟s motives, he cannot be cast in damages if there was probable cause for the complaint he made. Hence, the term usually imports a causeless as well as an ill intended prosecution. It commonly, but not necessarily, means a prosecution on some charge of crime."

iii) The person who claimed for compensation on account of malicious prosecution must also establish the connection between the reasonable and probable cause and the malice. For the purposes of bringing a claim for malicious prosecution the requirements of "absence of reasonable and probable cause" and „malice‟ were separate requirements although they may be entwined. The proof of absence of „reasonable and probable cause‟ must co-exist alongside „malice‟. It is commonplace that in order to succeed in an action for malicious prosecution the plaintiff must prove both that the defendant was activated by malice and that he had no reasonable and probable cause for prosecution. It is also by now a

settled law that every prosecution/inquiry which ends in the clearing of opponent will not per-se entitle the opponent to file a suit for compensation. Successful proceedings initiated under this law required that the original proceedings must have been malicious and without cause.

iv) "Reasonable and Probable cause" means an honest belief in the guilt of the accused based on a full conviction founded upon reasonable grounds, of the existence of circumstances, which assuming them to be true, would reasonably lead any ordinary prudent man and cautious man placed in the position of the accuser to the conclusion that such person charged was probably guilty of the crime imputed.

v) In other words "Malice" means the presence of some improper and wrongful motive that is to say, some motive other than desire to bring to justice a person whom the prosecutor honestly believes to be guilty. (…) The existence of malicious itself is not sufficient to prove malicious prosecution but should be accompanied by proof of absence of reasonable and probable cause and the malice should be proved affirmatively.

vi) It is pertinent to mention here that from perusal of different Notifications issued by the Revenue hierarchy from time to time it is obvious that the „Charagah" lands have expressly been excluded from every grant, hence, its any alienation or grant of proprietary rights thereof are not inconsonance with the policy. Moreover, it is also an admitted fact that the „Charagah" land cannot be converted into state land for its onward allotment against any sort of claim and shall not be used for any other purpose except with the prior permission of the Board of Revenue. Change of character of the „Charagah" land was subservient to the manifestly described wider scope of public purpose.

Conclusion: i) See analysis No.i

ii) See analysis No.ii

iii) The claimant must demonstrate both the lack of reasonable and probable cause and the existence of malice, as these are separate yet closely connected legal elements.

iv) Reasonable and probable cause is a genuine belief in the accused's guilt, based on credible evidence that a reasonable person would find convincing.

v) Malice refers to an improper motive beyond a desire for justice, and must be proven alongside the absence of reasonable cause for a malicious prosecution claim.

vi) 'Charagah' lands are explicitly excluded from grants or ownership transfers and cannot be converted for allotment or other uses without prior approval from the Board of Revenue, as they are designated for public purposes.

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27. **Lahore High Court**
SAASA Corporation (Pvt) Limited v. M/s SEFAM Pvt Limited
R.F.A. No.8394 of 2023
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC4319.pdf

Facts: The parties entered into a contract for the supply and installation of an elevator, with a 50% advance payment made by the respondent, against which dispute arose between the parties and both parties filed suits, which were consolidated, and the trial court partially decreed in favor of M/s Sefam while dismissing Saasa's claims.

Issues: i. Whether the defendant has the right to cross-examine the witnesses of the plaintiff after consolidation of both suits?
ii. What is the legal effect of consolidating suits with similar parties and subject matter?
iii. Does failing to provide an opportunity for cross-examination violate fair trial rights?
iv. Can the court pass orders without hearing the other party, and what is its legal consequence?

Analysis: i) "After framing fresh consolidated issues it is mandatory under Order XVIII of CPC for the trial court to fix the case for cross examination upon the witnesses of the respondent/plaintiff/PWs but no fair opportunity was granted which is blatant violation of aforesaid provision of law."
ii) "It is well-settled by a long chain of authorities that the consolidation of the suits can be ordered by the Court in exercise of its inherent powers... The purpose of the consolidation is to avoid multiplicity of litigation to eliminate award of contradictory judgments and to prevent the abuse of the process of the Court."
iii) The compound calculation of maintenance not only caters for inflation and rising cost of living but also allows to account for growing needs and requirements of wife and children, thus, reducing the occasions to resort to Court seeking enhancement in maintenance allowance.
iii) Non-providing opportunity to cross examine the witnesses is violative of the principles of fair trial
iv) "It is settled principle of law that no one should be condemned unheard and if any adverse order is passed without affording an opportunity of hearing to the opponent party, such order is termed as illegal and passed in violation of the principle of ‘due process of law’ as enshrined in Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: i) After framing fresh consolidated issues it is mandatory to give clear opportunity for cross examination.
ii) The purpose of the consolidation is to avoid multiplicity of litigation to eliminate award of contradictory judgments and to prevent the abuse of the process of the Court.
iii) & iv) See above analysis.

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28. **Lahore High Court**
Amir Mahmood v. The State and another
Crl. Misc. No. 44858-B/2024
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC4209.pdf

Facts: The petitioner is applying for pre-arrest bail in an FIR concerning alleged regulatory violations in cosmetics manufacturing. During a facility inspection, a drug inspector found five medicated cosmetic products without valid manufacturing licenses. The products were confiscated, and samples were sent for testing, which revealed they were unregistered and contained allopathic ingredients. Consequently, the finished goods store was sealed, and the FIR was registered after receiving approval from the appropriate quality control authority.

Issues: i) What does the Drugs Act, 1976 regulate?
ii) What does Section 17 of ibid Act empower the government to do?
iii) What do Sections 18 and 19 of ibid Act cover for Inspectors?
iv) What does Clause (a) of Section 18(1) of the ibid Act allow Inspectors to do?
v) What authority does Clause (b) of Section 18(1) grant to Inspectors?
vi) What does Clause (f) of Section 18(1) allow Inspectors to seize?
vii) What authority does Clause (h) of Section 18(1) give to Inspectors?
viii) What was the purpose of the DRAP Act enacted in 2012?
ix) What do Sections 7 and 27 of the Act outline regarding the DRAP's powers and the associated offences?
x) What must Provincial Inspectors do if they find a contravention under Clause (6) of Schedule-V of DRAP Act?
xi) How does Section 29 of DRAP Act direct Inspectors to address offences?
xii) How do the Drugs Act and the DRAP Act define "drug" and "medicated cosmetics"?
xiii) What is the purpose of the Pakistan General Cosmetics Act, 2023?
xiv) How does Section 2(j) of the Pakistan General Cosmetics Act define "general cosmetic"?
xv) How does the legal framework differentiate between "medicated cosmetics" and "general cosmetics"?
xvi) What are the key types of partnerships in business law?
xvii) What is a Partnership of Skill and Capital?
xviii) How is profit-sharing determined in a Partnership of Skill and Capital?
xix) What is the definition of a partnership under the Partnership Act 1932 in Pakistan?
xx) What does "business" include in the context of a partnership?
xxi) How partnership relationship arises under Partnership Act?
xxii) What does Section 6 of Partnership Act state about determining the existence of a partnership?
xxiii) What are the consequences outlined in Section 27 for violations of Section 23(1)(a)(vii) of the Drugs Act?

xxiv) What is a key requirement for granting pre-arrest bail according to precedents?

Analysis: i) The Drugs Act is a special law that regulates the import, export, manufacture, storage, distribution, and sale of drugs.

ii) Section 17 of the Act empowers the Federal or Provincial Government to appoint qualified individuals as Federal or Provincial Inspectors within designated local limits to enforce the Act.

iii) Section 18 outlines the powers conferred upon these Inspectors, while section 19 details the procedures they must follow when seizing any drug or article under section 18.

iv) Clause (a) of section 18(1) of the Drugs Act authorizes the Inspector, with the permission of the licensing authority, to inspect any premises where drugs are manufactured (including the plant), the manufacturing process, the means used for standardizing and testing the drugs, and all relevant records and registers.

v) Clause (b) of section 18(1) empowers the Inspector to inspect any premises where drugs are sold, stocked, exhibited for sale, or distributed, along with the storage arrangements and all relevant records and registers.

vi) Clause (f) of section 18(1) allows the Inspector to seize any drug, materials used in its manufacture, and any other articles, such as registers, cash memos, invoices, and bills, which he has reason to believe may provide evidence of an offence punishable under the Drugs Act, or the rules made thereunder.

Vii) Clause (h) of section 18(1) grants the Inspector the authority to lock and seal any factory, laboratory, shop, building, storehouse, or godown, or any part thereof, where any drug is being manufactured, stored, sold, or exhibited for sale in violation of the said Act or the rules.

viii) In 2012, Parliament enacted the DRAP Act (XXI of 2012) to establish the Drug Regulatory Authority of Pakistan ("DRAP") 2 "to provide for effective coordination and enforcement of the Drugs Act and to bring harmony in inter-provincial trade and commerce of therapeutic goods, and to regulate, manufacture, import, export, storage, distribution, and sale of therapeutic goods."

ix) Section 7 of the Act describes the DRAP's powers and functions. Section 27(1) states that the offences shall be such as specified in Schedule-III, and section 27(2) provides that the prohibitions specified in Schedule-II shall be punishable in accordance with Schedule-III.

x) Schedule-V of the DRAP Act outlines the powers of Inspectors. Clause (6) of Schedule-V stipulates that the Provincial Inspector, upon finding any contravention of the DRAP Act or the Drugs Act, shall, unless otherwise directed by the Board, always refer the case to the Provincial Quality Control Board3 and seek orders regarding the action to be taken in response to such infringements.

xi) Section 29 states that the Inspector shall take cognizance of offences in the manner specified in Schedule-IV.

xii) The Drugs Act defines the term "drug" in section 3(g) and the DRAP Act in section 2(xii) read with Schedule-I. The DRAP Act separately defines "medicated

cosmetics" in Schedule-I. According to it, they include "cosmetics containing drugs and are defined as articles containing active drug ingredients intended to be rubbed, poured, sprinkled, or sprayed on, or introduced into, or otherwise applied to the human body or part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of any such articles; except that such term shall not include soap."

xiii) Parliament has also enacted the Pakistan General Cosmetics Act, 2023 (XLIII of 2023), to regulate the quality, standard, labeling, packing, manufacturing, storage, distribution, and sale of general cosmetics.

xiv) Section 2(j) of the Act defines "general cosmetic" to mean "any substance intended to be used to clean, improve or change of complexion of skin, hair, nails or teeth and include the beauty preparations for make-up, perfume, skin cream, skin lotion nail polish, nail paint, soap, shampoo, shaving cream, gel, sun care and deodorant also include any article intended for use as a component of general cosmetics or any other item declared by the [Pakistan General Cosmetics Regulatory] Authority for the purposes of this Act."

xv) Thus, the legal framework distinguishes between "medicated cosmetics" and "general cosmetics." The DRAP Act governs the former, while the latter falls under the Act of 2023. There is no overlap between these two categories.

xvi) In business law, a partnership is a formal arrangement between two or more individuals to operate a business and share its profits and liabilities. There are various types of partnerships, each defined by the partners' roles, responsibilities, and liabilities. When no fixed period is prescribed for the partnership's duration, it is considered a partnership at will. Conversely, when the partners establish a fixed duration for the partnership, it ends upon the expiration of that period. If the partners continue the partnership after the fixed period has expired, it transitions into a partnership at will.

xvii) A Partnership of Skill and Capital, also known as a Partnership of Labour and Capital, is a business arrangement where one partner provides the financial capital, and the other contributes skill or expertise to manage the business. This mutually beneficial structure allows each partner to contribute what they possess in abundance. The capitalist partner supplies the necessary funds but typically does not engage in daily operations, while the working partner manages the business using their skills and knowledge.

xviii) The profit-sharing arrangement is based on the contributions of both partners and is defined in the partnership agreement. Due to their financial risk, the capitalist partner usually receives a portion of the profits proportionate to their investment. On the other hand, the working partner earns their share based on the value of their expertise and labour. These terms vary, and the agreement can allocate profits in any way that reflects the contributions and roles of the partners. This type of partnership allows both parties to focus on their strengths: the capitalist providing financial backing and the working partner managing the business. The clear division of responsibilities often leads to more efficient operations.

xix) In Pakistan, partnerships are governed by the Partnership Act 1932 and, where it is silent, by the Contract Act 1872. Section 4 of the Partnership Act defines a "partnership" as "the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all." Consequently, a partnership must be formed to conduct a business, which must be legal.

xx) "Business" encompasses every trade, occupation, and profession6 and is not undertaken for personal pleasure. The essential feature of a partnership is the concept of mutual agency, where each partner acts as an agent for the others in business matters.

xxi) Section 5 of the Partnership Act stipulates that the partnership relationship arises from a contract, not status.

xxii) Section 6 provides that in determining whether a group constitutes a firm or whether an individual is a partner, the actual relationship between the parties must be evaluated based on all relevant facts. Explanation 1 clarifies that sharing profits or gross returns from jointly held property does not automatically establish a partnership. Explanation 2 further states that receiving a share of business profits or payments linked to profits does not make someone a partner by itself. In particular, the following payments do not create a partnership: (a) by a lender of money to persons engaged in or about to engage in any business, (b) by a servant or agent as remuneration, (c) by the widow or child of a deceased partner, as an annuity, or (d) by a previous owner or partowner of the business, as consideration for the sale of goodwill or a share thereof.

xxiii) Section 23(1)(a)(vii) of the Drugs Act prohibits any person from exporting, importing, manufacturing for sale, or selling any drug that is either unregistered or not in compliance with registration conditions. Section 27 prescribes punishment for such offences.

Conclusion: i) See analysis No.i.

ii) Allows the government to appoint qualified inspectors to enforce its provisions within specific areas.

iii) define the powers of inspectors and the procedures for seizing drugs or articles.

iv) this provision allows Inspectors to inspect drug manufacturing premises and related records for compliance.

v) The Inspectors inspect drug sales and storage premises for compliance.

vi) Seize drugs and related materials that may serve as evidence of violations.

vii) To lock and seal premises involved in the unlawful manufacture, storage, or sale of drug

viii) To coordinate and enforce drug regulations and facilitate inter-provincial trade of therapeutic goods.

ix) Both provisions define the DRAP's powers and specify the offences and penalties related to drug regulations.

x) To refer any contravention to the Provincial Quality Control Board for further action.
xi) The procedures for Inspectors to take cognizance of offences as specified in Schedule-IV.
xii) The Drugs Act and DRAP Act define "drug" and "medicated cosmetics," the latter including cosmetics with active drug ingredients for body application, excluding soap.
xiii)To regulates the quality, labeling, and sale of general cosmetics.
xiv) Any substance for cleaning or enhancing skin, hair, nails, or teeth, including various beauty products.
xv) separates "medicated cosmetics" and "general cosmetics," with each category governed by its respective regulations.
xvi) Partnerships can be classified as partnerships at will or fixed-duration, with the former continuing indefinitely and the latter ending after a set period unless renewed.
xvii) A Partnership of Skill and Capital involves one partner providing financial resources while the other contributes expertise, allowing each to leverage their strengths for mutual benefit.
xviii) Profit-sharing in a Partnership of Skill and Capital is based on each partner's contributions, promoting efficient operations through clear responsibilities.
xix) See analysis No.xix.
xx) See analysis No.xx.
xxi) From a contract, not status.
xxii) The actual relationship between parties must be evaluated to determine partnership status, clarifying that certain payments do not establish a partnership.
xxiii) Section 27 outlines penalties for breaching Section 23(1)(a)(vii), which prohibits dealing with unregistered drugs.
xxiv) The fear of arrest for ulterior motives is crucial for granting pre-arrest bail.

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29. **Lahore High Court**
M/S Z A Corporation v. Federation of Pakistan etc.
W.P.No.57829/2024
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC4073.pdf

Facts: The petitioner through the instant constitutional writ challenged the appointment of chairman of a Federal organization appointed at Islamabad.

Issues: i) When the writ jurisdiction of Hon'ble High Court could be invoked to question the authority of any person holding some office?
ii) What is the territorial jurisdiction of the Hon'ble High Court for the writ of Quo Warranto?
iii) Whether a person can perform functions beyond the place of his/her place of office?

Analysis: i) The High Court may if it is satisfied that there is no other adequate remedy

provided by law on the application of any person, make an order requiring the person within the territorial jurisdiction of the Court holding or purporting to hold public office to show under what authority of law, he claims to hold that office.
ii) The words "within the territorial jurisdiction of the Court holding or purporting to hold public office" would lead to the ineluctable conclusion that for the purpose of writ of quo warranto, a person against whom, constitutional petition has been filed, must be holding or purporting to hold public office within a territorial jurisdiction of that Court.
iii) A person may perform functions within the territorial jurisdiction of the Court, even if, he is not holding public office within the territorial jurisdiction of said Court, hence constitutional petition may be maintainable in said Court considering the dominant object for filing of writ petition, however, in case of writ of quo-warranto under Article 199(1)(b)(ii) of the Constitution, a person must hold or purported to hold public office within territorial jurisdiction of Court, where constitutional petition has been filed.

Conclusion: i) Where the Hon'ble High Court is satisfied that there is no other adequate remedy the Hon'ble High Court may issue a writ of Quo Warranto.
ii) The Hon'ble High Court may issue writ of Quo Warranto against a person holding or purported to hold public office within territorial jurisdiction of Court.
iii) A person may perform functions within the territorial jurisdiction of the Court, even if, he is not holding public office within the territorial jurisdiction of said Court.

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30. **Lahore High Court**
Riaz Ahmad etc. v. Secretary to Govt. of the Punjab etc.
F. A. O. No. 29323 of 2021
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC4104.pdf

Facts: The appellants/applicants moved before the Hon'ble High Court against dismissal of an application by learned District Court. They moved an application under section 11 of Punjab Waqf Properties Ordinance, 1979 with the averments that disputed land was "Patta Dawami" and is not a Waqf land as notified by Auqaf department.

Issues: i) What is effect of non-registration of lease upon its perpetuity or otherwise?
ii) How is the lease of an immovable property regulated; whether it could be in perpetuity?

Analysis: i) For ascertaining & adjudging this question if a particular lease is perpetuity or otherwise, the Hon'ble Supreme Court of F.A.O. No. 29323 of 2021 5 Pakistan in a case reported as Government of Sindh and others Vs Muhammad Shafi and others (PLD 2015 SC 380) held that:- ……

"After the enforcement of the two enactments referred to above, however, the question of determination of whether a lease is one in perpetuity or not stands

simplified. Section 17 of the Registration Act ibid mandates certain instruments to be compulsorily registerable and subsection (d) of section 17 provides in the list of such documents "a lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent." The effect of nonregistration of such instruments is provided by Section 49 of the Registration Act in the manner:

……

……

Similarly it is clear from Section 107 of TPA that a lease of any property beyond one year could only be effected by a registered instrument (note:-subject to the exemption qua other leases orally made coupled with delivery of possession). This is the express and unequivocal mandate of the law. It is settled principle of law that whether law requires an act to be done in a particular manner, it has to be done accordingly and not otherwise. At this point, we may also add that if an act is done in violation of law, the same shall have no legal value and sanctity, especially when the conditions/circumstances which may render such an act invalid have been expressly and positively specified in law (see section 49 ibid)……..."

ii) The lease of immovable property is defined under Section 105 of the Transfer of Property Act, 1882 which regulates and determines the relationship of lessor and lessee and unambiguously stipulates that lease of immovable property is a transfer of a right to enjoy such property, made for certain time, express or implied, or in perpetuity in consideration of price paid or promised and the transferor is called lessor, the transferee is called lessee, price is called the premium and money, share of crops, service or any other thing of value to be rendered periodically or on specified occasion to the transferor by the transferee. So, the essential features of lease are the transfer of interest to enjoy property with exclusive possession by the transferor to the transferee for certain time or in perpetuity for consideration of price paid or promised etc.

Conclusion: i) As per the analysis already made upon issue (i)
ii) As per the analysis already made upon issue (ii)

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31. **Lahore High Court**
M/s. Mehr Dastgir Leather and Footwear Industries (Pvt) Limited v. Federation of Pakistan through Secretary Ministry of Finance & others
W.P No.15793 of 2022
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC4061.pdf

Facts: The petitioner-company is contesting show cause notices issued by the tax department, despite the matter being previously resolved in their favor by higher courts. While the company had secured legal rulings supporting their tax refund claims, the department did not process the refunds. Following complaints, the department introduced new justifications, alleging the suppliers were blacklisted,

which contradicted prior court rulings. The petitioner contends that these new notices revisit issues already settled, making them both unjust and retaliatory.

Issues: i) What is 'condonation of time limit' under section 74 of the Sales Act, 1990?
ii) To whom power is vested to condone time limit?
iii) Where condonation of time limit applies?
iv) Whether provision of section 74 ibid Act is applicable to the action under section 11 of the ibid Act?
v) What are the checks upon the power of condonation of time limit?
vi) Whether any guidelines are provided under section 74 ibid Act for extending time limitation?
vii) Whether statutory limitation can be reversed?

Analysis: i) Section 74 provides that: "74. Condonation of time-limit.– Where any time or period has been specified under any of the provisions of the Act or rules made there under within which any application is to be made or any act or thing is to be done, the Board may, at any time before or after the expiry of such time or period, in any case or class of cases, permit such application to be made or such act or thing to be done within such time or period as it may consider appropriate. Provided that the Board may, by notification in the official Gazette, and subject to such limitations or conditions as may be specified therein, empower any Commissioner to exercise the powers under this section in any case or class of cases."

ii) The above provision grants power to the Board to permit an act or thing to be done within such period or time as it may be considered appropriate.

iii) This condonation applies where any time or period has been specified under any provision of the Act or rules within which any application is to be made or any of the act or thing is to be done. The condonation may under peculiar circumstances permit such act or thing to be done within an extended period of time.

iv) Quite clearly, this provision does not apply to an action being taken under section 11 (now repealed) which relates to assessment of tax and recovery of tax not levied or short levied or erroneously refunded.

v) From a reading of section 74 of the Act, it can be discerned that there have to be reasonable and rational grounds which should compel the Board to make an order in the nature of the one envisaged by section 74. It is not an automatic exercise of power or a request made by an officer of Inland Revenue. (…)It is not enough for FBR to simply condone the time limit and this must be supported by reasons and on the basis of documents which would show that there were circumstances beyond the control of officers of Inland Revenue at the relevant time which constrained them from taking action under the normal time limit.

vi) it has been held that no guidelines or parameters have been mentioned in section 74 of the Act and the least that FBR should do is to provide reasons for extending the limitation period.

vii) There cannot be unbridled reversal of statutory period of limitation as legal rights have come to accrue in the registered person.

Conclusion: i) See analysis No.i.
ii) Federal Board of Revenue (FBR).
iii) Extension granted under specific circumstances.
iv) Provision not applicable.
v) Section 74 requires reasonable grounds and supporting documents to justify time limit condonation, not merely a request or automatic approval.
vi) No guidelines provided but FBR required explicit reasoning.
vii) No unbridled reversal of statutory period of limitation.

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32. **Lahore High Court**
M/S 7Sky Digital Marketing Pvt. Limited v. M/S ASR Builders & another.
Civil Revision No.326 of 2024.
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC4069.pdf

Facts: This Civil Revision is against the order of the Trial Court by which two separate legal petitions of petitioner and respondent No.1 relating to the same core issue have been consolidated and court framed a single set of consolidated issues.

Issues: i) The Arbitration Law of pre-independence era and how it repeals.
ii) What is the purpose of The Arbitration Act, 1940?
iii) The role of Arbitration.
iv) How the court decide matter under the ibid 'Act'?
v) Whether the provisions of Civil Procedure Code (CPC) is applicable to the proceedings under the ibid 'Act'?

Analysis: i) It would not be out of context to mention here that before independence, there was no specific law on resolution of the disputes through arbitration and it was only invented in the first instance in British Rules through Indian Arbitration Act 1899. In the year 1940, for the first time, comprehensive and uniform law on the subject was introduced in the shape of "Act, 1940" by virtue of which, the previous law i.e. the Indian Arbitration Act, 1899 was repealed alongwith second schedule of the "CPC".
ii) The purpose of the "Act, 1940" was to provide a domestic tribunal for settlement of disputes by and between the parties and provide expeditious relief strictly unhampered by the rules or procedure laid down in the "CPC" and The Evidence Act, 1872, which is now Qanun-e-Shahadat Order 1984.
iii) The arbitration procedures are in fact consolatory in nature and the arbitrator is a person in whom the parties repose their confidence. In other words, the arbitration is one of alternate modes of resolution of the disputes interse the parties.
iv) There is no cavil that in terms of Section 33 of the "Act, 1940" any party to an arbitration agreement desiring to challenge the existence or validity of an

arbitration agreement or an award or to have the effect of either determined may apply to the court and the court shall decide the question on affidavit. The proviso to Section 33 of the "Act, 1940", however, ordains that where the court deems it just and expedient, it may set down the application for hearing and other evidence also, and it may pass such order for discovery and particulars as it may do in a suit.

v) Section 41 of the "Act, 1940" provides procedure and powers of the court and in terms of Sub-Section (a) of Section 41 of the "Act, 1940", the provisions of "CPC" are applicable to all the proceedings before the court under the "Act, 1940". Needless to mention that the applicability of the provisions of "CPC" are not meant to hamper the arbitration proceedings but for ensuring the advancement of ends of justice.

Conclusion: i) See analysis No.i.

ii) Provide a domestic tribunal for expeditious settlement of dispute free from constraint of CPC and QSO, 1984.

iii) Arbitration is a trusted alternative dispute resolution, fostering collaboration between parties.

iv) The parties may challenge the validity of arbitration agreements or awards in court, and the court shall decide on affidavit and may with the provision for a hearing, evidence and discovery if deemed necessary.

v) The provisions of CPC is to facilitate arbitration proceedings related while promoting the pursuit of justice.

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33. **Lahore High Court**
Mst. Misbah Iftikhar & another v. Mst. Aleesa and 3 others
Writ Petition No.1234 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC4133.pdf

Facts: Suit of respondent No 1 for recovery of dower etc. against respondents No 2 and 3 was partly decreed and respondent No1 was held entitled to recover a house as part of dower alongwith other reliefs. Feeling aggrieved respondents 2 and 3 preferred an appeal in which the decree to the extent of house was maintained by the Learned Appellate court thereafter respondent No1 filed an execution petition. The petitioners filed an application under section 12(2) of CPC before the Learned Appellate court claiming their ownership qua the suit property which application was dismissed; the same judgment was assailed by the petitioners.

Issues: i) What is the object of Family Court Act, 1964?

ii) Definition of Family Court and their Establishment.

iii) Can an Additional District Judge acting as an appellate court under the Family Courts Act of 1964 decide an application under Section 12(2) of the Code of Civil Procedure?

iv) Is fresh suit barred if a judgment or decree is obtained through fraud?

v) Interpretation of the term ‘person’ used in section 12(2) of the Code of Civil Procedure.
vi) Whether Concealments of facts amounts to fraud?
vii) Whether application under section 12(2) of Code of Civil Procedure could be moved before a Family Court?
viii) Whether issues should be framed in an application under section 12(2) of Code of Civil Procedure when fraud and misrepresentation is alleged?

Analysis: i) As per preamble of the "Act, 1964", it was enacted to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith.
ii) Section 2 deals with the definitions clause and it defined "Family Court" as under :-

"(b) "Family Court" means a Court constitute under this Act"

Section 3 of the "Act, 1964" mandates the Government of Punjab to establish Family Courts, which reads as under :-

"S. 3. Establishment of Family Courts.- (1) Government shall establish one or more Family Courts in each District or at such other place or places as it may deem necessary and appoint a Judge for each of such Court:
Provided that at least one Family Court in each District, shall be presided over by a woman Judge to be appointed within a period of six months or within such period as the Federal Government may, on the request of Provincial Government, extend;

(2) A woman Judge may be appointed for more than one District and in such cases the woman Judge may sit for the disposal of cases at such place or places in either District, as the Provincial Government may specify.

(3) Government shall, in consultation with the High Court, appoint as many woman Judges as may be necessary for the purposes of sub-section 1."

iii) It would not be out of context to mention here that a Family Court is a Civil Court in every aspect despite the exclusion of the provisions of the "C.P.C." with exception to Sections 10 & 11 and the Qanun-e-Shahadat Order, 1984 by virtue of Section 17 of the "Act, 1964". Though in terms of Rule 3 of the Family Courts Rules, 1965, the courts of the District Judge, the Additional District Judge are also designated as Family Courts alongwith the Civil Judge but ordinarily functions of Family Courts are assigned to the Civil Judge and the District Judge and the Additional District Judge acts as appellate court as is evident from the bare reading of Section 14 of the "Act, 1964".
iv) Prior to insertion of subsection (2) in section 12 of the "C.P.C." one has to

institute a suit for setting aside of a judgment, decree or order obtained by practicing fraud upon the court but with the introduction of subsection (2), fresh suit was barred.

v) By virtue of subsection (2) of Section 12 of the "C.P.C." any person can challenge the validity of judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction by filing an application to the court which passed the final judgment, decree or order. The term "person" used in subsection (2) has wider import and cannot be narrowly interpreted, so as to restrict it to refer to only a judgment debtor or his successors but it should be read to include any person adversely effected even though not a party to the proceedings wherein such decree, judgment or order is passed.

vi) The scope of Section 12(2) of "C.P.C." is not narrow but wider enough. It is not restricted to the judgment, decree or order obtained while playing fraud with the court but it also extends to the cases where a judgment, decree or order has been obtained by the parties through fraud interse by concealment of true facts.

vii) In the case of FOZIA MAZHAR versus ADDITIONAL DISTRICT JUDGE and 2 others (2021 CLC 270) in somewhat similar facts and circumstances this Court held as under :- "6. In view of the above, If for the sake of arguments this Court considers that application section 12(2) of the Code of Civil Procedure, 1908 was not maintainable due to non- applicability of C.P.C., even then the learned Judge Family Court in a case where as decree or order has been obtained through fraud, deceits, misrepresentation or on any of such grounds, the learned Judge Family Court can competently entertain such an application under the inherent jurisdiction, which is presumed and considered to be vesting in all Courts, Tribunals or authority of even limited jurisdiction, because it is a settled principle of law that fraud vitiates the most solemn proceedings even and the decrees, orders or the judgments obtained in pursuit of these intentions or actions are to be reviewed, reversed, recalled or upset. This rule is based on the principle that an authority if can do act or pass an order, judgment or decree, it can undo it also but with some exceptions also, if the authority has been defrauded in the passing of that act, order or judgment. In addition to the above, the general rule that power of review does not exist unless it is expressly conferred by law, has got two well-established exceptions i.e. (i) a court has inherent jurisdiction to set aside judgment or order which it had delivered without jurisdiction; (ii) a court or authority has the power to review an order or judgment obtained by fraud……''…… After having an overview of the principles laid down in the above cited judgments no cavil left to hold that despite an embargo in terms of Section 17 of the "Act, 1964" there is no legal impediment in the way of an aggrieved person moving an application under Section 12(2) of the "C.P.C." before the Family Court.

viii) Suffice to observe that though it is not a principle of universal application that in each and every case, the court is bound to frame the issues before

deciding the fate of an application under Section 12(2) of the "C.P.C." but where misrepresentation and fraud have been alleged and prima facie a case is made out, in such an eventuality said application should have not been dismissed summarily.

Conclusion: i) The main object is expeditious settlement and disposal of disputes relating to marriage and family affairs.
ii) See above analysis No ii.
iii) the Additional District Judge acts as appellate court as is evident from the bare reading of Section 14 of the "Act, 1964".
iv) Fresh suit is barred.
v) See above analysis No v.
vi) Scope of provisions of Section 12(2) of CPC includes decree or order obtained by the parties through fraud interse by concealment of true facts.
vii) There is no legal impediment in the way of an aggrieved person moving an application under Section 12(2) of the "C.P.C." before the Family Court.
viii) See above analysis No viii.

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34. **Lahore High Court**
Muhammad Naeem, Advocate etc. v. The Member (Judicial-II), BOR Punjab, Lahore etc.
Case No: Writ Petition No.59198 of 2024
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC4125.pdf

Facts: This case involves a challenge to the validity of an order dismissing a review petition related to two partition applications for joint land in a specific area. The proceedings were initially sine die adjourned due to a pending civil suit, leading to subsequent review applications that faced further adjournments. Additional Deputy Commissioner (Revenue) on application, directed timely decisions, but the Member Board of Revenue, Punjab dismissed appeal and Review application. Ultimately, prompting the filing of a writ petition to contest the latest decision by the Board of Revenue.

Issues: i) Which forum is competent to decided Question of Title after amendment in Section 141 of the Punjab Revenue Act,1967?
ii) Whether during pendency of the suit before Civil Court, the Revenue hierarchy has jurisdiction to adjudicate the matter pertaining to partition of Agricultural land?

Analysis: i) Section 141 of the Act ibid was substituted through the Punjab Land Revenue (Amendment) Act, 2015 with the following provision:
"**3. Amendment in Section 141 of Act XVII of 1967.—** In the said Act, for Section 141, the following shall be substituted

"141. Question of title of holding — If a question of title in the holding is raised in the partition proceedings, the Revenue Officer shall inquire into the substance of such question and decide the matter after hearing the parties."

Now after the aforesaid amendment in respect of the partition between the parties at the time of incorporation of inheritance mutation, if the parties/co- sharers are agreed for the scheme of private partition then the Revenue Officer shall affirm the scheme otherwise he shall immediately commence the proceedings of partition of the joint holding and complete the same within thirty days. If any question of title in the holding arises during the partition proceedings, the Revenue Officer under Section 141 of the Act ibid is fully competent to decide this issue after hearing the parties and the decision of Civil Court is not required in this regard.

ii) As far as this plea of the petitioners that civil suit is pending and during the pendency of the suit before the Civil Court, the revenue hierarchy has no jurisdiction to adjudicate the matter, suffice it to say that as per Section 141 of the Land Revenue Act, 1967 if a question of title in the holding is raised in the partition proceedings, the Revenue Officer shall inquire into the substance of such question and decide the matter after hearing the parties.

Conclusion: i) After the Punjab Land Revenue (Amendment) Act, 2015 The Revenue Officer under Section 141 of the Punjab Revenue Act,1967 is fully competent to decide the issue of title after hearing the parties and the decision of Civil Court is not required in this regard.

ii) During pendency of the suit before Civil Court, the Revenue hierarchy has jurisdiction to adjudicate the matter pertaining to partition of Agricultural land.

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35. **Lahore High Court**
Sadiq Poultry Farms (Private) Limited etc. v. First Habib Modaraba
Civil Original Suit No.06 of 2023.
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC4053.pdf

Facts: A suit was filed under Section 9 of the Financial Institution (Recovery of Finances) Ordinance, 2001, seeking multiple forms of relief, including the recovery of some amount plus interest due to defendant's breach of terms of the agreements. Defendant filed leave to defend and raised objection upon the maintainability of the suit on the basis of the territorial jurisdiction clause in the agreement, which was decided.

Issues: i) What is the prerequisite before taking cognizance or adjudicating upon an issue?

ii) Whether through a jurisdiction clause in an agreement, jurisdiction can be conferred to specific court with mutual consent of the parties at dispute?

iii) What are the key differences between exclusive and non-exclusive jurisdiction clauses in contracts?

iv) What is significance of a 'boiler plate clause' used in agreements/contracts?

Analysis: i) It is a well-entrenched and settled principle of law that before delving into matter in issue, a Court/Tribunal has to make sure that it has jurisdiction to ponder upon such issue.

ii) The Supreme Court of Pakistan in "EDEN BUILDERS (PVT.) LIMITED, LAHORE Versus MUHAMMAD ASLAM and others" (2022 SCMR 2044) (the "Eden Builders case") has held that the "parties cannot be restrained to enforce their right in an ordinary court of law but if by mutual agreement between the parties a particular court having territorial and pecuniary jurisdiction is selected for the determination of their dispute, there appears to be nothing wrong or illegal in it or opposed to public policy"… exclusive jurisdiction clauses enunciate a choice by parties to limit the place of institution of the suit to one forum. Jurisdiction clauses, therefore, relate as to which Courts would hear a dispute.

iii) The issue of exclusive jurisdiction for determination and enforcement of contractual rights and obligation has been discussed by learned Division Bench in "FAYSAL BANK LIMITED versus Messrs USMAN ENTERPRISES and another" (2023 CLD 1563), relevant portion thereof reads as" "There are two broad categories under forum selection clauses and this categorization is depending on the intention of the parties to a contract as expressed in the language of the forum selection clause. A contract may contain an exclusive jurisdiction clause or a non-exclusive jurisdiction clause. Traditionally, a clear cut distinction could be traced out in common law jurisdictions between an exclusive jurisdiction clause and a non-exclusive jurisdiction clause. Under a traditional exclusive jurisdiction clause the parties to a contract agree that disputes arising out of the contract will be decided exclusively by the court chosen by the parties while under a traditional non-exclusive jurisdiction clause parties to a contract agree that a particular court or courts will be having the jurisdiction to decide a matter pertaining to the contract however such a clause meant a preferable jurisdiction meaning thereby that jurisdiction of other courts was not ousted altogether.

7. In the modern contracts this clear cut traditional distinction between an exclusive jurisdiction clause and a non-exclusive jurisdiction clause has faded away with the passage of time due to multiple factors including increasing use and growing litigation in relation to such clauses, more sophistication in drafting contracts and a variation in interpretation of these clauses specially a nonexclusive jurisdiction clauses by court of different jurisdictions. This scenario has led to situations where sometimes a non-exclusive jurisdiction clause gives rise to same effects as that of an exclusive jurisdiction clause. In such a scenario the traditional distinction between these clauses seems to be an illusory one. Nevertheless, a distinction can be drawn and ascertained on the basis of the content and scope of the contractual bargain of the parties to a contract…."

iv) It is now a settled and recognized law in Pakistan, that all commercial and banking contracts/agreements contain a number of "boilerplate clauses", which are often seen as standard add-ons to the main terms and conditions of the contract. One such "boilerplate clause" relates to jurisdiction and choice of law,

and although these can be relatively straightforward when both parties are based in the same jurisdiction, they deserve proper consideration, particularly when the parties to the contract are based in different jurisdictions….Such clauses are drafted taking into account the common economic and geographic convenience of the parties.

Conclusion: i) Court/Tribunal has to make sure that it has jurisdiction.
ii) If by mutual agreement between the parties a particular court having territorial and pecuniary jurisdiction is selected for the determination of their dispute, there appears to be nothing wrong.
iii) See above analysis No iii.
iv) Boilerplate clauses, which are often seen as standard add-ons to the main terms and conditions of the contract deserve proper consideration.

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36. **Lahore High Court**
Majida Naz v. National Database and Registration Authority and 02 others
Case No. Writ Petition No.700 of 2021
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC10249.pdf

Facts: Through this writ petition under Article 199 of Constitution of Pakistan 1973, the petitioner has approached the High Court after refusal of NADRA to issue Pakistan Origin Card (POC) to her minor daughters.

Issues: i) What is citizenship by descent and whether the minors can claim Citizenship of Pakistan due to citizenship of any one of their parent?
ii) What should be preferred, in case of conflict between an Act and its rules?
iii) Parameters to exercise discretion by an authority.

Analysis: i) Provisions of section 5 (Pakistan Citizenship Act, 1951) are reproduced hereunder for the facility of ready reference: - "5. **Citizenship by descent**.- Subject to the provisions of section, a person born after the commencement of this Act, shall be a citizen of Pakistan by descent if his [parent] is a citizen of Pakistan at the time of his birth. Provided that if the [parent] of such person is a citizen of Pakistan by descent only, that person shall not be a citizen of Pakistan by virtue of this section unless- (a)that person's birth having occurred in a country outside Pakistan, the birth is registered at a Pakistan Consulate or Mission in that country, or where there is no Pakistan Consulate or Mission in that country [at the prescribed Consulate or Mission or] at a Pakistan Consulate or Mission in the country nearest to that country; or (b)that person's [parent] is, at the time of the birth, in the service of any Government in Pakistan". Bare reading of above suggests
ii) Any SOP or even rules framed under statute cannot go beyond the scope of Act. Reliance in this regard may safely be placed on case reported as "Suo Moto Case No.11 of 2011" (PLD 2014 Supreme Court 389), "Khawaja Ahmad Hassaan

v. Government of Punjab and others" (2005 SCMR 186), "Messrs. Mehraj Flour Mills and others v. Provincial Government and others" (2001 SCMR 1806) and "Muhammad Uneeb Ahmed v. Federation of Pakistan through Secretary, Ministry of Science and Technology, Islamabad and others" (2019 MLD 1347). In Mehraj Flour Mills case supra, it was held as under; "There is no cavil with the proposition that the rule shall always be consistent with the Act and no rule shall militate or render the provisions of Writ Petition No.700 of 2021 6 the Act ineffective. The test of consistency is whether the provisions of the act and that of rule can stand together. Main object of rule is to implement the provisions of the Act and in case of conflict between them the rule must give way to the provisions of the act. In any case, the rules shall not be repugnant to the enactment under which they are made".

iii) The provisions of section 24-A as inserted in General Clauses (Amendment) Act, 1997 contemplate that where, by or under any enactment a power to make any order or give any direction is conferred on any authority, office or person, such power shall be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment.

Conclusion: i) A person who is born after the commencement of the Act, shall be citizen of Pakistan if his parent is citizen of Pakistan at the time of his birth.
ii) The rules shall not be repugnant to the enactment under which they are made
iii) See above analysis No iii.

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37. **Lahore High Court**
SNGPL through G.M v. Muhammad Awais SDO Highway
Writ Petition No.2284 of 2024
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4220.pdf

Facts: The petitioner department filed this writ petition against the order passed by the learned Additional District Judge/Judge Gas Utility Court directing petitioner to restore gas supply of respondent subject to payment of restoration fee.

Issues: i) Whether section 29 of the Gas (Theft Control and Recovery) Act, 2016 bars the jurisdiction of Gas Utility Court to issue injunction?
ii) The bar contained u/s 29 of the Act of 2016, when attracted?
iii) When and how Gas Utility Court could exercise Inherent Jurisdiction u/s 151 of CPC?
iv) Whether an allottee of Government residence is successor-in-interest for recovery of gas utility arrears?
v) Whether it is a valid excuse for non-compliance of an order that the same is against the law?
vi) Whether intentional and continuous non-compliance of court orders under self-assumption of illegality, attracts the initiation of contempt proceedings?

Analysis: i) If a plaintiff, applicant or appellant as the case may be, deposits a sum due so assessed against him by Gas Utility Company with the Gas Utility Court within a period of thirty days at the time of filing of suit, application or appeal, the Gas Utility Court may pass an order either prohibiting or requiring Gas Utility Company from disconnecting or restoring the supply of gas to plaintiff/applicant or appellant.

ii) Bar so contained in section 29 of the 2016 Act, thus would be attracted where plaintiff/applicant/appellant fails to deposit the sum so assessed against him by Gas Utility Company with the Gas Utility Court.

iii) Gas Utility Court may conveniently invoke its inherent jurisdiction and powers as granted by Section 151 of the CPC, in light of Section 5 of the 2016 Act, which stipulates that, subject to the provisions of the Act, Gas Utility Court in the exercise of its jurisdiction shall have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908. It may therefore be resolved conveniently that where no sum due has been assessed by Gas Utility Company against a plaintiff, the Gas Utility Court despite the bar contained in section 29 of the Act, still has got inherent powers in view of section 151 of the CPC which mandates that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the Court.

iv) Undeniably, the house that has been allotted to respondent is a Government owned premises and respondent can also not be considered as successor-in-interest as defined under clause 'n' of sub-section 1 of section 2 of the 2016 Act, whereby while defining the term successor-in-interest it has been specifically mentioned that the term successor-in-interest would not include a person who occupies such premises merely as a tenant. Admittedly, no sum due as defined under clause 'o' of sub-section 1 to section 2 of the 2016 Act has ever been assessed against the respondent as the respondent has not so far purchased or received gas for self-consumption.

v) This stance, on the face of it, is misconceived rather contumacious. When an injunctive order directing the petitioner to restore the supply of gas has been passed by the trial court, the same must have been obeyed by the petitioner so long as the order remains intact……it would hardly allow the petitioner to make itself a judge of the validity of the order passed against it, and by his own act of disobedience to consider the same as illegal. Such tendency or practice, if allowed to be prevailed, will weaken the public confidence on the integrity of courts while administering the cause of justice. Whether an order is right or wrong, it is duty of the parties to obey the order or get the same set aside by the higher court. If a party to a proceeding considers that the court while passing an injunctive order has committed an error in the understanding of law applicable, or in its application, he can only resort to the remedy available to him in accordance with law. Non-compliance of injunctive order by a party on the basis of self-serving assumption that the same has been passed erroneously, would tend to the subversion of orderly administration of civil Government…….The obedience

that has to be given to the orders of the Court, can hardly be made dependent on parties' opinion as to their propriety.

vi) Intentional and continuous non-compliance of the order of court by the petitioner on the basis of self-assumed opinion that the order has been passed in derogation of provisions of law, would hardly justify inaction on the part of petitioner qua the compliance of injunction order passed by the trial court. Such conduct would rather be legitimately considered as contumacious in the first place exposing the petitioner to the initiation of contempt proceedings which as per learned counsel for the respondent have been initiated before the learned trial court and the same are still to be adjudicated upon by the learned trial court, and at the same time such conduct of the petitioner disentitles the petitioner to the equitable and discretionary relief under Article 199 of the Constitution particularly where impugned order passed by trial court has been held to be passed in accordance with law. Therefore, no indulgence can be shown to the petitioner owing to his contumacious conduct that can hardly be condoned as extraordinary constitutional jurisdiction of this Court falls within the realm of equitable and discretionary jurisdiction.

Conclusion: i) The bar contained in section 29 of the Gas (Theft Control and Recovery) Act, 2016 does not restrict the power of the Gas Utility Court to issue injunctions.

ii) Such bar would be attracted only when the plaintiff default in deposit of the sum assessed against him by the court.

iii) See above analysis at no. (iii).

iv) An allottee of Govt. residence is not a successor-in-interest in terms of the Gas Act, 2016.

v) It is not a valid excuse for non-compliance of any order that the same is against the law, it has to be complied with unless remedy available to him in accordance with the law is availed.

vi) Such conduct would rather be legitimately considered as contumacious in the first place exposing the petitioner to the initiation of contempt proceedings.

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38. **Lahore High Court**
Muhammad Zareen v. Learned Addl: Sessions Judge, etc.
Crl. Misc.No.3303-M of 2024
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4274.pdf

Facts: Brother filed an application for Exhumation of the dead body of his sister as he had suspicion quo administering poison to her, which application was accepted. The same order was assailed by the petitioner through a revision petition which was dismissed; feeling aggrieved, the petitioner assailed both the orders.

Issues: i) Exhumation and Post Mortem as tools to unearth real cause of death.

ii) Does disinterment of a buried body justify to determine the cause of death, despite concerns of disrespect to the sanctity of grave?

Analysis: i) Guidance has been sought from the case reported as "Ameer Afzal Baig v. Ahsan Ullah Baig and others" **(2006 SCMR 1468),** wherein it was observed that the legal heir had a right to get the suspicion removed, more particularly, when exhumation by itself could never lead to involvement of someone unless postmortem is conducted and report is positive. It may further be observed that exhumation and thereafter post-mortem examination merely are the tools to unearth the real cause of death of deceased.
ii) In order to uncover the fact as to whether one met natural or unnatural death particularly where a doubt has been created in the mind of real brother of the deceased, it is rather more sacred and necessary for the sake of justice justifying disinterment of the dead body. Mere fact that dead body had already been buried and its exhumation may cause disrespect to the dead body, in no way be counted as a good and valid ground to deny the request of disinterment particularly where disinterment is necessary to advance the cause of justice.

Conclusion: i) Exhumation and thereafter post-mortem examination merely are the tools to unearth the real cause of death of deceased.
ii) Mere fact exhumation may cause disrespect to the dead body, in not a valid ground to deny the request of disinterment.

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39. **Lahore High Court**
Mst. Razia Begum v. Public at Large, etc.
(Civil Revision No.44347 of 2023)
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC4198.pdf

Facts: Petitioner**,** being the mother of deceased/ insurance policy holder, filed an application for issuance of succession certificate which was dismissed by the trial court while directing the Insurance Corporation to pay the entire amount to the nominee/ widow of deceased policy holder. Feeling aggrieved, petitioner filed an appeal which was also dismissed. So, the petitioner challenged decisions of both the courts below by filing civil revision u/sec. 115 CPC.

Issue: (i) Whether the proceeds of Insurance Policy are to be treated as ''Tarka''?
(ii) Whether the nominee can exclude all the legal heirs of the deceased insured person and the nomination itself operates as a gift or will?
(iii) Whether the status of the nominee is only to collect the policy proceeds and distribute the same amongst the legal heirs?

Analysis: (i) Section 72 of the Insurance Ordinance, 2000 authorizes and empowers the policy holder to nominate a person or persons to whom the money secured by the policy shall be paid in the event of his death, but this provision of law does not exclude the legal heirs to inherit the assets, including the policy proceed of the deceased according to the principle of Muhammadan Law, because the reason is that there is a constitutional guarantee enunciated in the Constitution of the Islamic Republic of Pakistan, 1973, that no law can be made which is contrary to the injunctions of Quran and Sunnah.

(ii) It is nowhere mentioned that after the death of nominee the amount would be disbursed amongst the legal heirs or legal representatives of the nominee. Hence, it clarifies that the nomination shall not operate as a gift or will because had the nomination been a gift or will, then after the death of the nominee the amount would devolve on the heirs of nominee rather than the heirs of policy holder.
(iii) It is an established principle of law that a nominee, if appointed, does not become the sole owner of the assets left by the deceased but he/she is only authorized to collect the amount or to hold the property of the deceased as an administrator and then to distribute the same amongst all the legal heirs. The nomination does not make the nominee as donee nor the nomination amounts to a gift, in the absence delivery of possession of the property gifted.

Conclusion: (i) The proceeds of Insurance Policy falls within the ambit of ''Tarka''.
(ii) Nomination itself does not operate as Gift or Will and so, the nominee cannot exclude legal heirs of the deceased.
(iii) The status of the nominee is only to collect the policy proceeds and distribute the same amongst the legal heirs.

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40. **Lahore High court**
Atif Munawar v. Additional District judge, etc.
W.P.No.10130/2024
Mr. Justice Anwar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC4099.pdf

Facts: The petitioner filed an ejectment petition under the Punjab Rented Premises Act, on the basis of a written tenancy, on the grounds of default in payment of monthly rent, subletting, and damage to the rented premises. Leave to appear and contest the ejectment petition ("PLA") was filed by the respondent wherein he took the plea that he is not a defaulter. Special Judge (Rent) declined the PLA on the ground that rent has not been paid in accordance with the terms and conditions of the tenancy agreement which was to be paid through bank account of the petitioner. An appeal was preferred by the respondent under Section 28 of the Act, which was accepted on the ground that the tenancy was valid till 31.01.2027 and allegations of sub-letting as well as damage to rented premises require recording of evidence, therefore, he is entitled to leave to defend hence, this constitutional petition.

Issue: Whether a tenant, who fails to deposit the rent, in accordance with the terms and conditions of the tenancy agreement, is entitled to the acceptance of PLA in order to establish that he is not a defaulter?

Analysis: i) Once the respondent admitted that he has not paid the monthly rent in accordance with the terms and conditions of the tenancy agreement, there was no room for allowing the PLA of the respondent enabling him to lead evidence after framing of issue qua default or other grounds of eviction…a

court cannot allow a party to deviate from the terms and conditions of the contract, rather, it is a duty of the Court to intervene where enforcement of an agreement between the parties is required. It is also not permissible for the Courts to excuse any of the parties from the consequence of the contract that they have freely and voluntarily accepted, even if they are shown to be onerous or oppressive.

Conclusion: i) See above analysis No. i

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41. **Lahore High Court**
M/s K&N's Foods (Pvt.) Ltd. v. Federation of Pakistan, etc.
Writ Petition No.43578 of 2024
Mr. Justice RAHEEL KAMRAN
https://sys.lhc.gov.pk/appjudgments/2024LHC4192.pdf

Facts: The case involves two companies which were granted tax exemption certificates for supplying goods without payment of tax. However, these exemptions were proposed to be revoked through notices issued by the Commissioner Inland Revenue in Lahore, due to legal amendments that allowed for reduced tax rates. Eventually, the exemption certificates were revoked, and the companies were instructed to apply for new certificates with a reduced tax rate. Hence; this petition.

Issues: i) What is subsection (4) of section 153 of the Income Tax Ordinance, 2001 before substitution?
ii) What is amended subsection (4) of section 153 of ibid Ordinance?
iii) How the amendment was introduced in subsection (4) of ibid Ordinance?
iv) Have there any restriction on legislative power to enact civil laws with retrospective effect?
v) What does 'retrospective effect' connotes?
vi) What is the effect of laws on substantive rights and obligations?
vii) What are the two rules for courts to avoid retrospective laws affecting vested rights or past transactions?
viii) What is the effect of amendment vide Finance Act, 2024?

Analysis: i) Prior to substitution through Finance Act, 2024, sub-section (4) of section 153 of the Ordinance was as under: - "(4) The Commissioner may, on application made by the recipient of a payment referred to in sub-section (1) and after making such inquiry as the Commissioner thinks fit, may allow in cases where tax deductible under sub-section (1) is [not minimum], by an order in writing , any person to make the payment,-- (a) without deduction of tax; or (b) deduction of tax at a reduced rate Provided that the Commissioner shall issue certificate for payment under clause (a) of sub-section (1) without deduction of tax within fifteen days of filing of application to a [company] if advance tax liability has been discharged: Provided further that the Commissioner shall be deemed to have issued the exemption certificate upon the expiry of fifteen days to the aforesaid

company and the certificate shall be automatically processed and issued by Iris: Provided also that the Commissioner may modify or cancel the certificate issued automatically by Iris on the basis of reasons to be recorded in writing after providing an opportunity of being heard."

ii) The amended sub-section (4) reads as follows: - "(4) The Commissioner may, on application made by the recipient of a payment referred to in sub-section (1) and after making such inquiry as the Commissioner thinks fit, may allow in cases where tax deductible under sub-section (1) is not minimum, by an order in writing , any person to make the payment after deduction of tax at reduced rate but such reduction shall not exceed eighty percent of the rate specified in the said Division: Provided that the Commissioner shall issue reduced rate certificate within fifteen days of filing of application to a company if advance tax liability has been discharged: Provided further that the Commissioner shall be deemed to have issued the reduced rate certificate upon the expiry of fifteen 5 W.P No.43578 of 2024 W.P No.49585 of 2024 days to the aforesaid company and the certificate shall be automatically processed and issued by Iris: Provided also that the Commissioner may modify or cancel the certificate issued automatically by Iris on the basis of reasons to be recorded in writing after providing an opportunity of being heard."

iii) The aforementioned amendment was introduced through the Finance Act, 2024 published in the Gazette of Pakistan on 30.06.2024 which was to come into force from 01.07.2024.

iv) No doubt there is no restriction on the legislative powers to enact civil laws with retrospective effect. A legislature that is competent to make a law on a particular subject also has the power to legislate such a law with retrospective effect and can, by legislative authorization, even take away vested rights.

v) Hence, when a legislature gives retrospective effect to a law, either by express provision or by necessary implication, no protection can be afforded to vested rights contrary to that law. Similarly, when a legislature enacts a law with retrospective effect, the person affected cannot plead the imposition of a previously non-existent civil obligation as a ground for declaring the law invalid.

vi) However, every statute that relates to substantive rights and obligations should be deemed prospective unless, by express provision or necessary implication, it has been given retrospective effect.

vii) By now it is well settled that the Courts must lean against giving a statute retrospective effect that affects vested rights and/or past and closed transactions by adhering to two rules: first, if two interpretations are reasonably possible, the one that saves vested rights and/or past and closed transactions should be adopted; and second, no statute should be construed to have retrospective effect to a greater extent than its language necessarily requires.

viii) The Finance Act, 2024 through which the amendment in question is introduced has been made effective from 01.07.2024. There is no provision of the Finance Act, 2024 that expressly or by necessary implication gives any retrospective effect or application to the amended section 153(4) of the

Ordinance. (…)The amendment introduced through the Finance Act, 2024 is applicable on all exemption certificates issued after its effective date i.e. 01.07.2024.

Conclusion: i) See analysis No.i
ii) See analysis No.ii
iii) Through the Finance Act, 2024 published in the Gazette of Pakistan on 30.06.2024.
iv) No restriction on legislature to enact retrospective laws, including the taking away of vested rights.
v) When a legislature enacts a law with retrospective effect, vested rights cannot be protected, and affected individuals cannot challenge the law based on previously non-existent obligations.
vi) Every law concerning substantive rights is presumed to be prospective unless explicitly made retrospective.
vii) Courts lean interpretations that protect vested rights and past transactions unless a statute clearly mandates retrospective effect.
viii) No retrospective effect.

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42. **Lahore High Court**
Faisalabad Electric Supply Company Ltd. v.
The Chairman Punjab Revenue Authority, etc.
W.P. No. 48782 of 2024
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC4283.pdf

Facts: Petitioner/Faisalabad Electric Supply Company Ltd. had challenged order of Appellate Tribunal, Punjab Revenue Authority through writ petition. The respondent had directed the petitioner to deposit one third (1/3rd) of the disputed amount of withholding tax within 30 days.

Issues: (i). Whether writ petition is maintainable against interim order of Appellate Tribunal hearing appeal under section 67 of the Punjab Sales Tax on Services Act, 2012?
(ii) Whether Appellate Tribunal can order deposit of one third of disputed amount u/s 68 of the Punjab Sales Tax on Services Act, 2012?

Analysis: i) As regards the other objection qua maintainability of the writ petition against an interlocutory order, suffice it to observe that there is no absolute bar on entertaining a petition under Article 199 of the Constitution against an order which is interlocutory in nature, if the same is *corum non judice* or without jurisdiction. Indeed, such constitutional jurisdiction is equitable and discretionary in nature which should sparingly be exercised to interfere whenever an interim order is challenged. Such judicial policy is meant to curtail delays, piecemeal and fractured litigation at various fora at the same time. However, in exceptional circumstances, such as cases involving a flagrant violation of law, a clear

wrongful exercise of jurisdiction or a manifest and grave injustice, intervention of this Court in interlocutory orders may be warranted on application of an aggrieved person where the law applicable provides no other remedy.

(ii) Section 68 of the Act governs deposit of the tax determined while appeal is pending. That provision postulates that the person who has filed appeal is required, pending the appeal, to deposit the admitted amount of tax based on the return filed under section 35 or as may be determined by the Commissioner (Appeals) or the Appellate Tribunal where such return has not been filed. In other words, authority of the Appellate Tribunal to grant stay against recovery of the total amount of tax is curtailed or restricted by the requirements to deposit, during pendency of the appeal, the admitted amount of tax or the amount determined by the Commissioner (Appeals) and the Appellate Tribunal. The above restrictions or limitations specified in section 68 ibid are not similar to sub-sections (5) & (6) of section 67A of the Act that mandate the tax to be paid in accordance with the order of the Appellate Tribunal assailed therein during pendency of the Tax Reference and apply for refund if the tax liability is ultimately reduced by the High Court or until the decision by the Supreme Court. However, while an appeal is pending before it under section 67 of the Act, an Appellate Tribunal is empowered under section 68 ibid to compel deposit of only such amount of tax demanded under the Act which falls within the following three categories:

i) the admitted amount of the tax based on the return filed under section 35 of the Act
ii) the amount of tax determined by the Commissioner (Appeals)
iii) the amount of tax determined by the Appellate Tribunal.

... However, on literal construction of section 68 ibid, the requirement to compel deposit of the amount of tax determined by the Commissioner (Appeals) pose a number of problems: firstly, such construction would render redundant the authority of Appellate Tribunal under section 67(3) of the Act to stay recovery of the tax pursuant to the order being appealed against; secondly, if such amount of tax is compelled to be deposited at the stage of pendency of appeal before the Appellate Tribunal, it may also render the provision of sub-section (5) of section 67A of the Act superfluous; thirdly, the requirement of deposit of tax in such manner before determination of liability by the first extra-departmental/independent forum i.e. the Appellate Tribunal may be treated as unreasonable restriction on the right of access to justice and fair trial right embodied in Article 10A of the Constitution; and finally, determination of the tax amount by the Commissioner (Appeals) cannot ordinarily be equated with the determination made by the Appellate Tribunal, therefore, to that extent literal construction of section 68 of the Act would render it *ex facie* discriminatory as the discrimination in such a case ensues from the lack of classification and similar treatment extended to dissimilarly or differently placed appellants. At the same time, redundancy cannot be attributed to the legislative expression in section 68 ibid qua deposit tax pursuant to determination made by the Commissioner (Appeals).

Conclusion: (i) If any order is passed by the Appellate Tribunal in flagrant violation of law, in the absence of an alternate remedy, the same may be assailed by an aggrieved party in constitutional jurisdiction under Article 199.
(ii) Section 68 of the Act is construed narrowly and read down to the extent of condition qua deposit of the amount of tax determined by the Commissioner (Appeals) in the manner that recovery of only such amount of tax shall be compelled as has been determined on the basis of judicial precedent(s) of this Court or the Supreme Court of Pakistan settling the controversy raised.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No. 25/Legis./II.D-4(V); Amendment was made in the High Court Rules and Orders, Volume-IV sub-rule (ii) of Rule-5, Part-B of Chapter-12

SELECTED ARTICLES

1. CAMBRIDGE LAW JOURNAL
https://www.cambridge.org/core/journals/cambridge-law-journal/article/trans-parenthood-in-the-uk-the-unanswered-questions-of-the-mcconnell-litigation/1488B48B44A31EF8D2EBB07B457BB309

Trans Parenthood in The Uk: The "Unanswered Questions" of the Mcconnell Litigation By Peter Dunne And Alan Brown

This article considers three "unanswered questions" raised by R. (McConnell) v Registrar General for England and Wales (AIRE Centre Intervening) [2020] EWCA Civ. 559, which held that a trans man (with a Gender Recognition Certificate) who gave birth must be registered as "mother" on his child's birth certificate. This article considers these questions to clearly situate McConnell within the context of the UK's legal regimes concerning access to fertility treatment, gender recognition and legal parenthood in cases involving assisted reproduction. The article argues that clearly establishing the current legal position will provide the proper context to facilitate any subsequent legal reforms.

2. CAMBRIDGE LAW JOURNAL
https://www.cambridge.org/core/journals/cambridge-law-journal/article/from-discretion-to-expert-judgement-recasting-sedimented-concepts-in-administrative-law/5D33C6599C971E1B6750F67BC71BF953

From Discretion To Expert Judgement: Recasting Sedimented Concepts In Administrative Law By Samuel Ruiz-Tagle

This article re-examines the traditional account of administrative decision-making under wide conferrals of statutory power. The received wisdom in such cases is that public officials exercise "discretion", usually defined as freedom of choice. Based on a doctrinal

study of the English planning system and related case law, this paper contends that the notion of discretion as choice obscures one of the defining characteristics of modern government. That is, the making of public decisions tackling practical problems with intelligent and expert judgment under legal standards set out in legislation and further developed by the courts. More widely, the paper discusses the foundational role of tacit knowledge and decision-making expertise in public administration.

3. **CAMBRIDGE LAW JOURNAL**
https://www.cambridge.org/core/journals/cambridge-law-journal/article/artificial-intelligence-the-rule-of-law-and-public-administration-the-case-of-taxation/CF6FDEE4F7620A567DE56DBDA71BCD3B

Artificial Intelligence, The Rule Of Law And Public Administration: The Case Of Taxation By Stephen Daly

It is now a cliché to highlight that whilst artificial intelligence (AI) provides many opportunities, it also presents myriad risks to established norms. Amongst the norms considered in the literature, the Rule of Law unsurprisingly features. But the analyses of the Rule of Law are narrow. AI has the capacity to augment as well as to undermine fidelity to the ideal of the Rule of Law. Rather than viewing AI only as a threat to important norms, this article's core argument is that AI should also be presented as an opportunity to meet their demands. It uses the Rule of Law in tax administration to support this argument.

4. **CAMBRIDGE LAW JOURNAL**
https://www.cambridge.org/core/journals/cambridge-law-journal/article/legal-persons-and-the-right-to-privacy/C98CE419E681D6A570E897BF129B8907

Legal Persons And The Right To Privacy By Eric Descheemaeker

This article examines what the state of the law regarding the tortious protection of the privacy of corporations tells us about the concept of a legal person. Given that non-human persons are capable of having an interest in at least their informational privacy, logic would seem to dictate that they should be recognised such a right protecting their personality. In reality, the law is most hesitant to concede the right to privacy to non-natural persons (the same being true of reputation). This suggests that, for the dominant strand of the law at least, despite the rhetoric, legal persons do not really have rights of personality; in other words, that they are not really persons.

5. **NATIONAL LAW REVIEW**
https://natlawreview.com/article/human-resources-role-data-privacy-and-cybersecurity-part-ii-assessing-five-key

Human Resources' Role in Data Privacy and Cyber security, Part II: Assessing Five Key Areas of Risk by: Erin Schachter, Mercedes M. de la Rosa of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Navigating employee data privacy and risk management is a vital function of HR. By assessing these key areas—developing a solid framework, ensuring employee understanding, monitoring data flows, comprehending internal requirements, and addressing critical employee life cycle moments—HR professionals can better safeguard both employee data and the organization as a whole. Fostering a culture of privacy and accountability can help maintain employee trust and the integrity of the organization.
