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FORTNIGHTLY CASE LAW BULLETIN
(16-03-2023 to 31-03-2023)
A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles
Prepared & Published by the Research Centre Lahore High Court

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1. Supreme Court of Pakistan
Saadat Khan & others v. Shahid-ur-Rehman & others
Civil Petition No.262-P of 2017
Mr. Justice Umar Ata Bandial, Mr. Justice Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._262_p_2017.pdf

Facts: The petitioners sought leave to appeal against a judgment of the Peshawar High Court, whereby the High Court had upheld, in revision, the judgment of the appellate court non-suiting the petitioners on the issue of limitation.

Issues: (i) Whether limitation does not apply where a person seeks to enforce his right of inheritance in the estate of his deceased predecessor?
(ii) When does the right of a person to sue for declaration of right of inheritance in the estate of his deceased predecessor accrues?
(iii) Whether the criterion for determination of actual denial of right as to joint property is different in cases of co-sharers as compared to strangers?
(iv) Whether mere omission by brothers to pay a share of the profits or produce of the joint property to their sisters amounts to actual denial of rights of the sisters?
(v) Whether a fraudulent sale, gift or mutation of shares of sisters in joint property by brothers amounts to actual denial of rights of sisters hence giving rise to compulsory cause of action?
(vi) When would limitation starts to run in case sisters are deprived of their shares in joint property through fraud by brothers?
(vii) Whether the benefit of section 18 of the Limitation Act, 1908 is available against any person who is a transferee in good faith and for valuable consideration?

Analysis: (i) In view of the provisions of the residuary Article 120 of Schedule-I to the Limitation Act 1908, there can hardly be any suit to which the bar of limitation does not apply. As per the said Article a suit for which no period of limitation is provided elsewhere in the Schedule, the period of limitation for that suit is six years from the time when the right to sue accrues. No specific Article of Schedule-I to the Limitation Act provides a period of limitation for a suit instituted by a person, under Section 42 of the Specific Relief Act 1877, for declaration of his ownership rights to any property against a person denying his said rights; therefore, the residuary Article 120 applies to such suit. A suit instituted by a female legal heir for declaration of her ownership rights as to the property left by her deceased father in his inheritance, against her brother who denies her rights is thus governed by the provisions of Article 120. To decide whether such a suit is barred by limitation, the six-year period of limitation provided by Article 120 is to be counted from the time when the right to sue for declaration accrues as provided therein.
(ii) The question, when the right to sue for declaration has accrued in a case, depends upon the facts and circumstances of that case, as it accrues when the

defendant denies (actually) or is interested to deny (threatens) the rights of the plaintiff as per Section 42 of the Specific relief Act 1877. The actual denial of rights gives rise to a compulsory cause of action and obligates the plaintiff to institute the suit for declaration of his rights, if he wants to do so, within the prescribed period of limitation; while in case of a threatened denial of rights, it is the option of the plaintiff to institute such a suit on a particular threat. On the actual denial of rights, the cause of action and the consequent right to sue matures for instituting the suit for declaration; whereas every threatened denial of rights gives rise to a fresh cause of action, and thus a fresh right to sue accrues on such a denial.

(iii) Because of the special characteristics of their relationship, the criterion for determining the actual denial of a co-sharer's rights as to joint property by the other co-sharer is different from the one that is applied between strangers. Co-sharers have a relationship of trust and support for each other. Possession of joint property with one co-sharer is considered to be for and on behalf of all the co-sharers. A co-sharer who is not in actual possession is considered to be in constructive possession of the joint property. Each co-sharer protects the joint property against trespassers for the benefit of all the co-sharers. Even if one co-sharer acquires possession of some portion of the joint property in consequence of legal proceedings initiated by him against a trespasser, he is deemed to be in possession of that portion of the joint property, on behalf of all the co-sharers. Against this backdrop, the actual denial of a co-sharer's rights as to joint property by the other co-sharer is not to be readily inferred. Actual denial of a co-sharer's rights by the other co-sharer may occur when the latter does something explicit in denial of the former's rights. A mere oral negation, even made several times, of each other's rights by the co-sharers on different disputes as to the use and sharing of the profits of the joint property, but without doing any overt act to oust a co-sharer from the ownership of the joint property, cannot be treated as an actual denial of the rights and thus does not necessitate to sue for declaration of ownership rights.

(iv) Mere omission to pay a share of the profits or produce of the joint property to their sisters by the brothers in possession of the joint property does not in itself constitute a repudiation of the sisters' rights, nor does a wrong entry as to the inheritance rights in the revenue record oust the sisters from their ownership of the joint property as the devolution of the ownership of the property on legal heirs of a person takes place under the Islamic law of inheritance immediately on the death of that person without any intervention of anyone and without the sanction of the inheritance mutation in the revenue record.

(v) The position is, however, different when the brothers in possession of the joint property make a fraudulent sale or gift deed or get sanctioned some mutation, whether of sale or gift etc., in the revenue record claiming that their sisters have transferred their share in the joint property to them, or when they on the basis of a wrong inheritance mutation start selling out or otherwise disposing of the joint property claiming them to be the exclusive owners thereof. In such

circumstances, the brothers by their overt act expressly repudiate the rights of their sisters in the joint property, and oust them from the ownership of the joint property. Their acts are, therefore, a clear and actual denial of the rights of the sisters, which give rise to a compulsory cause of action and obligates the sisters to institute the suit for declaration of their rights, if they want to do so, within the prescribed period of limitation.

(vi) Although, by the said acts of the brothers, the right accrues to the sisters to sue for declaration of their rights, but if they by means of fraud are kept from the knowledge of those overt acts, the time limit of six years provided in Article 120 for instituting the suit for declaration against brothers or any person claiming through them otherwise than in good faith and for a valuable consideration, is to be computed from the time when the fraud of the brothers first became known to the sisters, by virtue of the provisions of Section 18 of the Limitation Act. The "fraud" contemplated by Section 18 means suppression of those acts or transactions that give rise to the cause of action from coming into the knowledge of the plaintiff. A deliberate concealment of facts intended to prevent discovery of the right to sue is also a "fraud" within the meaning of the term used in this Section, but an open act of a party cannot be said to be a fraudulent act of concealment and is therefore not covered by this Section.

(vii) The benefit of Section 18 is, however, not available against any person who though claims through the defrauding party but is a transferee in good faith and for a valuable consideration. That is why this Court has treated differently the two types of cases: (i) where the joint property is still in possession of the defrauding brothers or their legal heirs; and (ii) where the joint property has been alienated further to third persons- the transferees in good faith and for a valuable consideration.

Conclusion: (i) Limitation does apply where a person seeks to enforce his right of inheritance in the estate of his deceased predecessor.

(ii) The right of a person to sue for declaration of right of inheritance in the estate of his deceased predecessor accrues when the defendant denies (actually) or is interested to deny (threatens) such rights of the plaintiff.

(iii) The criterion for determination of actual denial of right as to joint property is different in cases of co-sharers as compared to strangers.

(iv) Mere omission by brothers to pay a share of the profits or produce of the joint property to their sisters does not amount to actual denial of rights of the sisters.

(v) A fraudulent sale, gift or mutation of shares of sisters in joint property by brothers amounts to actual denial of rights of sisters hence giving rise to compulsory cause of action.

(vi) In case sisters are deprived of their shares in joint property through fraud by brothers then limitation will be computed from the time when the fraud of the brothers first became known to the sisters.

(vii) The benefit of section 18 of the Limitation Act, 1908 is not available against any person who is a transferee in good faith and for valuable consideration.

2. **Supreme Court of Pakistan**
Federation of Pakistan through Secretary Establishment Division, Islamabad etc. v. Misri Ladhani and others
Civil Appeals No. 21 & 22 of 2022
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._21_2021.pdf

Facts: These Civil Appeals with leave of the Court are directed against the judgment passed by learned High Court of Sindh, whereby the learned High Court vide impugned judgment directed the competent authority to notify the proforma promotion of the respondent No.1 in BS-21 with effect from the date on which the CSB recommended his case for promotion in BS-21 with all ancillary benefits.

Issues: i) Whether the competent authority is bound to approve the promotion of an officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made?
ii) Whether the officer or official, who expires or superannuates after the recommendations of CSB or DPC and before issuing of the notification, shall stand exempted from assumption of the charge of the higher post?
iii) Whether the competent authority has power or jurisdiction to approve, remand or reject the recommendations of CSB or DPC?

Analysis: i) The concept of promotion is provided under Section 9 of the Civil Servants Act, 1973, which prescribes that a civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post. In Sub-Section (3), it is clearly provided that promotions to the posts in BPS-20 and BPS-21 and equivalent shall be made on the recommendations of the Selection Board, which shall be headed by the Chairman, Federal Public Service Commission. According to Sub-Clause (b) of Rule 2 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, (APT Rules, 1973) Central Selection Board (CSB) means a Board constituted by the Federal Government for the purposes of selection for promotion or transfer to a post in BPS-18 in the District Management Group, Police Group and posts in BPS-19 to 21 and equivalent, consisting of such persons, as may be appointed by the Federal Government from time to time. It is further provided in Rule 7 of the APT Rules, 1973 that promotions and transfers to posts in BPS-2 to BPS-18 and equivalent shall be made on the recommendations of appropriate Departmental Promotion Committee ("DPC") and promotions and transfers to posts in BPS-19 to BPS-21 and equivalent shall be made on the recommendation of the Selection Board. At this juncture, Rule 7 (a) is also very significant, which explicates that the competent authority may approve the promotion of an officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made. According to Rule 7 of the APT Rules, 1973, the competent authority may approve the promotion of an

officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made but nowhere is it said that the competent authority is by all means bound to accept the recommendations of CSB or DPC.

ii) It is further provided in Sub-Rule (2) that notwithstanding anything in FR-17, the officer or official, who expires or superannuates after the recommendations of CSB or DPC and before issuing of the notification, shall stand exempted from assumption of the charge of the higher post. The principal appointing officer or an officer so authorized will give a certificate to the effect that the officer or official has expired or superannuated. Moreover, Rule 8 further expounds that only such person as possesses the qualification and meet the conditions laid down for the purpose of promotion or transfer to a post, shall be considered by the DPC or the Selection Board, as the case may be.

iii) It is lucidly provided under Rule 5 of the Civil Servants Promotion (BPS-18 to BPS 21) Rules, 2019 that the recommendation made by the Central Section Board, Departmental Selection Board or Departmental Promotion Committee shall have no effect unless approved by the appointing authority concerned with further condition specifically in sub-rule 3 that appointing authority shall have powers to approve or reject or remand back the recommendations of the Central Section Board, Departmental Selection Board or Departmental Promotion Committee, whereas in sub-rule (4) it is further provided that in case of rejection or remanding back any recommendation, the competent authority shall record reasons for doing so.

Conclusion: i) According to Rule 7 of the APT Rules, 1973 the competent authority is not bound to approve the promotion of an officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made.

ii) Yes, according to Rule 7(2) of APT Rules, 1973, the officer or official, who expires or superannuates after the recommendations of CSB or DPC and before issuing of the notification, shall stand exempted from assumption of the charge of the higher post.

iii) Yes, under Rule 5 of the Civil Servants Promotion (BPS-18 to BPS 21) Rules, 2019 the competent authority has the power or jurisdiction to approve, remand or reject the recommendations of CSB or DPC.

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3. Supreme Court of Pakistan
Jind Wadda and others v. General Manager
NHA (LM & IS), Islamabad and others.
Civil Appeal No.700 of 2014
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._700_2014.pdf

Facts: Through the instant appeal filed under Section 54 of the Land Acquisition Act,

1894 read with Article 185 of the Constitution of the Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment of the Peshawar High Court whereby their RFA was dismissed.

Issues: Whether it is incumbent upon land-owners to produce independent, trustworthy and credible evidence for their claim qua enhancement of the compensation?

Analysis: When appellants have failed to produce any independent, trustworthy and credible evidence for their claim qua enhancement of the compensation. The burden of proof in such cases is 'incumbent' upon land-owners.

Conclusion: Yes, it is incumbent upon land-owners to produce independent, trustworthy and credible evidence for their claim qua enhancement of the compensation.

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4. **Supreme Court of Pakistan**
Suo Moto Case No. 4 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Amin-ud-Din Khan, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/s.m.c._4_2022.pdf

Facts: The Suo Moto was taken regarding grant of Additional 20 Marks to Hafiz-e-Quran while admission in RIBBS/ BDS Degree under Regulation 9 (9) of the MBBS and BDS (Admissions, House Job and Internship) Regulations, 2018.

Issues: i) Whether PEMRA's complete prohibition to criticize judges offends the constitution, law, morality, and Islam?
ii) Whether the Chairman of PEMRA, alone, does constitute PEMRA?
iii) Whether institutions which are funded by the public can be referred to as state institutions?
iv) Whether the Constitution or the Supreme Court Rules, 1980 grant to the Chief Justice (or to the Registrar) the power to make special benches?
(v)Whether the Supreme Court Rules, 1980 provide how to attend Suo Motu cases?
(vi) Whether collective determination by the Chief Justice and the Judges of the Supreme Court can be assumed by only the Chief Justice?

Analysis: i) The Judiciary would be flawed if it is not open to constructive criticism. The Judiciary exists to serve the people and should embrace observations, opinions, and critique as it also serves as a check on its own functioning. The people's feedback also helps identify shortcomings, which can thereafter be addressed. Constructive criticism serves the interest of the Judiciary as it helps improve its performance. The relationship between the litigant, who is the service-user, and the Judiciary, which is the service-provider, should be collaborative, with the common goal of improving the service. Forbidding criticism neither serves the interest of the people nor of the Judiciary. Islam does not prohibit the criticism of Judges. Believers must speak the truth. Prophet Muhammad (peace and blessings

be upon him) taught that the highest form of jihad (struggle) is to speak up against an oppressor, and if despite seeing wrongdoing people do nothing, then they too will be punished. Judges adjudicate, and at times hold others to account. Therefore, it would be constitutionally, legally, morally, and religiously indefensible to absolve Judges from accountability. Prescribing something for others but not abiding by it oneself is most offensive to Almighty Allah and He castigates hypocrites. PEMRA's complete prohibition to criticize Judges offends the Constitution, law, morality, and Islam.

ii) The Chairman of PEMRA, alone, does not constitute PEMRA. The law which established and governs PEMRA states that, 'All orders, determinations and decisions of the Authority [PEMRA] shall be taken in writing and shall identify the determination of the Chairman and each member separatel y.' PEMRA comprises of the 'Chairman and twelve members'. However, the Prohibition Order does not disclose if the members had any say in the matter, let alone whether a meeting of the members took place, how many attended it and their determinations. This lack of disclosure by a statutory-regulatory body is of concern.

iii) State institutions are neither mentioned in the Constitution nor in PEMRA's law. Institutions which are funded by the public may be referred to as public institutions, acknowledging the public's ownership, and that they serve the public. When the phrase public institution is substituted with state institution, it is not inconsequential phraseology; as the public's ownership of the institution is severed and renders it unaccountable.

iv) Neither the Constitution nor the Rules grant to the Chief Justice (or to the Registrar) the power to make special benches, select Judges who will be on these benches and decide the cases which they will hear. There is also no additional, incidental, ancillary, or residual power with the Chief Justice which could be used to do this. Yet, unfortunately, this is being done, and sometimes with grave repercussions. When benches are tailored and Judges of a particular understanding or inclination are placed together to hear a particular case, then doubts, suspicion, and misgivings arise. A decision from an adjudicatory process, which is perceived to be structured to obtain a particular decision, invariably results in severe criticism. The matter assumes criticality when objections taken on the constitution of Special Benches, and requests made for hearing by the Full Court, are not attended to, and no order disposing of such objections and requests is passed.

v) With regard to article 184(3) of the Constitution there are three categories of cases. Firstly, when a formal application seeking enforcement of Fundamental Rights is filed. Secondly, when (suo mot-u) notice is taken by the Supreme Court or its Judges. And, thirdly cases of immense constitutional importance and significance (which may also be those in the first and second category). Order XXV of the Rules only attends to the first category of cases. There is no procedure prescribed for the second and third category of cases. The situation is exacerbated as there is no appeal against a decision under Article 184(3) of the

Constitution. The Rules also do not provide how to attend to the following matters: (a) how such cases be listed for hearing, (b) how bench/benches to hear such cases be constituted and (c) how Judges hearing them are selected.
vi) The Supreme Court is empowered to make makes rules attending to the aforesaid matters. The Supreme Court comprises of the Chief Justice and all Judges." The Constitution does not grant to the Chief Justice unilateral and arbitrary power to decide the above matters. With respect, the Chief Justice cannot substitute his personal wisdom with that of the Constitution, Collective determination by the Chief Justice and the Judges of the Supreme Court can also not be assumed by an individual, albeit the Chief Justice.

Conclusion: i) PEMRA's complete prohibition to criticize judges offends the constitution, law, morality, and Islam.
ii) The Chairman of PEMRA, alone, does not constitute PEMRA.
iii) Institutions which are funded by the public cannot be referred to as state institutions.
iv) The Constitution or the Supreme Court Rules, 1980 do not grant to the Chief Justice (or to the Registrar) the power to make special benches.
(v) The Supreme Court Rules, 1980 do not provide how to attend Suo Motu cases.
(vi) Collective determination by the Chief Justice and the Judges of the Supreme Court cannot be assumed by only the Chief Justice.

Dissenting Note By Mr. Justice Shahid Waheed

Issues: i) What types of orders a Court ordinarily pass during the proceeding of any case?
ii) Whether the Hon'ble Chief Justice is empowered to constitute a bench, special or regular?
iii) If any Judge of the Bench constituted by the Hon'ble Chief Justice has any objection, what would be the proper course for him?
iv) Whether a court should try any question and also pass order thereon which is not directly and substantially in issue in a case pending before it?
v) Whether any member of a Bench, after having accepted the administrative order of the Hon'ble Chief Justice, is estopped to question the constitution of the Bench?

Analysis: i) Be it noted that during the proceeding of any case, a Court ordinarily passes three types of orders, the first type of order is that of regulatory nature whereby the proceedings of the case are regulated, managed, or controlled. The second type of order relates to a formal decision of a Court about a claim or dispute, and this may be called adjudicatory order. While the third type is regulatory cum adjudicatory order and it not only contains a formal expression of any decision of a Court on a particular issue but also a direction for further progress of the case.
ii) The first point to be examined is whether the objection to the constitution of this Bench could be brought under consideration in this case. I think it cannot for two reasons. One, a Bench, special or regular, is constituted by an administrative

order of the Hon'ble Chief Justice, and as such, the present Bench in conformity with the principle settled in Suo Moto Case No.4 of 2021 (PLD 2022 SC 306), has been lawfully constituted to hear this case. It is to be noted that judgment in the Suo Moto Case No.4 of 2021 is of a Five-Member Bench and thus, takes precedence over all precedents of this Court regarding the power of the Hon'ble Chief Justice to constitute any kind of Benches. It appears that for this reason neither the Attorney General for Pakistan nor the PMDC's lawyer had any objection to the constitution of this Bench. Given these circumstances, in my humble view, none of the Judges of this Bench can object to the constitution of the Bench, and if they do so, their status immediately becomes that of the complainant, and consequently, it would not be appropriate for them to hear this case and pass any kind of order thereon.

iii) Forbye, judicial propriety requires that if any Judge of the Bench has any objection, the proper course for him is either to recuse himself from the Bench or to refer the matter to the Hon'ble Chief Justice with the concurrence of other Judges of the Bench, so that the case is assigned to some other Bench.

iv) I hold the view that no Court should try any question and also pass order thereon which is not directly and substantially in issue in a case pending before it. In the case at hands, the matter in issue is whether the memorization of the Holy Quran is a relevant criteria for the determination of the candidates for an MBBS or BDS degree. Indubitably, the above-stated second question is not related to the issue involved in this case, and thus, it cannot be brought under debate, nor can any conclusion be drawn thereon.

v) The administrative order of the Hon'ble Chief Justice regarding the constitution of the Bench becomes fait accompli when a Judge in compliance thereof starts hearing the case. Hence, any Member of this Bench, after having accepted the administrative order of the Hon'ble Chief Justice, is estopped to question the constitution of the Bench on the well known doctrine of estoppel.

Conclusion: i) During the proceeding of any case, a Court ordinarily passes three types of orders i.e. regulatory nature, adjudicatory order, and regulatory cum adjudicatory order.

ii) The Hon'ble Chief Justice is empowered to constitute a bench, special or regular.

iii) If any Judge of the Bench constituted by the Hon'ble Chief Justice has any objection, the proper course for him is either to recuse himself from the Bench or to refer the matter to the Hon'ble Chief Justice with the concurrence of other Judges of the Bench, so that the case is assigned to some other Bench.

iv) No court should try any question and also pass order thereon which is not directly and substantially in issue in a case pending before it.

v) Any member of a Bench, after having accepted the administrative order of the Hon'ble Chief Justice, is estopped to question the constitution of the Bench.

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5. **Supreme Court of Pakistan**
Muhammad Rafiq v. Mst. Ghulam Zoharan Mai & another
Civil Appeal No. 2613 of 2016
Mr. Justice Qazi Faez Isa, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2613_2016.pdf

Facts: The appellant has filed civil appeal against order of Lahore High Court passed in Civil Revision which was allowed in favour of respondents, who through suit before trial court challenged the gift in favour of appellant.

Issues: i) Whether mere production of photocopy of register maintained by the sub-registrar is sufficient to prove the gift deed?
ii) Whether revenue authority can change the revenue record regarding entry of gift transaction merely on the basis of photocopy of register maintained by the sub-registrar which is not even registered gift deed?
iii) Whether a party who challenges the gift transaction is under obligation to implead revenue authority or produce/summon the officer/official as witness?

Analysis: i) Primary evidence of the gift deed would be the gift deed itself, but if it is not produced, a certified copy of the gift deed can be produced as secondary evidence. The sub-registrar or any officer/official from his office can be produced/summoned by the beneficiary to testify that the photocopy which was produced was a true/certified copy from the said register. But mere production of photocopy of register maintained by the sub-registrar is not sufficient to prove the claim of gift…
ii) If the revenue authority changes the revenue record regarding entry of gift transaction on the basis of photocopy of register maintained by the sub-registrar they do not act in accordance with the law. They ought to issue notices to the heirs of deceased donor to consider any objection that they may have. To have acted on the basis of a purported extract from the sub-registrar's register and to have changed the revenue record on this basis is not permissible…
iii) A party who challenges the gift transaction is not obliged to array the revenue authority nor is obliged to produce/summon any officer/official of it as a witness because such party has denied the gift and did not rely upon the said gift. It is for the party who relied upon the purported gift or gift mutation has to establish the same. And, it was for such party to have produced/summoned the concerned officer/official from the sub- registrar's office and from the revenue authority.

Conclusion: i) Mere production of photocopy of register maintained by the sub-registrar is not sufficient to prove the gift deed.
ii) Revenue authority cannot change the revenue record regarding entry of gift transaction merely on the basis of photocopy of register maintained by the sub-registrar which is not even registered gift deed.
iii) The party who challenges the gift transaction has no obligation to implead revenue authority or produce/summon the officer/official as witness.

6. **Supreme Court of Pakistan**
Muhammad Yousaf v. Addl. District Judge, Multan and others
Civil Petition No 6482 of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._6482_2021.pdf

Facts: Respondent No. 3 filed a composite family suit for dower, dowry articles etc. whereas the petitioner filed a civil suit for cancellation of entries of Nikah Nama. The learned trial court vide consolidated judgment partially decreed the suit of respondent No. 3 whereas the suit of the petitioner was dismissed. The petitioner and respondent No. 3 filed appeals. The appeal of respondent No. 3 was partially accepted whereas that of the petitioner was dismissed. Again the petitioner opted to file a writ petition against both the decrees i.e. decree of dismissal of his appeal as well as the decree of partial acceptance of appeal of respondent No, 3 which was dismissed. Through this petition filed under Article 185(3) of the Constitution, petitioner has sought leave to appeal against the judgment passed by the Lahore High Court.

Issues: i) Whether the cases of different jurisdictions can be consolidated in a single proceeding?
ii) Whether a suit challenging the validity of any entry of the Nikahnama is to be tried by the family court?
iii) What would be the legal status of family suits pointing a finger at any entry of the Nikahnama instituted before and pending trial or filed subsequent to the Family Courts (Amendment) Act 2015 (XI of 2015)?

Analysis: i) It is a cardinal principle of law that causes emanating from different jurisdictions cannot be consolidated in a single proceeding. A civil matter cannot be consolidated with a criminal matter, so also it cannot be consolidated with a family matter.
ii) The Family Courts Act, 1954 was amended in Punjab and a new residuary entry - "any other matter arising out of the Nikahnama" - was introduced at serial no. 10 in Part I of the Schedule to the Act (by way of Family Courts (Amendment) Act 2015 (XI of 2015) which stated that a suit challenging the validity of any entry of the Nikahnama is to be tried exclusively by the family court.
iii) Any suit pointing a finger at any entry of the Nikahnama instituted before and pending trial or filed subsequent to the above amendment shall be deemed to have been filed as a family suit and to be tried or transferred or deemed to have been transferred to a family court if already being tried by such court.

Conclusion: i) No, the cases of different jurisdictions cannot be consolidated in a single proceeding.
ii) After the amendment in Family Courts Act, 1964 vide Family Courts (Amendment) Act 2015 (XI of 2015), a suit challenging the validity of any entry

of the Nikahnama is to be exclusively tried by the family court.
iii) Family suits pointing a finger at any entry of the Nikahnama instituted before and pending trial or filed subsequent to the Family Courts (Amendment) Act 2015 (XI of 2015) shall be deemed to have been filed as a family suit and to be tried or transferred or deemed to have been transferred to a family court.

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7. **Supreme Court of Pakistan**
Muhammad Imran v. The State etc.
Criminal Petition No. 1212-L of 2022
Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1212_l_2022.pdf

Facts: Through the instant petition, the petitioner has assailed the order passed by the learned Single Judge of the learned Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered under Section 379 PPC, in the interest of safe administration of criminal justice.

Issues: i) Whether liberty of a person is a precious right and the same cannot be taken away merely on bald and vague allegations?
ii) Whether while granting pre-arrest bail, the merits of the case can be touched upon by the Court?

Analysis: i) It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.
ii) It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court.

Conclusion: i) Yes, liberty of a person is a precious right and the same cannot be taken away merely on bald and vague allegations.
ii) While granting pre-arrest bail, the merits of the case can be touched upon by the Court.

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8. **Supreme Court of Pakistan**
Pakistan Electronic Media Regulatory Authority v.
Pakistan Broadcasters Association & others
Civil Appeal No.1518 of 2013
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1518_2013.pdf

Facts: The respondents No. 2 to 8, being private broadcasters owning and operating different television channels, were issued various show cause notices in 2010 by the appellant/PEMRA, demanding payment of surcharge on account of late payment of annual fee pertaining to the licences granted to the respondents by the appellant. The respondents challenged the vires of the said surcharge by filling a

constitutional petition before the High Court which was allowed. Petitioners have assailed the said judgment through this petition.

Issues: i) Whether PEMRA may revoke and suspend any licence?
ii) Whether rules made under a parent statute can go beyond the scope of the said statute?
iii) What is status of regulations which do not draw their power from the parent statute?
iv) What is principle to interpret the fiscal statutes?

Analysis: i) It also substituted Section 30 of the Ordinance, which, through Section 30(1)(a), now provides that PEMRA may revoke and suspend any licence if the licensee fails to pay the licence fee, annual renewal fee or any other charges including fine, if any. The term “other charges”, however, has not been defined therein.
ii) It is settled law that the rules made under a parent statute cannot go beyond the scope of the said statute and nor can they enlarge the scope of the statutory provisions therein. The power of rule-making is an incidental power that must follow and not run parallel to the parent statute.
iii) Furthermore, regulations must be made by the authority of the parent statute and regulations that do not draw their power from the parent statute are also ultra vires to the said parent statute.
iv) It is trite law that fiscal statutes are to be interpreted strictly and there is no room for any intendment therein.

Conclusion: i) PEMRA may revoke and suspend any licence if the licensee fails to pay the licence fee, annual renewal fee or any other charges including fine, if any.
ii) Rules made under a parent statute cannot go beyond the scope of the said statute
iii) Regulations which do not draw their power from the parent statute are ultra vires to the said parent statute.
iv) The fiscal statutes are to be interpreted strictly and there is no room for any intendment therein.

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9. **Supreme Court of Pakistan**
Fakhar Nawaz v. Administrative Secretary/Senior Member Board of Revenue,Peshawar, etc.
C.M.A.10945 of 2022 In C.P.3884 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._10945_2022.pdf

Facts: The main Civil Petition of the Petitioner was dismissed for non-prosecution whereupon the Petitioner filed the instant restoration application which has not been filed by the original AOR or drawn by the original ASC but by the newly appointed AOR and ASC.

Issues: Whether a restoration application filed before the Supreme Court by a new AOR without the consent of the earlier AOR or without the leave of the court is maintainable?

Analysis: We have drawn the attention of the learned counsel to Rules 6, 15, 23 and 24 of Order IV of the SC Rules…The restoration application is not only silent regarding the legal requirements mentioned in the SC Rules but is also in violation of the same. The application fails to show how the present ASC has appeared in this case without the instructions of the earlier AOR as required under Rule 6; the application does not disclose as to why the application was not filed by the earlier AOR as per Rule 15; how did the petitioner authorize and how did the new AOR file his power of attorney without the consent of the earlier AOR or without the leave of the Court as required under Rule 23; it is also not clear as to how the earlier AOR has been removed as no AOR can withdraw from the case without the leave of the Court as provided under Rule 24. The above shows that the instant application has been filled in violation of the SC Rules and neither the Petitioner, the AOR nor the ASC have bothered to pay any heed to the SC Rules before filling this application. This is most disconcerting especially because the new AOR has totally overlooked and bypassed the SC Rules. This restoration application being in flagrant disregard of the SC Rules is not maintainable.

Conclusion: A restoration application filed before the Supreme Court by a new AOR without the consent of the earlier AOR or without the leave of the court is not maintainable.

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10. **Supreme Court of Pakistan**
The Province of Sindh through Chief Secretary & others v.
Ghulam Shabbir and others.
Civil Appeals No. No.52-K to 71-K of 2022
Mr. Justice Muhammad Ali Mazhar, Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._52_k_2022.pdf

Facts: Through these appeals the petitioner assailed the judgment passed by the learned Sindh Service Tribunal ("Tribunal") in Appeals whereby the appeals of the respondents were disposed of with the direction to the appellants to consider the respondents for promotion to BPS-17 with effect from the date when the posts were fallen vacant in the quota.

Issues: i) Whether an acting charge appointment amounts to an appointment by promotion on regular basis or whether it confer any vested right for regular promotion?
ii) Whether the acting charge appointment can be made for an indefinite period?
iii) What is meant by the doctrine of legitimate expectation?

Analysis: i) However, it is further clarified in the 1974 APT Rules that appointment on acting charge basis shall be made on the recommendations of the DPC or PSB I or

II, as the case may be, with a further rider that acting charge appointment shall not amount to appointment by promotion on regular basis for any purpose including seniority and it shall not confer any vested right for regular promotion to the post or grade held on acting charge basis but, according to Sub-rule 9, the civil servant appointed on acting charge basis is entitled to draw fixed pay equal to the minimum pay on which his pay would have been fixed had he been appointed to that post on regular basis.

ii) Consistent with Sub-rule 4 of Rule 8-A of the 1974 APT Rules, acting charge appointment can be made against posts which are likely to fall vacant for a period of six months or more and against vacancies occurring for less than six months, but it is somewhat conspicuous in the case of the present respondents that the acting charge continued for up to three years without any logical justification or rhyme or reason and at the end of the day the promotion was regularized without any demur but with immediate effect which is a sticking point. … If assignment of duties on acting charge basis is allowed to be continued for an unlimited period of time then it amounts to deflecting and frustrating the very spirit of the rules. It is the obligation of the competent authority to decide the fate of an acting charge holder within the cutoff date fixed in the rules with all eventualities rather than allowing them to continue the acting charge for a long period and then one fine morning, according regularization of promotion to the acting charge holder and treating the service of the incumbent during acting charge *non est*. To stretch or continue acting charge or adhoc arrangement on own pay scale (OPS) for an extensive period rather than making timely appointments or filling the post by promotion according to the ratio or quota, as the case may be, creates misgivings and suspicions and such a tendency is highly destructive and deteriorative to the civil servant service structure.

iii) The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. In fact, a legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government or a public authority. This doctrine is basically applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation. As per Halsbury's Laws of England, Volume 1(1), 4th Edition, paragraph 81, at pages 151-152, it is prescribed that "A person may have a legitimate expectation of being treated in certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice."

Conclusion: i) An acting charge appointment shall not amount to an appointment by promotion on regular basis and it shall not confer any vested right for regular promotion.

ii) The acting charge appointment cannot be made for an indefinite period rather can only be made against posts which are likely to fall vacant for a period of six months or more and against vacancies occurring for less than six months.
iii) The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority.

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11. **Lahore High Court**
The State v. Manzoor Ahmad, (Manzoor Ahmad versus The State. and (Sultan Ahmad versus The State, etc.
Murder Reference No.129 of 2019, Crl. Appeal No.44496-J of 2019 and Crl. Appeal No.37914 of 2019
Ms. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC1238.pdf

Facts: The appellant, was involved in case F.I.R. registered under Sections 302, 34 P.P.C., at P.S. and was tried by the learned Additional Sessions Judge. The trial court seized with the matter in terms of the judgment, convicted the appellant under Section 302(b) PPC as Tazir and sentenced to Death for committing Qatl-e-Amd, with the direction to pay compensation of Rs.15,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to undergo 06-months S.I further.

Issues: i) What is the evidentiary value of site plan?
ii) When a witness takes specific plea of his presence, whether he must give explanation for his presence?
iii) Whether acquittal creates double presumption of innocence in favour of accused?

Analysis: i) Although the site plan is not a substantive piece of evidence in terms of Article 22 of the Qanun-e-Shahadat Order, 1984, as held in the case of “Mst. Shamim Akhtar v. Fiaz Akhtar and two others” (PLD 1992 SC 211) but it reflects the view of the crime scene. The same can be used to contradict or disbelieve eyewitnesses.
ii) When for the presence, if witnesses took the specific plea, there must be an explanation for their presence there. The deposition of a chance witness whose presence at the place of the incident remains doubtful should be discarded. Conduct of the chance witness after the incident may also be considered, particularly the condition of the dead body of the deceased.
iii) We have also taken note of the settled principle of criminal jurisprudence that unless it can be shown that the lower court’s judgment is perverse or that it is completely illegal. No other conclusion can be drawn except the guilt of the accused or misreading or non-reading of evidence resulting into a miscarriage of justice. Even otherwise, when a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to his case. The

acquittal order cannot be interfered with, whereby an accused earns double presumption of innocence.

Conclusion: i) The site plan is not a substantive piece of evidence in terms of Article 22 of the Qanun-e-Shahadat Order, 1984 but the same can be used to contradict or disbelieve eyewitnesses
ii) If a witness takes the specific plea of his presence, there must be an explanation for his presence there.
iii) When a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to his case. The acquittal order cannot be interfered with, whereby an accused earns double presumption of innocence.

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12. **Lahore High Court**
Aziz Khan v. The State & another
Crl. Appeal No.39152 of 2019
Ms. Justice Aalia Neelum, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC9067.pdf

Facts: Through this appeal filed under Section 48 of the CNSA, 1997, appellant has called in question his conviction and sentence under Section 9(c) of the CNSA, 1997.

Issues: i) When a document can be exhibited by the trial court?
ii) How the document is required to be exhibited under the rules of Lahore High Court Rules and Orders?
iii) Under what circumstances the benefit of doubt is extended in favour of the accused?

Analysis: i) A document can only be exhibited when it is relevant and admissible in evidence. Prior to exhibiting a document, question of its admissibility must be decided by the trial court. Exhibit is a noun, which is earmarked for a document to be produced in evidence and given nomenclature by using alphabets or numbers for identification.
ii) Rule 14-H, Part B, Chapter 24, Volume III of the Lahore High Court Rules and Orders provides a self-explanatory procedure for exhibiting a document to be read in evidence. The learned trial court is under the bounden duty to see that the aforementioned Rule has been followed in its true letter and spirit. Where a document consists of more than one page, every page should be labelled and duly signed by the learned trial court as envisaged under the aforementioned Rule.
iii) It is golden principle of criminal law that a single circumstance creating reasonable doubt would be sufficient to smash the veracity of prosecution case and enough to extend the benefit of doubt in favour of the accused, not as a matter of grace or concession but as of right.

Conclusion: i) A document can only be exhibited by the trial court when it is relevant and admissible in evidence.

ii) Under the Rule 14-H, Part B, Chapter 24, Volume III of the Lahore High Court Rules and Orders, every page of the document is required to be labelled and duly signed by the learned trial.
iii) A single circumstance creating reasonable doubt is sufficient to extend the benefit of doubt in favour of the accused.

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13. **Lahore High Court**
Bilal Moeen Butt alias Bilal Hussain Butt v. The State etc.
Crl. Misc. No. 49770-B of 2021
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC9943.pdf

Facts: Through this petition, petitioner seeks post arrest bail in case FIR registered for offence under Section 489-F PPC.

Issues: i) What would be status of case at post-arrest bail stage if dishonest intention of an accused involved in issuing subject cheque requires further determination?
ii) If accused makes out his case as one of further inquiry, whether his previous criminal record without any conviction may be based to disentitle him to the grant of post arrest bail?

Analysis: i) A regular and smooth business relationship of the parties existed as well as the accused had been paying the due amounts to the complainant in near past. Dishonest intention of the accused involved in issuing of subject cheque is the question requiring determination by the learned trial court after recording of evidence.
ii) Seven other cases were alleged having previously been registered against the accused but he has not been convicted in any one of those. Accused makes out his case as one of further inquiry.

Conclusion: i) If dishonest intention of the accused involved in issuing subject cheque requires further determination, then case would be one of further inquiry into his guilt.
ii) If accused makes out his case one of further inquiry, then his previous criminal record, without any conviction, is not sufficient to disentitle him to the grant of post arrest bail.

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14. **Lahore High Court**
Muhammad Hamza v. The State etc.
Crl. Misc. No.11382-B of 2023
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2023LHC963.pdf

Facts: Through this petition, the petitioner has sought post arrest bail in case FIR registered for offence u/s 366 of PPC.

Issues: What would be fate of case at post-arrest bail stage if the culpability of the petitioner for an offence punishable under Section 336 PPC requires further determination by the trial court?

Analysis: Section 336 PPC manifests that intention to cause hurt or knowledge that the alleged act is likely to cause hurt is a necessary requirement to constitute offence under Section 336 PPC. But when occurrence prima facie seems accidental in nature, then section 336 PPC would not be applicable.

Conclusion: If the culpability of the petitioner for an offence punishable under Section 336 PPC requires further determination by the trial court, it will make the case as one of further inquiry into petitioner's guilt entitling him for post-arrest bail.

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15. **Lahore High Court**
Ahsan Nawaz v. Judge Family Court, etc.
W.P.No.355 of 2023
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC959.pdf

Facts: Through this petition, judgment and decree passed by respondent No.1 has been assailed, by virtue of which a suit for recovery of maintenance allowance and dower filed by respondent No.2 against the petitioner has been decreed to the extent of maintenance allowance.

Issues: Where a Nikah between the spouses has been performed, however, the marriage is not consummated as the Rukhsati has not taken place, in such an eventuality, whether a wife is entitled to maintenance allowance?

Analysis Section 9 of the Ordinance spells out that where a husband fails to maintain his wife, she in addition to seeking other legal remedies (as contemplated in West Pakistan Family Courts Act 1964) can also seek maintenance allowance. It shall not be out of place to mention here that no condition of Rukhasti or consummation of marriage has been mentioned therein. (…) claim of maintenance by the wife is not conditional with the rukhsati or consummation of marriage. It has also been elaborated that in such circumstances the conduct of the spouses will be of utmost importance while granting a claim of maintenance. (…) A wife who is willing to, but cannot, discharge her marital obligations for no fault of her own, rather is prevented to do so by any act or omission of her husband is legally entitled to receive her due maintenance from her husband, and the latter cannot benefit from his own wrong."

Conclusion: Claim of maintenance by the wife is not conditional with the rukhsati or consummation of marriage.

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16. **Lahore High Court**
Millat Tractors Limited v. Federal Board of Revenue & others
I.C.A No.83099 of 2022
Mr. Justice Shahid Karim, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC1332.pdf

Facts: This is an appeal under Section 3 of the Law Reforms Ordinance, 1972 and brings a challenge to the order by a learned Single Judge. The relief claimed in the

constitutional petition was for seeking a declaration regarding SRO to be struck down as having been issued without lawful authority. Further reliefs were claimed on the basis of the former SRO under which the appellant claimed the benefit of refund of sales tax from the respondents.

Issues: i) Whether Federal Board of Revenue has the power to take away vested rights and to upset past transactions?
ii) Whether Section 50 of the Sales Tax Act, 1990 does confer power upon FBR to make retrospective application of an amendment made in the Sales Tax Rules, 2006?
iii) How eligible person can be defined under Refund Claims of Recognized Agricultural Tractor Manufacturers Rules, 2012?
iv) Whether an enactment which prejudicially affects vested rights or the legality of past transactions can be given retrospective operation?
v) Whether any earlier notification contained a representation which was acted upon, its effect could have been nullified by an executive act?

Analysis: i) FBR neither has the power to take away vested rights and to upset past transactions nor to apply a notification retrospectively under the purported powers conferred by section 50 of the Sales Tax Act, 1990.
ii) Section 50 does not confer power upon FBR to make retrospective application of an amendment made in the Sales Tax Rules, 2006.
iii) A reference to definition of the term "eligible person" would also be apt under the circumstances. According to the definition an eligible person mean a manufacturer of agricultural tractors who supplies tractors to a person holding a valid proof of land holding such as agricultural pass book and copy of record of rights of agricultural land.
iv) In our jurisprudence the rule is now settled and vouched by respectable authority that an enactment which prejudicially affects vested rights or the legality of past transactions cannot be given retrospective operation. This rule is based on the principle of promissory estoppel and legitimate expectation.
v) The question came up for discussion in M/s Army Welfare Sugar Mills Ltd. and others v. Federation of Pakistan and others (PTCL 1993 CL 188) and the Supreme Court of Pakistan once again delved into the doctrine of promissory estoppel and went on to hold that a representation through a statutory regulatory order (SRO) could only be withdrawn by a legislative act. In M/s Army Welfare Sugar Mills too the benefit granted by a notification was sought to be withdrawn by a subsequent notification and it was concluded that the earlier notification contained a representation which could have been rescinded before it was acted upon or if it was acted upon, its effect could have been nullified by statutory provision and not by an executive act. This means that vested rights could not be impaired either by an executive act or by the exercise of powers delegated by the legislature unless the legislature has specifically granted delegation to enact retrospective measures… In the guise of making rules, vested and concluded rights could not have been taken away by the enactment of a notification which

was to take effect retrospectively. This could only have been done by the legislature under its primary power to legislate.

Conclusion: i) Federal Board of Revenue neither has the power to take away vested rights and to upset past transactions nor to apply a notification retrospectively.
ii) Section 50 does not confer power upon FBR to make retrospective application of an amendment made in the Sales Tax Rules, 2006.
iii) An eligible person mean a manufacturer of agricultural tractors who supplies tractors to a person holding a valid proof of land holding such as agricultural pass book and copy of record of rights of agricultural land.
iv) An enactment which prejudicially affects vested rights or the legality of past transactions cannot be given retrospective operation.
v) Any earlier notification contained a representation which was acted upon its effect could have been nullified by statutory provision and not by an executive act.

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17. **Lahore High Court**
Shah Jahan & another v. Province of Punjab & others
W.P.No.76524 of 2022
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC1127.pdf

Facts: The Govt. of the Punjab notified Gujrat as the 10th Division of the Punjab. Through Notification under Section 4 of the Land Acquisition Act, 1894, issued by District Collector, Gujrat (impugned Notification) acquisition proceedings have been set in motion regarding private land measuring 184K-OM. This has been challenged in this and connected W.P. by the landowners. Both petitions are being decided by this common judgment.

Issues: i) Whether any area of forest which qualifies to be treated as forest can be put to any other use when the department has remained fail to declare such area either as a protected forest or reserve forest?
ii) Whether the department without any reasonable cause can justify the acquisition and setting up of the project on an area which comprises of agricultural and forest land?

Analysis: i) According to the reports filed by the departments, when the area has not been declared either as a protected forest or reserve forest under the provisions of the Forest Act, 1927, this does not make any difference since the area qualifies to be treated as such and notifications ought to have been issued in this regard by the Forest Department. This failure to do so will not detract from the fact that the area under acquisition is a reserve forest and cannot be put to any other use unless the provisions of section 27 of the Act, 1927 are scrupulously followed.
ii) The department without any reasonable cause cannot justify the setting up of the project on an area which comprises of agricultural and forest land and to change the nature of forest land and carry out construction for setting up of a

Divisional Headquarter. It is also unjustified to cut trees which are standing on the forest area and to change the status of land used for flood mitigation in any manner. The act of the respondents contravenes the holding of High Court in Public Interest Law Association of Pakistan as well as of Shah Zaman Khan by the Supreme Court of Pakistan. No, acquisition of agricultural and cultivable farmlands can be done on the basis that it offends Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973.

Conclusion: i) The area of forest which qualifies to be treated as forest cannot be put to any other use when the department has remained fail to declare such area either as a protected forest or reserve forest unless the provisions of section 27 of the Act, 1927 are scrupulously followed.
ii) The department without any reasonable cause cannot justify the acquisition and setting up of the project on an area which comprises of agricultural and forest land as it offends Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973.

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18. **Lahore High Court**
Ayaz Mehmood v. Musadaq Riaz & 2 others
R.F.A. No. 51 of 2023
Mr. Justice Mirza Viqas Rauf, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC1010.pdf

Facts: This appeal is filed u/s 96 of CPC against the ex-parte judgment and decree passed by learned Civil Judge whereby the suit for specific performance and injunction, instituted by the appellant, has been dismissed. The appeal is accompanied by an application seeking to exclude the period for pursuing the remedy before forum without jurisdiction i.e. the learned District Court.

Issues: i) What is status of plaint returned under order VII Rule 10 of CPC for presentation before competent forum?
ii) Whether section 14 of the Limitation Act is applicable to the appeals??
iii) How the litigant, who seeks the exclusion of time period for pursuing remedy in forum without jurisdiction, ought to plead relevant facts and who has initial burden to prove the same?
iv) Whether wrong advice of a counsel can be permitted as grounds for excluding period consumed in pursuing remedy in wrong forum?
v) Whether availing of remedy within time provided by law is merely a technicality?

Analysis: i) There is no cavil to the settled proposition of law that where the plaint is returned under Order VII, Rule 10 of the Code for its representation before the Court of competent jurisdiction, for all intent and purposes, it is treated as a fresh institution.
ii) It is equally an established principle that although section 14 of the Limitation Act has no direct application to the appeals but the principles enumerated therein

can be taken into the consideration by the Court while ascertaining the availability of 'sufficient cause' for condonation of delay under section 5 of the Limitation Act.

iii) It is incumbent upon the litigant, seeking exclusion of time period for pursuing remedy in forum without jurisdiction, to plead the facts to justify the grant of relief and by reasonably demonstrating due diligence and good faith in pursuing the matter before the learned Court having no jurisdiction to adjudicate. The initial burden, to show the above elements for seeking to exclude the period consumed in prosecuting case before learned forum without jurisdiction, is on the applicant pleading such relief.

iv) In "Abdul Ghani" case the court has observed that in circumstances where error of pursuing remedy before forum is fairly obvious and it could have been avoided by exercising even little diligence or adopting some care, even the wrong advice of a counsel cannot be foundation for enlargement of time consumed in pursuing remedy before wrong forum…

v) Availing of remedy within the period provided by law is not merely a technicality. Section 5 or section 14 of the Limitation Act, 1908 are not intended to add premium to the carelessness or to validate lack of vigilance and required caution by a litigant.

Conclusion: i) Where the plaint is returned under Order VII, Rule 10 of the Code for its representation before the Court of competent jurisdiction, for all intent and purposes, it is treated as a fresh institution.

ii) Although section 14 of the Limitation Act has no direct application to the appeals but the principles enumerated therein can be taken into the consideration by the Court while ascertaining the availability of 'sufficient cause' for condonation of delay.

iii) The litigant ought to plead relevant facts to justify the grant of relief and by reasonably demonstrating due diligence and good faith in pursuing the matter before the learned Court having no jurisdiction to adjudicate. Applicant has initial burden to prove these elements.

iv) Wrong advice of a counsel cannot be permitted as grounds for excluding period consumed in pursuing remedy in wrong forum where error of pursuing remedy at wrong forum could have been avoided by exercise of even little diligence.

v) Availing of remedy within time provided by law is not merely a technicality.

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19. **Lahore High Court**
Muhammad Suqrat v. The learned Addl. District Judge, etc.
W.P.No. 2827 of 2016
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC992.pdf

Facts: This writ petition stems out from judgment of the learned Additional District Judge allowing the revision against order of the learned Judge Family Court/Executing Court, whereby respondent is directed to hand over dower in

shape of 04 tola gold ornaments or its price to petitioner in execution of decree passed under section 10 (4) of the Family Courts Act, 1964.

Issues: Whether an order under section 10 (4) of the Family Courts Act, 1964 decreeing suit for dissolution of marriage on the basis of Khula subject to return of dower is a decree under section 13 of the Act ibid and is executable as such?

Analysis: Section 2 (2) of the Code of Civil Procedure (V of 1908) describes decree as the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and it may be either preliminary or final. Section 13 of the Family Courts Act, 1964 provides the manner of enforcement of decrees while the manner & form of decree is provided in Rules 16 & 17 of the West Pakistan Family Court Rules, 1965. The order is compound when suit for dissolution of marriage is decreed in terms of section 10 (4) of the Act ibid, dissolving the marriage interse parties as well as making it subject to return of dower.

Conclusion: An order under section 10 (4) of the Family Courts Act, 1964 decreeing suit for dissolution of marriage on the basis of Khula subject to return of dower is a decree falling in section 13 of the Act ibid and is executable as such.

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20. **Lahore High Court**
Fazal Karim & 2 others v. Mehboob Khan (deceased) through his legal heirs
C.R.No.212-D of 2018
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC1297.pdf

Facts: The petitioners instituted a suit for permanent injunction, which was resisted by the respondents, by moving an application under Order VII Rule 11 “CPC” on the ground that suit is barred by law and is not maintainable. The application was accepted. Feeling aggrieved, the petitioners preferred an appeal but of no avail and the appeal was dismissed in limine, hence this civil revision petition.

Issues: i) Whether a co-sharer/co-owner can institute a suit for injunction for the protection of his rights without seeking partition?
ii) Whether there is any exception to the general rule that a co-sharer can institute a suit for permanent injunctions against a co-sharer?

Analysis: i) Law is consistent to this effect that every co-sharer/co-owner is owner in each and every inch of the joint property until it is partitioned by metes and bounds. It is also an oft repeated principle of law that a co-sharer/co-owner cannot change the nature of the joint property or raise construction without consent of the other co-sharers/co-owners. If a co-sharer is dispossessed from the joint property in his/her possession by any other co-sharer, the remedy lies for regaining his/her possession either in a suit under section 9 of the Specific Relief Act, 1877 or by way of a suit for partition.

ii) The matter, however, would become different in a case when a co-sharer intends to change the nature of the joint holding or threatens the other co-sharers to divest from their right in the joint property as co-owner. In such a case, such co-owner can institute a suit for injunction restraining the former from changing the nature of the joint land or raising any construction upon the same. In the said eventuality, it is for the former to first of all get the joint land partitioned

Conclusion: i) A co-sharer/co-owner cannot institute a suit for injunction for the protection of his rights without seeking partition.
ii) Yes, there is an exception to the general rule that a co-sharer can institute a suit for permanent injunctions against a co-sharer who intends to change the nature of the joint holding or threatens the other co-sharers to divest from their right in the joint property as co-owner.

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21. **Lahore High Court**
Mst. Asma Abdul Waris v. State Bank of Pakistan & 4 others
ICA No. 18654 of 2023
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC1286.pdf

Facts: State Bank of Pakistan declined to interfere in the orders of other bank in the service matter due to lack of jurisdiction and the constitutional petition of the appellant against the order of the State Bank of Pakistan was also dismissed. Through this Intra Court Appeal, filed under Section 3 of the Law Reforms Ordinance, 1972, the appellant has called in question order passed in the constitutional petition.

Issues: i) Whether the State Bank of Pakistan has jurisdiction to hear and decide service matters of employees of other Banks?
ii) What would be the legal consequences when anything required to be done in a particular manner is not done in the said manner?

Analysis: i) Section 11 of the Banking Companies Ordinance, 1962 deals with prohibition of employment of managing agents and restrictions on certain forms of employment and does not relate to the service matters of other employees of banks or their cases about terms and conditions of service and termination. Hence, the State Bank of Pakistan has no jurisdiction to hear and decide service matters of employees of Banks and where a jurisdiction is not vested by, law, the courts would not ordinarily confer said jurisdiction on any authority for the reason that jurisdiction could not be conferred by parties even by consent.
ii) It is settled by now that where a thing is required to be done in a particular manner, it must be done in the said manner and not otherwise as the same would be against the intention of legislature and not sustainable. Anything done to the contrary would be illegal, ex-facie erroneous and unsustainable in law.

Conclusion: i) The State Bank of Pakistan has no jurisdiction to hear and decide service

matters of employees of other Banks.

ii) When anything required to be done in a particular manner is not done in the said manner; the same would be against the intention of legislature and would be illegal, ex-facie erroneous and unsustainable in law.

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22. **Lahore High Court**
Munir Ahmad, Advocate High Court v. Province of Punjab, through Chief Secretary, etc.
W.P.No.18733 of 2023
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC1082.pdf

Facts: The petitioner through this Constitutional petition prayed for issuance of directions to the respondents, to conduct fair and free transparent elections in view of Article 218 (3) read with Article 220 of the Constitution of Islamic Republic of Pakistan, 1973.

Issues: Whether news items can be relied upon for reaching to conclusion that as certain officers have shown their inability to facilitate the conduct of Election etc. therefore, Election Commission has failed to proceed with matters of conduct Election?

Analysis: The Election Commission of Pakistan has not raised any plea against any of the officers that he/she is not helping in conducting the election in a proper manner or that it is not in a position to hold elections in a fair manner. Therefore, there is nothing substantially available on record to establish that the Election Commission of Pakistan had failed to implement Articles 218 and 220 of the Constitution and was not proceeding with the matter of conduct of elections in fair manner in letter and spirit.

Conclusion: Mere news items cannot be relied upon for reaching to conclusion that as certain officers have shown their inability to facilitate the conduct of Election etc. therefore, Election Commission has failed to proceed with matters of conduct Election.

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23. **Lahore High Court**
Muhammad Naseem etc. v. Province of Punjab through Collector, District Bhakkar etc.
C.R.No.112&113/2014
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC998.pdf

Facts: Through these civil revisions, the petitioners have challenged the validity of the judgment & decree passed by the learned Civil Judge who dismissed the suit for declaration and permanent injunction filed by the petitioners and also assailed the consolidated judgment & decree whereby the learned Additional District Judge,

dismissed the appeals of the petitioners.

Issues: i) Whether it is necessary for inferior owners (adna maalikan) to get permission from superior owners (aala maalikan) to be remained in possession of land after offer them share of produce (nazrana / jhaar)?
ii) Whether a person can claim right of inferior ownership (adna malkiyat) by breaking barren (barani) land?
iii) Whether any of the litigating parties could be allowed to re-agitate the matter in a subsequent suit or proceedings when once a matter is decided finally between the parties to suit or proceedings?

Analysis: i) It is an essential pre-requisite for the inferior ownership (adna maalikan) that they shall approach the superior owners (aala maalikan) and offer them share of produce (nazrana / jhaar) and take permission to be remain in possession.
ii) Mere the cultivation is not a sole criterion / reason to confer proprietary rights on the basis of entry in the column No.6 of Jamabandi as " قبضہ با شرع ما لکان بوجہ نو توڑ "as it neither creates any right of ownership in favour of the any person nor declares them as inferior owner (adna maalikan).
iii) The subsequent suit on the same issue or cause of action is not maintainable under Section 11 of CPC, which provision envisages that no Court shall try a suit or issue in which the matter directly or substantially in issue has already been decided in former suit between the same parties or between the parties under whom they or anyone of them remained litigating against same title which issue has earlier been raised and has finally been heard and decided by Court of competent jurisdiction. The object of the principle of res-judicata is to make end of the lis and also to prevent multiplicity of litigation. That once a matter is decided finally between the parties to suit or proceedings then none from the said litigating parties could be allowed to re-agitate the matter in a subsequent suit or proceedings.

Conclusion: i) Yes, it is necessary for inferior owners (adna maalikan) to get permission from superior owners (aala maalikan) to be remained in possession of land after offer them share of produce (nazrana /jhaar).
ii) A person cannot claim right of inferior ownership (adna malkiyat) by breaking barren (barani) land.
iii) Any of the litigating parties could not be allowed to re-agitate the matter in a subsequent suit or proceedings when once a matter is decided finally between the parties to suit or proceedings.

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24. **Lahore High Court**
Malik Zulfiqar Ahmad etc. v. Mosaddaq Parvaiz etc.
C.R.No.49148/2020
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC1319.pdf

Facts: Through this civil revision the petitioners have challenged the validity of the

judgment & decree passed by the learned Additional District Judge who accepted the appeal of the respondent No.1, set aside the judgment & decree passed by the learned Civil Judge and decreed the suit for specific performance of agreement along with permanent injunction filed by the respondent No.1.

Issues: i) On whom the burden of proof of contract lies in case of subsequent contract?
ii) What would be the legal consequences of non-production of material witnesses in evidence?
iii) Whether amount may be claimed as compensation in case of default of the contract?

Analysis: i) Initial onus of proof of contract is on the shoulder of a subsequent vendee to prove that his case falls within the purview and parameter of Section 27 of the Specific Relief Act, 1877 and that he is a transferee of the land for value, the consideration has been paid in good faith and that he had no notice of the earlier contract of the property.
ii) Non-production of material witnesses amounts to withholding of the best evidence and it would be legally presumed that if the said witnesses would be produced in the evidence, they would have deposed against the petitioners/defendants, as such presumption under Article 129 (g) of Qanun-e-Shahadat Order, 1984 clearly does not give them any favour.
iii) Section 20 of Act ibid provides that the amount may be claimed as compensation in case of default of the contract.

Conclusion: i) In case of subsequent contract, the burden of proof of contract lies on the subsequent vendee to prove that his case falls within the purview and parameter of Section 27 of the Specific Relief Act, 1877.
ii) Non-production of material witnesses in evidence amounts to withholding of the best evidence and such presumption becomes unfavorable to the party withholding best evidence under Article 129 (g) of Qanun-e-Shahadat Order, 1984.
iii) Yes, under Section 20 of the Specific Relief Act, 1877 the amount may be claimed as compensation in case of default of the contract.

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25. **Lahore High Court**
Humaira Mehboob v. Summit Bank Limited etc
E.F.A.No.20277 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1313.pdf

Facts: This appeal in terms of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 arising out of execution proceedings calls in question the vires of order whereby learned Judge Banking Court proceeded to dismiss the application filed by the Appellant. She also challenges order regarding fixation of reserve price of the mortgaged property.

Issues: i) Whether a judgment debtor is estopped from its own conduct to file objection belatedly when he/she did not file objection on the report of evaluator regarding valuation of the property at the time of filing report?
ii) Whether the Banking Court is to fix reserve price of the mortgaged property on the report of evaluator appointed by the court or on the report of an evaluator privately hired by the judgment debtor?
iii) Whether anything stops a judgment debtor to locate and bring forward a buyer of his choice either in the auction or before the Court prior to the sale if the property is being sold for a price which in the estimation of the judgment debtor is on the lower side?

Analysis: i) The record does not show that at the time of filing this report, the Appellant has ever filed an objection while the "Banking Court" in order dated 13.03.2023 observed that "an opportunity was given to the judgment debtor for submission of objection on the valuation report but the judgment debtor has not filed the objection at that time and reserve price was fixed on 09.02.2023. The judgment debtor filed the objection petition at belated stage just to linger on execution proceedings". Admittedly, execution proceedings are underway since year 2014 and the Appellant was well aware about it but she knowingly did not file objections at the relevant time rather the same were filed belatedly on 18.03.2023 as is evident from the order sheet attached with record so she is estopped from her own conduct.
ii) Pertinently, fixing the value of the property is a matter of opinion, and the Court cannot give its opinion on such a point. It appears that the object of the above proviso is to relieve the Court from the burden of affirming the accuracy of the value of the property shown in the proclamation of sale and to enable the prospective purchaser to form his own opinion relying upon the estimates given by the parties. After all, Order XXI Rule 66 (2) (e) CPC stipulates that the proclamation shall contain every other thing which the Court considers material for a purchaser to know in order to judge the nature and value of the property. Notwithstanding the afore-mentioned provision, with the availability and benefit of the evaluation reports from the PBA approved evaluators, the Courts do fix the reserve price of the properties being put to auction on the basis of the value placed therein. In the case in hand, the Appellant, while relying upon her evaluation report, has invited this Court to disregard the report prepared by the "Evaluator". The contention so raised cannot be accepted. The fact that the evaluation report prepared under the instructions of the Appellant places higher price of the mortgaged property than the evaluation report, which the "Evaluator" prepared under the directions of the "Banking Court", should not form basis for rejecting the latter report. The preference would always be given to evaluation report prepared under the orders of the Courts rather than a report which is prepared at the behest of a judgment debtor. In this case, the reserve price was fixed by the "Banking Court" based on the report of "Evaluator" hence it ensures reasonableness, fairness and otherwise promotes transparency whereas mere bald

assertion of inadequacy of reserve price fixed by a private evaluator not appointed by the Court is per se no ground to re-fix the reserve price especially when no substantial injury was otherwise caused. It is not uncommon for the judgment debtors to prepare the evaluation report showing exaggerated value of the mortgaged properties in order to delay and frustrate the auction process. It may again be emphasized that evaluation report by the "Evaluator" was prepared under the orders of the "Banking Court" and, therefore, the selection is not between the evaluation reports of the contesting purchasers that the Court is merely accepting the value placed by one side as ipse dixit.

iii) Nothing stops a judgment debtor to locate and bring forward a buyer of his choice either in the auction or before the Court prior to the sale if the property is being sold for a price which in the estimation of the judgment debtor is on the lower side. For this very purpose Rule 83 Order 21 CPC has been enacted under which Court sales can be postponed to enable a judgment debtor for raising money through private sale of the property.

Conclusion: i) A judgment debtor is estopped from its own conduct to file objection belatedly when he/she did not file objection on the report of evaluator regarding valuation of the property at the time of filing report.

ii) The Banking Court is to fix reserve price of the mortgaged property on the report of evaluator appointed by the court and not on the report of an evaluator privately hired by the judgment debtor.

iii) Nothing stops a judgment debtor to locate and bring forward a buyer of his choice either in the auction or before the Court prior to the sale if the property is being sold for a price which in the estimation of the judgment debtor is on the lower side.

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26. **Lahore High Court**
The State v. Muhammad Shahid alias Shada.
Crl. Appeal No.1026 of 2016
Mr. Justice Asjad Javaid Ghural, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC9073.pdf

Facts: Through the instant appeal, filed under section 417 Cr.P.C, the State has assailed the vires of impugned order passed by learned Additional Sessions Judge, in which accused person/respondent was acquitted by the learned trial court while exercising jurisdiction under section 265-K Cr.P.C from the charge in offence under section 9(c) of the Control of Narcotic Substances Act, 1997, during the pendency of the trial.

Issues: i) Whether summoning of an accused is a mechanical process?

ii) Whether prosecution should be stifled in its very inception while exercising power under section 265-K Cr.P.C. by the learned trial court?

iii) Whether power under section 265-K Cr.P.C can only be used in exceptional cases with reasons as to satisfaction of court regarding the non-probability of conviction of the accused?

iv) Whether prosecution can be deprived of the opportunity of producing evidence under the garb of the power conferred by section 265-K Cr.P.C?

Analysis: i) From bare perusal of section 204(1) Cr.P.C, it becomes abundantly clear that summoning of an accused is not a mechanical process rather trial court applies its judicious mind and only summons an accused when there is sufficient ground available to further proceed with the trial. The expressions 'existence of sufficient ground' and 'prima facie case' have been construed by the Courts interchangeably.

ii) It is a settled law that prosecution should not be stifled in its very inception while exercising power under section 265-K Cr.P.C. by the learned trial court. Where a prima facie case is made out against the accused, he should not be acquitted under section 265-K Cr.P.C. which amounts to stifle the prosecution at its very inception.

iii) No doubt section 265-K Cr.P.C. empowers the trial court to acquit the accused person(s) at any stage of the case if, after hearing the accused and prosecutor, the court considers that there is no probability of conviction of the accused. But, before rendering such an opinion, the court must give reasons as to its satisfaction regarding the non-probability of conviction of the accused. Power under this section can only be used in exceptional cases where the court reaches the conclusion that the prosecution has no case against the accused and there is not an iota of the probability of his conviction.

iv) It is a settled law that the prosecution cannot be deprived of the opportunity of producing evidence under the garb of the power conferred by section 265-K Cr.P.C, especially in such cases where allegations against the accused require recording of evidence. Depriving a complainant to prove his case through oral or documentary evidence is not a fair exercise of jurisdiction under aforementioned section. Stifling the prosecution is not the purpose of this section. Section 265-K Cr.P.C. is an exception to the general rule therefore, it must be construed strictly. Provisions of sections 249-A & 265-K Cr.P.C. contain an exception to the general rule that an accused should be declared guilty or innocent after affording full opportunity to prosecution and defense to prove their case.

Conclusion: i) Summoning of an accused is not a mechanical process.

ii) Prosecution should not be stifled in its very inception while exercising power under section 265-K Cr.P.C. by the learned trial court.

iii) Yes, power under section 265-K Cr.P.C can only be used in exceptional cases with reasons as to satisfaction of court regarding the non-probability of conviction of the accused.

iv) Prosecution cannot be deprived of the opportunity of producing evidence under the garb of the power conferred by section 265-K Cr.P.C.

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27. **Lahore High Court**
Muhammad Farman v. The State
Crl. Misc. No. 72710/B of 2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC1346.pdf

Facts: Through this application, the petitioner seeks pre-arrest bail in case FIR registered for offences under sections 21(1), 21(2)(b), and 21-A of the Agricultural Pesticides Ordinance, 1971.

Issues: Does the 'expired pesticide' fall in the definition of 'substandard' given in clause (rr) of section 3 of the Ordinance?

Analysis: "Substandard" products are those which are authorized but do not fulfil their quality standards or specifications. In this sense, they are distinct from "falsified" products, which intentionally or fraudulently misrepresent their identity, composition or source. Falsification includes substitutions and reproduction and/or manufacturing of an unauthorized product. Falsified products consist of innovator and generic products and items that lack active ingredients, have insufficient active ingredients, have the wrong ingredient, and/or contain hazardous contaminants or pathogens.

Product labels have various dates, each with its own meaning. Manufacturers use these dates to share special information with buyers. The "expiry date" advises buyers of the date up to which the manufacturer expects his product to retain its claimed efficacy, safety, quality or potency. The use-by-date alerts consumers when the product's quality may degrade. The phrase "best by date" indicates that the item's taste, flavour or texture may deteriorate beyond that date. Therefore, even after the "best before date", a product can be consumed because it is safe though it may not be as good as if used within the stipulated time limit. On the other hand, once the "expiry date" passes, the product is not fit for consumption. The term "substandard" in section 3(rr) applies to two types of products: (a) the pesticide whose strength or purity falls below the purported standard or quality specified on its label or under which it is sold; (b) the pesticide whose valuable ingredient has been wholly or partially extracted. Pesticides that have passed their expiration date lose their effectiveness. They may also change chemical composition, harming not just the crop but also people and the environment. Pesticides sprayed too close to water might drift and deposit fine spray droplets away from their target, contaminating surface water. Drift incidents can pollute surface water more than runoff or leaching. Therefore, expired pesticides are included in part (a) of the definition of "substandard" given in section 3(rr) of the Ordinance. Consequently, the provisions of section 21(2)(b) apply when a person sells expired pesticides.

Conclusion: Yes, the 'expired pesticide' falls in the definition of 'substandard' given in clause (rr) of section 3 of the Ordinance.

28. **Lahore High Court**
Liaquat Ali v. The State etc.
Crl. Misc. No.7517/B of 2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC1228.pdf

Facts: By this application, the Petitioner seeks post-arrest in case FIR registered at Police Station ANF, for offences under sections 9(2)(Item 9), and 15 of Control of Narcotic Substances Act, 1997 (XXV of 1997).

Issues: i) What is difference between retrospective law and ex post facto law?
ii) What type of protection under Article 12 of Constitution is provided against retrospective punishment?
iii) What is the aim and object of CNSA?

Analysis i) In Nabi Ahmed and another v. Home Secretary, Government of West Pakistan, and others (PLD 1969 SC 599), the Supreme Court of Pakistan held that there is no fundamental difference between retrospective law and ex post facto law. The former is used in civil and the latter in criminal matters, which are more serious by definition.
ii) Article 12 guarantees protection with reference to the time of the act or omission which may subsequently be made punishable and to the commission of an offence for which a heavier or a different kind of penalty may be imposed by legislation that takes effect from a previous date. The time of the commencement of a proceeding to impose the punishment is not critical to the protection. This distinction is important. As a result, while every law that alters the legal rules of evidence or any other procedural rule is prohibited by the American ex post facto clause, it is not barred by Article 12 of our Constitution.
iii) The CNSA consolidates and amends the law relating to narcotic drugs, psychotropic substances, and controlled substances. It inter alia aims to control their production, processing and trafficking and implement the provisions of the international conventions in this regard. Section 2 of the CNSA defines the aforesaid terms which are supplemented by the Schedule thereto.7 Section 2(za) empowers the Federal Government to declare any substance to be a psychotropic substance by notification in the official Gazette.8 Under section 7(2), it can make rules to permit and regulate the import, export, and transhipment of narcotic drugs, psychotropic or controlled substances through a licence or permit.

Conclusion: i) There is no fundamental difference between retrospective law and ex post facto law. The former is used in civil and the latter in criminal matters.
ii) Article 12 guarantees protection with reference to the time of the act or omission which may subsequently be made punishable and to the commission of an offence for which a heavier or a different kind of penalty may be imposed by legislation that takes effect from a previous date.
iii) The CNSA consolidates and amends the law relating to narcotic drugs, psychotropic substances, and controlled substances. It inter alia aims to control

their production, processing and trafficking and implement the provisions of the international conventions in this regard.

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29. **Lahore High Court**
MCB Bank Limited v. Tanveer Spinning and Weaving Mills and others
Civil Original Suit No.175411 of 2018
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1191.pdf

Facts: The Defendants filed leave to defend the suit under Section 10 of the Financial Institution (Recovery of Finances) Ordinance, 2001 whereby they prayed to grant them unconditional leave to appear and defend the suit.

Issues: Whether the restructuring or renewal of financial facilities is to be recognized as an obligation in terms of section 2(e) of the Financial Institution (Recovery of Finances) Ordinance, 2001?

Analysis: It may be noted that renewal, rescheduling, restructuring of a finance facility only ensued upon default, non-payment, delayed payment or inability in payment of outstanding liability by a customer who normally sought such concession upon admission of his liability…the restructuring or renewal of loan in favor of customer by a financial institution as facility comes within the purview of obligation as defined under Section 2(e) of the Ordinance…. Furthermore, the performance of any undertaking and fulfilment of a promise relating to repayment of finance is also an obligation within the meaning of the Ordinance.

Conclusion: The restructuring or renewal of financial facilities is to be recognized as an obligation in terms of section 2(e) of the Financial Institution (Recovery of Finances) Ordinance, 2001.

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30. **Lahore High Court**
MCB Bank Limited v. M/S MAZCO Industries Private Limited etc.
Execution Application No.64900 of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1039.pdf

Facts: The Applicant/ Judgment Debtor filed an application under Sections 19(7) and 2(b) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 seeking transfer of the Execution Application to the Banking Court while taking the plea of lack of pecuniary jurisdiction of High Court.

Issues: Whether a decree in a banking suit passed by High Court is liable to be transferred on the ground that the amount of decree ultimately passed by High Court is less than the amount claimed in the suit by plaintiff and the decreed amount fell below the threshold of pecuniary limit of High Court for the exercise of its jurisdiction?

Analysis: The Banking Court which initially assumed the jurisdiction on the basis of the value fixed by the decree-holder in the plaint was the only forum which had the pecuniary jurisdiction to execute the decree and to decide all ancillary matters relating to the execution, discharge and satisfaction of the decree…If during the pendency of the suit the value of subject-matter is increased or decreased, the Court will not lose jurisdiction because jurisdiction once obtained is not taken away by increase or decrease in the value of the subject-matter and the Court can proceed with the adjudication of the suit while as per section 19 of the Ordinance a banking suit on pronouncement of a judgment even in case of consent decree automatically stands converted into execution proceedings before the same court which decided the case.

Conclusion: A decree in a banking suit passed by High Court is not liable to be transferred on the ground that the amount of decree ultimately passed by High Court is less than the amount claimed in the suit by plaintiff and the decreed amount fell below the threshold of pecuniary limit of High Court for the exercise of its jurisdiction.

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31. **Lahore High Court**
Deputy Registrar of Companies v. Mukhtar Textiles Mills Limited and 8 others
C.M.No.02 of 2018 in C.O.No.39619 of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1032.pdf

Facts: The Company was wound up on the grounds of suspension of its business operation, laying off entire staff in order to avoid incurring expenditure. While passing the winding up order, the Court appointed official liquidator with direction to submit preliminary report. During winding up proceedings, instant application for recalling of winding up order has been filed and the petitioner raised objection to the maintainability of the petition.

Issues: i) Whether court is empowered to declare dissolution of a company void?
ii) What are conditions on which Court has the discretion to stay the winding up proceedings?

Analysis: i) Plain reading of section 414 of the Companies Act, 2017 reveals that it empowers the Court to declare dissolution of a company void in case application for the purpose was filed either by the liquidator or any person who appears to the Court to be interested, within two years of the date of dissolution of the Company.
ii) A bare reading of the said Section reveals that two conditions are required to be satisfied for bringing an order of stay of winding up in existence (i) filing of an application either of the Official Liquidator or of any creditor or contributory or of the registrar or the Commission or a person authorized by it for stay of winding up proceedings; (ii) proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed. If the above two conditions are

satisfied, the Court has the discretion to stay the winding up proceedings, either altogether or for a limited time by imposing appropriate terms and conditions. Pertinently, consequence of winding up order was that all the assets of the company would come under the control of the Court and management of the company would vest with liquidator instead of Directors and the Chief Executive of the company.

Conclusion: i) Section 414 of the Companies Act, 2017 empowers the Court to declare dissolution of a company void in case application for the purpose was filed either by the liquidator or any person who appears to the Court to be interested.
ii) Two conditions are required on which Court has the discretion to stay the winding up proceedings which are (i) filing of an application either of the Official Liquidator or of any creditor or contributory or of the registrar or the Commission or a person authorized by it for stay of winding up proceedings; (ii) proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed.

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32. **Lahore High Court**
DG Khan Cement Company Limited etc. v. Federal Board of Revenue etc.
Case No: W.P.No.52043 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC1074.pdf

Facts: Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioners have challenged impugned show cause notice and subsequent notice issued by Respondent No.4 under Section 11(2) of the Sales Tax Act, 1990.

Issues: i) Whether under Provisions of Section 8 of 1990 Act the exclusion of adjustment/refund of input tax does have any nexus with the taxable activity?
ii) What functions are performed by the Federal Board of Revenue under the Federal Board of Revenue Act, 2007?

Analysis: i) Provisions of Section 8 of 1990 Act, manifests that the exclusion of adjustment/refund of input tax does not have a nexus with the taxable activity/supply of the registered person and parameters regarding adjustment of input tax are given in Sub-Sections (a) to (m) of this Section. The mechanism provided in Section 8 will be read together with the provisions contained in Sections 2 and 7 of 1990 Act when such kind of exercise regarding input tax is carried out by the competent authority.
ii) The Respondent/Federal Board of Revenue (the “FBR”) functions under the Federal Board of Revenue Act, 2007 (the “2007 Act”) and in terms of Section 4(1) (a) and (k) of this Act, it has to act in implementing the provisions of all fiscal laws, by (i) taking appropriate action; (ii) making policy; and (iii) issuing rules & regulations or guidelines in a clear, transparent, effective and expedient manner. High Court has already declared the FBR as a Regulatory Body to deal

with all the tax related affairs under relevant provisions of the 2007 Act.

Conclusion: i) Under Provisions of Section 8 of 1990 Act the exclusion of adjustment/refund of input tax does not have any nexus with the taxable activity.
ii) Federal Board of Revenue functions under the Federal Board of Revenue Act, 2007 and in terms of Section 4(1) (a) and (k) of this Act, it has to act in implementing the provisions of all fiscal laws.

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33. **Lahore High Court**
Mukhtar Ahmad Butt v. Addl. District Judge, etc.
W.P. No. 33436 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC9048.pdf

Facts: Through this constitutional petition, petitioner has called in question order passed by Senior Civil Judge whereby while allowing application of the respondents for framing of additional issues, request of the petitioner to discard the written statement filed by the respondents, on the ground of having been filed after delay of 53 days, has been declined. Petitioner has also called in question order passed by Addl. District Judge, whereby appeal filed by the petitioner against the afore-referred order has also been dismissed.

Issues: i) Whether written statement filed subsequent to the period of thirty days as provided under proviso to rule 1 of Order VIII C.P.C is to be discarded?
ii) Whether Court is empowered as provided under rule 1 of Order VIII C.P.C. to permit a party to file written statement within specified or extended time?
iii) Whether passed by the Courts below are ordinarily interfered with by High Court?

Analysis: i) Although, proviso to rule 1 of Order VIII C.P.C. provides that written statement is to be filed within period not ordinarily exceeding thirty days but the said rule does not provide that written statement filed subsequent to the said period of thirty days is to be discarded. The words used in the proviso are „that the period allowed for filing the written statement shall not ordinarily exceed thirty days‟. The phrase „shall not ordinarily exceed‟ cannot be read as „shall not exceed' by treating the word 'ordinarily‟ as redundant as the same is not permissible under the law as no word in a law could be treated as superfluous or redundant and has to be given effectto in letter and spirit. Reliance in this behalf may be placed upon judgments reported as "Waqar Zafar Bakhtawari and 6 others Vs. Haji Mazhar Hussain Shah and others" (PLD 2018 SC 81), "Syed Mushahid Shah and others Vs. Federal Investment Agency and others" (2017 SCMR 1218) and "Dr. Zahid Javed Vs. Dr. Tahir Riaz Chaudhary and others" (PLD 2016 SC 637). Reliance may also be placed on the case of "Engineer Zafar Iqbal Jhagra and others Vs. Federation of Pakistan and others" (PLD 2013 SC 224) wherein it is provided that general principle of statutory interpretation was that the language of legislature must not be rendered superfluous. The phrase „shall not ordinary exceed thirty

days" gives discretion to the Court to allow a party to file written statement even beyond period of thirty days and when such a discretion is exercised by allowing time to the other party to file written statement which is availed by the said party and written statement is filed within timeframe provided by the Court, the other party cannot raise objection against the said written statement by asking the Court to discard the same as having been belatedly filed.
ii) The power of the Court provided under rule 1 of Order VIII C.P.C. to permit a party to file written statement within specified or extended time, as is evident from the phrase, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit", cannot be curtailed by the proviso as a proviso is ordinarily an exception to the general rule and cannot be so interpreted to render the provision of main Section as redundant or ineffective or without any legal effect. Reliance in this behalf may be placed on judgments reported as "Federal Land Commission through Chairman Vs. Rais Habib Ahmed and others" (PLD 2011 SC 842) and "Enmay Zed Publications (Pvt.) through Director General Vs. Sindh Labour Appellate Tribunal through Chairman and 2 others" (2001 SCMR 565) wherein it is provided that proviso to a section operates as an exception and cannot render redundant or ineffective the substantial provisions of the main section. Needless to add that even otherwise the proviso to rule 1 of Order VIII C.P.C. provides discretion to Court to bind defendants to file written statement within thirty days or permit them to file the same beyond the said time period but the same does not curtail, in any manner, the power of the Court to allow a party to file written statement beyond thirty days.
iii) It is settled by now that discretionary orders passed by the Courts below are not ordinarily interfered with by this Court and order allowing the respondents to file written statement beyond thirty days was a discretionary order and this Court is not inclined to interfere in the said order on that account as well.

Conclusion: i) Written statement filed subsequent to the period of thirty days as provided under proviso to rule 1 of Order VIII C.P.C is not to be discarded.
ii) Court is empowered as provided under rule 1 of Order VIII C.P.C. to permit a party to file written statement within specified or extended time.
iii) Discretionary orders passed by the Courts below are not ordinarily interfered with by High Court.

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34. **Lahore High Court**
Mian Zafar Haider v. Deputy Commissioner etc.
Writ Petition No. 5740 of 2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2018LHC4068.pdf

Facts: Through this constitutional petition, the petitioner has called in question order passed by Deputy Commissioner, whereby services of the petitioner were put under suspension with immediate effect on account of willful absence from duty.

Issues: i) Whether the High Court can go into the factual determination of the matter while exercising its constitutional jurisdiction?
ii) Whether suspension is a temporary measure wherein an employee has to receive his full emoluments?
iii) Whether the High Court in its constitutional jurisdiction could consider the intermediate stages of the proceedings relating to terms and conditions of a civil servant when the said orders are to merge in the final order likely to be passed?

Analysis: i) Although the petitioner claims that his attendance is marked in the office of the Tehsildar but this Court cannot go into the factual determination of the matter while exercising its constitutional jurisdiction.
ii) Suspension is a temporary measure wherein an employee has to receive his full emoluments, although no work during his suspension is usually taken from the said employee.
iii) The matter relates to terms and conditions of service of an employee and the order of suspension is not a punishment. If any final order is passed against the petitioner as a result of proceedings under PEEDA Act, he would have remedy before the departmental authorities and Service Tribunal. This Court in its constitutional jurisdiction could not consider the intermediate stages of the proceedings relating to terms and conditions of a civil servant when the said orders are to merge in the final order likely to be passed. Besides, piecemeal decisions are not the intention of law. Moreover, bar of Article 212 of the Constitution would be applicable in the present case.

Conclusion: i) The High Court cannot go into the factual determination of the matter while exercising its constitutional jurisdiction.
ii) Suspension is a temporary measure wherein an employee has to receive his full emoluments.
iii) The High Court in its constitutional jurisdiction could not consider the intermediate stages of the proceedings relating to terms and conditions of a civil servant when the said orders are to merge in the final order likely to be passed.

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35. **Lahore High Court**
Aila Azhar and another v. Ali Kuli Amin-ud-Din and others
W.P. No.21798 of 2022
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC1147.pdf

Facts: The instant constitutional petition stemmed from order of Addl. District Judge in terms whereof the revision petition was accepted, order of the trial court was set aside and the application for consolidation of two suits was allowed.

Issues: (i) Whether cross-suits involving admitted joint property as well as disputed joint property may be consolidated for adjudication through single trial?

(ii) Whether all the joint properties must be the subject-matter of a suit of partition?
(iii) Whether trial court is competent to pass decree on the basis of admissions made in cross-suits to the extent of some of the properties included in the subject-matter of such suits?

Analysis: (i) Under Order XIV, Rules 1 and 2, C.P.C. issues are framed from the material controversies and propositions of law and fact raised inthe pleadings of parties and are not limited to the issues raised in the plaint alone. Rule 1(5) of Order XIV, C.P.C. mandates that on reading the plaint and the written statement and after such examination of the parties as mayappear necessary, the court shall ascertain that upon what material propositions of law or fact, the parties are at variance; and shall thereupon proceed to frame issues on which right decision of the case appears to depend. It is clear from bare reading of the provision that the material propositions of law or fact raised in the pleadings of the parties by both sides (i.e. plaintiffs and defendant) shall become subject matter of issues…This being so; in situation where parties are the same, the subject matter of the two suits raised in the pleadings i.e., plaint and written statement is the same, the questions for determination of issues will be the same and that it will require common evidence for decision; propriety demands that the two suits be consolidated to follow the rule of convenience for parties and to avoid contradictory decisions and unnecessary delay. It appears to be in these circumstances that an amendment was made in Order II, C.P.C. whereby Rule 6-A was added by Lahore High Court Notification No. 237/Legis/XI-Y-26, Gazette of Punjab dated 22.8.2018.
(ii) The rule is that partial partition shall not be allowed and the entirety of the properties be included irrespective of possession…It is consistent rule that all the properties that are jointly owned must be subject matter of the suit, instead of the partition of one property while leaving the other properties out for subsequent proceedings.
(iii) No doubt that the trial court is competent to pass decree on the basis of admissions made in the pleadings under Order XII, Rule 6, C.P.C. which would only apply to the properties that are admitted either by the petitioners or by the respondent.

Conclusion: (i) Cross-suits involving admitted joint property as well as disputed joint property may be consolidated for adjudication through single trial.
(ii) All the joint properties must be the subject-matter of a suit of partition.
(iii) Trial court is competent to pass decree on the basis of admissions made in cross-suits to the extent of some of the properties included in the subject-matter of such suits.

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36. **Lahore High Court**
Shehzad Nawaz and others v. Mst. Raaj Begum and others
R.S.A. No.25 of 2015
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC1219.pdf

Facts: The instant second appeal is directed against judgments and decree in terms whereof the suit for declaration of respondent was decreed by the trial court and appeal there against was dismissed by the first appellate court.

Issues: i) Whether in a second appeal concurrent findings of fact could ordinarily be challenged?
ii) What are the mandatory ingredients of gift?
iii) Whether question of limitation is also applicable in the cases where fraud and collusion are alleged?
iv) Whether gift mutations are merely a tool to deprive the daughter from their inherited share?

Analysis: i) In a second appeal concurrent findings of fact could not ordinarily be challenged unless any serious misreading of evidence was pointed out or serious questions of law were raised.
ii) To prove gift, it was incumbent to allege and prove three mandatory ingredients. The declaration of gift, acceptance of gift and transfer of possession of the property. It was also necessary to specifically mention the time, place and names of persons in whose presence these prerequisites were performed.
iii) It was observed by the Supreme Court Of Pakistan to the effect that gift mutation having been challenged on grounds of fraud and collusion, the contention that suit was barred by time did not have any force, as where fraud and collusion are alleged and established question of limitation cannot help the beneficiary thereof.
iv) The gifts were only a device to deprive the daughters from inheritance and the gift mutations were sanctioned to bypass the law of inheritance; and that gift being based on a fraudulent intent which vitiates even the most solemn transactions notwithstanding the bar of limitation Courts would not act as helpless bystanders and allow a fraud to perpetuate

Conclusion: i) In a second appeal concurrent findings of fact could not ordinarily be challenged unless there is any serious misreading of evidence or question of law raised.
ii) The declaration of gift, acceptance of gift and transfer of possession of the property are the mandatory ingredients to prove the gift.
iii) There is no question of limitation if fraud is alleged.
iv) Yes, the gifts are only a device to deprive the daughters from inheritance and the gift mutations are sanctioned to bypass the law of inheritance

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37. **Lahore High Court**
Munir Ahmed v. The Federation of Pakistan
W.P. No.80733 of 2022.
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC1180.pdf

Facts: Through this writ petition, the petitioner has challenged the decision of the Government whereby he was declined to provide the record of Tosha-khana.

Issues: Whether the record of Tosha-khana can be made public?

Analysis: There is no second thought that ownership of gift(s) received exclusively vests in the Government of Pakistan. Undoubtedly, the option of purchase is available to the recipient but only upon fulfilling the procedural and codal / legal requirements. And upon payment of price, as determined, ownership in the gifts is conferred on the recipient – [there are gifts, whose prices are either below the permissible limit or so insignificant that retention is allowed without any payment. This category of gifts is different]. I concur with the submissions of the learned Additional Attorney General that gifts are not provided to the individuals, out of any personal affection or bonding, but being the Government / Public functionaries, representing the State of Pakistan - this status/privilege is an essential qualification for the recipient of gift(s). Families/members of official delegations are subject to the same limitations, obligations and procedure(s), as applicable to the Government / Public functionaries. In every case, the dominion over the gift(s) remains with the Government and possession of the gifts is a mere entrustment. Recipient(s), entrusted with the property, may seek purchase of gifts but subject to the procedure prescribed for disposal – which inter alia includes the first step of disclosure of gift(s), declaration of intention to purchase, assessment/ascertainment of the price and payment of consideration. And unless all these requisite conditions are met, the ownership in the gift(s) or dominion over them vests and continues to vest in the Government, and the recipient is merely a trustee, holding gift(s) on behalf of the Government of Pakistan –gift(s), held as trustee, will not even became part of the estate of the recipient unless procedure prescribed is followed. In view of the above, it is declared that act of non-disclosure, non-declaration or non-payment of price qua the gift(s) is culpable wrongdoing, attracting malfeasance, misconduct and breach of trust. It is expected that Government / Public functionaries, those who had received the gift(s) but had, so far, neither disclosed nor declared the identity of gifts, must voluntarily declare receipt/possession of gifts, failing which said persons are likely to be exposed to criminal action or departmental proceedings, as the case may be. It is pertinent to mention that criminal breach of trust is otherwise a punishable offence under Pakistan Penal Code 1860. Nobody is above the law, nor anyone could be allowed to make gains or enrich itself at the expense of causing loss to the State and prejudice to the people of Pakistan. It is believed that claim of immunity pleaded is nothing but a figment of the colonial mindset, which

mindset must be abandoned/off-loaded now, if the Rule of law and equality before the law need to be established. Now, after seventy-five years of our independence it is imperative that the people of Pakistan be treated as citizens/fountainhead of all power, instead of being the subjects in a colonial set-up. People of Pakistan have the right to know the details of 'Tosha-Khana', what was gifted and who gifted it.

Conclusion: Yes, the record of the Tosha-khana can be made public.

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38. **Lahore High Court**
Fayyaz Ahmad etc. v. The State, etc.
Criminal Appeal No.654 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1106.pdf

Facts: Appellants along with 130 co-accused faced trial before Anti-Terrorism Court, Bahawalpur in case FIR under sections 302/ 353/ 224/225/ 295-B/324/ 435/ 436/ 395/148/149/ 458/ 186/427/ 201/ 337-A(2)/ 337-F(i)/342 PPC read with section 7 Anti-Terrorism Act, 1997 and on conclusion of trial vide judgment dated 31.03.2022 along with twenty two co-accused, the present accused/appellants were convicted and sentenced.

Issues: What are the evidential requirements to sustain a conviction in an offence of rioting?

Analysis An offence is a statement of facts embodied in a section of law which are to be proved as required through the definition given in such section of law. We know 'riot' is a disturbance of the peace by several persons, assembled and acting with a common intent in exercising a lawful or unlawful enterprise in a violent and turbulent manner. Bifurcating such definition into segments will show that disturbance of peace, like obstruction of roads, damage to property or injuries to persons, is to be proved by the evidence of illegal acts at the site, and that too by several persons, and if it was a lawful act then violent or turbulent manner shall be proved; both situations require that a pre-concert is to be proved for attracting common intent, or the circumstances which united the people to act with common intent at spur of the moment. (…) Riot, rout, and unlawful Assembly are related offences, yet they are separate and distinct. A 'rout' differs from a 'riot', in which the persons involved do not actually execute their purpose but merely move toward it. The degree of execution that converts rout into riot is often difficult to determine. (…) when force or violence will be used by an unlawful assembly with the intent mentioned therein then it would become an offence of rioting. (…) In such a case, to sustain a conviction for rioting, it is essential for prosecution first to prove the existence of an unlawful assembly with a common object and then to prove that one or more members of the assembly used violence or force in furtherance of the common object. (…) Mere presence of the appellant at the place of occurrence is never sufficient to prove that he shared the common object

of the unlawful assembly. The provisions of the above referred sections do not require conviction and punishment merely on the basis of only presence or identification of the appellant as member of the mob.

Conclusion: To sustain a conviction for rioting, it is essential for prosecution first to prove the existence of an unlawful assembly with a common object and then to prove that one or more members of the assembly used violence or force in furtherance of the common object. Mere presence of one at the place of occurrence is never sufficient to prove that he shared the common object of the unlawful assembly.

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39. **Lahore High Court**
Mirza Muhammad Akbar Baig. v Add. District Judge, etc.
Writ Petition No.6002 of 2022.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC983.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, petitioner has challenged the vires of order passed by learned Appellate Court whereby while accepting the appeal of the respondent No.3 her execution petition was restored.

Issues: i) What is the limitation for filing of an execution petition before the Family Court?
ii) Whether the learned Appellate Court can condone the delay in filing the appeal?

Analysis: i) Perusal of Section 13 of the West Pakistan Family Courts Act, 1964 reveals out that no limitation is provided for filing of an execution petition in family cases. Provisions of Limitation Act, 1908 are not applicable in family matters in stricto-senso. As no specific period of limitation for implementation of decree of dower has been fixed therefore whenever wife moves the legal forum for satisfaction of her right, husband is under legal obligation to satisfy the decree.
ii) Right of appeal is not merely a matter of procedure; rather it is a substantive right. There is no cavil that in terms of Rule 22 of the Family Courts Rules, 1965, an appeal under Section 14 of the Family Courts Act, 1964 shall be preferred within a period of 30 days of the passing of decree or decision but appellate Court is vested with the power to condone any delay in filing the appeal on showing sufficient cause by the appellant.

Conclusion: i) No limitation is provided for filing of an execution petition in family cases.
ii) The learned Appellate Court can condone the delay in filing the appeal on showing sufficient cause.

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40. **Lahore High Court**
Safdar Yar Khan, etc. v. Mohammad Iqbal Khan, etc.
Regular Second Appeal No.56 of 2005.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC1048.pdf

Facts: Through this Regular Second Appeal appellants have assailed the vires of judgments & decrees of the Courts below whereby suit of respondent No.1 was decreed concurrently.

Issues: i) Whether civil court has jurisdiction after the repeal of Settlement Laws particularly when the question of fraud & forgery is also involved?
ii) Whether the limitation runs against the void transaction?

Analysis i) After the repeal Act XII of 1957 the only forum to determine whether a property is available property or not, is the Civil Court and not the Residual Authorities. (…)The question of fraud & forgery is determinable only by the Civil Court, particularly in the settlement cases, where after the repeal of Settlement Laws no other forum is available for adjudicating such dispute. Notified Officer appointed under the Repeal Act do not possess jurisdiction to declare P.T.O & P.T.D as illegal, null & void on the ground of fraud & forgery. After repeal of Settlement Laws, this jurisdiction only vested with the Civil Court."
ii) Where fraud and forgery is alleged, the time is computed from the date of knowledge. (…) It is well settled principle of law that fraud vitiates even the most solemn transaction. Any transaction based on fraud would be void. Limitation does not run against void transaction. Mere efflux of time did not extinguish the right of any party. Notwithstanding the bar of limitation, the matter can be considered on merit so as not to allow fraud to perpetuate.

Conclusion: i) The question of fraud & forgery is determinable only by the Civil Court, particularly in the settlement cases, where after the repeal of Settlement Laws no other forum is available for adjudicating such dispute.
ii) Where fraud and forgery is alleged, the time is computed from the date of knowledge and limitation does not run against void transaction.

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41. **Lahore High Court**
Mst. Irshad Bibi v. Ghulam Mustafa, etc.
Civil Revision No.970 of 2012.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC1158.pdf

Facts: Petitioner instituted a suit for declaration against the respondents by contending therein that she is owner in possession of suit property; impugned sale mutation as well as subsequent entries in the revenue record made on the basis of said mutation is against the law as she never appointed general attorney for sale of her property. Learned trial court dismissed the suit; feeling aggrieved petitioner

preferred an appeal which was partially accepted. Respondents filed civil revision for the dismissal of the same whereas petitioner filed revision for decreeing the suit in toto.

Issues: i) Who is to prove the execution of oral sale mutation and general power of attorney if property is sold by general attorney?
ii) Whether it is imperative for the vendees to establish that the transaction was undertaken with a title holder in order to enforce a sale of immovable property?
iii) Whether transaction involving property of illiterate women is to be treated at par with Pardanasheen lady and what are the requirements if such transaction is involving anything against her apparent interest?
iv) Whether attestation of mutation itself furnishes a proof of sale?
v) Whether mutation is document of title and how the entries of mutation are proved?
vi) Whether the High Court is to give its findings after appraisal of evidence if both the courts below are at variance?
vii) Which powers should be exercised under the general power of attorney?
viii) Whether the execution of power of attorney creates absolute right of attorney over the property?
ix) What is the procedure to prove when no attesting witness is found?
x) If there are numerous cuttings on oral sale mutation then what inference can be drawn?
xi) Whether the fraud vitiates the transaction and whether limitation runs against void transaction?
xii) When the limitation commences where a person is by means of fraud kept from the knowledge of his right to institute a suit?
xiii) When right to sue accrues to a person against the other for declaration of his right?

Analysis: i) If suit property is sold by general attorney through oral sale mutation, in order to establish valid execution of the transaction, respondents have to prove not only the general power of attorney, the ingredients of sale but also the execution of the mutation through cogent and reliable evidence.
ii) In order to enforce a sale of immoveable property it is imperative for the vendees to establish that the transaction was undertaken with a title holder; there was an offer made which was accepted; the parties had no incapability; there was consensus at idem; that it was settled against valid consideration and that it was accompanied by the delivery of possession.
iii) Transaction involving property of illiterate women is to be treated at par with Pardanasheen lady and where a transaction involved anything against her apparent interest, it must be established that independent, impartial and objective advice is available to her and the nature, scope, implication and ramifications of the transaction entering into is fully explained to her and she understood the same.

iv) Attestation of mutation by itself does not furnish proof of sale and whenever any such transaction was questioned, the onus laid on the beneficiary to prove the transaction and every ingredient thereof as well as the document if executed for its acknowledgment.

v) Mutation is always sanctioned through summary proceedings and to keep the record updated and for collection of revenue, such entries are made in the relevant register under Section 42 of the Land Revenue Act, 1967 and it had no presumption of correctness prior to its incorporation in the record of rights. However, entries in the mutation are admissible in evidence but the same are required to be proved independently by the persons relying upon it through affirmative evidence. Oral transaction reflecting therein did not necessarily establish title in favour of the beneficiary. Mutation could not by itself be considered a document of title and may have been attested as an acknowledgment of past transaction.

vi) To reach a just conclusion, scanning of the whole evidence is necessary as conclusion drawn by both the courts below are at variance. Guidance sought from the judgment of august Supreme Court of Pakistan titled "Mst. Azra Gulzar V. Muhammad Farooq and another (2022 SCMR 1625)".

vii) It is settled principal of law that there must not be any uncertainty or vagueness in the power of attorney. Power of attorney should be construed strictly and only such powers qua the explicit object which were expressly and specifically mentioned in the power of attorney should be exercised by the agent as conceded to have been dedicated to him.

viii) The execution of power of attorney neither amounts to be divesting the principal of the authority over the subject matter nor does it amount to absolute right of the attorney over the property as its owner. The attorney has to act as an agent of the principal. There is a restriction that the attorney has to take the principal in confidence before converting the property of the principal on the force of the power of attorney into personal use or for the benefit of his near relatives. If an attorney intends to exercise right of sale in his favour or in favour of next of his kin, he has to consult the principal before exercising that right and he should firstly obtain the consent and approval of the principal after acquainting her with all the material circumstances. In this regard guidance sought from august Supreme Court of Pakistan titled "Muhammad Ashraf & 02 others V. Muhammad Malik & 02 others (PLD 2008 SC 389)".

ix) Article 80 of Qanun-e-Shahadat Order, 1984 provides the procedure how to prove when no attesting witness is found. It is obligatory upon the respondents to prove this fact that their witnesses had been died or cannot be traced out. Reliance is placed on "Ghulam Sarwar (Deceased) Through L.RS., and others versus. Ghulam Sakina" (2019 SCMR 567). The respondents had a way to prove the factum of death by leading secondary evidence.

x) If there are numerous cuttings on the alleged oral sale mutation, the said cuttings which have been made on the mutation were sufficient to declare the

impugned sale null & void. Reliance is placed upon the case law cited as "Mst Hameedan Bibi & another V. Muhammad Sharif (2017 YLR 239)."

xi) It is well settled principle of law that fraud vitiates even the most solemn transaction. Any transaction based on fraud would be void. Limitation does not run against void transaction. Mere efflux of time did not extinguish the right of any party. Notwithstanding the bar of limitation, the matter can be considered on merit so as not to allow fraud to perpetuate. In this regard, I seek guideline from the cases of Hon‟ble Supreme Court of Pakistan reported as "PEER BAKHSH through LRs and others vs. Mst. KHANZADI and others" (2016 SCMR 1417);"Muhammad Iqbal versus Mukhtar Ahmad" (2008 SCMR 855)"Mst. Raj Bibi etc. versus Province of Punjab, etc." (2001 SCMR 1591) and "Hakim Khan versus Nazeer Ahmad Lughmani" (1992 SCMR 1832).

xii) Where a person is by means of fraud kept from the knowledge of his right to institute a suit. In such circumstances, the period of limitation commences from the date when the fraud first became known to the "person injuriously affected". Such injuriously affected person can, therefore, institute a suit within the limitation period specified for such suit in the First Schedule ("Schedule") to the Limitation Act, but computing it from the date when he first had knowledge of the fraud, whereby he was kept from knowledge of his right to institute the suit. Thus, section 18 of Limitation Act is an umbrella provision that makes the limitation period mentioned in the Articles of the Schedule, begin to run from the time different from that specified therein.

xiii) The right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his right. The august Supreme Court of Pakistan in its recent judgment titled "RABIA GULA and others Vs. MUHAMMAD JANAN and others" (2022 SCMR 1009) while interpreting two actions that cause the accrual of right to sue, to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right.

Conclusion: i) Respondents have to prove not only the general power of attorney, the ingredients of sale but also the execution of the mutation through cogent and reliable evidence.

ii) In order to enforce a sale of immoveable property it is imperative for the vendees to establish that the transaction was undertaken with a title holder.

iii) Transaction involving property of illiterate women is to be treated at par with Pardanasheen lady and where a transaction involved anything against her apparent interest, it must be established that independent, impartial and objective advice is available to her.

iv) Attestation of mutation by itself does not furnish proof of sale.

v) Mutation is not document of title and entries of mutation are required to be proved independently by the persons relying upon it through affirmative evidence.

vi) The High Court is to give its findings after appraisal of evidence if both the courts below are at variance.

vii) The powers qua the explicit object which were expressly and specifically mentioned in the power of attorney should be exercised by the agent.
viii) The execution of power of attorney does not create absolute right of attorney over the property.
ix) It is obligatory upon the respondents to prove this fact that their witnesses had been died or cannot be traced out.
x) If there are numerous cuttings on the alleged oral sale mutation, it is sufficient to declare the impugned sale null & void.
xi) Any transaction based on fraud would be void and limitation does not run against void transaction.
xii) The period of limitation commences from the date when the fraud first became known to the "person injuriously affected".
xiii) The right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right.

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42. **Lahore High Court**
Bashir Ahmed v. The State etc., Mst. Sajeela Zakir v. Ahmed and four others and Mst. Sajeela Zakir v. The State etc.
Criminal Appeal No.223 of 2021, P.S.L.A No.19 of 2021 and Crl. Revision No.98 of 2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1090.pdf

Facts: Five accused persons faced trial before learned Additional Sessions Judge, Bahawalnagar in a private complaint under sections 302/148/149 PPC arising out of an FIR under sections 302/148/149/34 PPC police station Takhat Mahal, District Bahawalnagar and on conclusion of trial appellant was convicted.

Issues: i) Whether prosecution is under obligation to prove its case beyond reasonable doubt at all stages of a criminal case?
ii) Whether it is not the quantity rather the quality which is required to establish a charge by the prosecution?
iii) What is deflection of bullet and ricochet effect in cranial cavity?

Analysis: i) It is well settled proposition of law that the prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case.
ii) This court is conscious of the fact that it is not the quantity rather the quality which is required to establish a charge by the prosecution and similarly it is for the prosecution to choose as to which of the witnesses can be useful to it, but having said that the prosecution cannot escape its liability to bring home the guilt against the accused beyond any shadow of doubt.
iii) Presence of bullet inside the body without exit wound does not mean that it was not a close-range fire because the locale from where it entered was a

zygomatic bone, bullet jacketed in the skull while touching the maxilla bone which are very hard bones of the body and even due to ricocheting effect bullet usually deflect inside the body (…) The ricochet effect is different in the cranial cavity as compared to other part of the body.

Conclusion: i) The prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case.
ii) The prosecution is required to produce the quality and not a quantity of evidence to establish a charge.
iii) The ricochet effect is different in the cranial cavity as compared to other part of the body and due to ricocheting effect bullet usually deflect inside the body.

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43. **Lahore High Court**
Hafiz Ali Raza v. Deputy Commissioner, Lahore, etc.
W.P.No.20258 of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC1304.pdf

Facts: The petitioner has challenged the vires of Order passed by Deputy Commissioner, Lahore by which thirteen persons have been put under preventive detention.

Issues: (i) Whether section 3 of the Maintenance of Public Order Ordinance, 1960 can be invoked on the sole basis of source report without any tangible evidence against a detenue?
(ii) Whether High Court lacks jurisdiction to dilate upon the issue of preventive detention as per section 23 of the Maintenance of Public Order Ordinance, 1960?

Analysis: (i) The purpose of section 3 is to prevent any person from acting in any manner prejudicial to public safety or the maintenance of public order. For ascertaining such act, it is essential that some material in tangible form should be available. Learned Assistant Advocate General states that only a source report is sufficient to prevent imminent danger by putting the person in captivity. Executive authority no doubt can take action on any source report in rare cases but then it becomes mandatory to collect the material to justify detention and the minimum period for collection of such material is impliedly reflected in section 3 (6) of Ordinance…Such material should obviously be in tangible form like; SMS/Voice messages, Whats app Messages or of other social media accounts, Pamphlets/handouts, Posters, Photographs, Paintings, Caricatures, Books/Literature, Newspapers, Audio/Video CDs, Electronic and Digital material, Wall chalking, Banners/Pena flex, recording of demonstrations in Rallies, Material on face book, twitter or any other social media account, call records, geo fencing through CDR, Speeches in Public Meetings , Radio & T.V. shows, Surveillance report in any form, Reports from international agencies, Suspicious transaction report from any financial institution, membership record of affiliated association or political party etc. On collection of such material there must be a standard satisfaction of authority for necessity to make an order for

preventive detention which means that there must be some reasonable grounds to justify the order.

(ii) High court in Constitutional jurisdiction can entertain the request of the petitioner for declaring the detention of the detenus as illegal. While the power of the executive todetain is written into the specific preventative detention laws, the authority for judicial review comes from Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, which expands the jurisdiction of the High Court to include orders, "directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner." Individuals that are preventatively detained also need not wait for their appearance before Review Board to seek judicial review of their detention.

Conclusion: (i) Section 3 of the Maintenance of Public Order Ordinance, 1960 cannot be invoked on the sole basis of source report without any tangible evidence against a detenue.

(ii) High court can exercise its Constitutional jurisdiction under Article 199 to entertain the request of the petitioner for declaring his detention under the Maintenance of Public Order Ordinance, 1960 as illegal.

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44. Lahore High Court
Mst. Beenish v. Additional District Judge etc.
Writ Petition No.16930 of 2020
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC975.pdf

Facts: Through this petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed judgment passed by the learned Appellate Court below whereby the appeal of respondent against ex-parte judgment and decree, passed by the learned Trial Court in favour of the petitioner, was accepted and the case was remanded for decision afresh.

Issues: i) Whether law of limitation is not merely a technicality and the same should be applied in strict sense?

ii) Whether in time barred appeal, without addressing the question of limitation, matter can be remanded?

Analysis: i) It is now well-settled principle of law that the law of limitation is not a mere technicality, rather it is to be observed and applied in its strict sense. If there is any delay in filing the appeal, each and every day is to be explained for its condonation. Furthermore, filing appeal by the respondent beyond the period of limitation created certain rights in favour of the petitioner more particularly when the respondent recorded a statement before the learned Executing Court, which could not be readily brushed aside unless some sound reason is available to

condone the delay and ignore the statement recorded during the course of judicial proceedings, which is conspicuously missing in this case.
ii) The appeal of the respondent was time barred and, without addressing the question of limitation through cogent reasons so as the effect of statement of the respondent before learned Executing Court, remanding the matter to the learned Trial Court, is an error apparent on the face of record. Constitutional petition against such remand order is maintainable and merits interference by this Court in its supervisory jurisdiction.

Conclusion: i) The law of limitation is not a mere technicality, rather it is to be observed and applied in its strict sense.
ii) Without addressing the question of limitation in time barred appeal, through cogent reasons, remanding the matter to the learned Trial Court, is an error.

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45. **Lahore High Court**
Shahid Muneer Sattar v. Mst. Mamoona Asad Raza etc.
FAO No.59 of 2019, 64 of 2019
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC9025.pdf

Facts: Through this single judgment, the titled as well as connected appeal are simultaneously being decided as both the appeals lay challenge to the same judgment of the learned Trial Court whereby the award, rendered by the learned Arbitrator, was made Rule of Court in terms of Section 17 of the Arbitration Act, 1940 and the suit instituted by respondents No. 1 and 2 was decreed giving rise to common questions of law and fact, which require opinion of this Court.

Issues: i) Whether the Court can traverse beyond the award and substitute its opinion as if it were an Appellate Court?
ii) Whether the award is binding upon the person who was neither party to the agreement nor participated in the arbitration proceedings?

Analysis: i) It is settled law that the Courts have supervisory jurisdiction in arbitration matters and the award made therein cannot be set aside on the ground that it was erroneous or that the Arbitrator could possibly have reached some other decision. However, the Court is entrusted with power to modify or correct the award on the ground of imperfect form or clerical errors, or decision on questions not referred, which are severable from those which were referred. Similarly, the Court has also power to remit the award when it has left some matters, referred undetermined, or when the award is indefinite, or where the objection to the legality of the award is apparent on the face of the award.
ii) The award is not binding upon the person who is neither a party to the Agreement nor directed by the court to nominate the arbitrator nor participated in the arbitration proceedings.

Conclusion: i) The Court cannot traverse beyond the award and substitute its opinion as if it were an Appellate Court.
ii) The award is not binding upon the person who is neither party to the agreement nor participated in the arbitration proceedings.

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46. Lahore High Court
Shabnam Dil Muhammad v. District Police Officer, etc.
Writ Petition No.48196 of 2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC9054.pdf

Facts: The petitioner filed a Habeas Corpus Petition under Section 491 of the Code of Criminal Procedure, 1898 for the recovery of her daughter, who was stated to be an illegal and improper custody of her husband. Detenue was recovered and produced before the Court by the police, who, in unequivocal terms, stated that she was illegally detained by respondent No. 2 and was also subjected to physical and mental torture. The petition filed under Section 491 Cr.P.C. was also converted into a writ petition filed under Article 199 of the Constitution and was numbered by the office accordingly.

Issues: i) Whether the Punjab Protection of Women against Violence Act, 2016 is a beneficial one, enacted to eliminate and combat the menace of violence against women?
ii) How a remedial statute can be defined?
iii) Whether High Court can issue a writ in the nature of mandamus directing the government to bring any law into force?

Analysis: i) After going through the provisions of the Women Act, it is crystal clear that the legislation is a beneficial one, enacted to eliminate and combat the menace of violence against women and cater to the needs of women who are subjected to violence. The provisions of the Women Act reflect that it is a remedial statute that introduces social reform by improving the conditions of women, victims of violence, who could not have been fairly treated in the past.
ii) A remedial statute was defined in the Hooghly Mills Company Case, observing that "If we look at the modern legislative trend we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, whereas penal statutes are sometimes enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty." Remedial statutes are enacted keeping in view the welfare and benefit of social justice. Such remedial statutes need to be interpreted in a very liberal manner.
iii) I would also like to attend to the legal proposition that where the Government has been empowered to appoint a date for the enforcement of the law by the legislature, can this Court issue a writ in the nature of mandamus directing the

government to bring that law into force. If the legislature sets down an objective criterion or test for the enforcement of a law, it is viable to measure, by employing the power of judicial review, the cause of the inaction on the part of the Government. But where the legislature has left the matter entirely to the discretion of the Government without providing any objective standard, a writ in nature of mandamus cannot be issued but it does not mean that the legislature ever intended that the Government may exercise a veto over its constitutional mandate of making law by not bringing the same into force for an indefinite period. Such conduct of the Government would amount to negating and nullifying the constitutional mandate of the legislature.

Conclusion: i) The Punjab Protection of Women against Violence Act, 2016 is a beneficial one, enacted to eliminate and combat the menace of violence against women and cater to the needs of women who are subjected to violence. Object and provisions of the Act, 2016 have been interpreted in the judgment.
ii) Remedial statutes are statutes which are enacted keeping in view the welfare and benefit of social justice.
iii) Where the legislature has left the matter entirely to the discretion of the Government without providing any objective standard, a writ in nature of mandamus cannot be issued but it does not mean that the legislature ever intended that the Government may exercise a veto over its constitutional mandate of making law by not bringing the same into force for an indefinite period.

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47. **Lahore High Court**
Mirza Waqar Ahmad etc. v. Ayesha Zeeshan, etc.
Writ Petition No. 23024 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC965.pdf

Facts: Respondent filed an application for custody of the minors, which was dismissed by the learned Senior Civil Judge (Family Division) and the appeal which was preferred by Respondent was partly allowed to entrust her custody of the minor daughters, however, order of the trial court was maintained to the extent of custody of the minor sons vide judgment passed by the learned Additional District Judge. The petitioners through this Constitutional Petition have assailed the judgment of the learned Appellate Court.

Issue: i) Whether there is any distinction between custody of the minor and the guardianship?
ii) Whether the wishes and willingness of the minor carry weight for the determination of his/her welfare whilst deciding the question of custody?

Analysis: i) Law maintains a distinction between custody and guardianship and respective rights and obligations in that regard under the Guardian and Wards Act, 1890. The definition of 'guardian' in section 4(2) appears to include the concept of custody, unless the same has been exclusively awarded by the court to a party who is not

the guardian of a minor. Custody under the Act involves a right to upbringing of a minor. On the other hand, guardianship entails the concept of taking care of the minor even in situations when the guardian does not have domain over the corpus of the child. A father is considered to be a natural guardian of a minor, since even after separation with the mother, and even when the mother has been granted custody of a minor, he is obligated to provide financial assistance to the minor. The liability to maintain the minor is not only religious and moral but legal. The right of custody of minor is subordinate to the fundamental principle i.e. welfare of the minor. Maintenance of child is the duty of father and the mother cannot be deprived of custody due to her inability to maintain the child for lack of resources.

ii) As regards plea of the petitioners that learned Appellate Court in the impugned judgment has ignored the wishes and willingness of the minor daughters, suffice it to observe that minor is not always the best judge of where his or her welfare lies, as held by the Supreme Court of Pakistan in the case of Mst. Aisha vs. Manzoor Hussain and others (PLD 1985 Supreme Court 436). Minor girls in the instant case are in their impressionable and tender ages; therefore, it would not be appropriate to attach much weight to their wishes in order to determine where their welfare in relation to their custody lies. Even otherwise, it is to be seen how confident in forming opinion and expressive they are without any influence.

Conclusion: i) Law maintains a distinction between custody and guardianship and respective rights and obligations in that regard under the Guardian and Wards Act, 1890. The definition of 'guardian' in section 4(2) appears to include the concept of custody, unless the same has been exclusively awarded by the court to a party who is not the guardian of a minor.

ii) It would not be appropriate to attach much weight to the wishes and willingness of the minor for the determination of his/her welfare whilst deciding the question of custody because the minor is not always the best judge of where his or her welfare lies.

LATEST LEGISLATION/AMENDMENTS

1. Vide the Islamabad Capital Territory Local Government (Amendment) Act, 2023, sub-section (1) of section 6 of the Islamabad Capital Territory Local Government Act, 2015 is substituted.
2. Vide the Capital Development Authority (Amendment) Act, 2023, clause (f) of section 8 of the Capital Development Authority Ordinance, 1960 is omitted while amendment has been made in section 15 and new section 49G is inserted.
3. Vide the Finance (Supplementary) Act, 2023, section 3, Eight Schedule and Ninth Schedule of the Sales Tax Act, 1990 are amended. Moreover, sections 37 and 37A of the Income Tax Ordinance, 2001 have been amended while new section 236CB is also inserted. Furthermore, the First Schedule of the Federal Excise Act, 2005 has been amended.

4. The Pakistan Global Institute Act, 2023 has been enacted to provide for the establishment of the Pakistan Global Institute.
5. Vide Notification No. SO(F-I) 3-9/2022, dated 23.02.2023, amendment has been made in the Schedule of the Punjab Prevention of Speculation in Essential Commodities Act, 2023.

SELECTED ARTICLES

1. HARWARD LAW REVIEW
https://harvardlawreview.org/wp-content/uploads/2023/01/136-Harv.-L.-Rev.-824.pdf

Personal Precedent at the Supreme Court by Richard M. Re

Personal precedent is a judge's presumptive adherence to her own previously expressed views of the law. This essay shows that personal precedent both does and should play a central role in Supreme Court practice. For example, personal precedent simultaneously underlies and cabins institutional precedent — as vividly illustrated by Dobbs v. Jackson Women's Health Organization. Further, the Justices' use of personal precedent is largely inevitable, as well as beneficial in many cases. Still, the Justices should manage or reform their use of personal precedent, including by limiting its creation. Finally, and most fundamentally, personal precedent challenges conventional theories of legality. Though typically excluded from the law, personal precedent may actually be its building block.

2. HUMAN RIGHTS LAW REVIEW
https://academic.oup.com/hrlr/article/22/2/ngac001/6542245?searchresult=1

The Draft Convention on the Right to Development: A New Dawn to the Recognition of the Right to Development as a Human Right? by Roman Girma Teshome

The draft Convention on the Right to Development is being negotiated under the auspices of the Human Rights Council. This article seeks to explore the merits and the added value of the draft in terms of its normative contents particularly compared with its soft law predecessor—the Declaration on the Right to Development. It argues that the draft is a momentous step in the recognition of the right to development as a human right not only because it is binding, if adopted, but also contains concrete, detailed and implementable norms. While it maintained the abstract and aspirational formulation of norms under the Declaration to a certain extent, the draft also addresses some of the prevailing gaps and limitations of the Declaration.

3. CAMBRIDGE LAW JOURNAL

https://www.cambridge.org/core/journals/cambridge-law-journal/article/cornerstone-of-our-law-equality-consistency-and-judicial-review/4BB0FECFB8136E322926F921D8F5FED4

The Cornerstone of Our Law: Equality, Consistency and Judicial Review by Michael Foran

Equality before the law is a foundational principle of the common law and is of particular importance for administrative law, given the connection between judicial review and the rule of law. Analysis as to the precise requirements of this principle can help us better to understand the role that obligations to act consistently play within judicial review. This article will examine whether consistency ought to be classed as a separate ground of review and argue that this is unnecessary. Examination of the role that legal equality plays within common law reason generally will shed light on the role that it plays within administrative law in particular. Consistency is best conceived as a background principle, informed by the value of legal equality, housed within reasonableness review and not as a separate ground of review that could elide the distinction between review and appeal.

4. MANUPATRA

https://articles.manupatra.com/article-details/Right-to-life-And-Custodial-Deaths

Right to life and Custodial Deaths by Sparsh Srivastava

Article 21of the Constitution states that "No person shall be deprived of his life or personal liberty except according to procedure established by law.". The SC in the Francis Coralie Mullin Case observed that the ambit of article 21 includes "the right to live with human dignity and all that goes along with it". But it seems, these rights could not find space to trickle down to the persons under custody. Custodial death (and custodial violence) is a major concern as it is gross violation basic human rights and infringement of the Fundamental rights. The paper aims at dealing with one of the many incidents keeping in view the prevailing laws and judicial pronouncements. The large number cases of custodial torture and deaths highlights the dark side of the Indian criminal justice system depicting the brutal behaviour faced by people under custody ultimately costing them their life. The paper categorically albeit concisely elaborates the legal positioning of the same.

5. MANUPATRA

https://articles.manupatra.com/article-details/The-Doctrine-of-Lis-Pendens

The Doctrine of Lis Pendens by Parishi Jain

The branch of 'Law of Property' has transposed drastically since the advent of the 'Transfer of Property Act, 1882'. Majority of the sections codified under the said act grounds on equitable principles to establish the right of any owner of a property to transfer or dispose of the immovable property with ease. However, the "Transfer of Property pending suit relating thereto" enlisted under Section 52 of the act was worded

in order to restrict such right of alienation of immovable properties in instances where a dispute regards to the rights of the said property is pending in a competent court of law. The nature of this section is not 'generalized' but rather it only binds the specific parties involved. Section 52 of the Transfer of Property Act, 1882 finds its roots in the age-old doctrine of 'Lis Pendens' which literally translates to 'pending litigation'. This doctrine is based on the common law principle of "utlite pendente nihil innovetur" which means 'during the pendency of litigation, nothing new interest should be introduced or created in respect of the property'.