LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-04-2023 to 30-04-2023)

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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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Dr. Muhammad Amin v. Zarai Taraqiati Bank Limited through Board of Director, ZTBL, HO, Islamabad and others
Civil Petition No. 2933 of 20 19
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2933_2019.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by the learned Islamabad High Court, whereby the Writ Petition was dismissed with certain observations.

Issues: i) What is the basic object of Rule 1 & 2 of Order II, C.P.C.?
ii) What does the expression "cause of action" means?

Analysis: i) According to Rule 1 of Order II, C.P.C., every suit shall as far as practicable be framed so as to afford ground for a final decision upon the subjects in the dispute and to prevent further litigation concerning them, whereas Rule 2 of Order II, C.P.C. explicates the niceties that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but the plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. It is further provided under Sub -Rule (2) of Rule 2 of Order II CPC, that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
ii) The expression "cause of action" means a bundle of facts which if traversed, a suitor claiming relief is required to prove for obtaining judgment which is always a fundamental element to confer the jurisdiction and enables a party to carry on an action in a court of law being a very significant constituent required to be incorporated in the plaint in terms of Rule 1 of Order VII C.P.C.

Conclusion: i) Basic object of Rule 1 & 2 of Order II, C.P.C is that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Sub-Rule (2) of Rule 2 of Order II CPC, also provides that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
ii) The expression "cause of action" means a bundle of facts which are required to be incorporated in the plaint in terms of Rule 1 of Order VII C.P.C.

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2. **Supreme Court of Pakistan**
Muhammad Taimur v. Chairman, National Accountability Bureau NAB Headquarters, Islamabad & others
Civil Petition No.278 of 2023
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._278_2023.pdf

Facts: The National Accountability Bureau had initiated an inquiry against an unregistered entity (Company). The petitioner was arrested during the inquiry proceedings. He had initially sought bail on merits, which was declined by the High Court. After some time the petitioner filed a petition before the Judge, Accountability Court, seeking bail on the ground of delay in the conclusion of the trial, which was refused, and consequently the petition was dismissed. The High Court, however, allowed the constitutional petition and extended the concession of bail, subject to furnishing bail bonds with two sureties. In addition, the High Court made the release of the petitioner subject to surrendering his passport and the Cryptocurrency code to the Investigating Officer of the Bureau. His name was also ordered to be placed on the exit control list.

Issues: i) Whether bail can be withheld as a punishment?
ii) When the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality whether the grant of bail can be made subject to any rider or condition that would render the concession of bail granted by the court as ineffective or redundant?
iii) What is the primary purpose of granting bail?

Analysis: i) It is settled law that bail cannot be withheld as a punishment. The foundational principles of criminal law are the presumption of innocence of an accused and that bail must not be unjustifiably withheld because it then operates as a punishment before being convicted upon conclusion of the trial. Moreover, the conviction and incarceration of a person who is ultimately found guilty upon conclusion of trial can repair the wrong caused by erroneously extending the relief of interim bail but, no satisfactory reparation can be offered to a person who has been wrongly accused for unjustified incarceration at any stage of the case, if in the end a verdict of acquittal is handed down.
ii) It is equally settled law that when the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality the grant of bail cannot be made subject to any rider or condition that would render the concession of bail granted by the court as ineffective or redundant. When a court is satisfied that a case for grant of bail has been made out then refusal to exercise discretion in favour of releasing the accused, subject to conditions described under section 499 of the Criminal Procedure Code, 1898 ("Cr.P.C.") would not be in conformity with the right to liberty and the fundamental rights guaranteed under the Constitution.

iii) The primary purpose of granting bail is to ensure attendance of an accused before the court. It also enables the accused, who is presumed to be innocent, to pursue normal activities which are essential for life such as earning a livelihood or taking care of the needs of the family.

Conclusion: i) Bail cannot be withheld as a punishment.
ii) When the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality the grant of bail cannot be made subject to any rider or condition that would render the concession of bail granted by the court as ineffective or redundant.
iii) The primary purpose of granting bail is to ensure attendance of an accused before the court. It also enables the accused, who is presumed to be innocent, to pursue normal activities which are essential for life such as earning a livelihood or taking care of the needs of the family.

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3. **Supreme Court of Pakistan**
Akber-ud-Din v. Headmaster Govt. High School Reshun and others.
Civil Appeal No. 1494 of 2017
Mr. Justice Qazi Faez Isa, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1494_2017.pdf

Facts: The appellant filed suit for damages wherein the respondent filed an application under Order VII, rule 11 of CPC seeking rejection of the plaint. The application was dismissed and appeal against the same was also dismissed; the respondent then filed a civil revision which was allowed by accepting the application under Order VII, rule 11 of the Code, and consequently the plaint filed by the appellant was rejected. Hence, this civil appeal.

Issue: Whether suit for damages filed by a student against school for issuance of character certificate upon his expulsion, and which the student later on managed to obtain clean character certificate, is maintainable whereas same is filed after almost two decades?

Analysis: The appellant attended the school for hardly a year and upon his expulsion sought issuance of a character certificate, which was issued recording expulsion. Somehow the appellant managed to procure a clean character certificate. But, still he was not satisfied. After almost two decades he sued for damages. The suit was hopelessly time-barred, yet it was entertained. The appellant initiated litigation, including this appeal, which is entirely frivolous. The appellant was unnecessarily accommodated and the school and its staff were involved in endless litigation. Court time and public resources were squandered…

Conclusion: Suit for damages filed by a student against school for issuance of character certificate upon his expulsion, whereas the student later on managed to obtain clean character certificate and which is also filed after almost two decades is not maintainable.

4. **Supreme Court of Pakistan**
Zakir Mehmood v. Secretary, Ministry of Defence (D.P), Pakistan Secretariat, Rawalpindi, etc.
C.P.2712/ 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2712_2020.pdf

Facts: Briefly, the facts are that the petitioner was proceeded against departmentally for misconduct and awarded major penalty of compulsory retirement. Thereafter, the petitioner embarked upon a long journey of unending litigation. The order dated 28.07.2020 is impugned in the present petition for leave to appeal, whereby the Tribunal dismissed the application under Section 12(2) CPC of the petitioner with costs of Rs.50,000/-. The said application was filed by the petitioner against the order of the Tribunal.

Issues: i) Whether the Service Tribunal can be deemed to be a Civil Court?
ii) Whether Service Tribunal while deciding an appeal, or any application including an application under Section 12(2) of the CPC, can award costs?
iii) What is difference between actual costs, compensatory costs and special costs?
iv) What is the purpose and object of imposing costs?

Analysis: i) A bare reading of the above provision shows that for the purpose of deciding an appeal, the Tribunal is deemed to be a civil court and has the same powers as are vested in a civil court under the CPC. Needless to mention that all courts exercising civil jurisdiction (whether original/ trial, appellate or revisional) under the CPC read with the Civil Courts Ordinance 1962, are referred to as "civil courts." But as the powers of a civil court have been conferred on the Tribunal for the purpose of deciding appeals, the reference in Section 5(2) of the Act to the powers of a civil court under the CPC is to be taken as a reference to the powers of an appellate civil court under the CPC. And since the Tribunal can interfere with the findings of facts recorded by the departmental authorities, in addition to correcting any legal error committed by them, the appeals filed before it are in the nature of first appeals as provided in the CPC. Thus, the principles governing first appeals under the CPC apply to appeals before the Tribunal, and the powers of the first appellate court under the CPC are available to it.
ii) A first appellate court can award the actual costs incurred in appeal as per provision s of rule 35(3) of Order 41, CPC and can also impose special costs in the exercise of its inherent powers under Section 151, CPC if the facts and circumstances of the case necessitate the making of such an order to secure the ends of justice or to prevent the abuse of the process of the court. Therefore, both these powers are also available to the Tribunal while deciding an appeal under the Act. Similarly, a first appellate court can award not only the actual costs incurred on an application under Section 12(2), CPC by virtue of Section 35 read with Section 141, 3 CPC but also compensatory costs under Section 35A, CPC or special costs under Section 151, CPC. Thus, the Tribunal can also exercise these

powers in awarding costs while deciding an application under Section 12(2), CPC or any other application.

iii) It may be elaborated that actual costs are awarded by a civil court under Section 35 of the CPC to reimburse the successful party the expenses incurred by him in the assertion or defence of his rights before the court and compensatory costs are granted under Section 35A to compensate him for undergoing unnecessary litigation due to false or vexatious claim or defence made by his opponent. Whereas special costs are imposed, under Section 151, for deterrent purposes on a party who initiates a proceedings, particularly the appellate proceedings, in complete disregard of the obvious factual or legal position, and thereby wastes the precious court time and abuses the process of the court.

iv) it is high time that courts and tribunals should regularly exercise their powers to impose reasonable costs to curb the practice of instituting frivolous and vexatious cases by unscrupulous litigants , which has unduly burdened their dockets with a heavy pendency of cases, thereby clogging the whole justice system. The possibility of being made liable to pay costs is a sufficient deterrence to make a litigant think twice before putting forth a false or vexatious claim or defence before court. The imposition of these costs plays a crucial role in promoting fairness, deterring frivolous lawsuits, encouraging settlement, and fostering efficient use of resources: (i) promoting fairness: imposing costs in litigation helps to create a level playing field for both plaintiffs and defendants. By requiring both parties to bear the financial burden of litigation, the system encourages parties to consider the merits of their case before initiating legal action. This helps to ensure that only those with legitimate grievances pursue legal recourse, reducing the possibility of abuse; (ii) deterring frivolous lawsuits: imposing costs can discourage parties from filing baseless or frivolous claims, as the risk of incurring significant financial losses may outweigh any potential gains. This helps to protect defendants from having to defend themselves against meritless claims, reducing strain on the court system and preserving judicial resources; (iii) encouraging settlement: when parties are aware of the potential costs associated with litigation, they may be more inclined to engage in settlement negotiations or alternative dispute resolution methods. This can result in more efficient resolution of disputes, lower costs for all involved, and a reduced burden on the court system; (iv) fostering efficient use of resources: imposing costs in litigation incentivizes parties to focus on the most relevant and important aspects of their case, as both parties will want to minimize their expenses. This can lead to more efficient use of legal resources, including court time and the expertise of legal professionals, and may result in more focused and streamlined proceedings. The practice of imposing costs would thus cleanse the court dockets of frivolous and vexatious litigation, encourage expeditious dispensation of justice, and promote a smart legal system that enhances access to justice by taking up and deciding genuine cases in the shortest possible timeframe.

Conclusion: i) Tribunal is deemed to be a civil court and has the same powers as are vested in

a civil court under the CPC.

ii) Service Tribunal can impose special costs while deciding the service appeal or any application including an application under Section 12(2) of the CPC of a civil servant.

iii) Actual costs are awarded by a civil court under Section 35 of the CPC to reimburse the successful party the expenses incurred by him and compensatory costs are granted under Section 35A to compensate him, whereas special costs are imposed, under Section 151, for deterrent purposes.

iv) The practice of imposing costs would cleanse the court dockets of frivolous and vexatious litigation, encourage expeditious dispensation of justice, and promote a smart legal system that enhances access to justice by taking up and deciding genuine cases in the shortest possible timeframe.

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5. **Supreme Court of Pakistan**
Dr. Sayyid A.S. Pirzada v. The Chief Secretary, Services and Administration Department, etc.
Civil Petition No.2009 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2009_2020.pdf

Facts: Through this civil petition, the petitioner has challenged the order of the Punjab Service Tribunal whereby the appeal filed by the petitioner concerning his promotion was held not maintainable on procedural grounds rather on merits.

Issue: Whether the Punjab Service Tribunal has power under the Act to direct the departmental authorities to decide the departmental appeal, review or representation of a civil servant, which remained undecided for 90 days?

Analysis: As per Section 4 of the Act, the right to prefer an appeal to the Tribunal can be invoked subject to the fulfilment of two pre-conditions: (i) in case a departmental appeal, review or representation is provided under the law, no appeal to the Tribunal shall lie unless such a remedy is availed by the aggrieved civil servant; and (ii) a period of 90 days has elapsed since such departmental appeal, review or representation has been preferred. Therefore, if the departmental appeal, review or representation of a civil servant is not decided within a period of 90 days, the aggrieved civil servant need not endlessly wait for the decision of the departmental appeal, review or representation and can straight away approach the Tribunal by filing an appeal for the redressal of his grievance. The Act encourages a civil servant to first avail the remedy of departmental appeal, review or representation so that the matter can best be decided at the departmental level. However, if no progress is made on such departmental remedy within 90 days, the Act provides the civil servant with a higher remedy in the shape of an appeal before the Tribunal to agitate his grievance. When the aggrieved civil servant avails the higher remedy of appeal before the Tribunal after the lapse of the prescribed period of 90 days, the departmental remedy of appeal, review or

representation loses its significance and automatically comes to an end. Once the matter is brought before the Tribunal in accordance with the provisions of Section 4 of the Act, the departmental remedy stands exhausted. Under Section 5 of the Act, the Tribunal on appeal can only confirm, set aside, vary or modify the order appealed against. The Tribunal has no power under the Act to direct the departmental authorities to decide the departmental appeal, application for review or representation of the civil servant, which remained undecided for a period of 90 days.

Conclusion: The Tribunal has no power under the Act to direct the departmental authorities to decide the departmental appeal, review or representation of the civil servant, which remained undecided for 90 days**.**

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6. **Supreme Court of Pakistan**
Bakhti Rahman v. The State and another
Criminal Petition No.207 of 2023
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._207_2023.pdf

Facts: This Criminal Petition for leave to appeal is directed against the judgment passed by the High Court, whereby the petitioner's application for post-arrest bail in FIR lodged under Sections 337-A(ii), 337-A(iii), 337-F(i), and 34 of the Pakistan Penal Code, 1860 was dismissed.

Issues: i) Whether deeper appreciation of the evidence can be gone into by the court at bail stage?
ii) Whether doctrine of parity or rule of consistency in a criminal case can only be applied if the case of the accused is analogous in all respects to that of the co-accused for considering the grant of bail?

Analysis: i) At the bail stage, the Court has to tentatively form an opinion by assessing the evidence available on record without going into merits of the case. The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is prima facie connected with the commission of offence or not. In order to ascertain whether reasonable grounds exist or not the Courts not only have to look at the material placed before them by the prosecution, but see whether some tangible evidence is available against the accused or not to infer guilt. An essential prerequisite for grant of bail by virtue of sub-Section 2 of Section 497 is that the Court must be satisfied on the basis of opinion expressed by the Police or the material placed before it that there are reasonable grounds to believe that the accused is not guilty of an offence punishable with death or imprisonment for life or imprisonment of 10 years. The mere possibility of further inquiry exists almost in every criminal case. The Court is required to consider overwhelming evidence on record to connect the accused with the commission of the offence and if the answer is in the affirmative he is not entitled to grant of bail.
ii) The doctrine of parity or rule of consistency in a criminal case elucidates that if

the case of the accused is analogous in all respects to that of the co-accused then the benefit or advantage extended to one accused should also be extended to the co-accused on the philosophy that the "like cases should be treated alike". The concept of equal justice requires the appropriate comparability of roles and overt act attributed to the co-offenders, but in case of difference or disparity in the roles due allowance cannot be extended to the co-offenders on the perspicacity that different sentences may reflect different degrees of culpability and or different circumstances.

Conclusion: i) The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is prima facie connected with the commission of offence or not.
ii) The doctrine of parity or rule of consistency in a criminal case can only be applied if the case of the accused is analogous in all respects to that of the co-accused then the benefit or advantage extended to one accused should also be extended to the co-accused on the philosophy that the "like cases should be treated alike".

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7. **Lahore High Court**
United Bank Ltd. etc. v. Chairman, PLAT, Lahore etc.
W.P. No. 25212 of 2012.
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2179.pdf

Facts: While serving as Assistant in the United Bank Limited, respondent No.3 filed a grievance petition, before Labour Court praying for grant of two increments on account of improving qualification, in terms of the United Bank Limited (Staff) Service Rules, 1999. The Grievance Petition filed by respondent No.3 was accepted by the Labour Court and the Bank authorities filed an appeal but the same was dismissed by the Punjab Labour Appellate Tribunal (PLAT); hence this petition.

Issues: i) Whether promulgation of PLAT, IRO, 2011 or IRA, 2012 during pendency of appeal can affect the jurisdiction of PLAT?
ii) Whether despite the repeal of relevant law, regarding grant of increments on account of improving qualifications, prior to issuance of result of concerned examination, the employee can be granted such increments?
iii) Whether High Court can grant a relief in Constitutional Jurisdiction which is not covered under any policy/law?
iv) Whether forum of appeal should take into consideration the findings given by a forum against whose decision appeal has been filed?
v) Whether a petition becomes non-maintainable on retirement of incumbent of post who on behalf of bank filed the petition?
vi) Whether person holding power of attorney, empowering him to institute/defend proceedings before different forums, can file writ petition before

High Court?

Analysis: i) IRO, 2011 having been enacted to the extent of Islamabad Capital Territory (ICT), same could not unnecessarily be stretched to the rest of the country. As far as IRA, 2012 is concerned; suffice it to note that the same came into existence during pendency of appeal of the petitioner-bank. According to section 57(2)(b) of IRA, 2012, NIRC may, on the application of a party, or of its own motion, withdraw from a Labour Court of Province any application, proceedings or appeal relating to unfair labour practice. Since the Bank itself allowed PLAT to decide the appeal as neither it filed any application for transfer of appeal to NIRC nor the same was withdrawn by NIRC on its own, the objection raised by its counsel in these proceedings carries no weight, thus, the same is accordingly spurned.

ii) It is of common knowledge that prior to issuance of formal result card, no person can be given any benefit merely on the basis of just participation in the examination. If the relevant law regarding grant of increments on account of improving qualifications is no more alive on the date when result card was issued, the employee cannot be held entitled to grant of such increment…

iii) If relief is not covered under any policy/law same cannot be granted by High Court in exercise of its constitutional jurisdiction.

iv) It is well entrenched by now that appeal is considered continuation of the original proceedings and the forum of appeal is bound to decide the matter without being influenced by the findings given by a forum against whose decision appeal has been filed.

v) A bank falls within the definition of a juristic person, thus, instant petition cannot be held non-maintainable just on account of retirement of its President. Further an incumbent of a post retires but the designation still subsists.

vi) If a person is empowered through power of attorney to institute/defend proceedings before different forums, such person can file writ petition before High Court…

Conclusion: i) IRO, 2011 have been extended to the extent of Islamabad Capital Territory, same could not unnecessarily be stretched to the rest of the country. According to section 57(2)(b) of IRA, 2012, NIRC may, on the application of a party, or of its own motion, withdraw from a Labour Court of Province any application, proceedings or appeal relating to unfair labour practice. However, if appeal is not transferred then later on objection cannot be entertained regarding jurisdiction.

ii) After repeal of relevant law, regarding grant of increments on account of improving qualifications, and that repeal is prior to issuance of result of concerned examination then the employee cannot be granted such increments.

iii) If relief is not covered under any policy/law same cannot be granted by High Court in exercise of its constitutional jurisdiction.

iv) The forum of appeal is bound to decide the matter without being influenced by the findings given by a forum against whose decision appeal has been filed.

v) The fact of retirement of incumbent of post who on behalf of bank filed the

petition does not render the petition non-maintainable because bank falls within the definition of a juristic person, further an incumbent of a post retires but the designation still subsists.

vi) If a person is empowered through power of attorney to institute/defend proceedings before different forums, such person can file writ petition before High Court.

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8. **Lahore High Court**
Asadullah Khan v. Province of Punjab and others
Civil Revision No. 42701 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2234.pdf

Facts: Petitioner through the instant revision petition has challenged the concurrent judgments and decrees of the two Courts below whereby his suit for declaration with consequential relief challenging the alleged gift deed and the subsequent mutation in favour of respondents was dismissed.

Issues: i) Whether the onus to prove those facts lies on a party who takes a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserts?

ii) Whether the court is duty bound to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party?

Analysis: i) In the case of Khalid Hussain v. Nazir Ahmad (2021 SCMR 1986), the Apex Court of the country has held that when a party took a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserted, then the onus to prove those facts laid on him. Moreover, mere assertion of fraud and misrepresentation is not sufficient rather the same has to be proved by leading confidence inspiring evidence.

ii) It is bounden duty of the learned trial Court to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party, as per section 3 of the Limitation Act, 1908.

Conclusion: i) The onus to prove those facts lies on a party who takes a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserts.

ii) The court is duty bound to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party.

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9. **Lahore High Court**
Mehboob and others v. Fateh Bibi and another
Civil Revision No.11751 of 2023.
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2242.pdf

Facts: Through this civil revision, the petitioners have assailed the impugned judgment

and decree passed by the Appellate Court wherein appeal of the respondent No.1 was accepted, consequently the suit filed by the respondent No.1 was decreed.

Issues: i) Whether an illiterate, rustic and village household lady is entitled to the same protection which is available to the Parda observing lady under the law?
ii) Whether adverse presumption would arise if the revenue officer has not been produced?
iii) Under what circumstances constructive possession can be considered and the party is entitled to consequential relief of possession?

Analysis: i) An illiterate, rustic and village household lady is entitled to the same protection which is available to the Parda observing lady under the law.
ii) If the revenue officer has not been produced, who is necessary to be produced and no evidence showing his incapability to appear in the Court has been adduced, then adverse presumption under Article 129(g) of Qanun-e-Shahadat Order, 1984 would arise that the best evidence has been withheld that if the revenue officer had appeared in the witness box, he would not have supported the stance.
iii) If the party has claimed to be owner in possession of the property and alleges it in the plaint and the property in dispute is an inherited property then possession of the party would be considered as constructive, because the same was under his cultivation prior to the impugned mutations. Therefore, the party is entitled to consequential relief of possession.

Conclusion: i) An illiterate, rustic and village household lady is entitled to the same protection which is available to the Parda observing lady under the law.
ii) If the revenue officer has not been produced, then adverse presumption under Article 129(g) of Qanun-e-Shahadat Order, 1984 would arise that the best evidence has been withheld.
iii) If the party has claimed to be owner in possession of the property and the same was under his cultivation prior to the impugned mutations then possession of the party would be considered as constructive.

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10. **Lahore High Court**
Ghulam Muhammad v. Muhammad Hayat (Late) through Legal Heirs and others
Civil Revision No. 265 of 2012
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2222.pdf

Facts: After consolidated proceedings, suit of respondents claiming decree for specific performance of agreement to sell was decreed and suit of petitioner seeking decree for recovery of possession of suit property was dismissed, which judgment & decree of learned trial court was maintained by the learned appellate Court whilst dismissing relevant appeal. Hence, the instant revision petition.

Issues: i) What is significance of pleading time, place and names of witnesses to oral agreement to sell in a suit seeking decree for specific performance of such agreement?

ii) Whether a witness of an oral agreement to sell may be produced in evidence even if he is not mentioned in pleadings?

iii) What is effect of introducing improvements in evidence as beyond pleadings by party seeking decree for specific performance of an oral agreement to sell?

iv) What would be fate of subsequent agreement to sell if basic & initial oral agreement to sell is not proved?

v) If one has purchased suit property through a sale mutation acceded by the vendor, what would be status of possession at spot of rival claimant seeking decree for specific performance of oral agreement to sell?

Analysis: i) In case of an oral agreement to sell, not only unimpeachable evidence is required to be produced to prove each and every incident of such a transaction, but said details are necessary to be pleaded as well.

ii) No party to a judicial proceeding can be allowed to adduce evidence in support of a contention not pleaded earlier and the decision of a case cannot rest on such evidence.

iii) When no date, time, place or names of witnesses of the oral agreement to sell had been mentioned in the pleadings whilst instituting suit seeking decree for specific performance of oral agreement to sell, then improvements in evidence in relation thereto are considered as beyond the pleadings and are believed to constitute an afterthought attempt to improve the case, which course of action is not permitted by law.

iv) It is imperative that only bona fide oral agreement leads to grant of decree of specific performance. Courts must insist for fulfillment at the earliest of all requirements so as to ensure that an oral agreement is fully proved. Pleading and proving of each and every link and chain of oral transaction is necessary and sine qua non. In view of the above, when the basic and initial oral agreement has not been proved, which was necessary to be pleaded and proved independently, the subsequent events in the shape of purported agreement to sell has no value in the eye of law.

v) It is a settled principle of law that mere an agreement to sell does not create a title, but the same can only be used in order to sue and the same cannot be considered a title document until & unless the same is proved before a Court of competent jurisdiction.

Conclusion: i) Pleading the time, place and names of witnesses present at the time of reaching at the oral agreement to sell is sine qua non requisite to prove such agreement in a suit seeking decree for specific performance of such agreement.

ii) The witnesses of oral agreement, produced beyond pleadings, cannot be considered.

iii) If a fact is not pleaded in the plaint, the evidence in this regard will also be considered as an improvement beyond pleadings and same cannot be relied upon while rendering judgment.
iv) When the basic and initial oral agreement is not proved, which was necessary to be pleaded and proved independently, then the subsequent purported agreement to sell has no value in the eye of law.
v) When one has purchased suit property through a sale mutation acceded by the vendor, possession at spot of rival claimant seeking decree for specific performance of oral sale agreement is nothing but an illegal occupation.

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11. **Lahore High Court**
Sheikh Muhammad Akram etc. v. Returning Officer PP-126 Jhang-III etc.
Election Appeal No. 24497 of 2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2156.pdf

Facts: The nomination papers of the respondent were accepted and the objections filed by the appellants on the nomination papers of the respondent were dismissed. The appellants, being aggrieved, have filed these three separate Election appeals under Section 63 of the Elections Act, 2017 (Act).

Issues: i) Whether the nomination papers of the candidate may be rejected on the basis of omission in the statement of assets and liabilities of his spouse/wife?
ii) What does the term default of "Government dues" under Article 62(1)(o) of the Constitution means?

Analysis: i) Indeed under section 62(9)(c) of the Act, the Returning Officer may reject the nomination papers if he is satisfied that statement is false or incorrect in any material particular. However, omission in the statement of assets and liabilities of candidate himself or his dependent children cannot be equated or treated at par with the omission of assets and liabilities of his spouse/wife. There is no law under which the wife is obliged to disclose all her assets and liabilities to husband and similarly there is no enactment under which husband can compel/force the wife to inform him about all her assets and liabilities. The spouse (in this case wife) is an independent person with all fundamental rights granted under the Constitution, including right of privacy and she may not want to disclose all her assets and liabilities to husband, specifically those not acquired through him or not directly related to her husband. Even if the assets were originally acquired by wife through husband, she is not obliged under law to inform him before further transferring/alienating of those assets. Therefore, any omission of assets/liabilities in the statement regarding assets/liabilities of spouse/wife may not be alike or of same gravity as of omission in respect of assets and liabilities of the candidate himself or the one acquired by him for his dependent children. In case of incorrect and false statement of candidate's own or his dependent children's assets/liabilities the same may be fatal but in case of statement regarding assets/liabilities of wife/spouse, the omission may not be fatal unless same is not

bonafide and some undue benefit/purpose was achieved or likely to be achieved by candidate for making such incorrect and false statement.

ii) The Hon'ble Supreme Court of Pakistan in "Khawaja Muhammad Asif Versus Muhammad Usman Dar and others" (2018 SCMR 2128) held that default for purpose of disqualification of candidate can only be established, if it is shown that a demand notice was issued by the authority who is competent to recover the "Government dues" and yet the same remained unpaid. It is also held that unless the said demand is raised, the amount does not constitute the "Government dues" to disqualify the candidate.

Conclusion: i) In case of incorrect and false statement of candidate's own or his dependent children's assets/liabilities the same may be fatal but in case of statement regarding assets/liabilities of wife/spouse, the omission may not be fatal unless same is not bonafide and some undue benefit/purpose was achieved or likely to be achieved by candidate for making such incorrect and false statement.

ii) Default for purpose of disqualification of candidate can only be established, if it is shown that a demand notice was issued by the authority who is competent to recover the "Government dues" and yet the same remained unpaid.

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12. **Lahore High Court**
Naveed Ahmed etc. v Sheikh Amjad Saeed deceased through his legal heirs etc
Civil Revision No.3093 of 2012
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2023LHC2201.pdf

Facts: Through this civil revision, the petitioners have filed the instant civil revision and challenged the validity of the impugned judgments and decrees passed by the Courts below while the plaintiffs also filed a Regular Second appeal against the defendant No.3 & defendant No.4.

Issue: Whether time does not remain as an essence of the contract if the parties agree to extend it in agreement to sell?

Analysis: Time does not remain as an essence of the contract if the parties mutually agree with free consent to extend it in agreement to sell.

Conclusion: Time does not remain as an essence of the contract if the parties agree to extend it.

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13. **Lahore High Court**
M/S Independent Newspapers Corporation (Pvt.) Limited through its authorized attorney, a private limited company and publisher of Urdu newspaper 'Daily Jang' v. Province of Punjab through Director General-Directorate General of Labour Welfare, Labour & Human Resource Department, Government of Punjab and 2 others
Writ Petition No. 3383 of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC2257.pdf

Facts: The grievance of the petitioner company canvassed in this constitutional petition is that respondent i.e. a trade union in the establishment of the petitioner company, has been got registered by its members with Registrar Trade Unions under the Punjab Industrial Relations Act, 2010 deviating from provisions of Industrial Relations Act, 2012, whereafter; petitioner's application seeking revocation of certificate of registration of respondent trade union was rejected summarily by said Registrar. Hence, instant petition.

Issues: i) What would be status of provisions of the Industrial Relations Act, 2012 being a Federal enactment as against Provincial Law enacted in shape of the Punjab Industrial Relations Act, 2010, in case any clash or repugnancy arises between them?
ii) What is the law and the relevant forum for registration of trade union in case of trans-provincial establishment?

Analysis: i) Under Article 143 of the Constitution of Pakistan, 1973, laws enacted by the Parliament are given overriding and superimposing effects over the laws enacted by a Provincial Assembly of any of the Province and the laws enacted by the Parliament shall prevail in case of any clash or repugnancy between the two. On the touchstone of Article 143 of the Constitution of Pakistan, 1973, the Act of Parliament has been placed on the higher pedestal and any Provincial Law enacted by the Provincial Assembly shall give way to the Federal Law enacted by the Parliament, if the former is inconsistent or repugnant to the latter.
ii) The Industrial Relations Act, 2012 was promulgated to consolidate and rationalize the law in Islamabad Capital Territory and at trans-provincial level, relating to formation of trade unions and federations or trade unions, determining the collective bargaining agents, regulation of relations between employers and workers, the avoidance and settlement of any differences or disputes arising between them or matters connected therewith and ancillary thereto. The formation of trade unions of the workers of a trans-provincial Establishment and the matters incidental thereto are regulated by the Act ibid. Under Act ibid, Jurisdiction with regard to a trans-provincial Establishment is vested with National Industrial Relations Commission being sole authority with the power to register trade unions and industry-wise trade unions pertaining to the trans-provincial Establishments.

Conclusion: i) The provision of the Industrial Relations Act, 2012 being Federal enactment would have overriding effect on Provincial Labour Law enacted as the Punjab Industrial Relations Act, 2010.
ii) A trans-provincial Establishment is governed by the Industrial Relations Act, 2012 and the unions operating in its various factories, offices and departments shall have to be registered with National Industrial Relations Commission.

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14. **Lahore High Court**
Muhammad Usman Faroooq v. Rawalpindi Medical University, Rawalpindi & one other
W.P. No. 1132of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC2338.pdf

Facts: The petitioner was denied the admission solely because he failed to produce all the original documents personally on the target date as per requirement. Now, through instant petition, the petitioner is seeking a direction to the respondents to allow his admission in the first year of MBBS against open merit list.

Issue: Whether it is a rule of universal application that interference with the internal governance and affairs of the educational institutions as well as dislodging decision of the university authorities should be avoided?

Analysis: Courts ordinarily exercise restraint in interfering with the internal governance and affairs of the educational institutions and keep their hands-off the educational matters as well as avoid dislodging decision of the university authorities, however, such rule may be followed generally not compulsorily in all matters.

Conclusion: This is not a rule of universal application that interference with the internal governance and affairs of the educational institutions as well as dislodging decision of the university authorities should always be avoided.

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15. **Lahore High Court**
Madeeha Munir v. Government of the Punjab and 06 Others
ICA No. 56780 of 2020
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC2359.pdf

Facts: Government of Punjab invited applications for filling various vacant posts of educators. The names of private respondents were reflected in the list of successful candidates. But their agreements were suspended on account of error in software and private appellants were appointed. The private respondents filed constitutional petitions which were allowed, hence, titled ICA as well as connected appeals have been instituted.

Issues: i) Whether principle of locus poenitentiae is applicable if an act is wrongly done due to some misunderstanding, error or illegality?

ii) Whether interference in the process of recruitment can be made on ground of favoritism or political interference etc.?

Analysis: i) If an act is wrongly done due to some misunderstanding, error or illegality, the principle of locus poenitentiae does not come into operation to protect such wrong. If foundation of an action is based on an illegality or error, the protection of locus poenitentiae cannot be provided to beneficiary of said action at cost of others.
ii) It is settled that in the absence of any specific evidence or material showing favoritism, political interference or departure from merits or malafide established through clear evidence, the interference in the process of requirements is not warranted by law.

Conclusion: i) Principle of locus poenitentiae is not applicable if an act is wrongly done due to some misunderstanding, error or illegality.
ii) In the absence of any specific evidence or material showing favoritism, political interference or departure from merits or malafide established through clear evidence, the interference in the process of requirements is not warranted by law.

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16. **Lahore High Court**
Commissioner Inland Revenue, Zone-III, Large Taxpayers, Karachi v. M/s Adam Sugar Mills Ltd., Karachi
STR No.97 of 2013
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2252.pdf

Facts: The applicant filed a Reference Application under Section 47 of the Sales Tax Act, 1990 regarding questions of law, asserted to have arisen out of an order passed by Appellate Tribunal Inland Revenue, Lahore.

Issues: (i) Whether a record seized in an illegal manner can be used against a taxpayer?
(ii) What is the effect of non-preparation of the statement in writing of the grounds of belief as envisaged under section 40-A (Since omitted) of the Sales Tax Act, 1990?

Analysis: (i) While taking cognizance under section 38 of the Sales Tax Act, 1990, inter-alia, the authorized officer must restrict himself to the record / documents that are in plain sight or voluntarily made available by the person present at the premises, for the purposes of inspection and taking into custody. This provision does not envisage any authority to compel the production of any record or document that is not presented voluntarily. Any record or document forcibly taken into custody must not be used adversely against the person from whose custody it was taken. The powers under this provision, by no stretch of imagination, can compromise the fundamental rights and constitutional guarantees embedded in the Constitution of the Islamic Republic of Pakistan, 1973.
(ii) The failure to place any material before the Court to establish that there were

sufficient reasons and grounds for by-passing normal course of action specified in section 40 and non-satisfaction of pre-requisites mentioned in section 40A renders the action taken under section 38 unsustainable and consequently the search and seizure was illegal, without lawful authority and of no legal effect. Apparently, sections 40 & 40A are aimed at to curtail and monitor the unlimited and unbridled powers of the Sales Tax Authorities to avoid undue harassment to the taxpayers.

Conclusion: (i) A record seized in an illegal manner cannot be used against a taxpayer.
(ii) Non-preparation of the statement in writing of the grounds of belief as envisaged under section 40-A (Since omitted) of the Sales Tax Act, 1990 renders the action taken under section 38 unsustainable and of no legal effect.

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17. **Lahore High Court**
Federation of Pakistan through Secretary Establishment Division Islamabad v. Khalid Mahmood and another
ICA No.431 of 2016
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2344.pdf

Facts: The Appellant challenged a judgment passed by a learned Single Judge-in-Chamber whereby the writ petition of Respondent No.1 for allotting him an additional plot was allowed.

Issues: (i) In what circumstances a differential treatment of persons can be sustained under Article 25 of the Constitution?
(ii) Whether an artificial grouping can be created under the garb of reasonable classification?

Analysis: (i) It is by now well settled law that although Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification, yet it is also equally settled that in order to justify this difference in treatment the reasonable classification must be based on intelligible differentia that has a rational nexus with the object being sought to be achieved. This means that anydistinct treatment meted out to a class of persons can only be sustained under Article 25 if the aforesaid test is satisfied.
(ii) It is also well settled that in order to establish a reasonable classification based on intelligible differentia, the differentiation must have been understood logically and there should not be any artificial grouping for specific purpose causing injustice to other similarly placed individuals…carving out any criteria to exclude certain officers and accommodate others of the same rank would tantamount to creation of artificial grouping causing injustice to the first mentioned officers hence any such classification cannot be excluded from the mischief of Article 25 of the Constitution.

Conclusion: (i) A differential treatment of persons can be sustained under Article 25 of the

Constitution in case of reasonable classification based on intelligible differentia that has a rational nexus with the object being sought to be achieved.
(ii) An artificial grouping cannot be created under the garb of reasonable classification.

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18. **Lahore High Court**
Salman Mushtaq v. Ex-officio Justice of Peace etc.
Writ Petition No. 58123/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2316.pdf

Facts: Through this constitutional petition, the petitioner challenges the order of learned Ex-officio Justice of Peace whereby the application for registration of FIR filed against the petitioner under section 22-A of Cr.P.C 1898 was accepted.

Issues: i) Whether a bribe-giver can be criminally prosecuted along with the bribe- taker?
ii) Whether a bribe-giver can reclaim the bribe money from the bribe-taker?

Analysis: i) Section 161 PPC makes it an offence for a public servant to take gratification other than legal remuneration in respect of an official act. Section 162 seeks to punish anyone who accepts or obtains or attempts to take illegal gratification to influence any public servant in performing his functions. Section 163 criminalizes obtaining and attempting to obtain gratification for exercising personal influence with a public servant. Section 165 prohibits and punishes a public servant who accepts, or attempts to get a valuable thing, without consideration, from a person concerned in a proceeding or business transacted by such public servant. Sections 164 and 165-A criminalize abetment of the offences under sections 162, 163, and 165. Section 165-B PPC excludes certain abettors. It states that a person shall be deemed not to have committed an offence under section 161 or 165 PPC if he is induced, compelled, coerced or intimidated to offer or give graft, or any valuable thing without consideration, or for inadequate consideration, to a public servant.
In Pakistan Penal Code, Chapter V deals with abetment. It expressly recognizes that the bribe-giver is an abettor in the bribery offence. The Explanation to section 109 PPC states that "an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment." Illustration (a) to section 109 reads as follows: "(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161." The upshot of the above discussion is that subject to section 165-B PPC, both the bribe-giver and the bribe-taker can be prosecuted.
ii) A nine-member bench of the Supreme Court of England in Patel v. Mirza, [2016] UKSC 42, [2016] 1 W.L.R. 399, after thoroughly surveying the entire case-law, concluded that "bribes of all kinds are odious and corrupting, but it does not follow that it is in the public interest to prevent their repayment. There are two

sides to the equation. If today it transpired that a bribe had been paid to a political party, a charity or a holder of public office, it might be regarded as more repugnant to the public interest that the recipient should keep it than that it should be returned."

Insofar as the restitution claims are concerned, the courts in India and Pakistan decide them on the basis of the Contract Act of 1872, the law they have commonly inherited from the British. The statutory provisions in both countries are the same except for a few amendments. Section 23 of the Act describes what considerations and objects are lawful. Section 24 provides that the agreement is void if any part of a single one or any part of several considerations for a single object is unlawful. Section 65 states, "when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it." However, section 165 of Contract Act 1882 is inapplicable to a situation where both parties knew that the agreement was unlawful (and, therefore, void) when they entered it, there was no contract but merely an agreement. It is not a situation where it is discovered to be void subsequently or where the contract becomes void due to future events. Most of the case-law in India and Pakistan adhere to the principle of *in pari delicto* (in equal fault) to disallow the claim of restitution of money paid in relation to an illegal agreement. However, there are a few judgements both in India and Pakistan which support the idea of restitution of money delivered in relation to an illegal agreement subject to certain conditions. After an in-depth analysis of those judgements of India and Pakistan, the court concludes that any agreement falling within the scope of sections 23 and 24 of the Contract Act is illegal and consequently void. If the agreement is indivisible, illegality impacts the whole of it. On the other hand, if it is divisible, it affects only the illegal part. If the object of the agreement is unlawful, it is void regardless of whether the parties are aware of the illegality.

Conclusion: i) Subject to section 165-B PPC, a bribe-giver can be criminally prosecuted along with bribe-taker.

ii) A bribe-giver can reclaim the bribe money from the bribe-taker subject to certain conditions as enumerated in the judgement.

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19. **Lahore High Court**
M/s Tradhol International SA Sociedad Unipersonal v. M/s Shakarganj Limited
Civil Original Suit No.80492 of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2392.pdf

Facts: Through this application, the applicant sought recognition and enforcement of a foreign arbitral award in Pakistan under the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (the "Act") and

its Schedule, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the "NY Convention") and a guide on UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the " NY Convention Guide"). The Court while enforcing the foreign arbitral award passed by the London Court of International Arbitration (the "LCIA") has discussed in detail the provisions regarding recognition and enforcement of a foreign arbitral award in Pakistan under the "Act" and its Schedule, the "NY Convention"

Issues: i) Whether High Court has jurisdiction to enforce a foreign arbitral award?
ii) Whether the recognition and enforcement of a foreign arbitral award can be refused in Pakistan on the basis of "incapacity" of the parties or the said agreement is "not valid"?
iii) Whether communications exchanged between the parties and sent through an automated information system i.e. email comes within the meaning of term "agreement in writing"?
iv) Whether any law applicable to a contract/agreement will also apply to an arbitration agreement contained within it, in jurisdictions of Pakistani and English law?
v) Whether the recognition and enforcement of a foreign arbitral award can be refused in Pakistan when award is contrary to the "public policy" of Pakistan?
vi) What is vision behind the enactment of the "Act", i.e. the NY Convention?
vii) What is role of preamble of a statute for the purposes of interpretation in order to dissect the true purpose and intent of the law?
viii) Whether pro-enforcement policy under the "NY Convention favors the recognition and enforcement of foreign arbitral awards?

Analysis: i) Accordingly, it follows from the above sections that the "High Courts" have exclusive jurisdiction to adjudicate and settle the matters relating to or arising out from the "Act". The notified Courts in Pakistan, in order to protect the sanctity of foreign arbitral awards as defined under Section 2(d) of the "Act" are the High Court and such other superior Courts as may be notified by the Federal Government. If the parties have any issue with the foreign agreements or the awards, they can only refer the matter to the Court as defined under Section 2(d) of the "Act" and not any other Court which is not notified. To protect the confidence of investors, the Courts (the High Court under Section 2(d) of the "Act") can then, if need be, deal the matter of pre-arbitration, pro arbitration and post arbitration. If we examine the jurisdiction of this Court as defined under Section 3 of the "Act" which states that the Court shall exercise exclusive jurisdiction to adjudicate and settle matter relating to or arising out from this "Act", the Court has to enforce (i) foreign arbitral award and (ii) foreign agreements; although foreign agreements are not defined under the "Act" but the agreements are defined under Article II of the "NY Convention" therefore, any issue with regard to enforcement of foreign arbitral award or foreign agreement, as defined under the "Act" and the Article II, is arisen, then this can further be

examined under Section 3(2) of the "Act" where again in proceeding regarding the stay application may be filed in the Court. The word "Court" is defined in capital which means the High Court and has been referred in various sections of the "Act" which again means the High Court but under Section 4, the word "court" is not in capital but it still means it is in capital and would be the High Court notified by the Federal Government. Section 3 of the "Act" gives exclusive jurisdiction to this Court in terms of Section 2(d) of the "Act" and the section ibid starts with 'notwithstanding anything contained in any other law for the time being in force' the Court shall exercise exclusive jurisdiction to adjudicate and settle matters related to or arising from the "Act". If Section 3 of the "Act" be read with Section 4 of the "Act" it makes it clear that jurisdiction is only confined to the High Court because Section 4(1) of the "Act" do mentions the word "court" and it is intertwined with Section 3 of the "Act" under the doctrine of intertwined as developed by this Court in the case of "TARIQ IQBAL MALIK Versus M/s MLTIPLIERZ GROUP PVT. LTD. and 04 others" (2022 CLD 468) by holding that "It may even be said that both Sections 256 and 257 of the Act are in pari materia and thus must be construed together. The ultimate outcome of the said provisions being intertwined with one another leads to the conclusion that in order to invoke Section 257 of the Act, it is mandated that any complainant must have some form of link or nexus to the affairs of a Company. Section 256 of the Act categorically clarifies that the link or nexus required to have the affairs of any company investigated is the holding of membership in such company in the manner as is categorically mentioned in Section 256 of the Act".

ii) Bare perusal of Section 7 of the "Act" read with Article V 1(a) of the "NY Convention" reveals that the recognition and enforcement of a foreign arbitral award may be refused in Pakistan if the party (…) furnishes proof to the competent authority of Pakistan (this Court) that the parties to the agreement were under some "incapacity", or the said agreement is "not valid" under the law to which the parties have subjected it (or failing any indication thereon, under the law of the country where the award was made).

iii) The above communications were exchanged between the parties and were sent through an automated information system which squarely comes within the meaning of terms defined in the Electronic Transactions Ordinance, 2002, as well as within the meaning of "agreement in writing" defined in Article II Clause 2 of the "NY Convention".

iv) In both the jurisdictions i.e. Pakistani and English law, it is presumed that the law applicable to a contract/agreement will also apply to an arbitration agreement contained within it, in the absence of any indication to the contrary. The said situation has already been dealt with by the Hon'ble Supreme Court of Pakistan in the case of "Hitachi Limited Versus Rupali Polyester" (1998 SCMR 1618) by holding that "if there is no express agreement between the parties as to the law governing arbitration agreement, the law which governs the main agreement will also govern arbitration agreement if the arbitration clause is embedded as a part of the main agreement". The English Court in the case of Enka Insaat Ve Sanayi AS

v Insurance Company Chubb [2020] UKSC 38, held that "where the law applicable to the arbitration agreement is not specified, a choice of governing law for the contract will generally apply to an arbitration agreement which forms part of the contract.

v) Bare perusal of Section 7 of the "Act" read with Article V 2(b) of the "NY Convention" reveals that the recognition and enforcement of an arbitral award may also be refused if the competent authority in Pakistan finds that the recognition or enforcement of the award would be contrary to the "public policy" of Pakistan.

vi) It is to be noted that the "NY Convention" was passed in New York in 1958 to provide a uniform and effective legal framework for the recognition and enforcement of international arbitration agreements and foreign arbitral awards. The aims of the "NY Convention", generally, are to promote international trade and commerce by ensuring that parties to an arbitration agreement could enforce their rights and obligations under that agreement in any of the countries that have ratified the "NY Convention"; to establish a comprehensive legal framework for the recognition and enforcement of foreign arbitral awards by national courts around the world; and to reduce uncertainty and risk in international commerce for the growth of international trade and investment.

vii) Here, it would also be advantageous to highlight the purpose and policy of the "Act", which is mentioned in its Preamble. The preamble means an introductory statement in a constitution, statute or act, and it explains the basis and objective of such a document. Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.

viii) Accordingly, in view of the above, it remains clear that a pro-enforcement policy under the "NY Convention" refers to a legal approach that favors the recognition and enforcement of foreign arbitral awards. This approach is based on the principle of comity, which requires countries to show respect and deference to the legal systems and decisions of other countries and arbitral tribunals. Pro enforcement policy under the "NY Convention" is important because it promotes the finality and enforceability of arbitration awards. When parties agree to resolve their disputes through arbitration, they expect that the resulting award will be final and binding. A pro enforcement policy helps to ensure that parties can rely on the arbitration process to resolve their disputes and that the resulting awards will be enforced in other countries. In practice, a pro enforcement policy means that courts should apply a narrow standard of review when considering applications for recognition and enforcement of foreign arbitral awards. This standard requires courts to limit their review to procedural matters and to refrain from reexamining the substance of the dispute. This approach ensures that the recognition and enforcement process is swift and efficient, which benefits both parties and

promotes international trade and commerce. Overall, a pro-enforcement policy under the "NY Convention" is essential to promote the recognition and enforcement of foreign arbitral awards. This approach reflects the importance of promoting finality and enforceability in the arbitration process, which in turn contributes to the stability and predictability of international commerce. Therefore, this Court is bound to implement it as such.

Conclusion: i) High Court has jurisdiction to enforce a foreign arbitral award.
ii) The recognition and enforcement of a foreign arbitral award can be refused in Pakistan on the basis of "incapacity" of the parties or the said agreement is "not valid".
iii) Communications exchanged between the parties and sent through an automated information system i.e. email which squarely comes within the meaning of terms defined in the Electronic Transactions Ordinance, 2002, as well as within the meaning of "agreement in writing" defined in Article II Clause 2 of the "NY Convention".
iv) Any law applicable to a contract/agreement will also apply to an arbitration agreement contained within it, in jurisdictions of Pakistani and English law.
v) The recognition and enforcement of a foreign arbitral award may be refused in Pakistan when award is contrary to the "public policy" of Pakistan.
vi) Vision behind the enactment of the "Act", i.e. the NY Convention to provide a uniform and effective legal framework for the recognition and enforcement of international arbitration agreements and foreign arbitral awards.
vii) The preamble of a statute holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.
viii) A pro-enforcement policy under the "NY Convention" refers to a legal approach that favors the recognition and enforcement of foreign arbitral awards.

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20. **Lahore High Court, Lahore**
Syed Faisal G.Meeran, Advocate v. Province of Punjab, etc.
W.P. No. 19723 of 2023
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC2208.pdf

Facts: Through this writ petition, it is prayed that the release price of wheat at the rate fixed by the Respondents be declared illegal, unconstitutional, and unlawful being a misuse & abuse of authority and based upon undue enrichment done in violation of the Election Act, 2017. It is further prayed that, in the best and larger Public interest, said act of Respondents may be struck down by directing the Respondents to restore the earlier release price along with the subsidy forthwith as provided in the past.

Issues: i) Whether fixation of prices of commodities is included in the policy matters of the executive, if yes, then what is the scope of the court's jurisdiction to interfere in such policy decisions?

ii) Whether the act of the Caretaker Government fixing the prices of wheat by enhancing the previous prices is against its mandate as provided by Section 230(a) of Election Act, 2017?

iii) Whether the public at large can get enforced through court, as their vested right, the providence of wheat and flour at subsidized rates?

iv) Whether the act of Government like supply of flour free of cost to the underprivileged can be called in question before the constitutional Court?

Analysis: i) Under the Price Control and Prevention of Profiteering and Hoarding Act, 1977, fixation of prices is to be dealt with by the Federal Government and Provincial Governments are duty-bound to control all the prices of foodstuffs without any discrimination. So, fixation of prices of commodities such like purchase and sale of wheat by Government, provision of wheat to flour mills, subsidized value, framing of policy to provide flour to public at a particular rate or free of cost to deserving people of society are within policy making domain of Government.Thereafter, price is to be fixed by the executive on the basis of data available with it and the same cannot be fixed at the whims and desires of the authorities and said power of the executive cannot be ordinarily interfered with by the Court in its constitutional jurisdiction.

ii) The Caretaker Government by its mandate provided by Section 230(a) of Election Act, 2017 was empowered to manage and take necessary steps to cater to the situation of wheat as the same related to the day to day matters necessary to run the affairs of the Government and the fixing of wheat price was within the jurisdiction and powers of the said Government.

iii) It is not the vested right of individuals or public at large i.e. consumers to claim that subsidy should be mandatorily provided to them in purchase of wheat or flour, hence, this Court in the absence of any law or policy justifying the same cannot issue direction to respondents to provide the same to the consumers at subsidized rates.

iv) The supply of flour free of cost to the underprivileged cannot be called in question before this Court as it is for the Government to provide the people living below poverty line with sources for providing them with food and for that purpose if the situation so demands.The Government can provide flour free of cost to the people who cannot purchase the same from their own sources, because Government is authorized to make such classifications if the situation so requires.

Conclusion: i) The pricing of a commodity involves several factors. It thus falls within the exclusive domain of the executive branch of the State. The jurisdiction of the Court is not to interfere in policy decisions based on factual issues, unless it is manifest that such policy decisions were patently illegal or manifestly unreasonable being the outcome of arbitrary exercise of power and mala fides.

ii) The Caretaker Government had got jurisdiction and could have fixed the prices of wheat by enhancing the previous prices as per its mandate as provided by Section 230(a) of Election Act, 2017.

iii) It is not the vested right of individuals or public at large i.e. consumers to claim that subsidy should be mandatorily provided to them in purchase of wheat or flour.

iv) Supply of flour free of cost under Ramadan package being a policy decision of the Government and not shown to be suffering from any discrimination did not merit to be interfered with by the Constitutional Court.

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21. **Lahore High Court**
Laeeq Ahmad v. Addl. District Judge, Kasur, etc.
W.P. No. 27318 of 2023
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC2301.pdf

Facts: Through this constitutional petition, the petitioner has called in question order passed by learned trial court, whereby application under Order XIV Rule 5, 1 & 2 of the C.P.C filed by the petitioner, was dismissed and has also called in question judgment passed by learned Addl. District Judge, whereby revision petition filed by the petitioner against the afore-referred order was also dismissed.

Issues: i) Whether failure to frame any issue or framing of an omnibus issue at trial stage nullifies the trial?
ii) Whether a party can stress for framing of a particular issue?
iii) Whether court can take into consideration the effect of changed circumstances while finally deciding the case?

Analysis: i) Failure to frame one or other issue at trial stage, in circumstances of case would not have the effect of nullifying the trial, and the Parties were required to lead evidence keeping in view the precise grounds pressed by them and no prejudice would be caused to parties due to framing of an omnibus issue by trial court. Moreover, it was also held that it was the duty of parties to get proper issues framed, if they had any objection or suggestion regarding framing of issues.
ii) It is not the vested right of a party to stress for framing of a particular issue if such a plea is not raised through its pleadings and where the court is convinced that the same does not arise from the pleadings or any other material available on the record, the said court can refuse to frame the issue requested to be framed by a party.
iii) The court can always take into consideration the effect of the said statement while finally deciding the matter as court is competent to determine all the matters pending adjudication before it while also taking into consideration the effect of changed circumstances in order to meet the ends of justice.

Conclusion: i) Failure to frame one or other issue at trial stage would not have the effect of nullifying the trial and no prejudice would be caused to parties due to framing of an omnibus issue.
ii) It is not the vested right of a party to stress for framing of a particular issue if such a plea is not raised through its pleadings.
iii) Court is competent to determine all the matters pending adjudication before it while also taking into consideration the effect of changed circumstances in order to meet the ends of justice while finally deciding the matter.

22. **Lahore High Court**
Ahmad Ali v. Addl. Sessions Judge, etc.
Cr. Misc. No.60827-M of 2022
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2353.pdf

Facts: Through this petition filed u/s 561-A Cr.P.C. the petitioner has impugned the dismissal orders of his superdari application regarding vehicle in question, passed by learned Magistrate 1st Class and learned Addl. Sessions Judge.

Issues: i) Whether vehicle of tampered chassis and engine number can be allowed to be given on superdari even the claimant is owner?
ii) Whether any person who has purchased the vehicle without taking due care in accordance with law, can claim to be bona fide purchaser?

Analysis: i) The owner was not entitled to retain or get superdari of the vehicle which has been declared as having been with tampered chassis number.
ii) If the petitioner has purchased the vehicle in question without taking due care and in compliance with the requirements of law, he cannot be claimed to be a bona fide purchaser and at the maximum, he can claim damages from the person from whom he had purchased the same.

Conclusion: i) Vehicle of tampered chassis and engine number cannot be allowed to be given on superdari even the claimant is owner.
ii) Any person who has purchased the vehicle without taking due care in accordance with law, cannot claim to be bona fide purchaser.

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23. **Lahore High Court**
Dr. Ummara Munir v. Federation of Pakistan through Secretary Ministry of National Health Services, Regulation & Coordination (NHRSR&C), Government of Pakistan, Islamabad & others.
W.P. No. 82061/2022
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC2439.pdf

Facts: Petitioners had requested for grant of exemption from the requirements of FCPS Part-I but declined, by CPSP in wake of change in the exemption rules, notified through impugned Notification. Petitioners seek judicial review of the decision(s) of CPSP under the doctrine(s) of 'legitimate expectation / promissory estoppel'.

Issues: i) What are the requisite conditions / requirements for determining the applicability of doctrine of legitimate expectation, under judicial review jurisdiction?
ii) Whether before seeking benefit of doctrine of legitimate expectation, petitioners have to prove their entitlement?

iii) Whether unwarranted intrusion in the policy domain, in exercise of judicial review jurisdiction, would be construed as fetter on the exercise of discretion?

Analysis: i) Applicability of doctrine of legitimate expectation is subject to the fulfillment of certain conditions, exceptions and relevant qualifications. Requisite conditions / requirements for determining the applicability of doctrine of legitimate expectation, under judicial review jurisdiction, are summed up as; making of specific representation, likely recipient of the representation made, either an individual or group of persons, detriment caused in wake of reliance on the representation, circumstances / factors for change / withdrawal of representation, if so made and acted upon, overriding public interest in case promise is reneged, case of apparent unfairness, unreasonableness and misuse of power.

ii) I find specific representation, promise or assurance conspicuous by its absence. Exemption rules were changed, and such change was not directed towards the petitioners specifically, but the policy was revised in general, applicable to a class / category of persons – aspirants for achieving FCPS Part-I. No individual prejudice is caused or convincingly pleaded. It is for the petitioners to prove entitlement before seeking benefit of doctrine of legitimate expectation. Petitioners failed to establish such entitlement.

iii) The scope of judicial review jurisdiction can certainly be extended to adjudge factum of allegations of unreasonableness – comparatively in the context of principles of Wednesbury reasonableness test or abuse of authority and unfairness in the purported exercise of authority by the public body, affecting alleged private rights, but not otherwise. And unwarranted intrusion in the policy domain, in exercise of judicial review jurisdiction, would be construed as fetter on the exercise of discretion, which encroachment is deprecated.

Conclusion: i) Requisite conditions / requirements for determining the applicability of doctrine of legitimate expectation, under judicial review jurisdiction, are summed up as; making of specific representation, likely recipient of the representation made, either an individual or group of persons, detriment caused in wake of reliance on the representation, circumstances / factors for change / withdrawal of representation, if so made and acted upon, overriding public interest in case promise is reneged, case of apparent unfairness, unreasonableness and misuse of power.

ii) Before seeking benefit of doctrine of legitimate expectation, petitioners have to prove their entitlement.

iii) Unwarranted intrusion in the policy domain, in exercise of judicial review jurisdiction, would be construed as fetter on the exercise of discretion, which encroachment is deprecated.

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24. **Lahore High Court**
Mian Zohaib Aslam Advocate v. Returning Officer and another
Election Appeal. No.01 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC2170.pdf

Facts: This election appeal has been filed by the Appellant under Section 63 of the Elections Act, 2017 read with Rule 54 of the Election Rules, 2017 for setting aside the order dated passed by the Respondent /Returning Officer, who rejected the objections filed by the Appellant by accepting the nomination papers of the Respondent.

Issues: i) What is the concept of the Expression "a court of law"?
ii) Whether a permanent disqualification under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 requires a definite declaration by any competent Court of law?

Analysis: i) The expression "a court of law" has not been defined in Article 62 or any other provision of the Constitution but it essentially means a court of plenary jurisdiction, which has the power to record evidence and give a declaration on the basis of the evidence so recorded. Such a court would include a court exercising original, appellate or revisional jurisdiction in civil and criminal cases.
ii) A plain reading of the Article makes it abundantly clear that the Constitution requires a declaration by a court of law for the candidate to be termed as being not sagacious, righteous, non-profligate, honest and ameen.

Conclusion: i) The expression "a court of law" means a court of plenary jurisdiction, which has the power to record evidence and give a declaration on the basis of the evidence so recorded.
ii) The Constitution requires a declaration by a court of law for the candidate to be termed as being not sagacious, righteous, non-profligate, honest and ameen.

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25. **Lahore High Court**
Saif Ullah v. Muhammad Shafique Chief Officer (DC,R.Y.Khan) Returning Officer PP-261 Rahim Yar Khan-VII.
Election Appeal No.03 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC2165.pdf

Facts: This election appeal has been filed by the Appellant under Section 63 of the Elections Act, 2017 read with Rule 54 of the Election Rules, 2017 for setting aside the order passed by the Respondent Returning Officer, who rejected the nomination papers of the appellant.

Issues: i) What is qualification of proposer and/or seconder to subscribe to the nomination paper?
ii) Whether a proposer with expired C.N.I.C is disqualified to subscribe to the

nomination paper?
iii) Whether Election Tribunal could make determination as to signatures without having referred the matter to an expert?

Analysis: i) Proposer and/or seconder are not defined anywhere in the Act ibid or the 2013 Rules, therefore, it would appear that the only qualification of a proposer and/or seconder are that he/she be a voter of the constituency. (…) The requirement of being qualified to subscribe to the nomination paper as a proposer, therefore, is that the proposer must be a voter of that constituency for which the candidate aspires to be elected as a member.
ii) When an expired Computerized National Identity Card (C.N.I.C) of a person is deemed to be valid for the purpose of his registration as a voter, then a proposer whose Computerized National Identity Card (C.N.I.C) is expired at the time of subscribing to the nomination paper or at the time of scrutiny of the nomination paper of a candidate, the proposer or the seconder cannot be termed as not qualified to subscribe to the nomination paper for that reason.
iii) With regard to the observation of the Returning Officer, Constituency PP-261, Rahim Yar Khan -VII that the signatures on the Computerized National Identity Card (C.N.I.C) of Ghulam Fareed were different from the signatures of Ghulam Fareed available on FORM A, it is observed that such determination could not have been made by the Returning Officer, Constituency PP-261, Rahim Yar Khan -VII without having referred the matter to an expert. (…) Insofar as Article 84 is concerned, we are of the view that keeping in mind the requisite standard of proof it is unsafe for the Court (which would here include an election tribunal) to itself carry out a visual examination and comparison of the record. In election matters, if at all such an exercise has to be carried out, it must be referred to expert opinion (which would here include the opinion of any relevant regulatory body or authority such as NADRA). The totality of the evidence must be considered only while taking such report into account and applying the requisite standard.

Conclusion: i) Proposer and/or seconder are not defined anywhere in the Elections Act, 2017 or the Election Rules, 2017. Only qualification of a proposer and/or seconder is that he/she must be a voter of that constituency for which the candidate aspires to be elected as a member.
ii) A proposer whose Computerized National Identity Card is expired at the time of subscribing to the nomination paper, cannot be termed as not qualified to subscribe to the nomination paper for that reason.
iii) Determination as to signatures could not be made by the Returning Officer, without having referred the matter to an expert.

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26. **Lahore High Court**
Ishtiaq Saleem v. Syed Zulfiqar Ali Shah (deceased) through L.Rs & others.
Civil Revision No.618-D of 2009/BWP
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC2369.pdf

Facts: Through this civil revision, the petitioner has challenged the validity of the judgment & decree passed by the learned appellate court, whereby while accepting the appeal of respondents decreed their suit for specific performance of an agreement to sell.

Issues: i) Whether pleadings are evidence themselves?
ii) Whether in contracts relating to immovable property time is essence of contract?
iii) Whether failure to perform part of contract by the date fixed in the agreement to sell i.e., for payment of remaining consideration amount is a ground for refusing relief of specific performance?
iv) Whether intention to make time the essence of the contract must be expressed in unmistakable language?
v) Whether it is incumbent upon the Court to decree every suit for specific performance?
vi) Whether discretionary relief can be denied to a bona fide and vigilant litigant, merely because of his pending lis for many years?
vii) Whether Increase of price of the property during pendency of cause in courts, ipso facto disentitles the purchaser to seek discretionary relief of specific performance?
viii) What procedure would be governed, when statute governing proceedings does not prescribe period of limitation?
ix) Whether benefit of section 5 of limitation act can be availed when governing statutes itself provide limitation?
x) Whether limitation is a mere technicality?

Analysis: i) There is no cavil with the proposition that pleadings are not evidence themselves and the facts pleaded in the pleadings should be proved through evidence.
ii) It is well-settled principle of law that in contracts relating to immovable property time is not essence of contract. Merely an express provision in agreement specifying certain time limit for performance of contractual undertaking on part of promisee/vendee in case of sale of immovable property, would not make specified time as essence of contract in absence of any such specified intendment from construction of document of contract. In the absence of a provision in the agreement to sell an immovable property that the time fixed for performance of the contract is to be treated as the essence of contract, the time fixed for performance of the contract is not treated as the essence of contract.
iii) The failure to perform part of contract by the date fixed in the agreement to sell i.e., for payment of remaining consideration amount is not a ground for refusing relief of specific performance unless the circumstances must be highlighted and proved by the owner-vendor of the land that time is essence of the contract. There is no cavil with the proposition that where defendant found to have committed breach of contract, it is not obligatory on the part of plaintiff to

prove his willingness to perform it. Section 55 of the Contract Act, 1872 deals with the effects of the failure of a party to perform its part of the contract where time is essence of the contract and the contracts where the time is not the essence of the contract.

iv) Intention to make time of the essence of the contract must be expressed in unmistakable language and it can be inferred from what passed between the parties before but not after the contract is made. A mere mention of a specified period in an agreement for completion of sale and payment of balance consideration amount would not make the time as essence of the contract unless it is expressly intended by the parties and the terms of the contract do not permit any other interpretation.

v) There is no cavil with the proposition that it is not incumbent upon the Court to decree every suit for specific performance if the circumstances of the case require otherwise.

vi) Section 22 of the Specific Relief Act, 1877 deals with discretion to grant of decree for specific performance. A perusal of above-quoted provision shows that grant of decree for specific performance is discretionary in nature and such discretion should be justly exercised. It is relevant to note over here that discretionary relief cannot be denied to a litigant, who otherwise is vigilant always ready and willing to perform his part of obligation, merely because his lis remained pending for many years in the court.

vii) Increase of price of the property during the time when causes remain pending in courts, not ipso facto disentitles the purchaser to seek discretionary relief of specific performance. Rise in the price of the property may be relevant factor in denying the relief of specific performance, keeping in view the conduct of the vendee, date of agreement of sale, time agreed to performance and time of filing of the suit before trial court.

viii) If Statute governing proceedings does not prescribe period of limitation then proceedings instituted there under would be governed by Limitation Act, 1908.

ix) Where law under which proceedings have been instituted prescribes period of limitation then benefit of section 5 of the said Act cannot be availed unless the same had been made applicable as per section 29(2) of the Limitation At, 1908. As Section 115 of C.P.C. itself prescribes 90 days for filing a revision petition, therefore, provision of section 5 of the Limitation Act was not available for condonation of delay or extension of time.

x) The limitation is not a mere technicality and once it expires, the right accrued in favour of the other side by operation of law cannot lightly be taken away. It is well entrenched by now that delay defeats equity and the favors the vigilant and not the indolent.

Conclusion: i) Pleadings are not evidence themselves.

ii) In contracts relating to immovable property time is not essence of contract.

iii) Failure to perform part of contract by the date fixed in the agreement to sell i.e., for payment of remaining consideration amount is not a ground for refusing relief of specific performance subject to certain extra ordinary circumstances.

iv) Yes, intention to make time the essence of the contract must be expressed in unmistakable language.
v) It is not incumbent upon the Court to decree every suit for specific performance.
vi) The discretionary relief cannot be denied to a bona fide and vigilant litigant, merely because of his pending lis for many years in the courts.
vii) Increase of price of the property during pendency of cause in courts, not ipso facto disentitles the purchaser to seek discretionary relief of specific performance keeping in view the conduct of the vendee.
viii)The procedure of Limitation Act, 1908 will be governed when statute governing proceedings does not prescribe period of limitation.
ix) The benefit of section 5 of the Limitation Act, 1908 cannot be availed when governing statutes itself provide limitation.
x) The limitation is not a mere technicality.

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27. **Lahore High Court**
Muhammad Azam v. Muhammad Anwar Khan and 6 others
Civil Revision No. 50670 of 2020
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC2309.pdf

Facts: The petitioner filed this civil revision u/s 115 of CPC against order passed by trial court vide which application of petitioner for grant of permission to file list of witnesses was dismissed.

Issues: i) In what circumstances court can excuse the omission to provide list of witnesses within seven (07) days of settlement of issues and allow a party to file a list of witnesses?
ii) What would be status of affidavit of litigant (annexed with application) having no possibility of having knowledge of facts stated in application?

Analysis: i) Order XVI Rule 1 of the Code requires the parties to provide list of witnesses within seven (07) days of settlement of issues. If omission in this regard has taken place, it is imperative to obtain permission of the Court. The concerned Court is required to see availability of 'good cause' for excuse from such omission, keeping in view fact of each case and the attending circumstances. If the Court is satisfied as to availability of good cause then the permission can be granted for which reasons are required to be recorded. The parties cannot be granted such permissions, at belated stage, as a matter of right or as a matter of course, without assigning or establishing 'good cause'.
ii) To make out a prima facie case as stated in application that an official of the Court neglected his duty or misplaced a document, an affidavit of a person who could not even depose as to those facts, is certainly based on hearsay and the same is not sufficient to justify the cause stated in application…

Conclusion: i) If the Court is satisfied as to availability of good cause for excuse from

omission to provide list of witnesses within seven (07) days of settlement of issues then the permission can be granted for which reasons are required to be recorded.
ii) An affidavit of a person (annexed with application) who cannot even depose as to facts stated in application is certainly based on hearsay and the same is not sufficient to justify the cause stated in application.

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28. **Lahore High Court**
Muhammad Aslam v. The State etc.
Criminal Appeal No. 255528/2018
Muhammad Yousaf v. Muhammad Aslam, etc.
Criminal Revision No. 255777/2018
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2276.pdf

Facts: The appellant was convicted for offences under Sections 302/34 PPC, at the conclusion of trial by Additional Sessions Judge and sentenced to Rigorous Imprisonment for life and to pay the compensation to the legal heirs of deceased under Section 544-A Cr.P.C. and in default thereof to further undergo simple imprisonment for six months along with benefit of Section 382-B Cr.P.C. The appellant filed criminal appeal against his conviction while the complainant filed separate criminal revision and sought enhancement of sentence of convict.

Issues: i) Whether presence of blackening shows that fire shot from close-range?
ii) Whether maxilla bone is one of the hardest bones of the body and can cause a ricocheting effect to the bullet?
iii) What will be the effect upon case of prosecution when the weapon of offence does not match with the recovered bullet from dead body?
iv) Whether FIR is a substantive piece of evidence, and it can be relied upon to the level that mere on the basis of averments in FIR one could be convicted?
v)Whether in the absence of any evidence in support of motive, mere stating it in FIR can cater to the requirement of due evidence?
vi) What is polygraph test?
vii) Whether polygraph test is an intrusion to personal liberty?
viii) Whether in polygraph test there is scope for error on account of several factors?
ix) Whether findings of polygraph test can be equated with admission of guilt?
x) Whether provisions of law support the evidentiary value of polygraph test as a modern device?
xi) Whether level of skill and experience of the examiner plays an important part in the accuracy of the polygraph test examination?

Analysis: i) If it was a distant fire with inter se distance of 11 feet with no exit wound then in that case, there must be no blackening and burning because it is not possible beyond 3 or 4 feet. The presence of blackening shows that it was a close-range fire…

ii) It is true that maxilla bone is one of the hardest bones of the body and can cause a ricocheting effect to the bullet.

iii) Even it was possible due to ricocheting effect couple with the fact that velocity of a pistol shot is usually up to '145 miles per hour' whereas of rifle is '120 miles per second to 370 miles per second' in black powder muskets. So, this difference is not only of digits but of hours and seconds as well. This anomaly as to whether fire hit with a rifle or pistol was easy to settle if checked as to whether lead bullet recovered from the body of deceased stood matched with which weapon of offence...This fact has left the prosecution barren of evidence on this score.

iv) It is trite that FIR is not a substantive piece of evidence, and it cannot be relied upon to the level that mere on the basis of averments in FIR one could be convicted, therefore, unless an independent corroboration is available, FIR would remain only an evidence of relevant fact. This principle of law is embodied in Article 49 of Qanun-e-Shahadat Order, 1984. Though entry in any public or other official book or register about fact in issue or relevant fact is admissible evidence as a relevant fact but conviction cannot be based on FIR.

v) In the absence of any evidence in support of motive, mere stating it in FIR does not cater to the requirement of due evidence. It is trite that though the prosecution is not required to prove motive in every case, yet the same, if set up, should be proved through independent source of evidence other than the words of mouth and in case of failure to do so, the prosecution should have faced the consequences and not the defence.

vi) A polygraph, often incorrectly referred to as a lie detector test, is a device or procedure that measures and records several physiological indicators such as blood pressure, pulse, respiration, and skin conductivity while a person is asked and answers a series of questions. The belief underpinning the use of the polygraph is that deceptive answers will produce physiological responses that can be differentiated from those associated with non-deceptive answers. In the method, the examiner typically begins polygraph test sessions with a pre-test interview to gain some preliminary information which will later be used to develop diagnostic questions. Then the tester will explain how the polygraph is supposed to work, emphasizing that it can detect lies and that it is important to answer truthfully.

vii) All over the world in the past there was serious criticism over polygraph test as being inconclusive while an intrusion to personal liberty and was suggested that it should not be conducted without the consent because otherwise it opposes to fundamental right of protection against self- incrimination. A significant criticism of polygraphy is that sometimes the physiological responses triggered by feelings such as anxiety and fear could be misread as those triggered by deception but it can be a best investigative tool to take a lead for collection of directed evidence.

viii) Though there are some studies showing improvements in the accuracy of results with advancement in technology, there is always scope for error on account of several factors. Objections can be raised about the qualifications of the

examiner, the physical conditions under which the test was conducted, the manner in which questions were framed and the possible use of `countermeasures' by the test subject. An objection can be raised that through polygraph test, a truth is extracted technically and some time by asking misleading questions, or through promise or without warning etc., therefore, it would be not relevant as being involuntary.

ix) True, findings of polygraph test cannot be equated with admission of guilt and does not provide a ground for conviction solely on such findings but more or less it being confession can be considered a relevant fact in conjunction with other evidence on the record. Admissibility of polygraph test being opinion of an expert has been tracked in the light of provisions of QSO, 1984 in the sense that truth extracted through polygraph test is like listening an extra judicial confession, burden to prove such confession is always on prosecution as per Article 119 of QSO, 1984.

x) In our regime, certain provisions of law support the evidentiary value of polygraph test and give it a legal cover as a modern device. Like an opinion of investigating officer in the form of report u/s 173 Cr.P.C., Polygraph test is also an investigative technique conducted by an expert and opinion of an expert on any subject is a relevant fact as explained under Article 59 of Qanun-e-Shahadat Order, 1984. Opinion of such experts are always subject to judicial scrutiny, therefore, in Article 65 of QSO, 1984, it has been explained that grounds of opinion shall also be relevant. Therefore, report of polygraph test should not be thrown away from consideration and best course can be the summoning of expert if any confusion arises while drawing inferences from such report.

xi) Based on the studies now available, experts assess the accuracy of polygraph examinations administered by a competent examiner to be about 90%. Level of skill and experience of the examiner plays an important part in the accuracy of the examination. Comparative studies have shown that polygraph tests yield an accuracy that equals or exceeds that of many other forms of evidence.

Conclusion: i) Yes, presence of blackening shows that fire shot from close-range.

ii) Yes, maxilla bone is one of the hardest bones of the body and can cause a ricocheting effect to the bullet.

iii) When the weapon of offence does not match with the recovered bullet from dead body than this fact will leave the prosecution barren of evidence on this score.

iv) FIR is not a substantive piece of evidence, and it cannot be relied upon to the level that mere on the basis of averments in FIR one could be convicted.

v) In the absence of any evidence in support of motive, mere stating it in FIR does not cater to the requirement of due evidence.

vi) A polygraph, often incorrectly referred to as a lie detector test, is a device or procedure that measures and records several physiological indicators and a useful investigative technique.

vii) Yes, polygraph test is an intrusion to personal liberty except in the cases

where examinee gives his/her consent before its conducting.
viii) Yes, in polygraph test there is always scope for error on account of several factors even though there are some studies showing improvements in the accuracy of results with advancement in technology.
ix) Findings of polygraph test cannot be equated with admission of guilt.
x)Yes, certain provisions of law support the evidentiary value of polygraph test and give it a legal cover as a modern device.
xi) Yes, level of skill and experience of the examiner plays an important part in the accuracy of the polygraph test examination.

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29. **Lahore High Court**
Mst. Kaneez Batool v. Allah Bukhsh and another
Civil Revision No.40110/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC2290.pdf

Facts: The respondents/judgment debtors filed objection petition primarily on the ground that the decree has become inexecutable as the respondents/judgment debtors have become co-sharers in the khata/khewat in which the disputed property falls. The objection petition was dismissed, by the Executing Court against which appeal was preferred by the respondents/judgment debtors that was allowed. The present Civil Revision was filed by the petitioner against order passed by the appellate court.

Issues: i) Whether a decree for possession against an illegal occupant becomes inexecutable for the reason that the said occupant has purchased the share from a co-sharer of the decree holder, in a joint khata/khewat, during the pendency of the execution proceedings?
ii) Whether questions relating to the executability of an order or decree can be raised in execution proceedings?

Analysis: i) In case reported as "Ramdas v. Sitabai and others" [(2009) 7 SCC 444], it has been held that without there being any formal partition of a property, a co-sharer cannot put a vendee in possession even though such cosharer may have a right to transfer his individual share. Thus, the right of the vendee from a co-sharer in a joint khata/khewat is always subject to the partition whereby the share of the co-sharers is divided by metes and bounds for which the respondents/judgment debtors, and not the petitioner, will have to approach the learned Civil Court concerned by instituting an independent suit as the learned Executing Court is only vested with the power and jurisdiction in terms of Section 47 of the Code of Civil Procedure, 1908 to determine and decide those questions between the parties to the suit or their representatives which are germane to execution, discharge or satisfaction of the decree and purchase of share from a purported cosharer in a joint khata/khewat is not such question as the said purchase of the share from a co-sharer does not nibble away the decree passed in favour of the petitioner that

has attained finality. Needless to mention that the learned Executing Court cannot travel beyond decree and this Court is well aware of the fact that this rule is not absolute or invariable rule of law rather the same is subject to certain exceptions as expounded by the Courts. (…) Had the share and/or possession of the suit property sought by the decree holder been indeterminate and/or undefined and the decree holder as a co-sharer sought possession in the joint khata/khewat, the decree could have been considered to have become inexecutable on account of indeterminate share.

ii) Even in the execution proceedings questions relating to the executability of an order or decree can be raised and it is open to the party against whom it is sought to be executed to show that it is null and void or had been made without jurisdiction or that it is incapable of execution.

Conclusion: i) If the share and/or possession of the suit property sought by the decree holder is indeterminate and/or undefined and the decree holder as a co-sharer sought possession in the joint khata/khewat, the decree could have been considered to have become inexecutable on account of indeterminate share. Share, in the joint khata/khewat, cannot be taken as a tool to defeat the decree of the decree holder with respect to already determinate share.

ii) Yes, questions relating to the executability of an order or decree can be raised in execution proceedings.

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30. **Lahore High Court**
Mst. Sadaf Rasheed v. Senior Civil Judge, etc.
Writ Petition No. 81201 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC2265.pdf

Facts: The petitioner has assailed the order passed by the Senior Civil Judge (Family Division), whereby application of the petitioner for setting aside ex-parte judgment and decree was dismissed.

Issue: i) Whether the determination of welfare of the minor can be made in the absence of proper service and adequate opportunity of hearing granted to the parties?

ii) Whether the factual controversy qua residential address of the party and his / her service can be decided without framing issues and recording evidence?

Analysis: i) In the absence of proper service and adequate opportunity of hearing granted to both sides, any determination of welfare of the minor cannot be termed as lawful and satisfying the requirement of fundamental right to fair trial as guaranteed under Article 10A of the Constitution of Islamic Republic of Pakistan, 1973.

ii) Without framing issues and recording evidence, the Court below has decided the factual controversy qua residential address of the petitioner while relying on photocopy of the petitioner's alleged second marriage in Khanewal district, produced by the counsel for respondent No.2. The Court below has also presumed

petitioner's knowledge of proceedings and service of summons on the basis that notice along with registered envelope AD were sent on her Khanewal address and that notice was also published in the newspaper daily "Dunya", Multan. Undeniably, neither the process server was produced as a witness in the instant case to establish personal service of summons under Section 8 of the Family Courts Act, 1964 upon the petitioner in accordance with law nor any reference to his report to the said effect has been made in the impugned order as well as the judgment and decree sought to be reviewed. Furthermore, in the absence of any acknowledgment due available on record, service of the notice has been presumed by the Court below merely on the basis of postal receipt available on record. Without establishing on record that the petitioner could not be served personally, reliance on publication of the notice could not be considered safe to presume service of the petitioner.

Conclusion: i) The determination of welfare of the minor cannot be made in the absence of proper service and adequate opportunity of hearing granted to the parties.

ii) The factual controversy qua residential address of the party and his / her service cannot be decided without framing issues and recording evidence.

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31. **Lahore High Court**
Asim Jamshaid. v Shahzad Iqbal Malik, etc.
R.S.A. No.64508 of 2022.
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC2269.pdf

Facts: Through this regular second appeal, the appellant/ plaintiff has assailed the judgments and decrees passed by the Civil Judge 1st Class, and Additional District Judge, whereby specific performance of agreement to sell was refused, however, defendant No.1 was directed to pay double the earnest money to the plaintiff alongwith profit at bank rate from the date when the earnest money was paid alongwith return of the remaining amount of consideration deposited in the Court by the appellant.

Issues: i) Whether compensation can be claimed by the person suing for specific performance of contract?
ii) How the discretion for grant of relief of specific performance of contract can be exercised?
iii) In case of non-performance, who is duty bound to prove readiness and willingness to perform his part of contract?

Analysis: i) Section 19 of the Specific Relief Act, 1877 gives right to claim compensation to the person suing for specific performance of contract in addition to or in substitution for its breach.
ii) It is well settled that the grant of relief of specific performance of contract is discretionary in nature which cannot be exercised arbitrarily. The Courts are not

bound to grant relief of specific performance of contract merely because it is lawful to do so. It is essentially an equitable relief and can be declined if the Court reaches the conclusion that it is unjust and inequitable to do so. This principle has been provided in section 22 of the Specific Relief Act, 1877.

iii) In case of non-performance of the contract, the primary responsibility to show readiness and willingness to perform his part of the obligation is that of the person who is seeking the relief of specific performance of the contract.

Conclusion: i) Section 19 of the Specific Relief Act, 1877 gives right to claim compensation to the person suing for specific performance of contract.

ii) It is well settled that the grant of relief of specific performance of contract is discretionary in nature which cannot be exercised arbitrarily.

iii) The primary responsibility to show readiness and willingness to perform his part is that of the person who is seeking the relief.

LATEST LEGISLATION/AMENDMENTS

1. The Punjab Place of Provision of Service Rules, 2023, have been prescribed for determination of place of provision of taxable services specified in these Rules.
2. The Punjab Home Department (Management Information System Employees) Service Rules 2023 have been made to provide for method of recruitment.
3. Vide Notification No. 690/Ad-VII, dated 04.02.2022, amendments have been made in the schedule of the Punjab Police Special Branch (Technical Cadre) Service Rules 2016
4. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, rate of water (Abiana) for various perennial and non-perennial canals has be revised.
5. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the drainage charges on all lands benefitting from a drainage and Reclamation Scheme have been revised
6. Vide Notification No. 63 of 2023 issued by Government of Punjab Law and Parliamentary Affairs Department dated 11-04-2023, Notification No.SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023 has been published
7. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for canal water for non-irrigation uses has been revised
8. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for canal water supplied for drinking and ordinary domestic use has been revised
9. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for water supplied to any cooling system of an industrial unit has been revised

10. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for water supplied from a canal for industrial purposes, cement plant has been revised
11. Vide Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023, the water rate for water supplied from a canal for industrial purposes, other than cement plant has been revised
12. Vide Notification No. DREP(A-I) 1-1/AA/2019/279 dated 04.04.2023, amendment in the first schedule of Madaaris and Schools Management Board Employees (Appointment and Conditions of Service) Regulations, 2020, has been made.
13. Vide Notification No. SO(CAB-I)2-7/2011 dated 12.04.2023, amendments have been made in first and second schedule of the Punjab Government Rules of Business 2011
14. Vide Punjab Undesirable Cooperative Societies (Dissolution) (Amendment) Ordinance, 2023, amendments have been made in sections 2,7,12 and 26 of the Act I of 1993 while new sections 17A and 17B are inserted along with addition of second schedule.
15. Vide Punjab Criminal Prosecution Service (Constitution, functions and powers) (Amendment) Ordinance, 2023, amendment has been made in section 6 of Act III of 2006
16. Vide Sugar Factories (Control) (Amendment) Ordinance, 2023, amendment has been made in section 13-A of the Act XXII of 1950
17. The Lawyers Welfare and Protection Act, 2023, has been promulgated to make provision and make laws in respect of welfare and protection of advocates

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SELECTED ARTICLES

1. HARWARD LAW REVIEW

https://harvardlawreview.org/print/vol-135/blasphemy-and-the-original-meaning-of-the-first-amendment/

Blasphemy and the Original Meaning of the First Amendment

Until well into the twentieth century, American law recognized blasphemy as proscribable speech. The blackletter rule was clear. Constitutional liberty entailed a right to articulate views on religion, but not a right to commit blasphemy — the offense of "maliciously reviling God," which encompassed "profane ridicule of Christ." The English common law had punished blasphemy as a crime, while excluding "disputes between learned men upon particular controverted points" from the scope of criminal blasphemy. Looking to this precedent, nineteenth-century American appellate courts consistently upheld proscriptions on blasphemy, drawing a line between punishable blasphemy and protected religious speech. At the close of the nineteenth century, the U.S. Supreme Court still assumed that the First Amendment did not "permit the publication

of . . . blasphemous . . . articles." And in 1921 the Maine Supreme Judicial Court affirmed a blasphemy conviction under the state's First Amendment analogue. Even on the eve of American entry into World War II, the Tenth Circuit upheld an anti-blasphemy ordinance against a facial First Amendment challenge. This Note argues that none of the constitutional clauses currently thought to make anti-blasphemy laws unconstitutional — Free Exercise, Free Speech, Establishment — originally prohibited blasphemy prosecutions. In other words, the original public meaning of the First Amendment, whether in 1791 or in 1868, allowed for criminalizing blasphemy.

2. HARWARD LAW REVIEW
https://harvardlawreview.org/print/vol-136/constitutional-remedies-in-one-era-and-out-the-other/

Constitutional Remedies: In One Era and Out the Other by Richard H. Fallon

Despite the ringing dictum of Marbury v. Madison that "every right, when withheld, must have a remedy," rights to remedies have always had a precarious constitutional status. For over one hundred years, the norm was that victims of ongoing constitutional violations had rights to injunctive relief. But the Constitution nowhere expressly prescribes that norm, and recent Supreme Court decisions, involving suits for injunctions and damages alike, have left the constitutional connection between rights and remedies more attenuated than ever before. The Article's central thesis combines empirical and normative aspects: Although the modern Supreme Court has wielded separation of powers arguments to truncate constitutional remedies, the Court's premises are mistaken. The Constitution frequently, though not invariably, requires effective remedies for constitutional rights violations. When Congress fails to authorize such remedies, nothing in the Constitution's history or tradition precludes a role for the Supreme Court in devising remedies that are necessary to enforce substantive rights. If we have entered an era in which a majority of the Justices believe otherwise, the situation is a deeply regrettable one in which the concept of a constitutional right will be cheapened.

3. HUMAN RIGHTS LAW REVIEW
https://academic.oup.com/hrlr/article/23/2/ngad006/7083774

Prisoner Lives Cut Short: The Need to Address Structural, Societal and Environmental Factors to Reduce Preventable Prisoner Deaths by Róisín Mulgrew

The State duty to prevent preventable prisoner deaths is easy to state and substantiate. Yet prisoner death rates are increasing around the world and are often much higher than those in the community. To understand why this is happening, the findings and recommendations of the country reports of international oversight bodies and thematic reports from international rapporteurs are synthesised with contemporary rights-informed penal standards, multi-disciplinary scholarship, non-governmental organization reports and media extracts. On the basis of this knowledge, this reform-

oriented article explores the impact of structural, societal and environmental factors on natural and violent prisoner deaths and how these factors operate cumulatively to create dangerous and life-threatening custodial environments. The paper makes recommendations to reaffirm and enumerate the positive obligation to protect prisoners' lives, develop specialist standards, adopt a broader approach to prison oversight and create a specific United Nations mandate on prisoner rights.

4. STATUTE LAW REVIEW

https://academic.oup.com/slr/article-abstract/40/1/40/5238966?redirectedFrom=fulltext

The Principle of Legality and Legislative Intention by Robert French

Contests about statutory interpretation frequently present courts with constructional choices. The process of choice is primarily volitional. An important principle directing constructional choice to the protection of common law rights and freedoms is the principle of legality. Historically, it is linked to a presumption about legislative intention. The presumption is at odds with contemporary legislative agendas and purports to link choice to a numinous concept of intention which plays no real part in interpretation, save as an after the event declaration of the legitimacy of the choice made. Text informed by context and statutory purpose remains central. The principle of legality properly stands alone without the aid of a presumed legislative intention.

5. ARTIFICIAL INTELLIGENCE AND LAW

https://link.springer.com/article/10.1007/s10506-022-09310-1

Smart Criminal Justice: Exploring the Use of Algorithms in the Swiss Criminal Justice System by Monika Simmler, Simone Brunner, Giulia Canova & Kuno Schedler

In the digital age, the use of advanced technology is becoming a new paradigm in police work, criminal justice, and the penal system. Algorithms promise to predict delinquent behaviour, identify potentially dangerous persons, and support crime investigation. Algorithm-based applications are often deployed in this context, laying the groundwork for a 'smart criminal justice'. In this qualitative study based on 32 interviews with criminal justice and police officials, we explore the reasons why and extent to which such a smart criminal justice system has already been established in Switzerland, and the benefits perceived by users. Drawing upon this research, we address the spread, application, technical background, institutional implementation, and psychological aspects of the use of algorithms in the criminal justice system. We find that the Swiss criminal justice system is already significantly shaped by algorithms, a change motivated by political expectations and demands for efficiency. Until now, algorithms have only been used at a low level of automation and technical complexity and the levels of benefit perceived vary. This study also identifies the need for critical evaluation and research-based optimization of the implementation of advanced technology. Societal implications,

as well as the legal foundations of the use of algorithms, are often insufficiently taken into account. By discussing the main challenges to and issues with algorithm use in this field, this work lays the foundation for further research and debate regarding how to guarantee that 'smart' criminal justice is actually carried out smartly.
