LAHORE HIGH COURT

BULLETIN

Fortnightly Case Law Update ***Online Edition***

Volume - V, Issue - XII

16 - 06 - 2024 to 30 - 06 - 2024

Published By: Research Centre, Lahore High Court, Lahore

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

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FORTNIGHTLY CASE LAW BULLETIN

(16-06-2024 to 30-06-2024)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Mehran v. Ubaid Ullah, etc.
Crl.P.L.A. 80-P/2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._80_p_2024.pdf

Facts: The juvenile petitioner through this leave to appeal assailed the judgments of the High Court and trial court wherein his post arrest bail under sections 302,324,392,427,201 and 34 of Pakistan Penal Code,1860 on the statutory ground of delay in the conclusion of trial was dismissed.

Issues: i) Whether the juvenile justice system specifically addresses the situation of children alleged to have infringed criminal law?
ii) Whether in Pakistan, the juvenile justice system finds its ideological roots in the Constitution of the Islamic Republic of Pakistan, 1973?
iii) Whether the main objective of the Juvenile Justice System Act, 2018 is to modify and amend the law relating to the criminal justice system for juveniles?
iv) Whether the post arrest bail can be granted as a matter of right to a juvenile accused detained for a heinous offence under section 6(5) of the Juvenile Justice System Act, 2018?
v) Whether Juvenile Justice System Act, 2018 is a beneficial legislation that favours juvenile offenders?

Analysis: i) The juvenile justice system specifically addresses the situation of children alleged to have infringed criminal law and operates under the premise that juveniles are different from adults and require special attention and treatment. Since juveniles are more amenable to rehabilitation than adults, the juvenile justice system is designed not just to punish but to rehabilitate, emphasizing correction and guidance to help children develop into responsible adults. A range of factors underscore the need for a special justice system for juveniles. These include juveniles' lack of maturity, propensity to take risks, susceptibility to peer influence, as well as intellectual disabilities, mental illness, and victimization. This system is distinct from the ordinary criminal justice system and is based on a rehabilitative and restorative model rather than a retributive one. It emphasizes reducing crime by rehabilitating and reclaiming juvenile offenders, focusing on treating rather than punishing them. Central to this system is the principle of the best interest of the child, which ensures the fulfillment of a juvenile's basic rights, needs, identity, social well-being, and physical, emotional and psychological development. The rationale behind this non-punitive approach is that public safety is best served by emphasizing rehabilitation rather than the incapacitation and punishment of juveniles.
ii) In Pakistan, the juvenile justice system finds its ideological roots in the constitution of the Islamic Republic of Pakistan, 1973. Article 25(3) of the constitution empowers the state to make special provisions for the protection of children, even if such protection discriminates against adults. Furthermore, Article 35 of the constitution mandates that the state shall protect children. As a signatory to the United Nations Convention on the Rights of the Child, Pakistan is also under international obligation to take special measures for the protection and rehabilitation of juveniles who come into conflict with the law. It is this international obligation, coupled with Pakistan's compliance with its

constitutional mandate that formed the impetus behind the enactment of the juvenile justice system.

iii) The main objective of the 2018 Act is to modify and amend the law relating to the criminal justice system for juveniles, with a special focus on disposing of their cases through diversion and socially reintegrating with the best interest of the child principle as a primary consideration. This approach, rooted in therapeutic jurisprudence, forms the foundation of the juvenile justice system. Therapeutic jurisprudence, as defined by David B. Wexler, involves the use of social science to study the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects. It offers an interdisciplinary perspective with a problem-solving approach that views the law itself as a potential therapeutic agent. Therapeutic jurisprudence forms the bedrock of the juvenile justice system, integrating the societal responsibilities of sanction and rehabilitation in line with the principles of rehabilitative and restorative justice. This holistic framework ensures that the juvenile justice system not only addresses legal accountability but also prioritizes the well-being and developmental needs of juvenile offenders. Juvenile justice also falls under the rubric of child justice. While juvenile justice is more narrowly focused on dealing with crimes, including aspects of both punishment and rehabilitation, child justice is more encompassing, aiming to protect and uphold the rights and best interests of all children involved in the legal system. Child justice is also centered around the idea that children, due to their age and maturity, should not be dealt with in the same manner as adults within the legal system. It emphasizes rehabilitation and education, rather than punishment, recognizing the potential for growth and change in young individuals. Both child and juvenile justice systems are shaped by international conventions like the UNCRC, which provides a broad framework and standards for the treatment of children within judicial systems worldwide.

iv) It is evident that while Section 6(4) deals with the matter of bail on merits, while Section 6(5) provides for a distinct and separate ground of bail, namely, the delay in the conclusion of the trial of the juvenile. It is also important to underline that since both minor offence and major offence are treated as bailable under section 6(3), the ground of delay in the conclusion of the trial provided by section 6(5) for grant of bail applies solely to juveniles detained for a heinous offence. Therefore, post-arrest bail is to be granted as a matter of right to a juvenile detained for a heinous offence, regardless of his age, whether above or below sixteen years, provided the prerequisites of Section 6(5) are fulfilled.

v) The 2018 Act is a beneficial legislation that favors juvenile offenders. It not only reduces the period for granting bail on the statutory ground of trial delay for juveniles detained pending trial under the previous law, i.e., the Juvenile Justice System Ordinance, 2000, from one year to six months but also removes the disqualification of having a previous criminal record for bail on this ground. Unlike the 2000 Ordinance or section 497 of the Criminal Procedure Code, 1898, the 2018 Act does not impose any other statutory disqualifications for granting bail to juveniles on the ground of delay in the conclusion of the trial. The subsequent ameliorative and benevolent legislation, i.e., the 2018 Act, reflects the legislature's intent to ensure that the trial of a juvenile is concluded within six months of his detention, and any delay beyond this period entitles the juvenile to be released on bail. Furthermore, since the denial of bail and detention of an accused pending trial curtail his fundamental rights to liberty, fair trial and dignity guaranteed by Articles 9, 10-A and 14 of the constitution, statutory

provisions on bail matters, such as Section 6(5) of the 2018 Act, must be interpreted in a manner that is progressive and expansive of these rights.

Conclusion: i) The juvenile justice system specifically addresses the situation of children alleged to have infringed criminal law and operates under the premise that juveniles are different from adults and require special attention and treatment.
ii) In Pakistan, the juvenile justice system finds its ideological roots in the constitution of the Islamic Republic of Pakistan, 1973.
iii) The main objective of the 2018 Act is to modify and amend the law relating to the criminal justice system for juveniles, with a special focus on disposing of their cases through diversion and socially reintegrating with the best interest of the child principle as a primary consideration.
iv) Post-arrest bail is to be granted as a matter of right to a juvenile detained for a heinous offence, regardless of his age, whether above or below sixteen years, provided the prerequisites of Section 6(5) are fulfilled.
v) The Juvenile Justice System Act, 2018 is a beneficial legislation that favors juvenile offenders.

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2. **Supreme Court of Pakistan**
Meer Gul. v. Raja Zafar Mehmood through legal heirs & others.
Civil Appeal No. 51-K/2021
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._51_k_2021.pdf

Facts: This Civil Appeal is directed against the Judgment passed by the learned High Court in second appeal whereby the appeal was allowed and suit filed by the appellant was dismissed due to non-deposit of remaining consideration amount.

Issues: i) Whether there is any mandatory provision under the Specific Relief Act 1877 wherein the plaintiff has to tender the outstanding sale consideration in Court at the time of instituting or presenting the plaint?
ii) How the courts should proceed in directing the plaintiff to deposit the sale consideration or balance sale consideration in the Court?
iii) Which provision can be invoked under Order X, Rule 1, C.P.C. to resolve the controversy at the earliest regarding deposit of remaining consideration amount?
iv) How the right of appeal accentuates checks and balances to prevent injustice, and ensures that justice has been done?

Analysis: i) There is no mandatory provision under the Specific Relief Act 1877 wherein, come what may, the plaintiff has to tender the outstanding sale consideration in Court at the time of instituting or presenting the plaint or even at the time of admission of the suit by the Court before issuing summons to the defendant or defendants.
ii) So for all intent and practical purposes, the deposit of the sale consideration or balance sale consideration in the Court is not an automatic or precondition by fiction of law but there must be an order of the Court for deposit with certain timeline with repercussions of noncompliance, and in case of genuine and satisfactory grounds pleaded for noncompliance within the stipulated time, the Court, in exercise of powers conferred under Section 148, C.P.C., may extend and accord some reasonable time for compliance, with or without cost, if a justifiable and satisfactory case for extension is made out.

iii) The first provision which may be invoked is provided under Order X, Rule 1, C.P.C., in which, at the first hearing of the suit, the Court can ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement and can also record such admissions and denials and the substance of the examination shall be reduced to writing by the Judge, and shall form part of the record. Perhaps better sense will prevail upon the parties to resolve and settle the dispute at an early stage but if this provision is not worked out, then the Court may also persuade the parties to adopt the method of alternate dispute resolution and may be, after proper mediation, they will patch up the dispute or issues cropped up between them which result in such time consuming litigation in the courts.

iv) The right of appeal accentuates twofold and threefold checks and balances to prevent injustice, and ensures that justice has been done with a noticeable differentiation between the two appellate jurisdictions; one is conferred by Section 96, C.P.C., in which the Appellate Court may embark upon the questions of fact, while in the second appeal provided under Section 100 C.P.C, the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the jurisdiction is relatively delineated to the questions of law which is sine qua non for exercising the jurisdiction under Section 100, C.P.C.

Conclusion: i) There is no mandatory provision under the Specific Relief Act 1877 wherein, come what may, the plaintiff has to tender the outstanding sale consideration in Court at the time of instituting or presenting the plaint.

ii) There must be an order of the Court for deposit with certain timeline with repercussions of noncompliance, and in case of genuine and satisfactory grounds pleaded for noncompliance within the stipulated time, the Court, in exercise of powers conferred under Section 148, C.P.C., may extend and accord some reasonable time for compliance.

iii) The first provision which may be invoked is provided under Order X, Rule 1, C.P.C., in which, at the first hearing of the suit, the Court can ascertain whether he admits or denies such allegations of fact and can also record such admissions and denials and the substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

iv) Under section 96, C.P.C., the Appellate Court may embark upon the questions of fact, while in the second appeal provided under Section 100 C.P.C, the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the jurisdiction is relatively delineated to the questions of law.

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3. **Supreme Court of Pakistan**
Muhammad Ijaz @ Billa & Mst. Naseem Akhtar v. The State and others
Criminal Appeal No.169 of 2023 and Crl.M.A. No.228 of 2024 A/W Crl.Appeal No.170 of 2023
Justice Jamal Khan Mandokhail, Justice Syed Hasan Azhar Rizvi, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._169_2023.pdf

Facts: Feeling aggrieved by the conviction and sentence, the appellants filed before the learned Lahore High Court separate Criminal Appeals and the complainant filed a Criminal Revision for enhancement of sentence awarded to the appellant Mst. Naseem Akhtar, while the Trial Court transmitted the Murder Reference to the Lahore High Court for confirmation or otherwise of the sentence of death

awarded to one of the appellant. A Division Bench of the learned Appellate Court took up the above matters together and dismissed both the appeals as well as the criminal revision, upholding the conviction and sentence of the appellants. The Murder Reference was answered in the affirmative, and the death sentence awarded to one of the appellant was confirmed. Now, being dissatisfied with the impugned judgment, the appellants filed separate Jail Petitions for leave to appeal, wherein leave was granted.

Issues:

i) What are the consequences if a party withholds the best available evidence?
ii) Whether motive is a double edged weapon?
iii) What is the rule of appreciation of evidence of recovery?
iv) What is the effect of delay in conducting the post-mortem examination of the dead body?
v) How would deciding a case based solely on high probabilities about the existence or non-existence of a fact impact the principle of "benefit of doubt" for the accused?
vi) Whether it is necessary to have multiple circumstances to extend the benefit of the doubt, or a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right?

Analysis:

i) It is well established that whenever a party withholds the best evidence available, it is presumed under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that if such evidence had been produced, it would not have supported the stance of that party.
ii) It is by now well-settled that the motive is a double-edged weapon, which can be used either way and by either side i.e. for real or false involvement.
iii) For the reason that these recoveries are corroborative pieces of evidence and are relevant only when the primary evidence, i.e., the ocular account, inspires confidence. However, the ocular account in this case is full of contradictions and does not inspire confidence.
iv) It is a matter of record that the post-mortem of the body of the deceased was conducted by Doctor seventeen hours after the alleged occurrence. When the Additional Prosecutor General and learned counsel for the complainant were confronted to explain the marked delay in carrying out the post-mortem of deceased, they were unable to point out any justifiable reason for the same in the entire record. Such unexplained delay in the post-mortem of a deceased would surely put a prudent mind on guard to very cautiously assess and scrutinize the prosecution's evidence. In such circumstances, the most natural inference would be that the delay so caused was for preliminary investigation and prior consultation to nominate the accused and plant eye-witnesses of the crime. (…) the noticeable delay in post-mortem examination of the dead body is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye - witnesses before preparing police papers necessary for the same.
v) If a case were to be decided merely on high probabilities regarding the existence or non -existence of a fact to prove the guilt of a person, the golden rule of "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of this Court, would be reduced to naught.
vi) It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is

sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons.

Conclusions: i) Whenever a party withholds the best evidence available, it is presumed under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that if such evidence had been produced, it would not have supported the stance of that party.
ii) Motive is a double-edged weapon, which can be used either way and by either side i.e. for real or false involvement.
iii) Recoveries are corroborative pieces of evidence and are relevant only when the primary evidence, i.e., the ocular account, inspires confidence.
iv) The most natural inference would be that the unexplained delay in the post-mortem of a deceased so caused was for preliminary investigation and prior consultation to nominate the accused and plant eye-witnesses of the crime.
v) Deciding a case based solely on high probabilities regarding the existence or non-existence of a fact would reduce the golden rule of "benefit of doubt" to an accused to naught, which is a dominant feature of criminal justice administration.
vi) To extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons.

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4. **Supreme Court of Pakistan**
Mst. Uzma Mukhtar v. The State thr. Deputy Attorney General and another
Criminal Petition No.128 of 2024
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._128_2024.pdf

Facts: The petitioner upon application dated 03.08.2016 got lodged an FIR on 18.08.2016 with Police Station FIA, Cyber Crime Circle, u/s 36 and 37 of ETO 2002 r/w section 500, 506 and 509 of PPC against respondent No.2 for the commission of alleged offences one year prior to the application. The Judge, Prevention of Electronic Crimes Court passed an order that section 36 and 37 of ETO 2002 are not attracted to the facts of the case and the proceedings cannot be continued u/s 54 of PECA 2016 as the provisions of PECA 2016 are also not attracted and placed the case file before learned Sessions Judge for its further entrustment to the court of competent jurisdiction. The petitioner challenged the order before Islamabad High Court by filing Criminal Revision which was dismissed in limine. Feeling aggrieved, the petitioner filed the instant Criminal Petition for Leave to appeal.

Issue: Protection against retrospective punishment.

Analysis: After hearing learned counsel for the petitioner and learned APG, we have perused the available record which reveals that assent of the President of Pakistan was received on 18.08.2016 for promulgation of PECA 2016 and notification dated 19.08.2016 was published in the Gazette of Pakistan on 22.08.2016. The offences mentioned by the petitioner in her application dated 03.08.2016 (Exb.PE) were allegedly committed by respondent No.2 since the last year i.e.

much prior to promulgation of PECA 2016. While providing protection against retrospective punishment, Article 12 of the Constitution of the Islamic Republic of Pakistan, 1973 lays down that no law shall authorize the punishment of a person for an act or omission that was not punishable by law at the time of the act or omission.

Conclusion: See above analysis.

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5. **Supreme Court of Pakistan**
Faheem Anwar Memon, Salik Ayaz, Ghulam Murtaza Shaikh, Abdul Rehman Sheikh, Naveed Khan, Saeed Ahmed, Faroosh Muhammad, Abdul Ghafoor. v. The State through Prosecutor General, Sindh and others
Criminal Petitions No.351-352, 438, 50-K, 76-77-K, 92-K and 94-K of 2022
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._351_2022.pdf

Facts: Through this Ciminal Petition, the petitioners assailed the judgment passed by the learned High Court wherein the conviction and sentence recorded by trial court was upheld in offence u/s 223 and 225-A PPC, but their conviction and sentence u/s 7(g) of ATA 1997 was set aside.

Issue: What is standard of proof for proving factum of negligence while taking disciplinary action and charge in criminal proceedings against a public servant?

Analysis: According to settled principles, the factum of negligence can be taken into consideration on the basis of presumption or surrounding circumstances while taking disciplinary action against a public servant but to bring home charge in criminal proceedings against a public servant u/s 223 PPC and 225-A PPC, definite and concrete evidence is required to prove the factum of negligence.

Conclusion: The factum of negligence can be taken into consideration on the basis of presumption or surrounding circumstances while taking disciplinary action but to bring home charge in criminal proceedings, definite and concrete evidence is required to prove the factum of negligence.

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6. **Lahore High Court**
National Bank of Pakistan v. M/s Salman Noman Enterprises Ltd. etc.
COS No. 21/2017.
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC3125.pdf

Facts: This suit has been filed under section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, seeking recovery of Rs.23,49,86,002.72/- along with cost of the suit and cost of fund against the defendants by sale of mortgaged, pledged and hypothecated properties.

Issues: i) Whether any change in the terms of the contract, without requiring sureties to execute their fresh personal guarantees and by expressly omitting their guarantees from security structure of finance facilities discharges the sureties as to

transactions after the variance?

ii) Whether the status of pledge stock with the bank, can be examined by the Executing Court?

iii) Whether markup can be charged beyond the expiry date of the finance agreement?

iv) What is the legal status of sanction advice and whether financial institutions can be non-suited on the basis of mere non-production of sanction advice?

v) What is the status of Brought Forward entries and whether defendants can challenge the 'Brought Forward' entries, which they have benefited from?

vi) What is the effect of not specifically challenging "transfer entries" in the statement of account at the relevant time?

Analysis: i) In the circumstances, the personal guarantees of defendants No.4 to 7 have no direct nexus with the outstanding liability under the finance agreements dated 04.02.2013 and if at all there was any connection, the said guarantees have been discharged under section 133 of the Contract Act, 1972 (Contract Act) when vide sanction letter dated 08.05.2014, the finance facilities terms were varied and renewed but no fresh guarantees were required from defendants No.4 to 7 and only defendants No.2 and 3 being sponsored directors executed their personal guarantees.Once the terms of the finance through sanction letter dated 08.05.2014 were changed and the defendants No.4 to 7 were not required to execute fresh personal guarantees and their guarantees were expressly omitted from security structure of finance facilities, the said defendants are discharged from their personal guarantees.

ii) Regarding claim of pledge stock, the Supreme Court as well as this Court repeatedly held that availability or otherwise of the pledge stock is a question that can be determined in execution proceedings at the time when collateral security is required to be accounted for and brought to the sale, therefore, it is not a ground of defence to the defendants for grant of leave.(…) The law settled by the Supreme Court in case of Messrs WORLD TRANS LOGISTICS and others vs. SILK BANK LIMITED supra regarding the status of pledge stock with the bank being constructive possession, can also be examined by the Executing Court at the relevant time.

iii) The claim of the defendants that markup of Rs.1.437 Million has been charged beyond the expiry date i.e. 31.03.2016 of the finance agreement regarding DF-1 is not only supported by record but also candidly conceded by learned counsel for the plaintiff, therefore, said amount is liable to be excluded from the suit amount.

iv) The next argument of learned counsel for the defendants that the CF pledge facility is not backed by any sanction advice, hence not recoverable, is also misconceived. It is settled law that sanction advice is an internal document of the bank, which can be seen only to know what was approved by the bank, whereas Finance Agreement overrides all arrangements and in the agreement, vis-a-vis the Customer, the sanction advice cannot be construed to disadvantage the customer. It is also well settled that financial institution cannot be non-suited on the basis of mere non-production of sanction advice as there is no such requirement of law. In the present case, the CF pledge facility is backed by the finance agreement dated 01.01.2016 and there is no need for sanction advice, when the finance agreement duly executed between the parties, is available on record. (…) Even otherwise under section 9 of the Ordinance, the suit can be filed by a financial institution when a customer commits default in fulfilment of any obligation. The term 'obligation' under section 2(e) of the Ordinance include any agreement, therefore,

the finance agreement itself is not only a sufficient document to establish default but also for filing of the suit. The purpose of sanction letter is only to support the finance agreement, if it is disputed, however placing on record the same is not a precondition to execute the finance agreement or for filing of a suit. Further the defendants have not denied the request letter and Board of Directors Resolution for the renewal of the short term finance through agreement dated 01.01.2016. In similar situation, in the case of Habib Bank Ltd vs. Taj Textile Mills Ltd. through Chief Executive and 5 others (2009 CLD 1143), this Court held that when the borrower has defaulted and requested for restructuring/renewal of loan which was granted by bank, plea for leave to defend the suit on its own force was not relevant, thus refused.

v) The plea of the learned counsel for the defendants that 'Brought Forward' entries are not explained, hence it is ground for leave to defend has also no basis. The outstanding amount of all six facilities is admitted in the annual audit reports of defendant No.1 and further 'Brought Forward' entries relate to previous outstanding liabilities to the defendants which are not only admitted in the loan application forms but are also corroborated by the statement of accounts. The defendants have also not disputed the execution of previous charge documents. In the circumstances, the defendants could not question the 'Brought Forward' entries to which they were beneficiary and have specifically requested for renewal of outstanding loans through application alongwith Board of Directors Resolution etc.

vi) Regarding "transfer entries" in the statement of account, no doubt this Court granted leave to defend in some cases, where specific entries were challenged being merely shown as "transfer entries" but in this case admittedly the defendants in their PLA have not challenged the said transfer entries specifically. Failure on the part of defendants to dispute entries in the statement of account at the relevant time when the same were sent to the defendants by the bank, is also hit by principal of financial estoppel. (…) when any entry in the statement of account not specifically challenged, then it was to be presumed that the accounts prepared and maintained by the bank were correct.

Conclusions: i) Once the terms of the finance are changed and the sureties are not required to execute fresh personal guarantees and their guarantees were expressly omitted from security structure of finance facilities, the said sureties are discharged from their personal guarantees under section 133 of the Contract Act, 1972.

ii) The status of pledge stock with the bank being constructive possession can be examined by the Executing Court at the time when collateral security is required to be accounted for and brought to the sale.

iii) No markup can be charged beyond the expiry date of the finance agreement.

iv) Sanction advice is an internal document of the bank, which can be seen only to know what was approved by the bank and the financial institution cannot be non-suited on the basis of mere non-production of sanction advice as there is no such requirement of law.

v) Brought Forward' entries relate to previous outstanding liabilities and the defendants could not question the 'Brought Forward' entries to which they were beneficiary.

vi) when any entry in the statement of account is not specifically challenged, then it is to be presumed that the accounts prepared and maintained by the bank were correct.

7. **Lahore High Court**
Chief Settlement Commissioner/Member (Judicial-V), Board of Revenue, Punjab, Lahore v. Aurangzeb Shaafi Barki etc.
C.M. No.1160 of 2022 (Application u/s 12 (2) CPC)
Aurangzeb Shaafi Barki etc. v. District Commissioner etc.
ICA No.09 of 2020 in W.P.No.2290 of 2019
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2024LHC3230.pdf

Facts: The matter of allotment of land in Murree Brewery Estate was taken by parties up to the Supreme Court of Pakistan, where the relevant civil appeals were dismissed on technical ground. Then, the appellants in relevant I.C.A., filed Criminal Original for implementation of the earlier passed consolidated judgment of the High Court which was dismissed by the Single Bench. Then, the appellants in I.C.A., filed Writ Petition for implementation of aforementioned consolidated judgment which was also dismissed. Thereafter, the appellants filed I.C.A., against the judgment of dismissal of their writ petition which was disposed of by this Court with modification that competent authority will pass appropriate order for sought implementation strictly in accordance with law. The Chief Settlement Commissioner has challenged the last mentioned order in I.C.A., by filing instant C.M. (application u/s 12 (2) CPC) which is being decided through this judgment.

Issues:
i) Whether High Court has jurisdiction to allot urban land under the West Pakistan Rehabilitation Settlement Scheme 1956?
ii) Whether rural evacuee agricultural land available in six border districts Sialkot, Gujranwala, Gujrat, Jhelum, Rawalpindi and Attock can be allotted to Indian Migrants other than Jammu and Kashmir refugees?
iii) If an order/judgment is without jurisdiction and void, then whether it is needed to be formally set aside in appeal?
iv) Whether the Revenue functionaries are bound to implement the void order/judgment?

Analysis:
i) Para (i) of Chapter-1 of Part-1 of the West Pakistan Rehabilitation Settlement Scheme, 1956 states that land means all evacuee land held for agricultural purposes or for purposes subservient to agriculture or for pasture etc. Para (ix) of Chapter 1 of part 1 of the Scheme ibid states that urban immoveable property means all immoveable property situated within the limits of a corporation, a municipal committee etc. When the Estate is brought within the limits of Municipal Committee, then status of the said land changes from rural to urban land. Further, it is mentioned in Para 4-A of Chapter 2 of part 1 of the Scheme ibid that the category of urban land will not be allotted under the Rehabilitation Settlement Scheme and will remain excluded from the scheme. This court had no jurisdiction to allot state land being urban land.
ii) It has specifically been mentioned in Para 44-A of Chapter (1) of part (2) of West Pakistan Rehabilitation Settlement Scheme, 1956 that rural evacuee agricultural land available in six border districts Sialkot, Gujranwala, Gujrat, Jhelum, Rawalpindi and Attock should be reserved and utilized for temporary allotment to those Jammu and Kashmir refugees who can cultivate the land themselves. The transfer of claims under any circumstances to these districts should not be permitted.

iii) A void judgment is such a court decision that has no legal power. It is like, it never happened. If an order/judgment is without jurisdiction and void, then no question would arise of holding that the matter cannot be considered on merits on account of any bar of limitation. If on the basis of a void order/judgment subsequent orders have been passed either by the same authority or by other authorities, the whole series of such orders, together with the superstructure of rights and obligations built upon them, must, unless some statute or principle of law recognizing it as legal, fall to the ground because such orders have as little legal foundation as the void order on which they are founded. The order/judgment being without jurisdiction is a nullity and does not require to be set aside in appeal.

iv) The public functionaries are custodians of public property. Therefore, even a slight lapse on behalf of the public functionaries in the stewardship of such sacred trust and public confidence, called for strictest accountability in the larger interest of justice and institutional building.

Conclusion: i) The High Court has no jurisdiction to allot urban land under the West Pakistan Rehabilitation Settlement Scheme, 1956.

ii) The rural evacuee agricultural land available in six border districts Sialkot, Gujranwala, Gujrat, Jhelum, Rawalpindi and Attock can only be allotted to Jammu and Kashmir refugees and could not be allotted to Indian Migrants.

iii) The order/judgment being without jurisdiction is a nullity and does not require to be set aside in appeal.

iv) Revenue functionaries are not bound to implement the order/judgment which is void or *per incuriam, coram non judice* and passed without jurisdiction or obtained on the basis of forged, false, fake, fictitious and fabricated documents.

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8. **Lahore High Court**
Sher Afzal v. The State etc.
Crl.Misc.No.729-M of 2024
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2024LHC3156.pdf

Facts: The petitioner on the same date was convicted and awarded death sentences in two separate murder cases. Later, death sentences awarded to him in both cases were converted into sentences of imprisonment for life by the High Court and the Supreme Court of Pakistan respectively. However, his separate Criminal Application was disposed of by the Supreme Court of Pakistan being not pressed in order to avail remedy before the High Court in view of provisions of Section 397 of the Criminal Procedure Code, 1898, seeking order for aforementioned both sentences of life imprisonment to run concurrently, hence this Petition.

Issues: i) Whether it would be legal to direct the two sentences of imprisonment for life, awarded to a convict in two separate murder cases, to run concurrently?

ii) What provisions of law may be invoked by the High Court if the sentences of life imprisonment awarded to a convict in different trials have not been ordered to run concurrently, while the appellate and revisional courts have been silent on this aspect as well?

Analysis: i) Section 397 of the Code of Criminal Procedure, 1898 make it clear that the Court, while analyzing the facts and circumstances of every case, is competent to

direct that the sentences of a convict in two different trials would run concurrently. The Court of law cannot deny the benefit of the said beneficial provision to convict because such denial would amount to ruthless treatment to him and would certainly jeopardize his life undergoing such a long imprisonment. Moreover, benefit conferred upon such a convict by the Court from death to imprisonment for life certainly evaporates if discretion of directing the sentences to run concurrently is denied to him.

ii) The legislation under the provision of section 397 of the Code of Criminal Procedure, 1898 is quite compassionate having tender feelings and has empowered the courts to order the subsequent sentence to run concurrently to the previous sentence of a convict. This is the entire discretion and appanage of the Court to exercise its powers moderately and judiciously. If the universal principle of law is to be given effect in case of punishment, it is for the Courts to interpret the law where liberty of convict is to be given preference instead to curtail it without animated reasons and justness.

Conclusion: i) It would be legal to direct the sentences of imprisonment for life, awarded to a convict in two separate murder cases, to run concurrently.

ii) If the sentences of life imprisonment awarded to a convict in different trials have not been ordered to run concurrently and the appellate and revisional courts have been silent on this aspect as well, then in appropriate cases inherit jurisdiction of the High Court in terms of section 561-A of the Code of Criminal Procedure, 1898 read with section 397 of the Code Ibid can be invoked, provided that the superior Court of Appeal specifically and consciously has not denied the benefit of provisions of section 397 of the Code ibid.

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9. **Lahore High Court**
Ghulam Dastgir Siddiqui and Others v. Mst. Elizbeth and another
`F.A.O. No.49 of 2017.
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC3245.pdf

Facts: This appeal under Section 24 of the Cantonments Rent Restriction Act, 1963 arises out of order, whereby the Additional Rent Controller, Chaklala Cantonment proceeded to dismiss the ejectment petition, filed by the appellants seeking eviction of the respondents.

Issues: i) Whether the ground of personal bona-fide need can still be considered valid for evicting tenants if it is documented that the landlord has previously used this reason to evict tenants from other properties?

ii) On whom the burden of proof lies in case landlord seeks eviction of his tenant on the ground of default in payment of rent?

iii) Whether the rent receipt produced by the tenant in the statement of his counsel is permissible under the law?

iv) If a landlord pleads multiple grounds for eviction of tenants but fails to prove one or more of these grounds, can an eviction order still be justified based on any successfully established grounds amongst those pleaded?

Analysis: i) There is no cavil that it is prerogative of the landlord(s) to choose any of his/their property who in his/their estimation would meet his/their requirements but at the

same time, ground of personal bona-fide need cannot be made basis for eviction of the tenant(s) when it is established on the record that the landlord(s) has/have already got vacated the other properties from his/their tenant(s) on the same ground in the near future.

ii) It is trite law that when the landlord(s) seek(s) eviction of his/their tenant(s) on the ground of default in payment of rent, he/they has/have to only assert the factum of default supported by affidavit and the onus then would shift upon the tenant(s) to prove that he/they has/have not defaulted in payment of rent.

iii) Adverting to the validity and authenticity of receipt of rent (Exhibit-P2) it is noticed that same was brought on record through the statement of counsel and it is heavily relied by the Additional Rent Controller, while deciding the issue against the appellants. (…) Though rigors of the Qanun-e-Shahadat Order, 1984 cannot be pressed into service with full force in the proceedings before the Rent Controller but cardinal principles regulating the procedure for recording of evidence cannot be kept aside totally.The Additional Rent Controller founded his conclusion exclusively relying upon rent receipt (Exhibit-P2) which was not admissible at all and was only an anecdotal piece of evidence.

iv) It is an oft repeated principle of law that if the landlord(s) plead(s) multiple grounds for eviction of the tenant(s) and if he/they fail(s) to prove one or more of such ground, the eviction order can be rested on any one of the recognized grounds which the landlord(s) ultimately succeeded to establish.

Conclusions: i) The ground of personal bona-fide need cannot be made basis for eviction of the tenant when it is established on the record that the landlord has already got vacated the other properties from his tenant on the same ground in the near future.

ii) When the landlord seeks eviction of his tenant on the ground of default in payment of rent, he has to only assert the factum of default supported by affidavit and the onus then would shift upon the tenant to prove that he has not defaulted in payment of rent.

iii) The rent receipt produced by the tenant in the statement of his counsel is not permissible under the law as the same is not admissible at all and is only an anecdotal piece of evidence.

iv) Yes, if the landlord plead multiple grounds for eviction of the tenant and if he fail to prove one or more of such ground, the eviction order can be rested on any one of the recognized grounds which the landlord ultimately succeeded to establish.

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10. **Lahore High Court**
M/s. Sui Northern Gas Pipelines Limited v. M/s. Bhatti Fabrics etc.
R.F.A. No.36584/2024.
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Sultan Tanvir Ahmad.
https://sys.lhc.gov.pk/appjudgments/2024LHC3160.pdf

Facts: Through this Application under Section 5 of the Limitation Act, 1908 the applicant seeks condonation of delay occurred in filing the appeal against the consolidated judgment & decree passed by the learned Additional District Judge.

Issues: i) Whether Section 5 of the Limitation Act is applicable to proceedings under special enactment, wherein a specific period of limitation is provided?

ii) Whether the time consumed in removing the objections will be counted under limitation?

iii) Whether it is necessary to requisition the record of the case and to decide the issue raised in the appeal on merits in case the said appeal is time barred?
iv) Whether upon dismissal of an appeal due to being time-barred, can the court order an inquiry and pursue recovery of the claimed amount from the delinquent officials who are directly or indirectly responsible for the delay in filing the cases beyond the statutory limitation period?

Analysis: i) Alongwith the appeal, an application (C.M.No.1/2024) for condonation of the delay was filed with the plea that the file of the title matter was mixed up with other files and on inquiry of the client it was traced out and thereafter the appeal was instituted immediately, thus the delay was neither willful nor deliberate and same may be condoned, suffice it to say that the Gas (Theft Control and Recovery) Act, 2016 is a special law which provides 30 days limitation for filing an appeal against the final decision/decree as such the provisions of Limitation Act, 1908 which is general law in nature, is not applicable to the instant case. It is settled law the provisions of the special enactment always take preference over the general provisions of the Act ibid.
ii) As regard the argument of the learned counsel for the applicant/appellant that initially the appeal was filed on 07.05.2022 which is well within the prescribed period of limitation, thus any period consumed in removing the office objections cannot frustrate a statutory remedy of appeal of the appellant, suffice it to say that the appellant did not remove the office objections within time, rather remained mum for a period of 749 days and no convincing reason has been furnished in this regard, thus the above argument has no force as a statutory remedy cannot be left open for a delinquent party to challenge the adverse order at the time of its own choice and if in contravention to the special statutory provision of limitation, the time period for availing a legal remedy is extended then there would be no end of the adversarial litigation which tantamount to frustrate the ends of justice.(…) Further, the Hon'ble Supreme Court of Pakistan in a recent order dated 11.07.2023 passed in a case titled as Zulfiqar Ahmad Vs Malik Sarfraz (deceased) through his L.Rs., etc. [C.P.No.1334-L/2021] has held that the time consumed in removing the objections will be counted under limitation and if time consumed more than the provided in the statute, then such matter will be dismissed as barred by time.(…) Besides above, limitation is not a technicality rather it affects the remedies of a party and law of limitation cannot be bypassed to rescue the indolent persons who were sleeping over the infringement of their rights.(…) Furthermore, a party could not be allowed to sleep over an adverse order for infinitum and challenge the same at the time of its own choosing or according to its own whims and caprice rather the aggrieved party is placed under legal obligation to challenge such adverse decision/order/decree within the prescribed period of limitation before the proper forum, whereas after expiry of the prescribed period of limitation, a tangible right stood accrued in favour of the opposite party and the said right cannot be frustrated merely on whimsical grounds.
iii) As instant appeal is blatantly time barred which deserves dismissal, as such there is no need to requisition the record of the case and to decide the issue raised in the main appeal on merits.
iv) Before parting with this judgment, it is noted with great concern that as a huge amount of Rs.12,19,57,918/- was involved in this case but the negligent conduct of the concerned officers/officials of the appellant-company who were pursing the matter is the most deplorable. This appeal was initially filed on 07.05.2022 which

met with certain objections raised by the office of this Court but after receiving back the file from the office, the officers/officials of the appellant who were dealing with the instant case, not only misplaced the objection form but also did not re-file the appeal within stipulated period rather they fell in deep slumber for about 02 years and re-filed the appeal on 08.06.2024 which constitute deliberate and intentional misconduct of the said officers/officials, which caused huge monetary loss to the appellant- company. Thus, the concerned officers/officials including the Legal Wing of the appellant-company are prima facie responsible for this mischief.(…) Office is directed to dispatch copies of this order alongwith the appeal as well as the judgment & decree of the Gas Utility Court to the Managing Director, Sui Northern Gas Pipelines Limited who shall hold a thorough probe / extensive enquiry into the matter, take stern action against the delinquent officers/officials including the Legal Wing of the appellant company involved in the delayed filing of the appeal and affect recovery of amount from the officers/officials who are found guilty in the said inquiry. He is also directed to transmit copy of final actions taken or recommendations made in this regard to the Deputy Registrar (Judicial/Civil) of this Court who shall place the same before this Court for perusal on administrative side.

Conclusions: i) Section 5 of the Limitation Act, 1908 is general law in nature and is not applicable to proceedings under special enactment, wherein a specific period of limitation is provided. It is settled law the provisions of the special enactment always take preference over the general provisions of the Act.
ii) The time consumed in removing the objections will be counted under limitation and if time consumed more than the provided in the statute, then such matter will be dismissed as barred by time.
iii) When appeal is blatantly time barred which deserves dismissal, as such there is no need to requisition the record of the case and to decide the issue raised in the main appeal on merits.
iv) The court can order an inquiry and pursue recovery of the claimed amount from the delinquent officials who are directly or indirectly responsible for the delay in filing the cases beyond the statutory limitation period.

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11. **Lahore High Court**
M.L. Traders, etc. v. Habib Bank Ltd, etc.
R.F.A No. 1583/2015
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC3270.pdf

Facts: This and connected appeals are directed against consolidated judgment and decree, in terms whereof Banking Court decreed the recovery suit, instituted by respondent No.1 with costs and action for claiming damages sought by the appellants, was dismissed.

Issues: i) Can bank justify denial of payment obligation, simplicitor on the ground of alleged violation of provision of transshipment in Credit?
ii) Would the judgment of Banking Court be sustainable in law if passed without indicating or considering the terms and conditions of bill of lading in the context of the scope and effect of Article 23 of *Uniform Customs and Practice for Documentary Credits (*UCP) 500?
iii) Whether the non-availability of bill of exchange or failure to produce has its

own consequences qua the claims?

Analysis: i) There is no cavil that Banks may decline request for payment to the beneficiary under the Credit, upon receiving the documents, on the premise that terms of Credit, regarding the prohibition qua transshipment, were violated provided such recusal is legally and contractually justified, drawing support from the conditions encapsulated in the bill of lading. On the contrary, Banks cannot justify denial of payment obligation, simplicitor on the ground of alleged violation of provision of transshipment in Credit, provided incidence of violation comes within one of the exceptions provided under Article 23 of UCP 500.
ii) We examined various clauses of APPLICATION AND AGREEMENT FOR IRREVOCABLE DOCUMENTARY CREDIT FREELY NEGOTIABLE IN BENEFICIARY"S COUNTRY, which are found relevant for the purposes of determining the controversy under reference – in particular clause 17 thereof – "Irrespective of the port to which shipment are affected we shall purchase the documents o lodgment under clause 1 above" - but evidently not considered and appreciated by the Banking Court. It is evident that Banking Court adjudged claims erroneously without indicating or considering the terms and conditions of bill of lading in the context of the scope and effect of Article 23 of UCP 500. In wake of these lapses judgment under reference is found not sustainable in law.
iii) During hearing of the appeals, we inquired from learned counsel for the financial institution that whether bill of exchange – referred in the evidence in chief of PW-1 – is produced and available on record, who stated that no such bill of exchange is available. Non-availability of bill of exchange or failure to produce have had its own consequences qua the claims.

Conclusion: i) Bank cannot justify denial of payment obligation, simplicitor on the ground of alleged violation of provision of transshipment in Credit, provided incidence of violation comes within one of the exceptions provided under Article 23 of *Uniform Customs and Practice for Documentary Credits (*UCP) 500.
ii) The judgment of Banking Court would not be sustainable in law if passed without indicating or considering the terms and conditions of bill of lading in the context of the scope and effect of Article 23 of *Uniform Customs and Practice for Documentary Credits (*UCP) 500.
iii) The non-availability of bill of exchange or failure to produce has its own consequences qua the claims.

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12. **Lahore High Court Lahore**
Government of Pakistan through Secretary Ministry of Defence, Islamabad & another v. Muhammad Sharif & others
RFA No. 31423 of 2021
Mr. Justice Asim Hafiz, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC3195.pdf

Facts: Through these consolidated appeals i.e. RFA Nos.18628, 18636, 18643, 18651, 18655, 18659, 18665, 31408, 31411, 31417, 31426, 31431, 31434 & 31436 of 2021, common questions of law and facts are involved in these cases. Through these appeals, consolidated judgment, passed by learned Senior Civil Judge-1 (Civil Division) has been challenged whereby Reference Applications under Section 18 of the Land Acquisition Act, 1894, filed by respondents, were partly accepted and Reference Application of the appellants was dismissed.

Issue: Who is responsible for determining compensation for compulsorily acquired land if the State/executive functionaries fail to compensate the landowners?

Analysis: Under the law, determination of compensation for the land compulsorily acquired was the duty not only of the State/executive functionaries (particularly of the Land Acquisition Collector), but once the landowners were not compensated by them, the duty for such determination, under the Constitution and the law, was cast upon the judicial forums, including the Referee Court and the superior Courts.

Conclusion: In such cases, the judicial forums, including the Referee Court and the superior Courts, are responsible.

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13. **Lahore High Court**
Muhammad Asghar Ali Shah v. The State etc.
Writ Petition No. 3962/2023
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7757.pdf

Facts: The Petitioner was an accused in a Case FIR under section 9(c) of CNSA, 1997. The Investigating Officer did not pen his version, so he applied to the concerned Magistrate, under section 164 of the Code of Criminal Procedure, 1898 to record it. However, the Magistrate declined his request on the ground that an accused can only have his confession recorded under that provision. The Petitioner challenged the said order of Magistrate.

Issues: i) Whether section 164 of the Code of 1898 prohibits the Magistrate from recording the statement of an accused not amounting to a confession?
ii) Whether the accused's non-confessional statement is to be recorded on oath?

Analysis: i) The courts in Pakistan have consistently held that anyone, including a witness, may approach the Magistrate for a statement under section 164 of the Code of 1898 on his own without involving the police….section 164 of the Code of 1898 does not prohibit the Magistrate from recording the statement of an accused not amounting to a confession. We find further support for this view in Chapter 13 of Volume II of the Rules and Orders of the Lahore High Court and Rule 25.28(1)(a) of the Police Rules, 1934….The High Court Rules and Orders distinguish explicitly between "confessions" and "statements" of accused persons. The language in Rule 1 that "Section 164 deals with the recording of statements and confessions at any stage before the commencement of an enquiry or trial" indicates that an accused may have his non-confessional statement recorded during the investigation. Rule 25.28(1)(a) of the Police Rules is clearer. It specifically discusses the accused's statement "not amounting to confession".
ii) It should, however, be noted that the accused's non-confessional statement would not be on oath because clause (b) of Article 13 of the Constitution of 1973, section 5 of the Oaths Act, 1873, and section 342 of the Code of 1898 prohibit it. Section 340(2) is an exception to the general rule, which provides that an accused person shall, if he does not plead guilty, give evidence on oath to disprove the charges or allegations made against him or any person charged or tried with him at the same trial.

Conclusion: i) Section 164 of the Code of 1898 does not prohibit the Magistrate from recording the statement of an accused not amounting to a confession.
ii) The accused's non-confessional statement is to be recorded without oath.

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14. **Lahore High Court**
Commissioner Inland Revenue v. Masood-ul-Hassan Prop:M/s Prism Estate and Builders etc.
Income Tax Reference No.01 of 2019
Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2024LHC3179.pdf

Facts: Proceedings under Section 122 of the Income Tax Ordinance, 2001were initiated against the taxpayer and his failure to submit satisfactory explanation eventuated in orders of assessments under Section122(1) of the Ordinance ibid as well as addition of undeclared balances under Section 111(1)(b) of the Ordinance ibid. The taxpayer filed appeal against both said orders before the Commissioner Inland Revenue whose order confirmed the aforementioned additions. The said order was further challenged by the parties through cross appeals before the Appellate Tribunal Inland Revenue, where the assessments made under Section 122(1) of the Ordinance ibid by the Commissioner Inland Revenue were cancelled vide impugned order on ground of jurisdiction, hence these Applications under Section 133 of the of the Ordinance ibid.

Issue: Whether the FBR or the Chief Commissioner may transfer jurisdiction in respect of cases or persons from one Commissioner to another?

Analysis: Section 209 of the Income Tax Ordinance, 2001 deals with jurisdiction of income tax authorities as defined under Section 207 of the Ordinance ibid and their appointments in terms of Section 208 of the Ordinance ibid. Section 209(1) of the Ordinance ibid empowers the Chief Commissioners, the Commissioners and the Commissioners (Appeals) to perform and exercise powers as assigned to them in respect of persons or classes or areas on the directions of the Board.

Conclusion: The proviso to Section 209 of the Income Tax Ordinance, 2001empowers both the FBR and the Chief Commissioner to transfer jurisdiction in respect of cases or persons from one Commissioner to another.

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15. **Lahore High Court**
Pak Gulf Construction (Private) Limited v. Govt. of Punjab etc.
W.P. No. 169/2024
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC3253.pdf

Facts: Through this Writ Petition, the petitioner company called in question the vires of impugned order whereby, the Punjab Revenue Authority proceeded to compulsorily register the petitioner company in terms of Section 27 of the Punjab Sales Tax on Services Act, 2012.

Issues: i) Which company/person is required to be registered under Punjab Sales Tax on

Services Act, 2012?

ii) Who has the authority to de-register a registered person/company not required to be registered under the Punjab Sales Tax on Services Act, 2012?

Analysis: i) If preamble of the Act is read with the provisions of Section 25(1)(a) of the Act, it will clarify that the Act has been introduced by the legislature for levy of tax, in expedient manners, on the services (i) provided, (ii) rendered, (iii) initiated, (iv) originated, (v) executed, (vi) received or (vii) consumed in the Punjab and a person is required to be registered under this Act if he or she provides any taxable service from his or her office or place of business in the Punjab.

ii) Under Section 29(2) if a person does not satisfy with the requirements for registration specified in section 25 of the Act, he may make an application to the Commissioner in this regard.

Conclusion: i) A person/company providing any taxable service from a place in Punjab is required to be registered under the Punjab Sales Tax on Services Act, 2012.

ii) The Commissioner may de-register a registered person/company not required to be registered under the Punjab Sales Tax on Services Act, 2012.

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16. **Lahore High Court**
Muhammad Shakeel v. Deputy Commissioner, etc.
W.P. No. 6368 of 2024
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2024LHC3071.pdf

Facts: Through this Petition, petitioner has called in question the action of respondents whereby in compliance of notice, father of petitioner has been detained by adopting procedure of Land Revenue Act, 1967 for recovery of outstanding amount without its determination by the court of competent jurisdiction.

Issue: Whether an amount can be recovered as arrears of land revenue without being determined by a court of competent jurisdiction?

Analysis: From the perusal of the aforementioned case law it is apparent that by now it is settled that unless an amount is determined by a court of competent jurisdiction, the same cannot be recovered as arears of land revenue. (…) In the present case proceedings under Land Revenue Act for recovery of dues as arrears have been initiated without getting determination of liability from any forum of competent jurisdiction including court of law. Besides, the procedure envisaged under Section 81 and 82 of Land Revenue Act, 1967 has also not been properly adopted, therefore, this petition is allowed with the result that arrest and detention of father of petitioner in terms of Sections 81 and 82 of Land Revenue Act, 1967 without determination of outstanding amount from any court of competent jurisdiction is declared to be illegal and without any legal effect, consequently the same is set aside.

Conclusion: Unless an amount is determined by a court of competent jurisdiction, the same cannot be recovered as arrears of land revenue.

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17. **Lahore High Court**
Raja Muhammad Khubaib v. Addl. District Judge, Lahore & others
Civil Revision No. 23551/2023
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC3171.pdf

Facts: The petitioner filed a suit for specific performance which was decreed by trial court with the direction to pay additional amount. Being aggrieved, the petitioner and respondent no. 03 filed separate appeals which were dismissed, hence, instant Civil Revisions.

Issues: i) What is the requirement for subjecting the defaulting party to the obligation of compensating the non-defaulting party in suit for specific performance?
ii) Whether there is any hard and fast rule to determine whether time is the essence of the agreement?
iii) What order court should passed while decreeing suit for specific performance when agreement provides for forfeiture of earnest money in case of failure of payment of balance consideration amount within time by vendee?

Analysis: i) Concept of compensating, in monetary terms, is essentially a tool to recompense the party that suffered loss, injury or disadvantage. Loss caused; injury occasioned; disadvantage suffered, in contractual arrangements, would, correspondingly, be the cause and effect of default committed or failure attributable to one of the parties to the contract. Hence, before subjecting defaulting party to the obligation of compensating the non-defaulting party, it is imperative to substantiate 'factum of default'.
ii) There is no hard and fast rule to determine whether time is the essence of the agreement, no doubt performance timelines in the agreement had significant bearing on the question of timely performance and effect of failure, but mere elapse of cut-off date, proprio vigore would not non-suit the buyer but such determination is dependent upon facts and circumstances encountered in each case.
iii) Court observed that in case petitioner failed to pay balance consideration within 30 days, respondent No.3 would be bound to return earnest money. This is contrary to the terms of the agreement. Agreement provided that in case the buyer fails to pay the remaining amount – buyer is petitioner – earnest money shall be treated forfeited. Agreement says that in case the seller fails or refuses to arrange for the transfer, he shall be bound to return doubled amount of earnest money, this latter condition is not applicable since the buyer had opted for enforcement of the agreement by resorting to remedy for enforcement of agreement. Now what would happen if the petitioner failed to pay the balance consideration within 30 days, without further ado earnest money had to be forfeited.

Conclusion: i) Before subjecting the defaulting party to the obligation of compensating the non-defaulting party, it is imperative to substantiate 'factum of default'.
ii) There is no hard and fast rule to determine whether time is the essence of the agreement.
iii) See above analysis No. iii.

18. **Lahore High Court**
Muhammad Aslam Khan v. Judl. Magistrate, etc.
W.P. No.9158 of 2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC3190.pdf

Facts: This Petition impugned the order passed by Magistrate whereby he agreed with case-cancellation report submitted by the police.

Issues: i) Whether it is necessary to give notice to complainant before agreeing with the case cancellation report?
ii) What are grounds for cancellation of a case?
iii) Whether Magistrate is required to give reasons for his order of agreeing with the case cancellation report?
iv) Whether it is necessary to seek permission from the Magistrate to reinvestigate the matter before him case-cancellation report has been filed?

Analysis: i) First question which is to be met is the notice to complainant before agreeing with the cancellation report. There is no cavil that officer incharge of police station is bound to give information to the complainant of any action taken by him during investigation, the relevant part of section 173 Cr.P.C…Same is the command of Police Rules, 1934; according to Rule 25.57 which deals with final report…Magistrate must ensure observance of above provision of law and rules when he receives case-cancellation report and if notice had not given by the police officer, he shall send a notice to this effect to the complainant.
ii) Police after thorough investigation recommended the case for cancellation while following the process mentioned in Rule 24.7 of Police Rules, 1934, which says when information or other intelligence is recorded under section 154, Criminal Procedure Code, 1898 and after investigation, is found to be (i) maliciously false or false owing to mistake of law or fact or (ii) to be non-cognizable or (iii) matter for a civil suit, case can be cancelled by the order of Magistrate. Before framing of Police Rules, 1934 the grounds for cancellation of case were being dealt with under High Court Rules & Orders (1931) Volume-III, which identifies only two grounds, i.e., (i) offence being non-cognizable (ii) case false or unfounded…But through police Rules, 1934 more expressive grounds were introduced that encompass a third category as well, i.e., matter for a civil suit. The duty of Magistrate for agreeing with cancellation report is explained more clearly in High Court & Rules & Orders Volume-III…
iii) It is true that Magistrate is not required to give reasons for his order, because he is not functioning as a criminal court however while cancelling a criminal case he is required to act judicially, in that he has to act fairly, justly and honestly, a duty common to the exercise of all state power.
iv) Coming to the contention that an application for change of investigation was filed well before the Magistrate agreeing with the case-cancellation report, it is trite that police can validly take up such application for consideration and if reach to the conclusion that there are grounds for change of investigation, senior police officer can direct the concerned investigator to seek permission from the concerned Magistrate to reinvestigate the matter, then Magistrate can pass appropriate order… If the permission is declined then cancellation report agreed by the Magistrate shall be deemed as final and complainant/petitioner is at liberty to recourse to alternate remedy by initiating a private prosecution as held in a case

reported as "BAHADUR AND ANOTHER Versus THE STATE AND ANOTHER" (P L D 1985 Supreme Court 62)…

Conclusion: i) The officer incharge of police station is bound to give notice to complainant and if notice had not given by the police officer, Magistrate shall send a notice to this effect to the complainant when he receives case-cancellation report.
ii) See above analysis No. ii.
iii) Magistrate is not required to give reasons for his order of agreeing with the case cancellation report because he is not functioning as a criminal court however he is required to act judicially.
iv) It is necessary to seek permission from the Magistrate to reinvestigate the matter before him case-cancellation report has been filed.

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19. **Lahore High Court**
National Database and Registration Authority v. Khan Agha and six others
C. R. No. 21451 of 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC3142.pdf

Facts: This Civil Revision is preferred by the Petitioner / National Database and Registration Authority (the "NADRA") against Judgment & Decree passed by Additional District Judge, whereby, the suit for declaration with consequential relief instituted by the Respondents was decreed as prayed for by reversing Judgment & Decree passed by Civil Judge. The Respondent No. 1 instituted a suit for declaration with consequential relief praying that the suit may be decreed in their favour by directing NADRA to restore their CNICs and Passports. CNICs / B Forms and Passports of the Respondents have been blocked by NADRA without providing an opportunity of hearing and despite being approached; NADRA is not ready to unblock the same.

Issues: i) What if the person does not approach the specialized forums prescribed for under the special laws?
ii) Who determine the citizenship or otherwise of a person?
iii) Why NADRA Ordinance has been promulgated?
iv) Whether the citizenship is the basic right of an individual?
v) Whether there are specialized laws to deal with issues regarding citizenship, CNIC and Passport?
vi) Whether the Citizenship Act, the Passports Act and the NADRA Ordinance bar the jurisdiction of Civil Courts?
vii) What will be the effect if direct resort to a Court of competent jurisdiction or to a constitutional Court in presence of alternate remedies provided by Law?

Analysis: i) If the claimant claims that he is a citizen by birth and decent and as such, entitled to hold CNIC and Passport yet he does not approach the specialized forums prescribed for under the special laws which were bypassed and he resorts to the Court of ultimate jurisdiction before exhausting such remedies. Hence, it is evident that the suit is not maintainable.
ii) Thus, it is evident that in recognition of legal right of the State to regulate the question of citizenship of a person, the Federal Government is vested with the jurisdiction to determine citizenship or otherwise of a person in the first instance

and appropriate remedies are available to an aggrieved person against an adverse action to approach the Federal Government in that behalf.

iii) The NADRA Ordinance has been promulgated for the establishment of NADRA to facilitate registration of all persons and the establishment and maintenance of multipurpose databases, data warehouses, networking, interfacing of databases and related facilities… Therefore, it is unequivocally manifest that the NADRA Ordinance as a special law deals with all aspects of identity cards and confers remedies and solutions against adverse orders passed in that behalf.

iv) There are not two opinions that one of the most indispensable basic rights of an individual is that of citizenship which is the sole and effective bond with the State. This enables the individual to exercise and enjoy all rights guaranteed by the State and entitles him for protection accorded by the State. The significance of such basic right of the individual is evident from the 1948 Universal Declaration of Human Rights. Article 15 thereof provides that "everyone has the right of nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".

v) The conclusion drawn from the conjunctive examination of the aforesaid laws is that specialized laws are in place to deal with all issues regarding citizenship, CNIC and Passport in recognition of legal right of the State to regulate the same. The Federal Government representing the State itself or through its instrumentalities created under the law is vested with the powers to regulate such rights and in the event of an adverse order, the aggrieved person is conferred the right to challenge the same by way of appeal, revision or review, as the case may be, under such laws.

vi) Although, the Citizenship Act, the Passports Act and the NADRA Ordinance do not expressly bar the jurisdiction of civil courts yet they impliedly do so by providing self-contained mechanisms regarding all issues with respect to citizenship, Passports and CNICs, respectively with alternative remedies against adverse orders. This is also the mandate of Section 9 of the CPC which confers plenary jurisdiction on civil courts to "try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred for which a general or special law is in force." In tandem with the above rule of law is the settled proposition that special laws prevail over general provisions.

vii) Therefore, it is imperative that as a normal rule, if a statute creates a right or liability not existing in common law and provides a machinery for enforcing that right, such remedies should be fully exhausted before resorting to the Court of plenary jurisdiction or a constitutional Court, as the case may be, depending upon the facts and circumstances of a particular case, unless the impugned action is inherently without jurisdiction, coram non judice, void ab initio, ultra vires, mala fide or illegal. …Hence, direct resort to a Court of competent jurisdiction or to a constitutional Court in presence of alternate remedies provided by law would ordinarily make the grievance not maintainable.

Conclusion: i) If the person does not approach the specialized forums prescribed for under the special laws, it is evident that the suit will not be maintainable.

ii) Federal Government is vested with the jurisdiction to determine citizenship or otherwise of a person in the first instance and appropriate remedies are available to an aggrieved person against an adverse action to approach the Federal Government in that behalf.

iii) The NADRA Ordinance has been promulgated for the establishment of NADRA to facilitate registration of all persons and the establishment and

maintenance of multipurpose databases, data warehouses, networking, interfacing of databases and related facilities.
iv) There are not two opinions that one of the most indispensable basic rights of an individual is that of citizenship which is the sole and effective bond with the State is.
v) There are specialized laws in place to deal with all issues regarding citizenship, CNIC and Passport in recognition of legal right of the State to regulate the same.
vi) See above analysis No. vi.
vii) Direct resort to a Court of competent jurisdiction or to a constitutional Court in presence of alternate remedies provided by law would ordinarily make the grievance not maintainable.

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20. **Lahore High Court**
Meezan Beverages (Pvt.) Limited v. Competition Commission of Pakistan and two others
W. P. No. 48527 of 2021
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC3218.pdf

Facts: This Constitutional Petition is directed against the impugned show cause notice and actions taken pursuant thereto, by the Respondents, being unlawful, illegal and without jurisdiction.

Issues: i) What is the scheme of law encapsulated in the Competition Act, 2010?
ii) Whether the jurisdiction of the Competition Commission of Pakistan with respect to deceptive marketing practices in terms of Section 10 of the Competition Act, 2010 is distinct and separate from the jurisdiction vested in the Tribunal under the Intellectual Property Organization of Pakistan Act, 2012?
iii) Whether powers of the Competition Commission of Pakistan to conduct studies or inquiries or to give advice or to engage in competition advocacy involve any penal consequences?
iv) Whether the Competition Commission of Pakistan is obliged to communicate the gist of reasons to the undertaking if it decides to proceed against the undertaking?
v) What is the purpose of the Intellectual Property Organization of Pakistan Act, 2012?
vi) Whether the Intellectual Property Organization of Pakistan Act, 2012 and the Competition Act, 2010 have distinct purpose, scope, and mandate?
vii) Whether the consequences and penalties for 'deceptive marketing practices' under provisions of the Competition Act, 2010 are contrastingly different from the 'infringement of intellectual property laws' under the Intellectual Property Organization of Pakistan Act, 2012?
viii) Whether the writ jurisdiction can be invoked to bypass the remedy provided under the concerned statute?

Analysis: i) …the scheme of law encapsulated in the Competition Act, 2010 which has been promulgated to make provisions to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency, to protect consumers from anti-competitive behavior and to provide for the establishment of the Competition Commission of Pakistan to maintain and enhance competition. As such, the domain, scope and focus of the Competition Act, 2010 is to foster

competition and curb anti-competitive practices between competing undertakings. … It is manifestly clear that the Act provides for a self-contained regulatory regime to regulate and enforce the scheme of law. The 'proceedings' in cases of contravention can only be initiated under Section 30 of the Act and based upon an order passed thereunder, the CCP may also impose a penalty at rates prescribed in Section 38 of the Act in all cases of contravention of the provisions of Chapter II.

ii) … exclusive jurisdiction of the Tribunal to adjudicate claims of infringement of intellectual property laws and offences under the IPO Act being a subsequent enactment impliedly excludes jurisdiction of the CCP in terms of deceptive marketing practices under Section 10 of the Act is completely misconceived since jurisdiction of the CCP under the Act and the IPO or the Tribunal under the IPO Act are distinct and separate in terms of ambit and scope of such laws and does not amount to any inconsistency or conflict of jurisdiction. …

iii) The powers of the CCP to conduct studies or inquiries or to give advice or to engage in competition advocacy do not involve any penal consequences and are merely tools available to the CCP to gather information to administer various provisions of the Act.

iv) As such, Section 37 of the Act does not in itself result in penal consequences. Addressing the requirements of Section 37 of the Act, it was opined that the CCP is obliged to communicate the gist of reasons to the undertaking if it decides to proceed against the undertaking as recorded in its internal deliberations which led to the decision of initiating such an inquiry. This is a minimum requirement for the purposes of transparency and good governance and also facilitates the regulatory process by keeping the undertaking informed. The result of an inquiry may lead to enunciation of formal 'proceedings' under Section 30 of the Act which requires issuance of notice, communication of detailed reasons and right of hearing.

v) Therefore, it is vividly evident that purpose of the IPO Act is to consolidate the regulation of all existing intellectual property laws included in its Schedule by the IPO and vest exclusive jurisdiction in the Tribunal to try all offences and adjudicate all suits and other civil proceedings regarding infringement or breach of intellectual property laws.

vi) Putting the Act in juxtaposition to the IPO Act, a simple and straight forward conclusion is evident that both the enactments have conspicuously distinct purpose, scope, and mandate. The Act relates to competition law, whereas, the IPO Act pertains to intellectual property laws. Each enactment has created a specialized regulatory body and has put in place a self-contained regulatory framework to administer duties and obligations imposed by law. The IPO Act consciously excludes the Act from its Schedule and as such, the legislature has intentionally kept the Act beyond the purview of the IPO Act.

vii) As such, violations of Section 10 of the Act in terms of 'deceptive marketing practices' under the Act has different ingredients than 'infringement of intellectual property rights' under the 'intellectual property laws', although an impugned action may entail concurrent proceedings within the distinct scope, mandate and ambit of the Act and the IPO Act. The distinction becomes more vivid as there is no requirement of 'breach of intellectual property rights' under the 'intellectual property laws' including the Trade Marks Ordinance to invoke and trigger the jurisdiction of the CCP under the Act in terms of 'deceptive marketing practices'. The consequences and penalties for 'deceptive marketing practices' under provisions of the Act are contrastingly different from the 'infringement of intellectual property laws' under the IPO Act. This conclusion is

manifestly evident from the express exclusion of the Act from the Schedule of the IPO Act.

viii) It is now well entrenched in our jurisprudence that the constitutional jurisdiction of this Court as a normal rule cannot be invoked on mere suspicion or apprehension when no substantive right is infringed and the aggrieved party has the right to advance its defense in response to a notice. The challenge to a show cause notice in writ jurisdiction at premature stage and tendency to bypass the remedy provided under the concerned statute amount to fetter the rights conferred on statutory functionaries specially constituted for the purpose to initially decide the matter.

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

ii) See above in analysis No. ii.

iii) Powers of the Competition Commission of Pakistan to conduct studies or inquiries or to give advice or to engage in competition advocacy do not involve any penal consequences.

iv) The Competition Commission of Pakistan is obliged to communicate the gist of reasons to the undertaking if it decides to proceed against the undertaking as recorded in its internal deliberations which led to the decision of initiating such an inquiry.

v) See above in analysis No. v.

vi) Putting the Act in juxtaposition to the IPO Act, a simple and straight forward conclusion is evident that both the enactments have conspicuously distinct purpose, scope, and mandate.

vii) The consequences and penalties for 'deceptive marketing practices' under provisions of the Competition Act, 2010 are contrastingly different from the 'infringement of intellectual property laws' under the Intellectual Property Organization of Pakistan Act, 2012.

viii) See above in analysis No. viii.

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21. **Lahore High Court**
Tariq Sheikh v. Federal Ombudsman etc.
W.P No.47872/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC3259.pdf

Facts: The respondent filed a complaint with the Human Resource Grievance Committee of the LUMS against the petitioner, alleging misogynistic behavior wherein allegation did not prove. The respondent preferred appeal but she withdrew same. Thereafter, the respondent filed a complaint on the same cause of action with the LUMS' Sexual Harassment Committee which concluded on the basis of the respondent's unequivocal admission before the Harassment Committee that her complaint did not allege sexual harassment against the petitioner, therefore, the Harassment Committee had no jurisdiction to hear the complaint. The findings of the Harassment Committee were not further challenged before any forum. The respondent after the findings given by the aforesaid Committees filed a civil suit for recovery of damages before the Civil Court at Lahore on the basis of the same cause of action. In the meanwhile, the respondent filed yet another complaint with the Federal Ombudsman under Protection against Harassment of Women at the Workplace Act, 2010. The respondent raised objection on jurisdiction of Federal

Ombudsman through objection petition which was dismissed, hence, this constitutional petition.

Issues: i) When the applicability of Protection against Harassment of Women at the Workplace Act, 2010 (Federal Act) comes into play?
ii) Whether the fact that an organization established under the federal charter will ipso facto, render it amenable to the jurisdiction of Federal Ombudsman, under the Federal Act in respect of harassment caused by or to the employee of an organization?
iii) Whether principle of non-interference, by High Court, in interlocutory orders of the fora below is a matter of rule?

Analysis: i) A provincial enactment is applicable within the provincial territory whereas the applicability of the Federal Act comes into play when the issue involves the Federal Territory and/or such organizations which transcend the provincial boundaries.
ii) This Court holds that for the purpose of determining as to which of the two Ombudsmen (Federal or Provincial) in relation to protection of the Women from harassment at workplace has the jurisdiction in respect of harassment caused by or to the employee of an organization, the charter alone could not be made basis of such determination, more particularly, if the place of business, operations and activities of the organization were 'localized' in a particular province and/or city.
iii) It is trite law that the principle of non-interference, by this Court, in interlocutory orders of the fora below is a matter of rule and refusal is an exception, however, when the orders passed by the Courts below are based on erroneous exercise of jurisdiction, this Court has supervisory jurisdiction to correct the same.

Conclusion: i) See analysis no. i.
ii) The fact that an organization established under the federal charter will not ipso facto, render it amenable to the jurisdiction of Federal Ombudsman, under the Federal Act in respect of harassment caused by or to the employee of an organization.
iii) The principle of non-interference, by High Court, in interlocutory orders of the fora below is a matter of rule and refusal is an exception.

LATEST LEGISLATION/AMENDMENTS

1. Vide notification No. 54 of 2024 dated 31.05.2024, published in the Official Gazette Punjab, the Governor of Punjab has appointed the officers as administrators under section 71 of the Punjab Local Government Act, 2022.
2. Vide notification No. 55 of 2024 dated 11.06.2024, published in the Official Gazette Punjab, the Government of Punjab Information and Culture Department has issued Punjab Government Advertisement Policy, 2024.
3. Vide notification No. PAP/Legis-2(o7)/2024/60 dated 07.06.2024, published in the Official Gazette Punjab, The Punjab Defamation Act, 2024 has been promulgated.
4. Vide notification No. PAP/Legis-2(o2)/2024/64, dated 14.06.2024 The Punjab Civil Servants (Amendment) Act, 2024 has been published in the Official

Gazette Punjab whereby amendments in sections 2, 9, 12, 18 are made and inserted a new section 18A in The Punjab Civil Servants Act, 1974.

5. Vide notification No. PAP/Legis-2(o3)/2024/65, dated 14.06.2024 The Police Order (Punjab Amendment) Act, 2024 has been published in the Official Gazette Punjab whereby a new section 18B inserted, to establish Organized Crime Unit in every district, in Police Order, 2002 and also repealed Rule 21.35 of the Police Rule, 1934.
6. Vide notification No. PAP/Legis-2(o4)/2024/66, dated 14.06.2024 The Punjab Agricultural Marketing Regulatory Authority (Amendment) Act, 2024 has been published in the Official Gazette Punjab whereby amendments in sections 4, 15B, and omission of section 5 made in The Punjab Agricultural Marketing Regulatory Authority Act, 2018.
7. Vide notification No. PAP/Legis-2(o5)/2024/67, dated 14.06.2024 The Punjab Healthcare Commission (Amendment) Act, 2024 has been published in the Official Gazette Punjab whereby amendment in section 6 is made.
8. Vide notification No. PAP/Legis-2(o6)/2024/68 dated 14.06.2024, published in the Official Gazette Punjab, The Punjab Price Control of Essential Commodities Act, 2024 has been promulgated.

SELECTED ARTICLES

1. Harvard Law Review
https://harvardlawreview.org/print/vol-137/the-new-negative-habeas-equity/

The New Negative Habeas Equity By Lee Kovarsky

ABSTRACT:

A federal statute restricts the habeas corpus remedy, but do federal judges also have equitable discretion to deny relief to unlawfully detained prisoners? Over the last several terms, the Supreme Court has begun to embrace this novel, ambitious view of habeas law. Although the Court has long cited what I call "negative" equity as a source of authority to devise its own limits on habeas relief, it had never — until recently — suggested that lower courts have free-floating discretion to deny relief to which prisoners are otherwise entitled.

This Article, which consists of three parts, considers and refutes the "new negative equity." In Part I, I set forth the older version of negative equity and then describe the recent departure therefrom. In Part II, I explain why the new negative equity doesn't follow from any text-centered approach to statutory interpretation — relying substantially on context and drawing heavily from a statutory history that decisional law and academic discourse have thus far neglected. In Part III, I focus on the most troubling register of the new negative habeas equity, which involves a rule against habeas relief for those who are not "factually innocent."

Equitable power to refuse relief might be consistent with "comity, finality, and federalism," as it were, but orphaned policy preferences are not law. Under the text-centered approach to law endorsed by most who favor habeas restrictions, such a practice is impossible to justify. Although no interpreter can be perfectly certain of

statutory meaning, the new negative equity is both inconsistent with habeas history and a least-plausible reading of the modern statute.

2. **COURTING THE LAW**
https://courtingthelaw.com/2024/06/11/commentary/construction-disputes-the-achilles-heel-of-a-developing-sector/

Construction Disputes – The Achilles Heel of a Developing Sector By Nouman Qadir & Robert Burns

ABSTRACT:

The rule of law is the foundation stone of a society as it ensures order and just conduct whereas its absence leads to chaos. It can only be preserved if the equality of access to the law is maintained. If this access is beyond a citizen's reach, it only reflects that the rule of law has been compromised. The Right Honourable Lord Woolf, in his report, Access to Justice, aptly summarised this concept in the following words:

"Access to justice is a fundamental right and an efficient and cost-effective justice system is of vital importance to the financial, commercial, and industrial life of our country."

The lack of rule of law severely hampers the development of any sector, but its absence particularly impacts a sui generis industry like construction. The growth of the Pakistani construction sector is stunted because it has to thrive in an environment where laws are not consistently enforced while corruption and bureaucratic inefficiencies flourish, which eventually leads to increased costs and delays.

Projects often suffer from poor quality and delays due to a lack of accountability while safety standards may be neglected, resulting in hazardous working conditions and substandard structures. This instability deters both local and foreign investors and undermines confidence in the sector, stalling potential growth and innovation. Ultimately, the absence of rule of law stifles sustainable development, erodes public trust and hinders economic progress within the construction industry.

3. **THE YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/the-glaring-gap-in-tort-theory

The Glaring Gap in Tort Theory By Kenneth S. Abraham & Catherine M. Sharkey

ABSTRACT:

The glaring gap in tort theory is its failure to take adequate account of liability insurance. Much of tort theory fails to recognize the active and central role that liability insurance plays in tort law and litigation, or mentions liability insurance only briefly. Liability insurance is treated as exogenous to tort law itself—as if it were merely a contingent source of outside financing, like a bank that passively guarantees a loan. It is no exaggeration to say that liability insurance played a defining and (in our view) salutary role in creating modern tort liability. Modern tort liability would not look at all as it does today if liability insurance had not existed and influenced tort law's development in the ways that it did.

This Article calls upon tort scholars of all theoretical and methodological stripes to address the significance of liability insurance by incorporating consideration of liability insurance into their work. We first lay the groundwork for understanding liability insurance's significance by describing the role that liability insurance plays in the life cycle of a tort claim, sketching the contemporary incidence of liability insurance and commercial self-insurance. We then provide a novel contribution to the tort law literature by identifying a collection of important judicial opinions that have made express reference to the availability (or unavailability) of liability insurance in precedent-setting, liability-expanding, and liability-limiting tort cases. We further identify the ways that liability insurance historically has influenced, and continues to influence, the shape and scope of tort law. We specifically identify a number of significant tort law doctrines and practices, such as the thin-skull rule, that we argue would never have persisted in the absence of liability insurance. Given this evidence, we argue that it is liability insurers who—paradoxically—have fueled the continuing expansion of American tort liability that began more than a century ago.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/The-Protection-of-Cultural-and-Religious-Heritage-in-Armed-Conflict

The Protection of Cultural and Religious Heritage in Armed Conflict By Mayank Chaturvedi, Muskan Goel

ABSTRACT:

This research article focuses on the critical importance of protecting cultural and religious heritage during times of war and armed conflict. It highlights how warfare can cause severe damage to cultural sites and artifacts, which are valuable to our shared history and identity.Using recent data and real-life examples, the article provides a detailed look at the destruction caused by conflicts. For instance, it examines the ruins of Palmyra in Syria, an ancient city with rich historical significance, and the Buddhas of Bamiyan in Afghanistan, monumental statues that were destroyed during conflict. These case studies illustrate the devastating impact war can have on cultural heritage.

The article also explores international laws designed to protect cultural heritage during conflicts. It looks at various legal frameworks and treaties that aim to prevent the destruction of cultural sites. By analysing these laws and their effectiveness, the paper underscores the need for stronger protection mechanisms.

5. **MANUPATRA**
THE FUTURE OF JUSTICE: MASS ARBITRATION AS A CATALYST FOR CHANGE (manupatra.com)

THE FUTURE OF JUSTICE: MASS ARBITRATION AS A CATALYST FOR CHANGE By Shreya Goyal

ABSTRACT:

As a streamlined and effective way to settle disputes, mass arbitration has become a notable alternative to traditional class action lawsuits. The benefits, drawbacks, and implications of mass arbitration as an alternative conflict resolution method are examined in this article. Mass arbitration changes the dynamics of consumer protection and corporate responsibility by overcoming the drawbacks of class lawsuits and offering a more convenient means of pursuing justice.