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FORTNIGHTLY CASE LAW BULLETIN

(16-10-2023 to 31-10-2023)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Muhammad Zubair Choudhary & others, Haroon Qadir & others, Akhtar Saeed Medical & Dental College, Rafay Tariq & others v. Pakistan Medical & Dental Council & others
Civil Petitions No.2916, 3219, 2757-L & 3063-L of 2019
Mr. Justice Umar Ata Badial, Mr. Justice Ijaz Ul Ahsan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2916_2019.pdf

Facts: Through these petitions, the petitioners have assailed judgments of learned Division Benches of the High Court which has dismissed their prayer to allow them to fill the seats which have been left vacant after conclusion of the admissions process and lapse of the admissions deadline set by the Pakistan Medical and Dental Council.

Issues: i) Whether any student can be given admission against vacant seats or against vacant seats left after passing of the admissions deadline or whose MDCAT result fall below the cut-off threshold?
ii) Whether the practice of granting extensions to medical and dental colleges after the expiry of the admission deadline allowed by the PM&DC/PMC can be continued?

Analysis: i) No admission against vacant seats left by "drop-out" students (defined under Regulation 2(d) of the 2018 Regulations) or against vacant seats left after passing of the admissions deadline set by the PM&DC/PMC should be allowed under any circumstances whatsoever. It must also be ensured that no student whose aggregate scores and MDCAT results fall below the cut-off threshold, assigned by the PM&DC/PMC for that academic year, is admitted into any medical or dental colleges. This should be done regardless of the number of vacant seats at medical or dental colleges or any other circumstances going to surplus seats across the country.
ii) The practice of granting extensions to medical and dental colleges after the expiry of the admission deadline allowed by the PM&DC/PMC must be discontinued forthwith. Imparting medical and dental education is not a business and must not be motivated by a desire for profit maximization.

Conclusion: i) No student can be given admission against vacant seats or against vacant seats left after passing of the admissions deadline or whose MDCAT result fall below the cut-off threshold.
ii) The practice of granting extensions to medical and dental colleges after the expiry of the admission deadline allowed by the PM&DC/PMC must be discontinued forthwith.

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2. **Supreme Court of Pakistan**
Mukhtar Ahmad Ali v. The Registrar, Supreme Court of Pakistan, Islamabad and another.
Civil Petition No.3532/2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3532_2023.pdf
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3532_2023_additional_note.pdf

Facts: Through this petition, the petitioner stated that as a citizen of Pakistan it was his fundamental right bestowed by Article 19A of the Constitution of the Islamic Republic of Pakistan to receive the information which he had sought from the Supreme Court and also relied upon the Right of Access to Information Act, 2017.

Issues: i) Whether the Registrar of the Supreme Court can be given the authority to initiate litigation on behalf of Supreme Court?
ii) How the Supreme Court is defined in the Constitution?
iii) Whether Additional Attorney-General can appear on behalf of Supreme Court against the mandate of the Constitution of Pakistan?
iv) Whether the Information Act applies only to public bodies excluding Supreme Court?
v) Whether Supreme Court is excluded from the purview of Article 19A of the Constitution and any information of public importance can be sought?
vi) Whether access to information is no longer a discretion granted through occasional benevolence?
vii) Whether access to information secures the well-being of people with added benefit of introspection by promoting self-accountability of institutions?
viii) Whether Article 19A of the Constitution envisages the placing of reasonable restrictions on the provision of information?
Additional Note
ix) Whether expression 'subject to regulation and reasonable restrictions' in Article 19A of Constitution confer competence upon the legislature to abridge constitutionally guaranteed right by granting out right or indiscriminate exclusion to a public entity?
x) Whether Supreme Court is expressly excluded from definition of public bodies as per spirit of The Information Act 2017?
xi) Whether right of access to information is bulwark against corruption and corrupt practices?
xii) Whether Supreme Court can refuse any request of access to information and proactive disclosure of information is implicit in the fundamental rights?

Analysis: i) The Supreme Court Rules, 1980 provide that the Registrar is the 'executive head of the office and shall exercise such powers as assigned to him'. The Rules do not grant to the Registrar the specific power to initiate litigation and though the Chief Justice may assign 'any function required by the Rules to be performed by

the Registrar', the Rules do not require, nor envisage, initiating litigation. Therefore, the Registrar could not be given this responsibility nor could he undertake it.

ii) Article 176 of the Constitution of the Islamic Republic of Pakistan, defines the Supreme Court as the Chief Justice and Judges of the Supreme Court…

iii) The learned AAG is employed by the office of the AG. The AG attends to the matters of the Federal Government under Article 100(3) of the Constitution of the Islamic Republic of Pakistan, which is part of the Executive and mandated to be separate from the Judiciary under Article 175(3) ...

iv) The Information Act 2017 applies only to public bodies as defined in its section 2(ix) and this definition does not include the Supreme Court. And, though the Act is applicable to 'court, tribunal, commission or board under the Federal law', the Supreme Court is established under the Constitution, and not under a Federal law, nor is the Supreme Court a public body of the Federal Government to which the Act does apply.

v) The Supreme Court is not excluded from the purview of Article 19A of the Constitution, and information of 'public importance' can be sought there under. It now needs consideration as to what constitutes public importance. The phrase 'public importance' is mentioned in a number of places in the Constitution but it does not define it. The phrase however has been interpreted by Supreme Court in the case of Manzoor Elahi v Federation of Pakistan. The phrase public importance with particular reference to Fundamental Rights was dilated upon in the case of Benazir Bhutto v Federation of Pakistan.

vi) What previously may have been on a need-to-know basis Article 19A of the Constitution has transformed it to a right-to-know. The burden has shifted from those seeking information to those who want to conceal it. Access to information is no longer a discretion granted through occasional benevolence, but is now after Article 19A was inserted into the Constitution through section 7 of the Constitution (Eighteenth Amendment) Act, 2010, a fundamental right available with every Pakistani which right may be invoked under Article 19A of the Constitution...

vii) Access to information thus secures the well-being of the people, which is what the nation aspires towards as stated in the Principles of Policy set out in the Constitution of the Islamic Republic of Pakistan under Article 38(a). Transparency brings with it the added benefit of introspection, which benefits institutions by promoting self-accountability. Article 19A stipulates that information be provided subject to regulation and reasonable restrictions imposed by law. However, there is no law which attends to the Supreme Court in this regard nor has the Supreme Court itself made any regulations. Needless to state that if a law is enacted and/or regulations made, requests for information would be attended to in accordance there with and in accordance with Article 19A.

viii) Article 19A envisages the placing of reasonable restrictions on the provision of information, but refusing to provide information is to be justified by the person, authority or institution withholding it.

Additional Note

ix) Article 19A of the Constitution guarantees to every citizen the fundamental right of having access to information in all matters of public importance. The exercise of this right is subject to regulation and reasonable restrictions imposed by law. The expression 'subject to regulation and reasonable restrictions' does not and cannot confer competence upon the legislature to abridge, impair, restrict or curtail the scope of the constitutionally guaranteed right by granting outright or indiscriminate exclusion to a public entity. The right under Article 19A is related to access to information in all matters of public importance, including information regarding public bodies…It is noted that Article 8 of the Constitution unambiguously declares a law to be void in so far it is inconsistent with the rights conferred under Chapter I. It further expressly bars the State from making any law which takes away or abridges the fundamental rights or has been made in contravention of the explicit command. The State has been defined in Article 7 and it, inter alia, includes the Majlis-e-Shoora (Parliament) and the legislatures of the respective Provinces.

x) A plain reading of the Right of Access to Information Act 2017 shows, prima facie, that the Supreme Court has not been expressly excluded from the definition of 'public bodies' under section 2 (ix) ibid. The definition of the expression 'public body' in sections 2(i) and 2(h) of the Sindh Transparency and Right to Information Act 2019 and the Punjab Transparency and Right to Information Act 2013, respectively, includes the High Courts in both the Provinces to be amenable to the right to access law.

xi) The right of access to information is a bulwark against corruption and corrupt practices. It enables the citizen to know how they are being served and how the resources that belong to them are being utilized and spent. It empowers the citizens and promotes democratic values and participatory governance.

xii) It is also presumed that the Supreme Court would be enforcing the principles that it enunciates for others to follow more rigorously in its own administrative affairs. There is no reason for the Supreme Court to refuse a request of access to information unless it falls within the exceptions described under the Act of 2017.The reluctance and refusal justifiably leads to giving rise to suspicions and adverse perceptions, thus eroding the independence of the judiciary... Proactive disclosure of information is implicit in the fundamental right guaranteed under Article 19A of the Constitution. Transparency, openness and enforcement of the right guaranteed under Article 19A are the tenets of public confidence and an independent judiciary.

Conclusion: i) The Registrar of the Supreme Court cannot be given the authority to initiate litigation on behalf of Supreme Court.

ii) Supreme Court is defined as the Chief Justice and Judges of the Supreme Court as per Article 176 of the Constitution of the Islamic Republic of Pakistan.

iii) Additional Attorney-General cannot appeare on behalf of Supreme Court as mandated by the Constitution of Pakistan under Article 100(3) for being part of the Executive.

iv)Yes, the Information Act applies only to public bodies excluding Supreme Court.

v) The Supreme Court is not excluded from the purview of Article 19A of the Constitution and any information of public importance can be sought thereunder.

vi) The access to information is no longer a discretion granted through occasional benevolence.

vii) Yes, access to information secures the well-being of people with added benefit of introspection by promoting self-accountability of institutions.

viii) Yes, Article 19A of the Constitution envisages the placing of reasonable restrictions on the provision of information but subject to certain lawful justifications for refusal the same.

Additional Note

ix) The expression 'subject to regulation and reasonable restrictions' in Article 19A of Constitution does not and cannot confer competence upon the legislature to abridge, impair, restrict or curtail the scope of the constitutionally guaranteed right by granting outright or indiscriminate exclusion to a public entity.

x) The Supreme Court has not been expressly excluded from definition of public bodies as per spirit of The Information Act 2017.

xi) Yes, the right of access to information is bulwark against corruption and corrupt practices.

xii) The Supreme Court can refuse any request of access to information if it falls within the exceptions of The Information Act 2017 and proactive disclosure of information is implicit in the fundamental rights guaranteed under Article 19A of the Constitution.

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3. **Supreme Court of Pakistan**
Sundas v. Khyber Medical University thr. V.C. Peshawar & others
Civil Petitions No. 1354, 355 &1447 of 2020
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1354_2020.pdf

Facts: The petitioners failed to pass the examinations in four chances and thus they had become ineligible to continue their medical studies under the Regulations of 2013. Before their respective registrations were revoked by the University, the petitioners invoked the jurisdiction vested in the civil courts by filing separate suits. It was on the basis of injunctive orders that the petitioners were allowed to pursue their studies in violation of the binding regulations of the regulator. The University subsequently issued notifications whereby the registrations of the petitioners were cancelled in accordance with the Regulations of 2013. The notifications were challenged before the High Court through constitutional petitions which were dismissed through the consolidated impugned judgment.

Issues: i) Whether the regulations relating to academic bodies and related policies are open to judicial review?
ii) Whether the compassion and hardship can be relevant considerations to grant any relief in breach of the law in favour of a litigant?
iii) Whether every citizen has right to choose the pursuit of a profession or trade?

Analysis: i) It is settled law that courts are required to exercise utmost restraint in matters relating to policies, discipline and other academic affairs of educational institutions. Refusing to interfere is a rule and deviation therefrom is an exception which can only be justified on the basis of clear and undisputed violation of the law. The reluctance of the courts to interfere with academic affairs is based on the foundational principle that the academicians and educational institutions are the best judges because formulating policies and eligibility criteria falls within their exclusive domain. The standards prescribed and set out in the regulations relating to academic bodies, determination of eligibility to pursue studies and other related policies are generally not open to judicial review unless they can be clearly shown to contravene the law or to be shockingly unreasonable or perverse.
ii) It is the duty of every court to implement the enforced laws and to decide the disputes in accordance therewith, rather than on the basis of compassion. The courts cannot grant any relief in breach of the law nor create a right in favour of a litigant which the latter does not possess by or under the law. Compassion and hardship cannot be relevant considerations when there is no scope for it in the relevant laws.
iii) Every citizen is unquestionably entitled and enjoys a right to choose the pursuit of a profession or trade but such a right is not absolute. The regulating authority may set minimum standards in the context of exercising the right in order to safeguard the interests and welfare of the public.

Conclusion: i) The regulations relating to academic bodies and related policies are generally not open to judicial review unless they can be clearly shown to contravene the law or to be shockingly unreasonable or perverse.
ii) The courts cannot grant any relief in breach of the law nor create a right in favour of a litigant. Compassion and hardship cannot be relevant considerations when there is no scope for it in the relevant laws.
iii) Every citizen is unquestionably entitled and enjoys a right to choose the pursuit of a profession or trade but such a right is not absolute.

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4. **Supreme Court of Pakistan**
Jamshed Ali Shah v. Irshad Hussain Shah and others.
Civil Petition No. 1751-L of 2021
Mr. Justice Umar Ata Bandial CJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1751_l_2021.pdf

Facts: Through this petition for leave to appeal, the petitioner has assailed the order

passed by a learned single Judge of the Lahore High Court, by which Civil Revision filed by him was dismissed.

Issue: When concurrent findings of fora below can be interfered with?

Analysis: The findings of the trial Court, appellate Court as well as High Court being based on sound and convincing reasoning, found to be in accordance with law and we are in complete agreement with them. All aspects of the matter, either legal or factual, were duly considered and appreciated. Neither any irregularity or infirmity nor any misreading and non-reading has been found by us which could persuade us to interfere in the concurrent findings.

Conclusion: The concurrent findings of fora below either legal or factual cannot be disturbed, when there is neither any irregularity or infirmity nor any misreading and non-reading in it.

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5. **Supreme Court of Pakistan**
Ghulam Mustafa Lund. v National Accountability Bureau through its Chairman, Islamabad and others.
Petition No.1303 of 2020
Mr. Justice Umar Ata Bandial, CJ, Mrs. Justice Ayesha A. Malik,
Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1303_2020.pdf

Facts: The petitioner was released on the plea of voluntary return. The respondents sent him notice for deposit of additional amount on the direction of Accountability Court. He challenged the said notice before the High Court through Writ Petition that was dismissed. Now, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has impugned the judgment of High Court.

Issues: i) What is the plea of voluntary return as defined in section 25(a) of NAO?
ii) What are the rules for construction and interpretation of the statutes?
iii) What is the role and power of Accountability Court in voluntary return proceedings?
iv) Whether Chairman NAB has authority to re-value or re-assess the liability of an accused already approved by him under the voluntary return or to again initiate an inquiry for the same allegations?
v) What is the meaning of the word “voluntary” as used in section 25(a) of the National Accountability Ordinance, 1999?

Analysis: i) Plea of "voluntary return" is available to a person under inquiry or even before inquiry but before authorization of investigation against him, to come forward to discharge his liability by making a voluntary return of the amount due against him. A voluntary return settlement, as a concept, is structured around and dependent upon the volition of the person who wishes to settle voluntary return,

therefore, constitutes (i) an offer of a holder of public office or any other person to make a voluntary return of the assets acquired or gains made by him in the course, or as a consequence, of any offence under the Ordinance (ii) acceptance of that offer by the Chairman NAB (iii) determination of the amount due from such person by the Chairman NAB and (iv) deposit by such person with the NAB of the amount so determined.

ii) In construction and interpretation of the Statutes, the Court has first to look at the language of the law and interpret the same in accordance with the ordinary meaning and usage of the words. The context in which the said words have been used by the legislature as is evident from the language of the provisions itself can also be considered without adding to or subtracting anything from the same. In case of lack of clarity, as a second step, the Court may look for the intent and purpose of the Lawmaker in using particular language and words as is evident from the language of the Statute.

iii) Accountability Court has got no role, power, or authority to direct or supervise the voluntary return proceedings. It is only the Chairman NAB (or his delegate u/s 34-A of NAO, if any) who is competent to accept the offer of voluntary return and determine or fix the liability of an accused thereunder.

iv) Chairman NAB has authority to re-value or re-assess the liability of an accused already approved by him under the voluntary return or to again initiate an inquiry for the same allegations. However, there are certain situations, under which he is empowered to do so. When he is satisfied that the accused has failed in fulfilling his statutory obligation at the time of making an offer which had led to his discharge, then the NAB would be at liberty to proceed under NAO and the earlier concluded voluntary return will not be an impediment in prosecuting the accused.

(v) Voluntary means that there is no question of any duress, coercion or threat to be imposed by any officer of the NAB upon the person, who is under an 'inquiry', so as to extract a commitment of the 'voluntary return', stipulated under section 25(a). It is simply an 'offer' made by the person concerned, which if 'accepted', by NAB, would constitute a valid contract. The consideration of which is the return of the illegal gains made by the person to the NAB and finally to the respective department of the Government.

Conclusion: i) A voluntary return settlement, as a concept, is structured around and dependent upon the volition of the person who wishes to settle.

ii) In construction and interpretation of the Statutes, the Court has first to look at the language of the law and interpret the same in accordance with the ordinary meaning and usage of the words.

iii) Accountability Court has got no role, power, or authority to direct or supervise the voluntary return proceedings.

iv) Chairman NAB has authority to re-value or re-assess the liability of an accused already approved by him under the voluntary return or to again initiate an inquiry for the same allegations.

(v) Voluntary means that there is no question of any duress, coercion or threat to be imposed by any officer of the NAB upon the person, who is under an inquiry.

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6. **Supreme Court of Pakistan**
Muslim Commercial Bank Limited v. Muhammad Anwar Mandokhel etc.
Civil Appeal No. 377 of 2014
Mr. Justice Sardar Tariq Masod, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._377_2014.pdf

Facts: This appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 is directed against the judgment passed by the High Court whereby a constitution petition filed by the appellant under Article 199 of Constitution was dismissed and the orders of the Labour Appellate Tribunal and the Labour Court were upheld.

Issues: i) Whether a Provincial Labour Court has the competence and jurisdiction to adjudicate upon trans-provincial issues?
ii) Whether a provincial legislature can legislate with regard to the establishments and industries functioning at the trans-provincial level?
iii) Why the Industrial Relations Act, 2012 was promulgated?
iv) What is the main purpose of National Industrial Relations Commission?
v) Which remedy was available to the workers during the interregnum period when no Industrial Relations Law was holding the field?
vi) Whether the Labour Laws are the procedural laws having retrospective effect?
vii) Whether the Industrial Relation Act, 2012 has retrospective effect?
viii) Whether all the decisions rendered by the Labour Court, during the interregnum period, are null and void in the eyes of law?
ix) Whether there are two different forums at provincial and federal level having jurisdiction to deal with industrial disputes?

Analysis: i) It is not the nature of the dispute, particularly, unfair labour practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the NIRC. Once it is established through any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive in nature and of overriding and superimposing effects over the Provincial Labour Court for resolving industrial disputes, including unfair labour practices, etc., related to such employers with establishments, branches, or industrial units in multiple provinces. Therefore, in such like cases recourse has to be made by the aggrieved party to the NIRC and not to the Provincial Labour Court.
ii) In this regard, Article 141 of the Constitution sets out the territorial jurisdiction of the Parliament as well as the Provincial Assembly in the words that "subject to the Constitution, Majhs-e-Shoora (Parliament) may make laws (including laws

having extraterritorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof. From the above provision of the Constitution, it is abundantly clear that the Parliament has extra-territorial authority to legislate, but the Provincial Legislature has no legislative competence to legislate a law regulating the establishments and industries functioning at the trans-provincial level.

iii) The Industrial Relations Act, 2012 was promulgated to consolidate and rationalize the law relating to the formation of trade unions, and the improvement of relations between employers and workmen in the Islamabad Capital Territory and trans-provincial establishments and industry.

iv) The main function of the NIRC, inter alia, is to adjudicate and determine an industrial dispute in the Islamabad Capital Territory and trans-provincial to which a trade union or a federation of such trade union is a party and which is not confined to matters of purely local nature and any other industrial dispute which is, in the opinion of the Government, of national importance and is referred to it by that Government. Similarly, the NIRC is also empowered, on the application of a party or of its own motion, to withdraw from a Labour Court of Province any application, proceedings, or appeal relating to unfair labour practice, which falls within its jurisdiction {S .57 (2) (b)}.

v) During the interregnum period with effect from 01.05.2010, when no Industrial Relations Law was holding the field, the workers had a remedy under the ordinary laws prevailing at that time, because, in the absence of a special law, the ordinary/general laws came forward to fill in the vacuum, the IRO 2012 does not destroy any existing right, rather by means of Section 33 thereof, all the existing rights stood preserved and protected, as such, it cannot be said that it affects any right or obligation created by other laws, including any provincial law.

vi) The Labour Laws provide the procedure and mechanism for the resolution of disputes, registration of Trade Unions, and establishment of Forum for the redressal of grievances of the labourers as well as employers, therefore, it is mainly a procedural law and in the light of the well-settled principles of interpretation of Statutes, the procedural law has retrospective effect unless the contrary is provided expressly or impliedly.

vii) The IRA, 2012 would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist and the workers of the establishments/industries functioning in the Islamabad Capital Territory or carrying on business in more than one province shall be governed by the Federal legislation i.e. IRO 2012; whereas, the workers of establishments/industries functioning or carrying on business only within the territorial limits of a province shall be governed by the concerned provincial legislations.

viii) Such decisions can be extended protection by applying the de facto doctrine it has been held that the Labour Court, being a creature of the Act of 2008, remained functional until the Act of 2008 remained in force and when the Act of 2008 repealed itself on 30.04.2010, the Labour Court also ceased to exist from such date. The grievance petitions filed by the appellants were pending in the

Labour Court on 30.04,2010 and their status remained that of a pending proceeding. From Ol.05.2010, NIRC was deemed to be constituted to hear grievance petitions and thus, the only forum provided in the law to hear and decide the grievance petitions from 01.05.2010 was NIRC.

ix) Moreover, after a comprehensive analysis of the new labour laws, both provincial and Federal, it may be confidently concluded that two parallel forums have been created; one operates at the provincial level, while the other is a federal-level entity known as the National Industrial Relations Commission (NIRC). Both these forums have jurisdiction to deal with industrial disputes, unfair labour practices and other allied matters, either attributable to the employer or the workers/workmen, however, the Federal Law has drawn a clear demarcation line of the jurisdiction of these two different forums i.e. Labour Courts in the Provinces and the other NIRC, at the Federal Level.

Conclusion: i) Provincial Labour Court has not the competence and jurisdiction to adjudicate upon trans-provincial issues.

ii) The Provincial Legislature has no legislative competence to legislate a law regulating the establishments and industries functioning at the trans-provincial level.

iii) See above in the analysis clause.

iv) The main function of the NIRC, inter alia, is to adjudicate and determine an industrial dispute in the Islamabad Capital Territory and trans-provincial to which a trade union or a federation of such trade union is a party.

v) During the interregnum period with effect from 01.05.2010, when no Industrial Relations Law was holding the field, the workers had a remedy under the ordinary laws prevailing at that time.

vi) Labour Laws are the procedural laws and in the light of the well-settled principles of interpretation of Statutes, the procedural law has retrospective effect unless the contrary is provided expressly or impliedly.

vii) The IRA, 2012 would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist.

viii) Such decisions can be extended protection by applying the de facto doctrine it has been held that the Labour Court, being a creature of the Act of 2008, remained functional until the Act of 2008 remained in force and when the Act of 2008 repealed itself on 30.04.2010.

ix) There are two different forums at provincial and federal level having jurisdiction to deal with industrial disputes, however, the Federal Law has drawn a clear demarcation line of the jurisdiction of these two different forums i.e. Labour Courts in the Provinces and the other NIRC, at the Federal Level.

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7. **Supreme Court of Pakistan**
Hasham Khan (deceased) through LRs. v. Waheed Ahmed
Civil Appeal No. 170 & 171 of 2017
Mr. Justice Sardar Tariq Masood, **Mr. Justice Amin-Ud-Din Khan**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._170_2017.pdf

Facts: The respondent-plaintiff instituted two separate suits of preemption to preempt the sale of land in favour of appellants on the basis that the plaintiff is co-owner in the suit land. The trial court decreed both the suits. Appeals preferred by the appellant were dismissed and same was the fate of the Civil Revisions filed by the appellant. Hence, these appeals with the leave of the Court have been preferred.

Issues: i) Whether a person who is required to prove a fact fails when against his oral assertion, other side makes oral assertion on oath?
ii) Whether "all the entries" in the Register Record of Rights/Jamabandi carry presumption of correctness in terms of s.52 of Punjab Land Revenue Act 1964?
iii) What is procedure concerning mutation of ownership or occupancy rights, inclusive of voluntary partition to make requisite entries into the mutation register when mutation is duly reported?

Analysis: i) We have noticed that when a person is required under the law to prove a fact pleaded by him and his oral assertion is challenged in the cross-examination and then the other side comes against it in the witness-box and after oath rebuts the same, the result is that the person required to prove the fact fails, when against an oral assertion the oral assertion is made by the other side.
ii) The pivotal question in this regard is, whether "all the entries" in the Register Record of Rights/Jamabandi carry presumption of correctness in terms of s.52 of Punjab Land Revenue Act 1964? Before proceeding to answer this question, it would be relevant to restate the relevant law and procedure as to the entries in Register of Record of Rights are incorporated and after crossing what threshold they qualify for the presumption of correctness as stated above… It may be noted that s. 52 of the Punjab Land Revenue Act 1967 confers presumption of correctness in favour of entries in records-of-rights and periodical records only when they are made as per law… While interpreting this provision, Lahore High Court in the judgement reported as "Pervez Alam Khan vs. Muhammad Mukhtar Khan" (2001 CLC 1489) while relying on the judgement of this court reported as "Shad Muhammad v. Khan Poor" (PLD 1986 SC 91) correctly held that presumption of correctness is attached only to the column of ownership and of possession of record of right and no such presumption is attached to the column of Lagan. In the same line, it is incrementally held that the same is the correct law for the entries made in Khana Kafiyat of Register of Record of Rights/Jamabadi. Whenever, a party relies on this Column, they will have to prove the incorporated statement/entry through independent evidence.
iii) According to Rule 7.1 of the Land Record Manual, in accordance with sections 33(3) and 34 of the Land Revenue Act, the mutation register serves as the repository for recording various acquisitions of rights or interests in land, be it as a landowner, assignee, or occupancy tenant. Nonetheless, it's imperative to note that the mutation register is distinct from the record-of-rights and consequently does not benefit from the legal presumption of truthfulness commonly associated with the latter. For the procedure concerning mutations of ownership or

occupancy rights, inclusive of voluntary partitions, the Patwari is obligated to make requisite entries into the mutation register once such mutations are duly reported to him by the transferee. In accordance with Rule 7.2 of the Land Record Manual, when a mutation case is registered, the Patwari is required to annotate the relevant jamabandi entry with the mutation's serial number and type, initially in pencil. Upon approval of the mutation, the notation is to be made permanent in red ink. Similarly, serial numbers of fard badar entries are to be noted, and to distinguish them from regular mutations, the term "badar" should be appended. Under Rule 7.56 of the Land Record Manual, Tehsildars and Naib-Tehsildars are mandated to prioritise estates for which new detailed jamabandis are to be created. Mutations with final orders passed up to 15th June, or any later date authorised by the Director of Land Records, must be incorporated into the jamabandi. The objective is to ensure all mutations up to that specified date are duly entered in the register and attested accordingly. In accordance with Rule 7.60 of the Land Record Manual, the field Kanungo is required to check and attest 100% of the Periodical Records during July and August. The focus is to ensure that mutations finalised by June 30th, or any other approved date, have been accurately reflected. On the other hand, under Rule 7.62, the Tehsildar or Naib-Tehsildar must validate a minimum of 25% of the khatauni and khewat holdings as well as 25% of the mutations linked to the jamabandis, executing these checks on site and in the presence of the respective right-holders. It may be noted that Register Haqdaran Zameen/Jamabandi form has 10 columns. It is prepared after every four years. The name of owners is mentioned in Column No. 3. The owners can transfer a property through mutation. During the four years transfer of property through mutation continues by the persons mentioned as owners in Column No. 3. Every entry of mutation is endorsed in this document. The person who intends to acquire rights in the property mentioned in the ownership column of this document is required to report the matter to the Patwari Halqa concerned who records events in his Roznamcha and the Roznamcha is maintained serial-wise and a date of event is mentioned on each Roznamcha. After recording the event in the Roznamcha the Patwari enters a mutation on the basis of the Roznamcha. After recording mutation the reference of mutation number is made in this document with a pencil and after the attestation of the mutation the noting of pencil is replaced with noting through red ink. This practice continues for four years and on 30th June after every four years all the mutations attested during the said four years are implemented in Column of ownership and the mutation number mentioned through red ink in Column No. 10 are replaced with black ink which remains there for four years and same are removed after completion of four years. If the existing owner sells whole of his property, his name is removed, otherwise, the share he sells to that extent the new owner becomes owner to the extent of purchase of share in the column of ownership. Same is the procedure of correction of revenue record through Fard Badar.

Conclusion: i) A person who is required to prove a fact fails when against his oral assertion,

other side makes oral assertion on oath.
ii) All the entries in the Register Record of Rights/Jamabandi carry presumption of correctness in terms of S.52 of Punjab Land Revenue Act 1964 only when they are made as per law.
iii) Procedure concerning mutation of ownership or occupancy rights, inclusive of voluntary partition to make requisite entries into the mutation register when mutation is duly reported is mentioned above in analysis No. iii.

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8. **Supreme Court of Pakistan**
Haji Shinkai v. Abdul Shakoor & others.
Civil Appeal No.23-Q of 2017
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._23_q_2017.pdf

Facts: The appellant has filed this civil appeal being discontent with the decree drawn up under Section 96 of the Code of Civil Procedure, 1908 following the judgment of the High Court with further prayer that the decree issued to him in his suit by the Trial Court be restored.

Issues: i) What is the scheme of arbitration provided under the Arbitration Act, 1940?
ii) Does Section 31 of the Arbitration Act, 1940, solely define jurisdiction and regulate the forum?
iii) Whether main object of Sections 32 and 33 of the Arbitration Act, 1940 is to expedite and simplify arbitration proceedings and to obtain finality?
iv) Whether the scope of the expression "effect of the award" employed in Section 32 of the Arbitration Act, 1940 is wide enough to cover a suit for enforcement of an award?
v) Whether in case of denial of arbitration agreement by a party regarding its existence, suit for enforcement of an award is expressly prohibited?
vi) Whether it is a settled principle that when an award without intervention of the Court is accepted and acted upon by the parties, same can be based to file a suit by either party relying on the same?
vii) Whether, in an incompetent suit, relief may be moulded, and the plaintiff can be awarded that relief, which he did not even, prayed for, and in which he was not interested?

Analysis: i) In regard to arbitration without the intervention of the Court, the Arbitration Act, 1940 lays down the procedure for the successive stages from the commencement of the arbitration to the passing of a decree in terms of the award. Sections 8 to 12 provide for the appointment or removal by Court of arbitrators or umpire in some instances. Section 13 confers certain powers on them. The award is required to be signed by the arbitrators or umpire, and notice in writing to the parties of the making of the award is enjoined by Section 14(1). If any party so desires, the arbitrators or umpire are directed by Section 14(2) to file the award in Court and to give notice to the parties of such filing. The power of the Court to

modify the award or to remit it is dealt with in Sections 15 and 16. If the Court sees no cause to set aside an award or remit it, it shall, under Section 17, proceed to pronounce judgment according to it, after the time for making an application to set aside has expired or if such application has been made, after refusing it. Upon the judgment so pronounced a decree shall follow...

ii) Section 31 lays down certain rules and imposes certain restrictions as to the Court to which applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings may be made or in which an award may be filed. Sub-Section (2) of Section 31 provides, inter alia, that all questions regarding the validity, effect or existence of an award shall be decided by the Court in which the award has been, or may be, filed and by no other Court. There can be no doubt that Section 31 merely regulates the forum, and it only defines the jurisdiction...

iii) Turning to Sections 32 and 33, it must be observed that while Section 33 provides for an application by a person desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined, Section 32 makes it a condition that no suit shall lie for a decision upon the existence, effect or validity of an arbitration agreement or award. It is thus clear that the main object of these provisions of the Arbitration Act, 1940 is to expedite and simplify arbitration proceedings and to obtain finality.

iv) It may be noted that it is now well settled that the expression "effect of the award" employed in Section 32 of the Arbitration Act, 1940 is wide enough to cover a suit for enforcement of an award.

v) When the defendants, on the other hand, denied the arbitration agreement and maintained that the award was invalid and inoperative. Upon these pleadings, it is manifest that the said suit raised the question as to the existence, effect or validity of the award and such a suit is expressly prohibited by Section 32 of the Arbitration Act,1940. It would be apposite to state here that if the plaintiff wanted to enforce the award, the proper procedure for him would have been first to get the award to be made a rule of the Court and then to enforce or execute the decree which might be passed on the basis of the award. He could not resort to the procedure of filing a separate suit in disregard of the special procedure provided in the Arbitration Act, 1940...

vi) Where the parties accept an award made in arbitration out of the Court, and it is acted upon voluntarily, and a suit is after that sought to be filed by one of the parties, then the objection that the suit, in terms of Section 32 of the Arbitration Act, 1940 is not maintainable, cannot be allowed to be raised.

vii) When the High Court, taking into account the assertion made by defendant in his written statement that he had only obtained a loan of certain amount from the plaintiff, modified the decree of the Trial Court and held that the plaintiff was entitled to the recovery of the amount from defendant subject to deposit of court fee within one month. The plaintiff neither sought this relief in his plaint nor was it the subject matter of issue, which was to the effect "whether the plaintiff is

entitled to the relief claimed for?". So, it could not be granted, particularly when it was found that the suit was not maintainable…

Conclusion: i) See analysis portion…
ii) Yes, section 31 of the Arbitration Act, 1940 merely regulates the forum, and it only defines the jurisdiction.
iii) Yes, the main object of Sections 32 and 33 of the Arbitration Act, 1940 is to expedite and simplify arbitration proceedings and to obtain finality.
iv) Yes, the scope of the expression "effect of the award" employed in Section 32 of the Arbitration Act, 1940 is wide enough to cover a suit for enforcement of an award.
v) Yes, in case of denial of arbitration agreement by a party regarding its existence, the suit for enforcement of an award is expressly prohibited under Section 32 of the Arbitration Act,1940.
vi) Yes, it is a settled principle that when an award without intervention of the Court is accepted and acted upon by the parties, same can be based to file a suit by either party relying on the same.
vii) In an incompetent suit, relief cannot be moulded, and the plaintiff cannot be awarded that relief, which he did not even, prayed for, and in which he was not interested.

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9. **Supreme Court of Pakistan**
Ammad Yousaf v. The State and another
Criminal Petition No. 225 of 2023
Mr. Justice Ijaz Ul Ahsan, Mr. Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._225_2023.pdf

Facts: The Executive Magistrate considered that the alleged views on national television against the armed forces constituted serious cognizable offences and sought permission from the Deputy Commissioner to register an FIR. The DC sought guidance from the Chief Commissioner, who through a letter, obtained permission from the Secretary, Ministry of Interior and conveyed the same to the Magistrate who registered an FIR under sections 120-B, 121-A, 124, 131, 153, 153-A, 505, 506, 201, and 109/34 of PPC against main accused and other unknown persons. The petitioner was subsequently implicated in the case during the investigation. Before the Trial Court could frame the charge, the petitioner filed an application under section 265-D of the Code, requested for his acquittal which was dismissed by the Trial Court. A Criminal Revision filed thereagainst the petitioner was dismissed by the Islamabad High Court, Islamabad, hence, this petition for leave to appeal.

Issues: i) Whether exercise of the inherent powers is mandatory in nature?
ii) What is charge? Which aspects are to be considered by the court before framing of charge?
iii) At which stage trial court can acquit an accused under sections 249-A and

265-K of the code?
iv) Whether an F.I.R under offences mentioned in section 196 Cr.P.C. can be registered?
v)What is the principle of Delegatus Non-Potest Delegare?
vi)Whether a person can be held responsible for deeds and actions of another?
vii)What are the pre-conditions to prosecute a person for offences mentioned in section 196 of Cr.P.C.?

Analysis: i) In our criminal justice system, the provisions of Chapter XXII-A of the Code are mandatory in nature, which provide a procedure for the Courts to ensure a just and fair trial for the accused, the prosecution as well as the complainant, therefore, the same must be complied with in their true letter and spirit.(…) The exercise of the inherent powers is mandatory in nature, therefore, any departure therefrom would be a violation of the substantive provisions of law and would prejudice the interests of the accused, which is an illegality.
ii) A charge is a gist and precise statement of the allegation(s) made against a person(s), which is the foundation of a criminal trial. It specifies the offence with which an accused is charged, by giving a specific name, if any, and the relevant provision(s) of law(s) (…) Section 265-D provides that before framing of a charge, the Court must consider the FIR, the police report, all the documents, and the statements of the witnesses filed by the prosecution available before it in order to determine whether it has jurisdiction to take cognizance of the matter. If the Court is of the opinion that it is competent to take cognizance and prima facie reasonable grounds exist for proceeding with the trial of the accused, only then, charge has to be framed.
iii) The Code has granted an inherent jurisdiction by virtue of sections 249-A and 265-K to the trial courts, as the case may be, to acquit any or all accused at any stage of the judicial proceedings for reasons to be recorded, after providing an opportunity of hearing to the parties. The words "any stage" used in both the sections include the stages before or after framing of the charge or after recording of some evidence. (…) Thus, if circumstances for exercise of inherent powers exist, the Court must use such powers at any stage of the proceedings on its own or upon an application by the accused, provided that an opportunity of hearing is afforded to the parties before making any order (…) Such power can only be exercised where the Court is of the opinion that no charge could be framed because of lack of jurisdiction; because the material available before it is insufficient for the purposes of constituting an offence; that if charge is framed, but the Court considers it to be groundless and to allow the prosecution to continue with the trial would amount to an abuse of process; or that in all circumstances, where there is no probability of conviction of the accused, even after a full-fledged trial.
iv) The intent of the legislature is to limit a Government to prosecute a person for offences mentioned in section 196 of the Code, only upon a complaint in Court, instead of registration of an FIR, to ensure transparency and impartiality. A

complaint is filed before a Judicial Magistrate, who being a judicial officer, is free from the Government's influence. He is supposed to perform his functions fairly, efficiently, without any pressure and interference. On the other hand, the police officials, who are part of executive, are admittedly in subordination to the Government(s) concerned, therefore, an independent investigation cannot be expected. However, prosecution in offences other than those mentioned in section 196 of the Code can be initiated through an FIR, as provided by section 154 of the Code. (…) According to the said section, cognizance can only be taken by a Court upon a complaint made by the Federal Government, the Provincial Government concerned, or some officer empowered in this behalf in respect of the offences mentioned therein. (…) In such view of the matter, section 196 of the Code mandates that no person or authority other than the Federal Government or the Provincial Government or any officer empowered by the respective Governments in this behalf is competent to file a complaint in respect of the offences mentioned in section 196.

v) The principle of Delegatus Non-Potest Delegare is a Latin legal maxim that generally applied to the delegation of power or authority by one person or entity to another. According to this Maxim, if a person or entity to whom a power or authority is delegated, cannot himself further delegate that power or authority to someone else. However, such power can be delegated in circumstances where the law expressly permits to do so, or in the absence of a law, where the original delegation explicitly authorizes it.

vi) It is a settled principle of law that each person is responsible for his deeds and actions, hence, holding the petitioner responsible for the act of the main accused, without prima facie cogent evidence, is unjustified.

vii) Thus, in order to prosecute a person for offences mentioned in section 196, firstly, there must be a complaint only by an order of the Federal Government or the concerned Provincial Government or by an officer empowered in this behalf by either of the two Governments. Secondly, the complaint must contain the name of a person(s), against whom proceedings are required to be initiated and all the details in respect of the alleged offence(s). Moreover, after filing a complaint, if subsequently, it surfaces that some person(s) other than the one(s) named in the complaint is/are also connected in commission of the offences, the Federal Government, the Provincial Government or an officer empowered by either of the two Governments, as the case may be, may pass an order for filing of a supplementary complaint against them with all the stated details. In any case, before submitting a complaint, the authorities concerned must conduct a preliminary inquiry in order to avoid frivolous, malicious and purposeless prosecution. Similarly, the Magistrate upon receiving a complaint and before assumption of the jurisdiction, must cross the threshold by applying his mind and analysing the evidence, in order to determine its jurisdiction and to ascertain that on the basis of the available material, charge can be framed. The Magistrate, if satisfied, that prima facie case against the nominated person is made out, he can then initiate judicial proceedings against the person nominated in the complaint. If

he reaches a conclusion that the complaint or the supplementary complaint has been filed by an unauthorized person or that the same suffers from mandatory requirements of section 196 or he lacks jurisdiction, he should not issue process in a mechanical manner, rather, should refrain himself from initiating judicial proceedings.

Conclusions: i) The exercise of the inherent powers is mandatory in nature; therefore, any departure therefrom would be a violation of the substantive provisions of law and would prejudice the interests of the accused, which is an illegality.
ii) A charge is a gist and precise statement of the allegation(s) made against a person(s), which is the foundation of a criminal trial and before framing of a charge, the Court must consider the FIR, the police report, all the documents, and the statements of the witnesses filed by the prosecution available before it in order to determine whether it has jurisdiction to take cognizance of the matter.
iii) Court can acquit the accused at any stage of the proceedings on its own or upon an application by the accused by invoking the provisions of sections 249-A and 265-K of the Cr.P.C, even after a full-fledged trial.
iv) FIR cannot be registered regarding offences against the State as mentioned in section 196 of the code and cognizance can only be taken by a Court upon a complaint.
v) Delegatus Non-Potest Delegare is a Latin legal maxim according to which, if a person or entity to whom a power or authority is delegated, cannot himself further delegate that power or authority to someone else unless the law expressly permits to do so, or in the absence of a law, where the original delegation explicitly authorizes it.
vi) It is a settled principle of law that each person is only responsible for his own deeds and actions.
vii) See the analysis part at serial number (vii) mentioned above.

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10. **Supreme Court of Pakistan**
Sui Northern Gas Pipelines Limited, through its General Manager, Rawalpindi v. Muhammad Arshad
Civil Petition No.3598 Of 2020
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3598_2020.pdf

Facts: The respondent filed a Civil Suit for declaration, perpetual injunction and mandatory injunction against the General Manager, Chief Engineer and Area Manager of the petitioner i.e. Sui Northern Gas Pipelines Limited ("SNGPL"), with the prayer that the gas utility bill was wrongly calculated and should be corrected as per actual consumption. A further relief was also sought for permanent injunction from recovery of the bill amount and disconnection of gas supply to the premises. The civil suit was decreed by the Additional District Judge/Gas Utility Court, Rawalpindi vide Judgment and, as a result thereof, the

gas consumption bill challenged in the suit was set aside, while SNGPL was found entitled to recover the cost of the meter. This Civil Petition for leave to appeal is directed against the Order passed by the High Court whereby the First Appeal filed by the petitioner was dismissed.

Issues: i) What is the meaning of the theft of natural gas?
ii) What is the legal requirement if any person desires a court to give a judgment as to any legal right or liability depending on the existence of facts which he asserts?
iii) Whether the liability is assessed according to the sanctioned load or not is to be proved in the Trial Court and such calculation sheet can be considered as the gospel truth?
iv) What is the meaning of "onus probandi"?
v) What is the meaning of legal principle "separate the grain from the chaff"?

Analysis: i) The 'theft of natural gas' means the use/consumption of gas in an unauthorized/un-lawful manner for which the user/consumer has neither been billed, nor he/she has paid for such consumption and also provides the possible instances of acts which are tantamount to theft. The procedure addresses several aspects of gas theft, the action that can be taken by the company in case of theft is conducting a raid at the premises and/or disconnecting gas supply to such subscriber.
ii) According to Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give a judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and the burden of proof lies on him. Lawsuits are determined on preponderance or weighing the scale of probabilities in which the Court has to see which party has succeeded to prove his case and discharged the onus of proof.
iii) The aspect of whether the liability is assessed according to the sanctioned load or not is to be proved in the Trial Court and such calculation sheet cannot be considered as the gospel truth unless the raiding team ascertained the actual load and consumption according to the appliances and equipment being used by the subscriber and confronted the subscriber or their representative at the time of raid in the case of theft of gas or tampered meter.
iv) The meaning of "onus probandi" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him.
v) The legal principle "separate the grain from the chaff" obligates the Court to scrutinize and evaluate the evidence recorded in the lis and judge the quality, and not the quantity, of evidence which has been done properly in the case without any non-reading or misreading of evidence by the Trial Court or the High Court concurrently.

Conclusion: i) The 'theft of natural gas' means the use/consumption of gas in an unauthorized/un-lawful manner for which the user/consumer has neither been billed, nor he/she has paid for such consumption.

ii) According to Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give a judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and the burden of proof lies on him.
iii) See above in the analysis clause.
iv) The meaning of "onus probandi" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him.
v) See above in analysis clause.

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11. **Supreme Court of Pakistan,**
Shah Fakhr-e-Alam and others v. Mst. Shaukat Ara and others,
C.A No. 998 of 2020,
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Muhammad Ali Mazhar,
Mr. Justice Athar Minallah.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._998_2020.pdf

Facts: Through this appeal filed under Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have challenged the judgment and decree, whereby Civil Revision filed by the respondents was allowed and concurrent judgments of the two *fora* below were set aside to the effect of decreeing the suit of the plaintiffs/respondents seeking a declaration of ownership of the suit-property, seeking correction of the erroneous entries in the revenue record favouring the defendants alongwith permanent injunction to prevent the defendants from denying their ownership and seeking restoration of possession if the plaintiffs were proved not to be already in possession as well as a partition of the suit-property.

Issues: i) What is the mandate of section 115 of the CPC in term of disagreeing with the findings of lower courts?
ii) Whether the law of limitation has ever provided a blanket exemption for individuals challenging an admitted wrong entry?

Analysis: i) When a trial court and the first appellate court, which are responsible for considering both factual and legal aspects, have already taken a specific viewpoint, the learned High Court under the jurisdiction granted by section 115 of the CPC should generally refrain from offering an alternative interpretation of the evidence, unless the lower courts' interpretation is clearly unreasonable or contradicts well established legal principles. When a higher court is unsatisfied with the findings of the lower courts, the higher court must carefully examine and discuss the lower courts' findings. Subsequently, the higher court should provide reasons for disagreeing with the lower courts and replacing their findings with its own.
ii) If a wrong entry is made and, in accordance with the prevailing Land Revenue Act, the ownership entry is recorded in the Register *Haqdaran Zameen/Jamabandi*/periodical record, each new entry in the latest record, updated

after every four years, creates a new cause of action. Unless challenged and declared invalid through appropriate action and declaration, an entry, order, or action remains in effect.

Conclusion: i) Section 115 of CPC mandates that any findings being set aside must be done so with proper reasons and logical justification, while the findings made by the higher court must also be supported by valid reasons based on the available evidence and the law.
ii) The Supreme Court, as well as the principles of law of limitation, have never provided a blanket exemption from the law of limitation for individuals challenging an admitted wrong entry.

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12. **Supreme Court of Pakistan**
Regional Police Officer, Dera Ghazi Khan Region, etc. v. Riaz Hussain Bukhari.
Civil Petition No.469-L of 2023
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._469_l_2023.pdf

Facts: This civil petition for leave to appeal is directed against the Order passed by the Punjab Service Tribunal whereby the appeal filed by the present respondent was allowed.

Issues: i) Whether in time barred petition filed by the Government, administrative delays due to lengthy procedure can be considered sufficient cause?
ii) What are the differences of considerations, between an individual and in case of government before filing an appeal while approaching the higher Courts?
iii) Whether preferential treatment can be accorded to Government Departments for condoning the delay?
iv) Whether delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied under the doctrine of law helps vigilant and not indolent?
v) Whether it is inherent duty of the Court to delve into the question of limitation, regardless of it that the objection is raised or not?
vi) Whether without mentioning necessary details in the application for condonation of delay in line with the guiding principles in the form of SOP as reported by the Supreme Court, the same can be succeeded in favor of Government departments?

Analysis: i) The mechanical and unpersuasive justification of administrative delays has almost become a trend which is consistently pleaded for condonation of delay through stereotypical and generalized applications, which cannot be considered 'sufficient cause' or a reasonable ground in every case...At times this cavalier attitude and approach smears and smacks mala fide and leads to the belief that the appeal is intentionally being presented belatedly only as a formality in order to

provide an undue advantage to the other side, rather than due to any genuine intent to challenge the judgment or order.

ii) In the case of an individual, all decisions rest solely on him with regard to the procurement of advice for challenging the decision at higher forum; the decision to challenge; the engagement of an advocate; supplying the relevant documents to the advocate for the preparation of the appeal/petition and then following the case religiously; however, in the case of the Government or any of its departments, the party has at its disposal the assistance of its own legal department; the help and support of the Attorney General's Office, or the Advocate General's Office as the case may be. Therefore, immediately upon receiving a copy of the judgment/order, the Government departments may move for instructions rather than waiting for the lapse of the period of limitation provided for approaching the higher Courts.

iii) It is also a well settled exposition of law that while considering the grounds for condonation of delay, whether rational or irrational, no extraordinary clemency or compassion and/or preferential treatment may be accorded to the Government department, autonomous bodies or private sector/organizations, rather their case should be dealt with uniformly and in the same manner as cases of ordinary litigants and citizens…The doctrine of equality before law demands that all litigants, including the State, are accorded the same treatment and the law is administered in an even-handed manner.

iv) No doubt the law favours adjudication on merits, but simultaneously one should not close their eyes or oversee another aspect of great consequence, namely that the law helps the vigilant and not the indolent. At this juncture, it is quite relevant to quote a Latin maxim"Leges vigilantibus non dormientibus subserviunt" or "Vigilantibus Non Dormientibus Jura Subveniunt" which articulates that the law aids and assists those who are vigilant but not those who are sleeping or slumbering. Delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied.

v) The astuteness of the law of limitation does not confer a right but ensues incapacitation after the lapse of the period allowed for enforcing some existing legal rights and it foresees the culmination of claims which have decayed by efflux of time. Under Section 3 of the Limitation Act, 1908 it is the inherent duty of the Court to delve into the question of limitation, regardless of whether it is raised or not. Carelessness, intentional or obvious sluggishness, or dearth of bona fide are no reason for condonation of delay.

vi) When the petitioner has skipped the necessary details including the identity of persons who became instruments of delay, deliberately or indeliberately, or whether any disciplinary action was taken against the person(s) responsible for the delay. All such details should have been jotted down in the application for condonation of delay for consideration which are if missing and due to dearth of such nitty-gritties, it cannot be determined whether the case is fit for condonation of delay in view of the guiding principles cogitated in the SOP which is very

much in field and should have been implemented in letter and spirit for seeking condonation of delay on sufficient cause...

Conclusion: i) In time barred petition filed by the Government, administrative delays due to lengthy procedure cannot be considered sufficient cause.
ii) See analysis portion.
iii) Preferential treatment cannot be accorded to Government Departments for condoning the delay.
iv) Yes, delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied under the doctrine of law helps vigilant and not indolent.
v) Yes, it is inherent duty of the Court to delve into the question of limitation, regardless of it that the objection is raised or not.
vi) Without mentioning necessary details in the application for condonation of delay in line with the guiding principles in the form of SOP as reported by the Supreme Court, the same cannot be succeeded in favor of Government departments.

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13. **Lahore High Court**
Muhammad Tanveer and another v. The State
Criminal Appeal No.66363-J/2019
The State v. Muhammad Tanveer
Murder Reference No.245/2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC5037.pdf

Facts: This single judgment shall dispose of criminal appeal filed by appellants against their convictions & sentences and murder reference sent by trial court for confirmation of death sentence awarded to appellant, as both the matters have arisen out of one and the same judgment passed by trial court.

Issues: i) How the question of sharing common intention has to be examined?
ii) What is the effect on sentence of death in murder case if prosecution fails to prove alleged motive and immediate cause of occurrence?

Analysis: i) It is trite law that for proving common intention, there should be evidence to prove preconcert/consultation between accused persons for committing the offence and in absence of the same, attending circumstances can also be taken into consideration for deciding existence of common intention e.g. if accused persons having joint motive/grudge i.e. reason for committing occurrence against the victim, after consultation and preparation come from their residence or some place to the place of occurrence and commit the occurrence, then existence of common intention can be gathered while examining the entire facts but at the same time it is also relevant to mention here that in case of presence of accused at the place of occurrence where his presence is otherwise natural or at least not

unusual/awkward e.g. at his home, question of sharing common intention has to be examined carefully.
ii) The law is well settled by now that if prosecution fails to prove alleged motive and immediate cause of occurrence then said failure reacts against the sentence of death awarded to convict on the charge of murder.

Conclusion: i) It is trite law that for proving common intention, there should be evidence to prove preconcert/consultation between accused persons for committing the offence and in absence of the same, attending circumstances can also be taken into consideration for deciding existence of common intention.
ii) If prosecution fails to prove alleged motive and immediate cause of occurrence then said failure reacts against the sentence of death awarded to convict on the charge of murder.

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14. **Lahore High Court**
Mst. Shabana Kausar v. The State
Criminal Appeal No. 44164-J of 2021
The State v. Mst. Shabana Kausar
Murder Reference No. 118 of 2021
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC5484.pdf

Facts: This judgment shall decide criminal appeal filed by appellant against her conviction and sentence and murder reference sent by the learned trial court for confirmation or otherwise of the death sentence awarded to appellant. Both these matters are decided by this single judgment as these have arisen out of the same judgment passed by the Sessions Judge.

Issues: i) Whether it is necessary that every circumstance should be linked with each other and it should form a continuous chain?
ii) Which interpretation is to be accepted if a fact is capable of two interpretations?
iii) Whether extra judicial confession is weak type evidence?
iv) Whether the accused can be convicted & sentenced merely on the basis of alleged recovery of dead body of the deceased?
v) Whether a single circumstance which creates doubt regarding the prosecution case, is sufficient to give benefit of doubt to the accused?

Analysis: i) It is settled by now that in such like cases every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused. But if any link in the chain is missing then its benefit must go to the accused.
ii) It is by now well settled that if a fact is capable of two interpretations then one favourable to the accused is to be accepted.

iii) It is by now well settled that evidence of extra judicial confession is a weak type evidence which can easily be procured in the cases of unseen occurrence to strengthen the weak prosecution case.
iv) The accused cannot be convicted & sentenced merely on the basis of alleged recovery of dead body of the deceased on his/her pointing out which is only a corroborative piece of evidence.
v) It is by now well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

Conclusion: i) It is necessary that every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused.
ii) If a fact is capable of two interpretations then one favourable to the accused is to be accepted.
iii) Extra judicial confession is weak type evidence.
iv) The accused cannot be convicted & sentenced merely on the basis of alleged recovery of dead body of the deceased on his/her pointing out which is only a corroborative piece of evidence.
v) A single circumstance which creates doubt regarding the prosecution case, is sufficient to give benefit of doubt to the accused.

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15. **Lahore High Court**
Ali Raza v. Inspector General of Police, Punjab etc.
W.P. No. 91824 of 2017
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5335.pdf

Facts: Feeling aggrieved by the unfavourable decision of the Police Department regarding non-appointment of petitioner as Junior Clerk on the ground that his father was retired on medical ground, petitioner has invoked constitutional jurisdiction of the Court.

Issue: Whether grant of Invalidation Certificate is conclusive proof of retirement on medical grounds?

Analysis: The criteria for issuance and completion of Medical Invalidation Certificate in favour of a government servant, who has been examined by the Medical Board, upon the request of his/her parent department, has been encapsulated in Notification, issued by the Additional Secretary, Primary & Secondary Healthcare Department, Govt. of the Punjab… After issuance of Invalidation Certificate by the Medical Superintendent concerned, on the basis of opinion of the Medical Board, same is to be forwarded to the Director General, Directorate General of Health Services, Punjab, for countersigning and if the same is countersigned then it is valid for retirement of government servant on medical grounds. It is well established by now that a written document outweighs an oral assertion…no

record relating to Invalidation Certificate, is found from Directorate General of Health Services, Punjab, Lahore, the same is considered to be fake and bogus… mere grant of medical allowance to a retiree does not determine the nature of his retirement rather contents of the Pension Payment Order are to be treated as conclusive proof in that regard.

Conclusion: No, along with Invalidation Certificate contents of Pension Payment Order are to be considered for determining nature of retirement.

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16. **Lahore High Court**
Mst. Nawab Bibi (deceased) through L.Rs. v. Hakim Ali and others
Civil Revision No.2312 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5523.pdf

Facts: The learned trial Court vide impugned judgment and decree decreed the suit of the petitioner(s)/plaintiff(s) to the extent of 1/2 share as inheritance from the legacy of the deceased. The petitioner(s)/plaintiff(s) being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree; hence, the instant revision petition by petitioner through her legal heirs with the prayer that she is entitled to inherit half property of deceased as sharer and half as return, whereas the petitioners in connected civil revision have prayed for setting aside the impugned judgments and decree and dismissal of the suit of plaintiff.

Issues: i) Whether every Muslim in the sub-continent is presumed to belong to Sunni sect?
ii) Whether any strict criteria can be set to determine the faith of a person?
iii) Whether fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved whether limitation does run?
iv) When the foundational transaction is based on fraud and mala fide, whether the subsequent superstructure built thereon can be allowed to stand?
v) Whether the concurrent findings on record can be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis: i) Every Muslim in the sub-continent is presumed to belong to Sunni sect, unless 'good evidence' to the contrary is produced by the party contesting the same. The judicial determination of whether the said presumption of faith of a party, positively stands rebutted, would be adjudged by the Court on the principle of preponderance of evidence produced by the parties.
ii) No strict criteria can be set to determine the faith of a person and therefore to pass any finding thereon, the Courts are to consider the surrounding circumstances i.e. way of life, parental faith and faith of other close relatives.
iii) Question of limitation has also rightly been adjudicated upon by the learned Courts below because fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved the limitation does not run.

iv) It is a settled principle of law that when the foundational transaction is based on fraud and mala fide, the subsequent superstructure built thereon cannot be allowed to stand and ultimately collapses.
v) The impugned judgments and decrees do not suffer from any infirmity rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Conclusion: i) Every Muslim in the sub-continent is presumed to belong to Sunni sect, unless 'good evidence' to the contrary is produced by the party contesting the same.
ii) No strict criteria can be set to determine the faith of a person and therefore to pass any finding thereon, the Courts are to consider the surrounding circumstances i.e. way of life, parental faith and faith of other close relatives.
iii) Fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved the limitation does not run.
iv) When the foundational transaction is based on fraud and mala fide, the subsequent superstructure built thereon cannot be allowed to stand and ultimately collapses.
v) When impugned judgment and decree does not suffer from any infirmity rather law on the subject has rightly been construed and appreciated then the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

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17. **Lahore High Court**
Muhammad Awais v. Zahida Parveen
C.R No. 4434 of 2019
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5517.pdf

Facts: Petitioner's right to produce evidence was closed and the learned trial court decreed the suit of respondent/plaintiff, against which petitioner preferred appeal and appellate court dismissed appeal of the petitioner/defendant. Being aggrieved petitioner through this revision petition challenged the judgment and decree passed by appellate court.

Issues: i) Whether nikahnama is per se admissible in evidence?
ii) Whether any condition such as "compensation in lieu of divorce" may be imposed on husband to exercise his right to divorce?

Analysis: i) The Nikahnama is per se admissible in evidence and entries of the same have not been challenged by the petitioner before any forum at the relevant time. Even otherwise, the entries of the Nikahnama have been proved by the respondent by producing oral as well as documentary evidence. As against this, the petitioner could not lead evidence in rebuttal as his right to produce evidence was closed by the learned trial Court and he remained unsuccessful in getting the said order reversed by the higher Courts despite availing of the remedy provided under law.

Meaning thereby the evidence of the respondent on this point is unrebutted and even during cross examination, conducted on the P.Ws. the petitioner's side could not shake the veracity of the testimonies of the P.Ws. rather the witnesses remained firm and unscathed.

ii) So far as the claim of the respondent for recover of Rs.500,000/- as compensation in lieu of divorce is concerned, it is observed that in the Holy Quran in Surah Al-Baqra and Surah Talaq the delegation of right of divorce has been described in detail. Similary, section 7(1) of the Muslim Family Laws Ordinance, 1961 deals with the matter of Talaq. The provision of section 105 of the Code of Muslim Personal Laws also caters this thing that a husband has an absolute right to divorce his wife. In this respect, no condition is described in Shariah as well as in the codified law. Reliance in this regard is placed on judgment reported as *Muhammad Bashir Ali Siddiqui v. Muhammad Sarwar Jahan Begum* (2008 SCMR 186), wherein it has been observed that no condition can be imposed on the husband if he desires to divorce his wife, because the right of divorce has been given by Almighty Allah to the husband and this proposition has been discussed in detail…The principles laid down by the Apex Court of the country in the judgment of *Muhammad Bashir Ali Siddiqui ibid* shall prevail in view of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

Conclusion: i) Nikahnama is per se admissible in evidence.

ii) No condition can be imposed on the husband if he desires to divorce his wife, as per settled principles and norms.

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18. **Lahore High Court**
The State v. Asad Ali
Capital Sentence Reference No.23 of 2019/ Crl. Appeal No.17007 of 2019
Ms. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC5025.pdf

Facts: Feeling aggrieved by the judgment of the trial court, the appellant assailed conviction by filing the instant appeal and trial court also referred Capital Sentence Reference to confirm the death sentence awarded to the appellant.

Issues: i) Whether, the statement of a witness/victim must be read in its entirety?

ii) Whether investigation flaws should prejudice the rights of the sexually harassed victims?

Analysis: i) Rape is a crime not only against human dignity but also against society as a whole. In our culture, the family members of a minor girl, the victim of sexual assault, would rather suffer silently than falsely implicate somebody. Any statement of rape is an extremely humiliating experience for the family members of the girls and women. Until she/they is/are a victim of sex crime, she/they would not blame anyone but the real culprit. While appreciating the victim's evidence, the courts must never forget that no self- respecting Father would put her daughter's honour at stake by falsely alleging the commission of rape on her.

Ordinarily, a look for corroboration of victim's testimony is unnecessary and uncalled for. No doubt, the DNA is negative, but it is evident from the testimony of the victim that she not only identified the accused but also proved how the incident had occurred. The statement of a witness must be read in its entirety. Reading a line out of context is not an accepted canon of appreciation of evidence.

ii) A statement recorded Under Section 164 Cr.P.C. can never be used as substantive evidence of the truth of the facts. Still, it may be used for contradiction or corroboration of the witness who made it. As such, we hold that the absence of any statement under Section 164 Cr.P.C. has not caused any prejudice to the accused or caused any miscarriage of justice… Moreover, it is a settled principle that investigation flaws should not cause prejudice to the rights of the sexually harassed victims, and accordingly, hyper-technicalities are to be avoided.

Conclusion: i) The statement of a witness must be read in its entirety. Reading a line out of context is not an accepted canon of appreciation of evidence.

ii) Investigation flaws should not cause prejudice to the rights of the sexually harassed victims.

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19. **Lahore High Court**
Khadija Shah v. The State, etc.
Criminal Misc. No.64830-B of 2023
Ms. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC5020.pdf

Facts: The petitioner sought post-arrest bail in the case F.I.R registered under section 7 of the Anti-Terrorism Act, 1997 and sections 302, 324, 290, 291, 353, 186, 153, 153-A, 153-B, 152, 149, 148, 146, 147, 131, 121, 121-A, 120-A, 107, 109, 505, 452, 436, 427, 395, 120-B of the Pakistan Penal Code, 1860.

Issue: Whether deletion of an objectionable tweet with an apology which was uploaded on social media to motivate the general public against the State Institutions makes the case one of further inquiry for bail under Section 497(2), Cr.P.C?

Analysis: As far as the contention of learned Additional Prosecutor Generals that the petitioner, along with others, enticed and motivated the general public against the Pakistan Army, State Institutions, and anti-state activities, leading to a devastating impact on the country, is concerned, the reports whether she made such tweets and same were uploaded from her social media accounts or not is still awaited. She admitted that one controversial tweet was uploaded which was subsequently deleted through her Twitter message. She tweeted and deleted it by admitting her wrongdoing. The petitioner, in her other Tweet after deleting the objectionable tweet, tendered apology through her tweet. The state is like a mother; one should be given a chance if she/he commits a mistake and apologizes. In these circumstances, prima facie prosecution case against the petitioner falls under the

ambit of further inquiry into her guilt under Section 497(2), Cr.P.C.

Conclusion: Deletion of an objectionable tweet with an apology which was uploaded on social media to motivate the general public against the State Institutions makes the case one of further inquiry for bail under Section 497(2), Cr.P.C.

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20. **Lahore High Court**
Muhammad Hanif Abbasi v. The State
Crl. Appeal No.663,684,685,834,747 of 2018
Miss Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC5352.pdf

Facts: The appellant faced trial for offences under Section 9(c), 14, 15 & 16 of the Control of Narcotic Substances Act, 1997. The trial court convicted the appellant under Section 9(c) & 16 of the Control of Narcotic Substances Act, 1997 and sentenced. Feeling aggrieved, the appellant has assailed his conviction by filing the instant appeal.

Issues: i) What is the obligation of an officer-in-charge of police station if any information disclosing a cognizable offence is laid before him satisfying the requirements of Section 154 of Cr.P.C?
ii) Whether there is any provision in law which allows arresting of a person without an order from the Magistrate and without a warrant?
iii) What is the condition precedent for putting the machinery of investigation in motion?
iv) What is the meaning of investigation?
v) Whether there is any specific provision relating to the permission of pre-investigative inquiry?
vi) Whether the investigating officer has jurisdiction to take steps regarding the investigation without the leave of the Court, if the offence is non-cognizable?
vii) Whether the trial court is bound to ask such questions from an accused under section 342 of the Criminal Procedure Code, 1898, which relates to the root of prosecution evidence based on his/their conviction?
viii) Whether the Public Prosecutor can withdraw from the prosecution of any person of the offences for which he is tried?
ix) What is the purpose of tendering pardon to an accomplice?
x) Whether the Magistrate of 1st Class is empowered to tender pardon to an accomplice at the stage of investigation?
xi) Whether an accomplice who has been given a pardon gets protection from the prosecution?
xii) What if the accomplice refused to comply with the condition on which he was tendered pardon?

Analysis: i) The criminal procedure provided that if any information disclosing a cognizable offence is laid before an officer-in-charge of a police station satisfying the requirements of Section 154 of Cr.P.C., the said police officer has no other option

except to enter the substance thereof in the prescribed form, that is to say, to register a case based on such information. The officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 of Cr.P.C.

ii) By its very definition, a cognizable offence would be a serious offence. A cognizable offence would be where the Investigating Officer can arrest the accused without a warrant. Section 154 of Cr.P.C. specifies that when a person commits any cognizable offense could be arrested without an order from the Magistrate and without a warrant.

iii) The only condition precedent for putting the machinery of investigation in motion under Section 154 of Cr.P.C. is information of a cognizable offence and registration of a criminal case for the offence alleged to have been committed, which is cognizable.

iv) The investigation includes all proceedings under the Code of Criminal Procedure, 1898, for collecting evidence by a police officer.

v) There is no specific provision where pre-investigative inquiry is either expressly permitted. Except under Section 174 Cr.P.C. as regards unnatural deaths and other cases reported to the police.

vi) If the offence is non-cognizable, the investigating officer has no jurisdiction to take any further steps regarding the investigation without the leave of the Court by the provisions of Section 155 (2) of the Code. It is only in cases where the cognizable offence is not disclosed or the authenticity of which ex-facie is highly doubtful.

vii) It is a consistent view of the Apex Court that any circumstance in respect of which an accused was not examined under section 342 of Cr.P.C. cannot be used against him/them. Non-indication of inculpatory material in its relevant facets by the trial court to the accused adds to the vulnerability of the prosecution case. The trial court was bound to ask such questions from an accused under section 342 of the Criminal Procedure Code, 1898, which relates to the root of prosecution evidence based on his/their conviction.

viii) As per the procedure laid down under section 494 of Cr.P.C. for withdrawal of the prosecution, the Public Prosecutor may, with the court's consent before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried.

ix) The principle for tendering pardon to an accomplice or its revocation is contained in sections 337 to 339 of the Code of Criminal Procedure, 1898, under Chapter XXIV. The principles of tendering a pardon to an accomplice in section 337 of Cr.P.C. have already been explained. The purpose of tendering pardon to an accomplice is mainly to un-reveal the truth in a grave offence so that the guilt of other accused persons concerned in committing a crime could be brought home. The object of section 337 of Cr.P.C. is to allow pardon in cases where a heinous offence is alleged to have been committed by several persons so that with

the aid of the evidence of the person granted pardon, the evidence may be brought home to the rest. Section 337 of Cr.P.C. empowers a Magistrate or the trial court to tender a pardon to a person supposed to have been directly or indirectly concerned in, or privy to an offence, to which this section applies at any stage of the investigation or inquiry or trial of the crime on condition of their making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence.

x) The Magistrate of 1st Class is also empowered to tender pardon to an accomplice during the trial but not at the stage of investigation on condition of his making full and true disclosure of entire circumstances within his knowledge relative to the crime.

xi) Section 338 of Cr.P.C. vests the court to which the commitment is made with the power to tender pardon to an accomplice. An accomplice who has been given a pardon under sections 337 and 338 of Cr.P.C. gets protection from the prosecution when they are called as a witness for the prosecution.

xii) They must comply with the condition of their making a full and true disclosure of the whole circumstances within their knowledge relating to evidence under his knowledge and in the knowledge of any other person, whether as principal or abettor, in the commission thereof and if they possess any material within their knowledge, concerning the commission of a crime or to refuse to comply with the condition on which tender was given to them, the public prosecutor shall give a notice under section 338 of Cr.P.C. to that effect, and the protection given to them is lifted.

Conclusion: i) The officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered.

ii) Section 154 of Cr.P.C. specifies that when a person commits any cognizable offense could be arrested without an order from the Magistrate and without a warrant.

iii) The only condition precedent for putting the machinery of investigation in motion under Section 154 of Cr.P.C. is information of a cognizable offence.

iv) The investigation includes all proceedings under the Code of Criminal Procedure, 1898, for collecting evidence by a police officer.

v) There is no specific provision where pre-investigative inquiry is either expressly permitted except under Section 174 Cr.P.C. as regards unnatural deaths and other cases reported to the police.

vi) The investigating officer has no jurisdiction to take steps regarding the investigation without the leave of the Court, if the offence is non-cognizable.

vii) The trial court is bound to ask such questions from an accused under section 342 of the Criminal Procedure Code, 1898, which relates to the root of prosecution evidence based on his/their conviction.

viii) The Public Prosecutor may, with the court's consent before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried.
ix) The purpose of tendering pardon to an accomplice is mainly to un-reveal the truth in a grave offence so that the guilt of other accused persons concerned in committing a crime could be brought home.
x) The Magistrate of 1st Class is not empowered to tender pardon to an accomplice at the stage of investigation.
xi) An accomplice who has been given a pardon under sections 337 and 338 of Cr.P.C. gets protection from the prosecution when they are called as a witness for the prosecution.
xii) If the accomplice refused to comply with the condition on which he was tendered pardon, the public prosecutor shall give a notice under section 338 of Cr.P.C. to that effect, and the protection given to him is lifted.

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21. **Lahore High Court**
Hasnain Afzal etc. v. Government of Punjab etc.
Writ Petition No.30999/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC5502.pdf

Facts: The petitioners challenged the order passed by respondent No.2, whereby petitioners' representation to treat them as "regular employees" instead of "permanent workmen" was declined.

Issues: i) Whether daily wager can be treated as regular employee or regular civil servant due to afflux of time?
ii) Whether word "regularization" can be construed to treat "daily wagers" as "regular employees" of the Board or "civil servants"?
iii) Whether appointments of daily wagers as "permanent workmen" and not as "regular employees" are contrary to the case law developed from time to time?
iv) Whether enrollment through daily wages, without any prescribed criteria, standards and transparent procedure, can be a route to become civil servant or regular employee in Public Sectors?

Analysis: i) Under Section 187(2) of the Punjab Local Government Act, 2022 (Act XXXIII of 2022), the employees of the Punjab Local Government service shall be appointed through the Punjab Public Service Commission (PPSC) and under Section 187(4) of the Act XXXIII of 2022, all the employees of Punjab Local Government, appointed through PPSC against sanctioned posts on contract basis prior to commencement of the Act XXXIII of 2022, shall stand regularized in Punjab Local Government service on completion of their contracts period. No provision in any relevant previous law of the Local Government or Policy of the Board has been referred to, under which daily wagers who were not enrolled through open merit competition, shall be treated as regular employees of the Board or civil servants merely due to afflux of time rather the employee, on work

charged basis or paid from contingencies or who is a worker or workman, has been specifically excluded from the definition of "Civil Servant" described under Section 2(b) of the Punjab Civil Servant Act, 1974 (Act of 1974). The relevant law, which provides protection to the daily wagers who have been performing their duties against permanent posts for long period of time, is Para 1(b) of the Schedule attached to the Ordinance of 1968… Under aforesaid Para 1(b) of the Schedule, attached to Ordinance of 1968, "permanent workman" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment.

ii) The word "regularization" cannot be construed to treat "daily wagers" as "regular employees" of the Board or "civil servants", as such interpretation will not only be against the law settled by the Supreme Court in "Province of Punjab Vs. Ahmad Hussain" supra but also go beyond the specific provision of Para 1(b) of the Schedule to the Ordinance of 1968 and Section 2(b) of the Act of 1974, and will amount to circumvent the entire due process of open merit competition, required for appointments of civil servants and regular employees in Public Sectors, including the Board.

iii) The argument of petitioners that their appointments as "permanent workmen" and not as "regular employees" are contrary to the case law developed from time to time, is misconceived.

iv) It can easily be deduced that enrollment through daily wages, without any prescribed criteria, standards and transparent procedure, cannot be a route to become civil servant or regular employee in Public Sectors, including the Board rather "daily wager" can only be treated as "permanent employee/workman" under the Ordinance of 1968.

Conclusion: i) Daily wager cannot be treated as regular employee or regular civil servant due to afflux of time but he will be considered as permanent employee.

ii) The word "regularization" cannot be construed to treat "daily wagers" as "regular employees" of the Board or "civil servants".

iii) The appointments of daily wagers as "permanent workmen" and not as "regular employees" are not contrary to the case law developed from time to time.

iv) Enrollment through daily wages, without any prescribed criteria, standards and transparent procedure, cannot be a route to become civil servant or regular employee in Public Sectors.

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22. **Lahore High Court**
Niaz Abbas alias Muhammad Nawaz, etc v.The State, etc
The State v. Muhammad Asif, etc
Criminal Appeal No.36092 of 2019
Murder Reference No.150 of 2019
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5215.pdf

Facts: Appellants (Niaz Abbas alias Muhammad Nawaz, Muhammad Asif, Muhammad

Aslam alias Mehnga and Muhammad Zahoor Ahmad) filed present Criminal Appeal against convictions and sentences awarded to them by the learned Trial Court on the charge under Sections 302, 324, 337-A(i), 337-D, 337-F(ii), 337-F(iii), 337-F(vi), 337- L(2), 109, 148, 149, P.P.C. However learned trial court vide same judgment acquitted Fazal Abbas, Muhammad Amjad, Muhammad Aslam son of Muhammad Iqbal, Muhammad Iqbal, Habib, Rabnawaz, Muhammad Zafar and Usman by extending them benefit of doubt and Criminal Appeal filed by complainant against acquittal of aforementioned accused persons before High Court has already been dismissed for non-prosecution. Moreover, one of the accused persons namely Raja Ijaz Ahmed who was assigned resorting to first fire shot that landed on the forehead of Muhammad Ashraf (deceased) was indicted and tried separately and at the end of trial earned acquittal and PSLA filed by the complainant was dismissed as having been withdrawn. Murder Reference was sent by learned trial court for confirmation of death sentence awarded to appellants. Since all the matters have originated from the impugned judgment, the same are decided through this single consolidated judgment.

Issues: i) What is the effect of belated recording of the statements of injured PWs?
ii) Whether evidence of a PW can be made basis for conviction of appellant(s), who names few accused persons in his examination-in-chief leaving all other appellants/accused?
iii) Whether injuries on the person of PWs are sufficient to prove their credibility and truth?
iv) When direct evidence of an injured witness cannot be relied?
v) What is the effect of dishonest improvements of witnesses of ocular account?
vi) What is the effect of acquittal of majority of accused persons on the same set of witnesses?
vii) What is the effect of dispatch of crime empties to PFSA after the arrest of accused?
viii) Whether investigation officer is bound by the statements of complainant?
ix) Whether heinousness of crime is alone sufficient to convict accused persons?

Analysis: i) …no plausible justification, however, was furnished qua belated recording of statements of injured PWs despite the fact that they were conscious when their injury statements were prepared by the Investigating Officer at T.H.Q. Hospital Shahpur Saddar. The belated recording of the statements of injured PWs would reduce their value to nil and no explicit reliance can be placed on such statements particularly where no reason was forthcoming justifying recording of their statements belatedly.
ii) …he in the whole of his examination in chief did not name out any of the accused except four accused persons as referred in the preceding lines. He simply omitted to name out any of the appellants. Evidence of this PW, therefore, can conveniently be put aside and in no way be made basis for the conviction of appellant.
iii) …it may be observed that mere stamp of injuries on their persons does not

make them truthful witnesses. It is, in fact the intrinsic worth of a witness which is evaluated by a court of law. It is by now a settled principle that injuries on the person of PWs may merely indicate qua their presence at the spot but same in no way can be counted as affirmative proof of their credibility and truth.

iv) …that direct evidence furnished even by the injured witnesses that apparently have no axe to grind, still can be dismissed if the same otherwise is found lacking the ring of truth. In the instant matter, we are of the considered view that evidence of even injured witness hardly rings true.

v) …It is by now settled principle of law that if improvements are found to be deliberate and dishonest, same would cast doubt on the veracity of the testimony of such witness of ocular account and no reliance can be placed on such testimony for conviction on a charge entailing death penalty for the simple reason that when a witness makes dishonest improvements while deposing before the court, he simply exposes himself to his own dishonesty that ipso facto is sufficient to discard his evidence by counting him a dishonest person.

vi) In such situation, principle of safe administration of criminal justice requires extending of benefit of doubt to the appellants particularly where majority of co-accused persons was acquitted on the same set of witnesses who did not come up with the whole truth, as such their evidence could not be used for convicting some of the accused keeping in view the principle as enshrined in maxim 'falsus in uno falsus in omnibus' and most importantly in a case where truth was mixed very heavily with something which was untrue and the prosecution witnesses did not disclose true and real facts.

vii) So far as recovery of firearm and positive report of Punjab Forensic Science Agency is concerned same is simply inconsequential in view of the fact that crime empties were shown to be recovered from the spot on 31.10.2015, however, the same were shown to be dispatched to the office of Punjab Forensic Science Agency on 18.01.2016 after the arrest of appellants namely Niaz Abbas, Muhammad Asif and Muhammad Aslam on 30.12.2015. Positive report, if any, qua these three appellants, therefore, was of no avail to prosecution.

viii) …He according to the provisions of Police Order and Police Rules in no way was bound by the statements of complainant and PWs and if he during the course of investigation came to the conclusion that real culprits were some other persons, he was fully competent to round them up, collect evidence and bring them to justice.

ix) It may be observed that mere heinousness of the crime cannot detract the court of law in any manner from the due course to judge and make the appraisal of evidence as per accepted principles of appreciation of evidence so propounded by the Superior Courts. Heinousness of crime alone in absence of confidence inspiring evidence to prove the charge against accused beyond any shadow of doubt, would hardly be sufficient for making the same a lawful basis for conviction of accused if charge has not been proved through the produced evidence beyond the shadow of reasonable doubt.

Conclusion: i) The belated recording of the statements of injured PWs would reduce their value to nil and no explicit reliance can be placed on such statements particularly where no reason was forthcoming justifying recording of their statements belatedly.
ii) From a particular PW, omitting to name out any of the appellants in evidence can conveniently be put aside and in no way be made basis for the conviction of appellant.
iii) Injuries on the person of PWs may merely indicate qua their presence at the spot but same in no way can be counted as affirmative proof of their credibility and truth.
iv) Direct evidence of an injured witness cannot be relied if the same lacks ring of truth.
v) If improvements are found to be deliberate and dishonest, same would cast doubt on the veracity of the testimony of such witness of ocular account.
vi) Where truth is mixed very heavily with something which is untrue, benefit of doubt is extended to accused persons in view of maxim 'falsus in uno falsus in omnibus'.
vii) Dispatch of crime empties to PFSA after the arrest of appellants and its positive report is of no avail to prosecution.
viii) Investigation officer is not bound by the statements of complainant and PWs and if he during the course of investigation came to the conclusion that real culprits were some other persons, he was fully competent to round them up, collect evidence and bring them to justice.
ix) Heinousness of crime alone in absence of confidence inspiring evidence, would hardly be sufficient for the basis of conviction.

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23. **Lahore High Court**
Syed Ali Raza Naqvi, etc. v. Chairman PPSC, etc.
W. P. No.43082 of 2023.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5412.pdf

Facts: The petitioners are aggrieved of non-issuance of appointment letters despite recommendations by Punjab Public Service Commission due to criminal cases, in which petitioners have already been acquitted. Hence, the instant writ petition has been filed.

Issues: i) How the term "criminal record" can be defined?
ii) Whether discretion can be exercised in mechanical way, when future of a citizen is at stake?
iii) Whether right of appointment of a qualified person is protected from any discrimination under the Constitution?
iv) Whether fundamental rights under the Constitution can be compromised by a rule of thumb?

Analysis: i) The term "criminal record", denotes a consistent involvement in criminal

activities.

ii) The discretion cannot be exercised in mechanical way, when future of a citizen is at stake. The petitioners, being citizens, have constitutional and fundamental right under Articles 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") against discrimination and for choice of occupation and profession.

iii) In particular under Article 27 of the Constitution, a person qualified for appointment is protected from any discrimination, which in this Court's opinion, includes denial for appointment on conjectures and surmises. For having a criminal record opinion, the authority must disclose the reasons, as envisaged in Faraz Naveed Case (supra), based on material gathered from Special Branch or concerned Police Station. The rule of thumb followed by the respondents to refuse appointment is declared ultra-vires of the Constitution.

iv) Acquittal for no evidence means that the allegation in FIR was false. Any law abiding citizen, by fate, can be entangled in any criminal case, therefore, his future and fundamental rights under the Constitution cannot be compromised by a rule of thumb.

Conclusion: i) The term "criminal record", means a consistent involvement in criminal activities.

ii) Discretion cannot be exercised in mechanical way, when future of a citizen is at stake.

iii) Right of appointment of a qualified person is protected from any discrimination under the Constitution.

iv) Fundamental rights under the Constitution cannot be compromised by a rule of thumb.

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24. **Lahore High Court**
Judicial Activism Panel v. Government of Pakistan, etc.
W. P. No.67863 of 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5568.pdf

Facts: In response to the Provincial Government's failure to enforce price control following the High Court Division Bench decision, citing a legal gap as an excuse, this petition was filed and is being heard alongside other connected petitions.

Issue: Whether Constitution of Pakistan grants unabridged powers to the High Court for enforcement of fundamental rights?

Analysis: Enforcement of fundamental rights and protection of the Constitution is the primary function of a High Court under the Constitution and as per the oath the Judge of this Court has sworn accordingly. Article 199(2) of the Constitution gives unabridged power to this Court for enforcement of fundamental rights under

Chapter 1, Part- II, which is subject only to the Constitution, not law.

Conclusion: Yes, the Constitution of Pakistan confers unbridged powers to the High Court for enforcement of fundamental rights.

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25. **Lahore High Court**
Zahida Bibi etc. v. SUMMIT Bank Ltd.
E.F.A. No.35845 of 2020
Mr. Justice Shahid Karim, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC9660.pdf

Facts: Through the instant appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the appellant has assailed the order whereby the objection petition filed by the appellants/judgment debtors has been dismissed.

Issue: Whether transparency of auction proceedings can be ignored merely on the basis of auction report?

Analysis: …To ensure transparency in the auction proceedings, through the Lahore High Court Amendment dated 15.08.2018, a duty has been cast upon the Court Auctioneer in sub-rule (2)(ii) of Rule 67 of Order XXI of CPC to cause video recording of the auction proceedings while ensuring transparent and fair bidding process of the public auction and the costs of such video recording shall be deemed to be costs of the sale… Rule 67 of Order XXI of CPC, prior to the Lahore High Court Amendment dated 15.08.2018, conferred authority upon the executing Court to direct that proclamation of auction shall be published in the official gazette or in a local newspaper or both and the cost of such publication shall be deemed to be costs of the sale. The purpose behind the enactment of Rules 54 and 67 of Order XXI of CPC is to give wide publicity to the sale of the property so that maximum number of people may turn up to participate in it and give bids that match the price the property deserves. Although Rule 67(2) ibid is directory, that failure to comply with such provision cannot be brushed aside without due application of mind and the Court has to undo a sale if such failure causes injustice. To ensure wide publicity, the Lahore High Court Amendment has substituted sub-rule (2) of Rule 67 of the CPC to make it mandatory for the Court to order proclamation to be published in at least one widely circulated national daily newspaper in every case where the reserve price fixed by the Court exceeds rupees two million, and the costs of such publication are deemed to be costs of the sale.

Conclusion: Ttransparency of auction proceedings cannot be ignored merely on the basis of auction report. Any objection in this regard requires factual inquiry and proper determination.

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26. **Lahore High Court,**
Manzoor Ahmad v. Federation of Pakistan Through Secretary to The Government of Pakistan, Ministry of Energy (Power Division), Islamabad and 4 others,
Intra Court Appeal No.60992 of 2023,
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2023LHC5152.pdf

Facts: The appellant was appointed as Deputy Managing Director (AD&M) on contract basis. However, later on, Deputy Secretary Government of Pakistan Ministry of Energy (Power Division) in a letter proceeded to direct the Board of Directors of National Transmission & Dispatch Company, Limited to dispense with the services of the appellant by serving one month's notice. Then, the Board of Directors terminated the services of the petitioner without cause. The appellant challenged the notification through writ petition, but it was dismissed. Hence, this appeal under Section 3 of the Law Reforms Ordinance, 1972 was filed.

Issue: Whether a contract employee may invoke the constitutional jurisdiction of High Court with regard to the matters relating to the terms and conditions of service or termination?

Analysis: In the case of breach of any of the terms and conditions of contract or any other issue ensuing there from, the grouse can only be remedied by filing a suit for damages. Regularization is a policy matter which necessarily requires backing of the law. In the absence of any law, policy or rules, an employee cannot knock on the door of the High Court for regularization of his/her services. It is the prerogative of the employer to decide the terms and conditions of an employee's contract. It is not for the court to step into the shoes of the employer and force him to employ someone for whom there is no available post, even if there is one, without following due process, procedure and criteria. The relationship between employer and contract-employee is governed by the principle of "master and servant" and except in exceptional circumstances; disputes arising there from are beyond the jurisdiction and parameters of the powers of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan.

Conclusion: A contract employee is precluded to invoke the constitutional jurisdiction of High Court with regard to the matters relating to the terms and conditions of service or termination, as the relationship of such employee and department shall be deemed to be as of master and servant.

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27. **Lahore High Court**
Ejaz Hussain Rathore v. Bahria Town (Private) Limited, Ahmad Ali Riaz and Riaz Malik
Regular First Appeal No. 08 of 2018
Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5476.pdf

Facts: Appellant filed suit for possession, permanent injunction and recovery of damages which was partially decreed and dismissed to the extent of prayer of possession of suit property. Hence, this appeal.

Issue: Whether mere breach of agreement is sufficient to straightway grant special damages?

Analysis: While awarding special damages, it is to be kept in mind that the person claiming special damages has to prove each item of loss with reference to the evidence brought on record. This may also include out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Appellant's claim so agitated in the case in hand was bound to be followed by strong and legally reckoned evidence for proof thereof and mere breach of the agreement on part of the Respondent in said regard was not sufficient enough to straightaway grant special damages in favour of the Appellant. In this connection, the Appellant was obliged to establish, substantiate and prove all heads of his claim separately and distinctly. According to substance of aforementioned Section 73 of the Contract Act, 1872, remote and indirect loss or damage sustained by reason of agitated breach cannot be granted.

Conclusion: Mere breach of agreement is not sufficient to straightway grant special damages rather the person claiming special damages has to prove each item of loss with reference to the evidence brought on record.

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28. **Lahore High Court,**
Irshad Ahmed v. Shaukat Hussain Kiyani etc.,
Writ Petition No. 1215 of 2020,
Mr. Justice MirzaViqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2023LHC5158.pdf

Facts: Respondent had moved an ejectment petition under the Punjab Rented Premises Act, 2009 seeking eviction of the petitioner from the ground floor of the rented house on score of expiry of relevant rent agreement, violation of its terms and conditions as well as non-payment of rent at the enhanced rate. Above mentioned petition was accepted and petitioner's preferred appeal was dismissed as well. Hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: i) Whether the term 'application' used in section 19 of PRPA, 2009 is restricted only to the ejectment petition?
ii) How a tenant's application seeking leave to contest would be proceeded if he seeks enforcement of his rights under the tenancy agreement not conforming to the provisions of the Punjab Rented Premises Act, 2009?
iii) Whether section 9 of PRP Act, 2009 is restricted only to application filed by landlord?

Analysis: i) From the bare perusal of section 19 of Punjab Rented Premises Act, 2009, it is manifestly clear that the term "application" used therein is not restricted to the ejectment application, rather it can be any other application falling within the domain of Rent Tribunal established under the "Act, 2009"

ii) Section 22 (2) of the Punjab Rented Premises Act, 2009 mandates that, subject to the Act ibid, a respondent shall file an application for leave to contest within ten days of his first appearance in the Rent Tribunal. If the tenancy agreement introduced by the tenant in his defence in the application for leave to contest is not registered or it does not conforming to the provisions of the Act ibid, the Rent Tribunal can halt further proceedings in the matter and can direct the tenant to pay the penalty in terms of section 9 of the Act ibid within specified period of time. On deposit of such amount within specified period, tenant's application for leave to contest should be proceeded further and in case of failure, it should be dismissed.

iii) Section 9 of the "Act, 2009" is not restricted only to the application filed by the landlord, more particularly the ejectment petition. In other words, any application either by the landlord or tenant, as the case may be, when brought before the Rent Tribunal under the "Act, 2009" for enforcement of his rights under the tenancy agreement not conforming to the provisions of the "Act, 2009", can be proceeded after having a recourse to section 9 of the "Act, 2009" by directing the landlord or the tenant to deposit the penalty.

Conclusion: i) The term 'application' used in section 19 of PRPA, 2009 is not restricted to the ejectment petition rather it can be any other application falling within the domain of Rent Tribunal established under the "Act, 2009".

ii) A tenant's application seeking leave to contest, brought before the Rent Tribunal under the Punjab Rented Premises Act, 2009, for enforcement of his rights under the tenancy agreement not conforming to the provisions of the Act ibid, can only be proceeded after having a recourse to section 9 of the Act ibid by directing him to deposit the penalty.

iii) Section 9 of the "Act, 2009" is not restricted only to the application filed by the landlord, more particularly the ejectment petition rather it applies to any application filed by landlord or tenant.

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29. **Lahore High Court**
Samina Naz and 5 others v. Evacuee Trust Properties Board
Writ Petition No.2826-R of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC5141.pdf

Facts: Subject property was allotted to the predecessors-in-interest of the petitioners. It is claim of the petitioners that respondent-department then sold out the "subject property" through registered sale deed to their predecessors-in- interest with the permission of the Federal Government. It is asserted that the sale deed was called in question by the respondent-department through a suit before the Civil Court,

which was initially dismissed by the trial court as well as the appellate court, however, in Civil Revision filed by the respondent-department judgments of both the courts were reversed by way of judgment. The petitioners being aggrieved filed Civil Appeal before the Supreme Court of Pakistan, which too was dismissed by way of judgment. The petitioners then filed a Civil Review Petition, which has been dismissed during the pendency of this petition. The grievance of the petitioners is that the respondent-department without any lawful authority, jurisdiction and without notice sealed the "subject property" and started entering into lease agreements with their tenants, which act is illegal and not operative upon their rights.

Issues: i) What was the object behind promulgation of Evacuee Trust Properties (Management and Disposal) Act, 1975?
ii) What is meant by evacuee trust property?
iii) Whether the Evacuee Trust Properties Board can resort to the provisions of the Evacuee Trust Properties (Management and Disposal) Act, 1975 instead of invoking the provisions of Order XXI of the CPC?

Analysis: i) "Act, 1975" was promulgated to provide for the management and disposal of evacuee properties attached to charitable, religious or educational trusts or institutions.
ii) Section 2(d) of the "Act, 1975" defines "evacuee trust property" as under:-

> "(d) "Evacuee trust property" means evacuee trust properties attached to charitable, religious or educational trusts or institutions or any other properties which form part of the Trust Pool constituted under this Act."

iii) There is no cavil to the proposition that in ordinary course a decree holder can only get the fruits of the decree by putting it to the test of execution in terms of Order XXI of "C.P.C." but on account of nature of the property being evacuee it always would remain a subject of the "Act, 1975". Section 25 of the "Act, 1975" authorizes the Chairman, Administrator, Deputy Administrator and Assistant Commissioner to eject any person in possession or occupation of any evacuee trust property whose possession or occupation is unauthorized. Section 31 of the Act ibid provides an overriding effect to the "Act, 1975". Needless to reiterate that when once it is declared by the court of competent jurisdiction that the "subject property" is an evacuee property and the sale in favour of the predecessors-in-interest of the petitioners was void ab-initio, status of the petitioners being successors-in-interest of the purported vendees becomes that of illegal occupant and trespassers, paving way for respondent-department to invoke the penal provisions of the "Act, 1975".

Conclusions: i) Act, 1975" was promulgated to provide for the management and disposal of evacuee properties attached to charitable, religious or educational trusts or institutions.
ii) Evacuee trust property" means evacuee trust properties attached to charitable, religious or educational trusts or institutions or any other properties which form

part of the Trust Pool constituted under this Act.
iii) Evacuee Trust Properties Board can resort to the provisions of the Evacuee Trust Properties (Management and Disposal) Act, 1975 instead of invoking the provisions of Order XXI of the CPC, as on account of nature of the property being evacuee it always would remain a subject of the "Act, 1975.

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30. **Lahore High Court**
Zahid Khan etc v. Muhammad Ahsan etc.
C.R.No.550-D/2016
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC5167.pdf

Facts: Through this civil revision the petitioners have challenged the validity of the judgment & decree passed by the learned Civil Judge who decreed the suit for possession through pre-emption filed by the respondent No.1 and also assailed the judgment & decree passed by the learned Additional District Judge who dismissed the appeal of petitioners.

Issues: i) Whether the right of preemption is stipulated with the sale of immovable property with permanent transfer of the title as well as the performance of the mandatory Talab as per law?
ii) What is meant by "sale"?
iii) Whether mere registration of the document of sale deed and attestation of mutation in favour of the vendee is only amounted to mature title of the vendee?
iv)Whether the suit of preemptor can be succeeded in case the subject matter land resold/ sale back to previous owner without preemption of such subsequent sale transaction?
v)Whether non-production of the acknowledgment receipt (A.D) amounts to withholding of material evidence?
vi)Whether non-production of witness of notice of Talb-i-Ishhad without furnishing plausible ground amounts to withholding best evidence and adverse presumption can be drawn against the plaintiff?
vii) Whether the performance of mandatory Talb as envisaged under Section 13 of the Punjab Pre-emption Act, 1991 has much significance?
viii) Whether High Court has jurisdiction to adjudicate the matter if it appears from decision of the subordinate Courts that the lower fora have exercised jurisdiction not vested in it by law?

Analysis: i) The right of preemption emanates from Section 5 of the Punjab Pre-emption Act, 1991 which is stipulated with the sale of immovable property with permanent transfer of the title as well as the performance of the mandatory Talab as per law...
ii) The sale means transaction of any land with permanent transfer of title / ownership against payment of price in the shape of money, thus a "sale" is transfer of ownership of immovable property in exchange for a price paid or

promised or partly paid or partly promised and for such transaction, payment of price must be contemplated; same must be followed by the delivery of possession.
iii) Mere registration of the document of sale deed and attestation of mutation in favour of the vendee is amounted to mature title of the vendee which is mere a subsequent event for the fiscal purpose or to update the official record…
iv) When the suit land was sold back to the ex-vendor through mutation which was sanctioned after a while and this transaction was not preempted and even the sale transaction affected through said mutation was also not pre-empted by the respondent, thus his suit is not maintainable…
v) Non-production of the acknowledgment receipt (A.D) amounts to withholding of material evidence, which flaw has grave adverse effect on the case of the respondent/plaintiff.
vi) When plaintiff has not produced the witness of notice of Talb-i-Ishhad nor any explanation has been furnished in this regard. Thus, it is amounted to withholding of the best evidence and it would be legally presumed that had the said witness produced in the evidence, he would have deposed unfavourable against the respondent/plaintiff and presumption under Article 129 (g) of Qanun-e-Shahadat Order, 1984 goes against him, as such the plaintiff failed to prove the service of notice of Talb-i-Ishad as well...
vii) The performance of mandatory Talb as envisaged under Section 13 of the Punjab Pre-emption Act, 1991 has much significance as it lays or dismantles the foundation of the very suit and skip off or non-performance of a single Talb demolishes the whole superstructure of the pre-emptory cause even though the remaining Talbs have been performed.
viii) Suffice it to say in this regard that under Section 115 C.P.C this Court has jurisdiction to entertain and adjudicate the matter if it appears from decision of the subordinate Courts that the lower fora have exercised jurisdiction not vested in it by law or failed to exercise a jurisdiction so vested, or have acted in the exercise of its jurisdiction illegally or with material irregularity and may pass appropriate order as it deems fit…

Conclusion: i) Yes, the right of preemption is stipulated with the sale of immovable property with permanent transfer of the title as well as the performance of the mandatory Talab as per law.
ii) A "sale" is transfer of ownership of immovable property in exchange for a price paid or promised or partly paid or partly promised and for such transaction, payment of price must be contemplated; it must be followed by the delivery of possession.
iii) Yes, mere registration of the document of sale deed and attestation of mutation in favour of the vendee is only amounted to mature title of the vendee.
iv) The suit of preemptor cannot succeed in case the subject matter land resold/sale back to previous owner without preemption of such subsequent sale transaction.
v) Yes, non-production of the acknowledgment receipt (A.D) amounts to

withholding of material evidence.
vi) Yes, non-production of witness of notice of Talb-i-Ishhad without furnishing plausible ground amounts to withholding best evidence and adverse presumption can be drawn against the plaintiff.
vii) Yes, the performance of mandatory Talb as envisaged under Section 13 of the Punjab Pre-emption Act, 1991 has much significance.
viii) Yes, High Court has jurisdiction to adjudicate the matter if it appears from decision of the subordinate Courts that the lower fora have exercised jurisdiction not vested in it by law.

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31. **Lahore High Court**
M/s Reshma Textile Mills Ltd v. Customs Appellate Tribunal
Through its Chairman Lahore etc.
Customs Reference No.57848/2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5346.pdf

Facts: This and connected Customs Reference applications are directed against common judgment passed by a Customs Appellate Tribunal.

Issue: Whether penal consequences could be invoked against a person or its agent in absence of constitution of offence of misdeclaration under section 32 of the Customs Act 1969?

Analysis: A bare perusal of sub-section (1) of section 32 of Customs Act 1969 indicates its independent existence for the purposes of attracting penalty in terms of clause 14 of section 156(1) of Customs Act 1969. Clause 14, ibid, treats offence under sub-section (1) of section 32 of Customs Act as an independent offence, for the purposes of the penalty envisaged. A person can be charged with offence under sub-section (1) of section 32 of Customs Act 1969 where same had knowingly and reason to believe that document furnished, and statement made in connection with the matter of Customs, is false (….) Sub-section (1) of section 32 of Customs Act 1969 does not draw any distinction between declaration made either for the purposes of in-bonding or ex-bonding. Evidently, incorrect declaration / statements made, even for the purposes of in-bonding, is covered under the expression in connection with any matter of customs, and same constitutes an offence under sub-section (1) of section 32 of the Customs Act 1969, incurring penalty in terms of clause 14 of section 156(1) of Customs Act 1969. .

Conclusion: Penal consequences can be invoked against a person or its agent upon misdeclaration under section 32 of the Customs Act 1969.

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32. **Lahore High Court**
Commissioner Inland Revenue, Legal Zone, Corporate Tax Office, Lahore v. LF Logistics Pakistan (Pvt.) Ltd., Lahore & another
ITR No.73773 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5270.pdf

Facts: The applicant-department filed Reference Application under Section 133 of the Income Tax Ordinance, 2001 regarding a question of law, urged to have arisen out of an order passed by an Appellate Tribunal Inland Revenue.

Issues: Whether it is the gross fee and not the gross receipts, which shall be treated as part of turnover for the purposes of commuting the minimum tax liability in terms of clause (b) of sub-section (3) of section 113 of the Income Tax Ordinance, 2001?

Analysis: The turnover, in terms of clause (b) of subsection (3) of section 113 of the Ordinance, means the gross fees paid for rendering of services other than those covered by final discharge of tax liability, for which tax is separately paid or payable. Fundamental question is whether the amounts, comprising of freight charges, terminal charges, shipment handling charges payment of duties and other taxes ('other amounts'), otherwise distinguishable from the fees paid in lieu of rendering of services in terms of clause (b) of sub-section (3) of section 113 of the Ordinance of 2001, could be treated as gross receipts. Factually, the claim of reimbursement of other amounts is not disputed. If construction proposed by learned counsel for the department is acknowledged – to treat other amounts and the service fees as part of gross receipts -, it would not only render clause (b) of sub- section (3) of section 113, *ibid*, redundant but conspicuously distort the meaning and effect of sub-clause (b) of clause (v) of sub-section (7) of section 153 of the Ordinance of 2001, and violates the ratio settled through various judicial pronouncements, wherein the term *"gross fee"* was elucidated. There is no cavil that the term "gross fee", in the context of *rendering of or providing of services*, would exclude reimbursable expenses for the purposes of ascertaining the volume of the "turnover". Accordingly, it is the gross fee and not the gross receipts, which shall be treated as part of turnover for the purposes of commuting the minimum tax liability in terms of clause (b) of sub-section (3) of section 113, *ibid*, and amounts comprising of freight charges, terminal charges, shipment handling charges payment of duties and other taxes have had to be excluded for the purposes of turnover in terms of clause (b) of sub-section (3) of section 113 of the Ordinance of 2001.

Conclusion: It is the gross fee and not the gross receipts, which shall be treated as part of turnover for the purposes of commuting the minimum tax liability in terms of clause (b) of sub-section (3) of section 113 of the Income Tax Ordinance, 2001.

33. **Lahore High Court**
Commissioner Inland Revenue, Zone-I, Regional Tax Office, Gujranwala v. Muhammad Khalid Chaudhry
ITR No.1255 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5263.pdf

Facts: The applicant-department filed Reference Application under Section 133 of the Income Tax Ordinance, 2001 regarding a question of law, urged to have arisen out of an order passed by an Appellate Tribunal Inland Revenue.

Issues: Whether an amendment in a statute which is procedural in nature is to be applied retrospectively even if a substantial right stands accrued in favor of a person?

Analysis: When the legislature, while amending any statute, intends to preserve any inchoate right under a repealed provision, it usually incorporates a saving clause or provision in the amending statute which in not the case in hand. Although, it is also settled law that when any amendment is made in a statute which is procedural in nature then the retrospective rule of construction is to be applied even if it is not specifically given retrospective effect. However, there is an exception to this general rule i.e. when any substantial right stands accrued in favor of a person then this general rule will not be applied.

Conclusion: An amendment in a statute which is procedural in nature cannot be applied retrospectively if a substantial right stands accrued in favor of a person.

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34. **Lahore High Court**
Nestle Pak Limited, Lahore etc v. Shehryar Kureshi etc.
C.R No.43193 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC5317.pdf

Facts: Through instant revision petition, petitioners have assailed judgment passed by Addl. District Judge, whereby respondents' appeal against order, passed by Civil Judge, returning plaint of their suit under Order VII Rule 10 CPC, was accepted, impugned order was set aside and the matter was remanded to Trial Court for decision afresh on merits.

Issues: i) Whether Trade Marks Ordinance affects the action against any person for passing off goods as the goods of another person or services as services provided by another person, or the remedies in respect thereof ?
ii) Whether trade mark owner receives protection against "passing off"?
iii) Whether musical work includes in the schedule of the Trade Marks Ordinance, 2001?
iv) Whether copyright is an exclusive right in relation to any tangible medium of comprehension either audio or visual in any form that could be copied etc. and it have any nexus with independent vendible goods or services unless the same used

as a trademark?

v)Whether register of Copyrights and the indexes as prima facie evidence of the particulars entered therein is admissible in evidence in Courts?

vi)Whether registration is compulsory for the enforcement of the copyright?

vii) Whether failure to get the copyright registered does impair the copyright or destroys the right to sue for copyright infringement?

viii) Whether all suits and other civil proceedings regarding infringement of intellectual property laws shall be instituted and tried in the Intellectual Property Tribunal?

ix) Where a general or special law is in force then whether the jurisdiction of Courts provided in the CPC is barred?

Analysis: i) Infringement of trademark is actionable under section 46 of the Trade Marks Ordinance, 2001. Sub-section (3) of section 46 provides that the Ordinance ibid would not affect the action against any person for passing off goods as the goods of another person or services as services provided by another person, or the remedies in respect thereof.

ii) Basically a trade mark owner receives protection against use of his mark by another in such a way as is likely to lead consumers to associate the others' goods with the trade mark owner. This protection against trade mark infringement, that is, against sale of another's goods as those of the trade mark owner by use of the owner's mark, may be described as protection against "passing off". However, passing off also includes any other method by which one person's goods are made to appear as if they originated from another, whether or not a trade mark is involved. Rule 11 of the Trade Marks Rules, 2004 deals with classification of goods and services, and provides that goods and services shall be classified in the manner specified in the Fourth Schedule.

iii) A comprehensive list containing 34 classes of vendible goods and 8 classes of services is available in the said Schedule, however musical work is not mentioned. Likewise, definition of "services" provided in section 2(xliii) of the Trade Marks Ordinance, 2001 does not include musical work in the ambit of services.

iv) Copyright in terms of section 3 of the Ordinance, 1962 is an exclusive right in relation to literary, dramatic, musical, artistic work, in any tangible medium of comprehension either audio or visual in any form that could be copied, reproduced, multiplied, communicated transmitted, repeated, broadcasted, telecasted, adopted in any form. "Copyright" from the scheme of the Copyright Ordinance appears to protect "copyright" in original work, by itself it is not relatable or associated with any vendible goods or services. The holder of such copyright in musical work has exclusive right to reproduce and multiply such work. From the scheme of the Copyright Ordinance, 1962 it appears that such Copyright work independently is capable of reproduction and reproduced copy is vendible independently and individually. It does not have any nexus with any other separate and independent vendible goods or services unless said work

otherwise is also used as a trade mark under the Trade Marks Ordinance.

v) Section 42 of the Ordinance of 1962 declares the Register of Copyrights and the indexes as prima facie evidence of the particulars entered therein and admissible in evidence in Courts suggesting that copyright subsists in the work and the person showed therein is the owner of such copyright.

vi) A bare reading of section 39 shows that the use of expression "may" is permissive and does not make it obligatory for an author to get the copyright registered. The natural and ordinary meaning of the word "may" would make the registration optional and not compulsory. Moreover, the words "may" and "shall" in legal parlance are interchangeable, depending upon the context in which they are used but legislative intent is to be seen and given effect to. The registration of copyrights in terms of 39 of the Ordinance of 1962 is not mandatory but optional with the author, publisher, owner or other person interested in the copyright…

vii) The very purpose of registration of copyright is to protect the interest of a person who has invented or prepared a particular work as against a person who wants to take undue advantage of the same in order to deceive the unwary public. Needless to say that mere failure to get the copyright registered does not invalidate or impair the copyright nor destroys the right to sue for copyright infringement.

viii) A designated forum i.e. Intellectual Property Tribunal (section 16 of the IPO Act of 2012) has been provided, replacing the Court of District Judge earlier provided by the Ordinance of 1962. Section 17(4) of the IPO Act of 2012 specifically provides that no court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of the Tribunal extends under this Act. Section 18 of the IPO Act of 2012 talks about jurisdiction of the Tribunal and says that all suits and other civil proceedings regarding infringement of intellectual property laws shall be instituted and tried in the Tribunal. Moreover, the intent of legislature regarding exclusive jurisdiction of the tribunal in all matters of intellectual property rights can also be inferred from section 18(2), which contain a non-obstante clause, and clearly bars the jurisdiction of all other courts regarding offences pertaining to intellectual property laws which was otherwise available to a court of Magistrate of the first class under section 72 of the Copyright Ordinance, 1962.

ix) As per Province of Punjab Amendment brought in section 9 of CPC (inserted by Punjab Act XIV of 2018, dated 20th March, 2018), the jurisdiction of Courts provided in the CPC is barred where a general or special law is in force.

Conclusion: i) Trade Marks Ordinance would not affects the action against any person for passing off goods as the goods of another person or services as services provided by another person, or the remedies in respect thereof.

ii) Yes, trade mark owner receives protection against “passing off”?

iii) Musical work does not include in the schedule of the Trade Marks Ordinance, 2001.

iv) Copyright is an exclusive right in relation to any tangible medium of

comprehension either audio or visual in any form that could be copied etc. and it does not have any nexus with independent vendible goods or services unless the same used as a trademark.

v) Yes, register of Copyrights and the indexes as prima facie evidence of the particulars entered therein is admissible in evidence in Courts.

vi) Registration is not compulsory for the enforcement of the copyright.

vii) Mere failure to get the copyright registered does not invalidate or impair the copyright nor destroys the right to sue for copyright infringement.

viii) Yes, all suits and other civil proceedings regarding infringement of intellectual property laws shall be instituted and tried in the Intellectual Property Tribunal.

ix) Yes, where a general or special law is in force than the jurisdiction of Courts provided in the CPC is barred.

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35. **Lahore High Court**
Fareeha Kanwal v. Punjab Healthcare Commission and others
Writ Petition No. 71548/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC5425.pdf

Facts: Petitioner filed writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, directed against a decision of the Punjab Healthcare Commission and a judgment delivered by a District Judge.

Issues: (i) Whether enhancement of fine can be claimed in appeal under Clause (e) of section 31 (1) of the Punjab Healthcare Commission Act 2010?

(ii) What is the scope of jurisdiction of High Court under Article 199(1)(a)(ii) of the Constitution of 1973?

(iii) Whether a fine can be imposed by the Punjab Healthcare Commission under section 28 of the Punjab Healthcare Commission Act 2010 without a determination based on reasoning?

(iv) Whether fine imposed by the Punjab Healthcare Commission can be utilized for compensating a complainant?

(v) What is the scope of the Punjab Healthcare Commission Act 2010 and the Pakistan Medical and Dental Council Act 2022 regarding the cases of medical negligence?

(vi) Whether the Punjab Healthcare Commission can refer a matter of medical negligence to the Pakistan Medical and Dental Council without recording any findings?

(vii) Whether allowing a healthcare establishment to operate on the basis of a provisional licence for an indefinite period is against the object and spirit of the Punjab Healthcare Commission Act 2010?

Analysis: (i) It is well-settled that the right to appeal is a substantive privilege established by law and must be expressly provided by the statute. It cannot be implied. A bare perusal of section 31 of the PHC Act reflects that the right of appeal under

the enactment is limited to five types of orders passed by the Commission. Section 30 merely mentions the bar of jurisdiction. It states that no court other than the Court of the District and Sessions Judge has the authority to question the legality of any action taken, order made or thing done under the PHC Act, or to grant an injunction, or stay or to issue an interim order in relation to any proceedings initiated by the Commission. Section 30 does not confer any new appellate powers on the District and Sessions Judge or otherwise broaden the scope of section 31.

(ii) The High Court's jurisdiction under Article 199(1)(a)(ii) of the Constitution of 1973 provides supervisory control over persons exercising functions related to the business of the Federation, a Province or a local authority. Nonetheless, this jurisdiction is limited to determining whether they acted in conformity with the law in performing theact or conducting the proceedings. If yes, the High Court will stay its hands and not substitute its findings for those of the tribunal. Decisions involving bad faith, excess and abuse of jurisdiction, misdirection, failure to follow the rules of natural justice and conclusions based on no evidence are treated as acts without lawful authority that vitiate the proceedings.

(iii) Section 28 of the PHC Act empowers the Commission to levy a fine up to Rs.500,000/- for contravention of any provision of the Act, and the rules and regulations framed thereunder, considering the gravity of the offence. Therefore, section 28 requires two assessments: first, ascertaining whether a violation occurred, and second, determining the magnitude of the breach and the appropriate monetary penalty. Reasons must support both determinations.

(iv) Section 32(1) of the PHC Act provides that a Fund shall be established for the purposes of the Act, which will be administered and controlled by the Commission. Section 32(2) delineates the sources for this Fund, which *inter alia* include any fees, penalties and other charges levied under the Act. This means that all fees and penalties must be deposited into this Fund. Section 32(3) specifies the permissible uses of the Fund, which primarily include expenses related to the Commission's functioning and operations of the Commission, such as paying employees, hiring contractors and consultants, purchasing equipment, repaying loans, and covering other legitimate expenses. Importantly, Section 32 does not grant the Commission the authority to utilize the Fund for compensating complainants.

(v) Section 19 of the PHC Act and section 44 of the PMDC Act of 2022 seem to overlap on the issue of medical negligence, but they do not. Section 44 can be invoked only when the alleged medical negligence is so grave that it raises the question of whether the medical practitioner concerned should be allowed to continue his practice. The Commission has a legal obligation to decide all complaints of medical negligence filed against healthcare service providers. Section 28 empowers it to levy a fine up to Rs. 500,000/-, depending upon the gravity of negligence, if the accusation is proven. Section 26(2) of the PHC Act stipulates that if the Commission deems that the facts of a case require action under another law, it may refer the matter to the competent governmental

authorities or law enforcement agencies for appropriate action under the relevant laws. It could entail a referral to the PMDC and registration of a criminal case. In this regard, the Commission must *inter alia* follow the principles elucidated by this Court in *Dr. Nafeesa Saleem and another v. Justice of Peace and others* (PLD 2022 Lahore 18).

(vi) Regulation 6 of the Complaint Management Regulations 2014 mandates the Commission to rule on all complaints, *inter alia* those involving medical negligence, malpractice or failure to provide adequate healthcare services. Section 28 of the PHC Act, in conjunction with Regulation 23, empowers the Commission to impose a fine if a complaint is successful. In this matter, the Commission has referred the cases of Respondents No.6 and 7 to PMDC without recording any findings. It has thus abdicated its jurisdiction. The Assistant Advocate General attempted to justify this course by arguing that the Commission required further inquiry to determine their culpability. This argument is not tenable. Regulations 15 and 16 of the 2014 Regulations provide for consultation with experts. In the present case, the Commission sought opinions from one neurologist and two anaesthesiologists. If it needed more assistance to decide on the guilt of Respondents No. 6 and 7, it could have consulted additional experts. The matter must, therefore, be remanded to it.

(vii) Granting a provisional licence to any healthcare establishment does not imply that it has complied with the relevant standards. Before issuing a regular licence, the Commission must ensure that it has complied with the PHC Act, Regulations and Standards and any instructions and/or corrective orders issued by it following the survey and/or the inspection report. In other words, cent per cent implementation of MSDS by healthcare establishments is mandatory. It is pertinent that the PHC Act does not stipulate any time limit within which the healthcare establishment must apply for a regular licence. As a result, these establishments continue to operate indefinitely under a provisional licence. It is trite that where the law does not prescribe a time limit for performing a duty, it must be completed within a reasonable time. Allowing a healthcare establishment to operate on the basis of a provisional licence for an indefinite period is against the objectand spirit of the PHC Act. The Provincial Government/ Commission must address this issue on priority.

Conclusion: (i) Enhancement of fine cannot be claimed in appeal under Clause (e) of section 31 (1) of the Punjab Healthcare Commission Act 2010.

(ii) The jurisdiction of High Court under Article 199(1)(a)(ii) of the Constitution of 1973 is limited to determining whether the persons exercising functions related to the business of the Federation, a Province or a local authority acted in conformity with the law in performing the act or conducting the proceedings.

(iii) A fine cannot be imposed by the Punjab Healthcare Commission under section 28 of the Punjab Healthcare Commission Act 2010 without a determination based on reasoning.

(iv) A fine imposed by the Punjab Healthcare Commission cannot be utilized for

compensating a complainant.

(v) The jurisdiction of the Pakistan Medical and Dental Council Act 2022 regarding the cases of medical negligence is limited as it can be invoked only when the alleged medical negligence is so grave that it raises the question of whether the medical practitioner concerned should be allowed to continue his practice while the Commission has a legal obligation to decide all complaints of medical negligence filed against healthcare service providers.

(vi) The Punjab Healthcare Commission cannot refer a matter of medical negligence to the Pakistan Medical and Dental Council without recording any findings.

(vii) Allowing a healthcare establishment to operate on the basis of a provisional licence for an indefinite period is against the object and spirit of the Punjab Healthcare Commission Act 2010.

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36. **Lahore High Court,**
Shariq Builders and Property Advisors v. Dr. Muhammad Faisal Murad etc., F.A.O. No. 54 of 2023,
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2023LHC5203.pdf

Facts: This Appeal is preferred in terms of Order XLIII of the Code of Civil Procedure (V of 1908) against the order of trial court, whereby ad-interim injunction was declined to the Appellant in the suit for specific performance, permanent and mandatory injunction.

Issue: Does order declining ad-interim injunction for want of deposit of balance consideration in a suit seeking specific performance of agreement to sell amounts to decision of the main application under Order XXXIX Rules 1&2 the Code of Civil Procedure, 1908?

Analysis: The word "ad-interim" would mean “for the meantime” (to make the interim gap), while the word "temporary" means “for a certain fixed period”, therefore, refusal of the "ad-interim" injunction would not amount to a case `decided'. If the main application filed under Order XXXIX, Rules 1 and 2 of Code of Civil Procedure, 1908 is still pending adjudication after declining ad-interim injunction to plaintiff and he deposits the remaining consideration amount in compliance of order of Court, then trial court would be required to finally decide the application under Order XXXIX Rules 1&2 of the Code ibid.

Conclusion: Declining ad-interim injunction for want of deposit of balance consideration in suit seeking specific performance of agreement to sell does not amount to decision of the main application under Order XXXIX, Rules 1&2 of the Code of Civil Procedure, 1908, which application will be finally decided after plaintiff deposits remaining consideration amount in compliance of order of the Court.

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37. **Lahore High Court,**
Muhammad Bashir v. Federation of Pakistan and NESPAK etc.,
Writ Petition No. 3320 of 2022,
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2023LHC4998.pdf

Facts: The Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking direction to the Respondents to implement the order of Supreme Court of Pakistan, passed in some earlier other Civil Petition, by way of reinstating him in service from the date of his termination.

Issues: i) Whether the *"NESPAK"* Service Rules are statutory or non-statutory in nature?
ii) Whether principle of 'Master and Servant' is applicable to the employees of the "*NESPAK*"?
iii) Whether an employee appointed prior to 1st November, 1993 falls within the ambit of 'sacked employees'?

Analysis: i) National Engineering Services Pakistan (Pvt.) Limited Employees Service Rules were framed by the Board of Directors of "*NESPAK"* in pursuance of powers conferred by the Memorandum and Articles of Association. Hence, application of the "Functional Test" suggests that the *"NESPAK* Service Rules" are neither issued under any Statute nor with approval of the Federal Government for being published in official Gazette. The Rules or Regulations, which are not required to be made with the approval of the Federal Government, cannot be termed as statutory in nature.
ii) *NESPAK* Service Rules*"* show that these are not framed under any Statute, rather they are made by the Board of Directors of the company/*NESPAK* in exercise of the powers conferred on it by the Article of Association of the Company. Therefore, these Rules are merely regulations, instructions and directions for internal use and management of the Company making principle of 'Master and Servant' applicable to the employees of the "*NESPAK*".
iii) Section 2(f) of the Sacked Employees (Re-instatement) Act, 2010 clearly defines 'sacked employee' as a person who was appointed as a regular or *ad hoc* employee or on contract basis or otherwise in service of employer during the period from 1stday of November, 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed, terminated from service or whose contract period had expired or who had been given forced golden hand shake during the period from 1st day of November, 1996 to 12th day of October, 1999 (both days inclusive).

Conclusion: i) The *"NESPAK"* Service Rules are non-statutory in nature.
ii) Principle of 'Master and Servant' will be squarely applicable to the employees of "*NESPAK*".

iii) An employee appointed prior to 1st November, 1993 does not fall within the ambit of 'sacked employees'.

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38. **Lahore High Court**
Muhammad Yousaf Zaheer v. Additional District Judge etc.
Writ Petition No.61 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5194.pdf

Facts: The petitioner called in question the vires of an order, whereby an Additional District Judge, while dismissing the revision petition filed by the Petitioner upheld the orders passed by the Executing Court/Senior Civil Judge (Family Division).

Issue: Whether the conduct of a judgment debtor in a family execution can be taken into consideration in allowing or disallowing equitable relief in Constitutional jurisdiction?

Analysis: Record of proceedings before the Executing Court reflects that acts and conduct of the Petitioner/judgment debtor consistently aimed at frustrating proceedings of execution of subject decree. The conduct of the Petitioner is very much relevant with controversy in hand. The subjectdecree involving maintenance allowance of Petitioner's own kids pertains to the year 2012 but till date he has not bothered to satisfy thesame on his own, rather he has been consistent to gear in all efforts to frustrate execution proceedings to avoid satisfaction thereof. He time and again has chosen way to set in field tactics to handicap proceedings conducted for auction of his immoveable property andhas not even hesitated to put up every effort for bringing even custody of his attached vehicles in absolute disguise. Thereafter, the ExecutingCourt initiated process for attachment and auction of his aforementioned immoveable property and vehicles. Circumstances existing in case in hand lead to an irresistible conclusion that the Petitioner is capable to satisfy the subject decree, but he deliberately and intentionally is avoiding to do so, forcing even his own kids to starve. A person showing such a callous attitude, in particular, towards discharge of his parental obligation is not entitled for any discretionary relief and so is the case with a person himself not ready to follow and comply law.

Conclusion: The conduct of a judgment debtor in a family execution can be taken into consideration in allowing or disallowing equitable relief in Constitutional jurisdiction.

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39. **Lahore High Court**
PIA Officers Cooperative Housing Society Limited v. Province of Punjab
W.P.No.3340/2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5208.pdf

Facts: Through this petition under Article 199 of the Constitution, the Petitioner, PIA

Officers Cooperative Housing Society Limited has impugned the orders, passed by Registrar, Cooperative Societies Punjab, Lahore and the Secretary, Cooperative Department, Government of the Punjab, respectively.

Issues: i) Whether the Registrar can hold an inquiry at his own motion under the Cooperative Societies Act, 1925?
ii) What is the intent and object behind promulgation of the Cooperative Societies Act, 1925?
iii) Whether the Secretary Cooperatives Department has powers to examine the legality of any inquiry or the proceedings of any officer subordinate to him and whether he can modify, annul, or reverse the same?

Analysis: i) The Respondent No.2 on his own motion by himself is empowered, under the law/Act, to hold an inquiry into the constitution, working and financial condition of a society. In this regard, reliance can be placed on the judgment reported as Shahbaz Qalandar Cooperative Housing Society Limited through Chairman versus Province of Sindh through Secretary Cooperative Department and 2 others (2011 CLC 783) holding that "the main object and purpose of holding inquiry is to check whether mandatory requirements and the working affairs of the society are being conducted according to law and in the larger interest of the members of the society." In another identical case cited as Saddar Cooperative Market Ltd. through Honorary Secretary versus Province of Sindh, Department of Cooperation and 3 others (2009 CLC 143) it has been held that Section 43(1) gives the power to the Registrar to hold an inquiry at his own motion for which no procedure has been provided.
ii) the Respondent No.2 who has issued certain directions to the Inquiry Committee in consonance with the object of the Act, which has been promulgated with the only intent to facilitate formation and working of Co-operative Societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living specifically, better business.
iii) Secretary, Cooperatives Department, being official head of the Department, has dealt with the matter as per the functions assigned to him under Section 64A of the Act read with Clause 1(a) and Clause 7(i) to Second Schedule of the Rules in which he/she also administers the provisions of the Cooperative Societies Act, 1925 alongwith Rule 10 of the Rules, because he/she is responsible for efficient and smooth working of the affairs of the Society.

Conclusions: i) Yes, the registrar under Section 43(1) of the Cooperative Societies Act, 1925 on his own motion by himself is empowered, under the law/Act, to hold an inquiry into the constitution, working and financial condition of a society
ii) The intent behind promulgation of the Cooperative Societies Act, 1925 is to facilitate formation and working of Co-operative Societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs to bring about better living specifically, better business.

iii)The Secretary Cooperatives Department, being official head of the Department has vested powers to examine the legality of any inquiry or the proceedings of any officer subordinate to him and he can modify, annul, or reverse the same.

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40. **Lahore High Court**
Al-Khalid Flour Mills v. Government of Punjab and others
Writ Petition No.3042 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5468.pdf

Facts: By way of this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 the Petitioner has challenged Clause-6 of Standing Operating Procedure dated 21.09.2022 issued by Director Food Punjab, Lahore which reads as: "No wheat quota to any flour mill will be issued during the days of Army grinding".

Issues: i) What is the mandate of food department?
ii) Whether there is any policy for the release of wheat stock available and to ensure its uninterrupted supply and stabilization of its price in market?
iii) Whether the Constitution of the Islamic Republic of Pakistan, 1973 promotes the rights of trade/business?
iv) What if the law describes or requires a thing to be done in a particular manner?
v) Whether writ petition can be filed for the entitlement of rights?
vi) Whether there is any condition on the inalienable right of every citizen to be treated in accordance with law?

Analysis: i) The Food Department has the mandate to legislate, formulate policy and plan as a measure of food security through wheat procurement, construction and maintenance of storage accommodation, storage of wheat, financial arrangements with the banks, transportation of wheat and release of wheat and its overall monitoring.
ii) For the release of wheat stock available and to ensure its uninterrupted supply and stabilization of its price in market, the Food Department introduced the "Policy" under Section 3 of the Punjab Foodstuffs (Control) Act, 1958 with certain terms and conditions specifically Clause-III, which entitles the flour mills to grind private wheat stock. This clause clearly demonstrates that no restriction was imposed upon the flour mills on the private grinding but with only condition to deliver 25% of flour obtained from private wheat stocks in their respective districts. Pursuant to issuance of the "Policy" by the Secretary Food Department, the Director Food Punjab, in order to ensure proper monitoring with regard to grinding of Government wheat, its production and supply to flour mills, issued the "SOP".
iii) Article 18 of the "Constitution" promotes the rights of trade/business of every citizen to carry out lawful trade but these rights are subject to certain qualifications as prescribed by the law.

iv) It is a settled principle of law that when a law describes or requires a thing to be done in a particular manner, it should be done in that manner or not at all.
v) It is settled law that writ is for enforcement of fundamental rights and not for the entitlement of rights and if any equitable relief is sought from the Court then it can only be granted subject to provision of relevant law.
vi) It is inalienable right of every citizen to be treated in accordance with law as envisaged by Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 but it is subject to Article 5 of the "Constitution" which cast duty and inviolable obligation on every citizen to obey the constitution and the law.

Conclusion: i) See above in analysis clause.
ii) Food Department introduced the "Policy" under Section 3 of the Punjab Foodstuffs (Control) Act, 1958 for the release of wheat stock available and to ensure its uninterrupted supply and stabilization of its price in market.
iii) Article 18 of the "Constitution" promotes the rights of trade/business of every citizen to carry out lawful trade but these rights are subject to certain qualifications as prescribed by the law.
iv) If law describes or requires a thing to be done in a particular manner, it should be done in that manner or not at all.
v) It is settled law that writ is for enforcement of fundamental rights and not for the entitlement of rights.
vi) See above in analysis clause.

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41. **Lahore High Court**
M/s Popular International (Pvt.) Ltd. v. Province of Punjab and others
W.P. No.54097 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC5550.pdf

Facts: The petitioner assailed the responsiveness of competitor respondent No.3 by filing a complaint before the Grievance Redressal Committee of the hospital. The Grievance Redressal Committee in its meeting considered the complaint of the petitioner and concluded against the responsiveness of respondent No.3 then he filed a representation before respondent No.1 against the decision. The stance of the respondent No.3 was accepted and decision of the Grievance Redressal Committee to the extent of its non-responsiveness was set aside and as a result the decision of the Technical Evaluation Committee declaring said respondent to be responsive in terms recorded in the pertinent document was affirmed. Through the instant constitutional petition this order of respondent No.1 is now assailed in constitutional jurisdiction.

Issues: i) Whether definition of term drug includes medical devices as per The Drugs Act, 1976?
ii) Whether the provisions of the Drug Regulatory Authority of Pakistan Act, 2012 are in derogation of the provisions made in the Drugs Act, 1976?

iii) Whether the Drug Regulatory Authority of Pakistan Act, 2012 stipulates concrete definitions of "drug" and "medical device"?
iv) Whether the importer needs to have a Drug Sale License at the time of bidding?

Analysis: i) The Drugs Act, 1976 at section 3(g) stipulated an inclusive definition of the term "drug" that appeared to cover both drugs as well as medical devices. As illustration reference is made to mention of the term "sutures" in the category of "drugs" as defined which functionally is a medical device with needle for stitching wounds and surgical incisions and incidentally is inter alia also one of the items under objection. The other item is disposable gloves.
ii) Sub-section (1) of section 32 of the Drug Regulatory Authority of Pakistan Act, 2012 states that the provisions of the said Act shall be in addition to and not in derogation of the provisions made in the Drugs Act, 1976 and any other law for the time being in force to clarify that the Act of 2012 shall not override other laws, however, sub-section (2) of said section 32 provides that in case of inconsistency between the provisions of the said Act and any other law for the time being in force the provisions of the Act of 2012 shall prevail.
iii) Conception of "drugs" was given a more focused form under the Act of 2012 by prescribing "drugs" and "medical devices" separate and distinct mechanism of identification. This mechanism is injected through the interpretation clause of the Act of 2012 which has distinct provisions in the form of sub-sections (xii) and (xviii) of section 2 of the Act of 2012 for "drug" and "medical device" respectively. Interestingly against both these provisions instead of stipulating concrete definitions it is inscribed "as defined in Schedule-I" for "drugs" and "as specified in Schedule-I" for "medical device". They as such are given to denote definitions ascribed to them by entries in Schedule-I of the said Act which the Federal Government has been empowered to amend from time to time.
iv) The analysis concludes that by virtue of notification No.10-1/2020-MD dated 04.6.2021 DRAP omitted the requirement to possess drugs sales license for importers of medical devices, therefore, the importer would not need to have a Drug Sale License at the time of bidding to be passing the test of meeting the compulsory criteria.

Conclusion: i) The Drugs Act, 1976 at section 3(g) stipulated an inclusive definition of the term "drug" that appeared to cover both drugs as well as medical devices.
ii) Sub-section (1) of section 32 of the Drug Regulatory Authority of Pakistan Act, 2012 states that the provisions of the said Act shall be in addition to and not in derogation of the provisions made in the Drugs Act, 1976.
iii) Relevant provisions of the Act, 2012 instead of stipulating concrete definitions it is inscribed "as defined in Schedule-I" for "drugs" and "as specified in Schedule-I" for "medical device".
iv) The importer will not need to have a Drug Sale License at the time of bidding to be passing the test of meeting the compulsory criteria.

42. **Lahore High Court**
Abida Sughra Farooqi v. Province of Punjab through its Secretary Labour & Human Resource Department, Lahore & others.
W.P. No. 65865/2019
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5462.pdf

Facts: Through this petition the petitioner assailed the order of competent authority, whereby, order of de novo inquiry was repeated.

Issues: i) Whether order of de novo inquiry can be passed in wake of de novo inquiry previously ordered on same allegations under sub-section (6) of section 13 of PEEDA Act 2006?
ii) Whether competent authority can order de novo inquiry, once order in writing has been passed under sub-section (5) of section 13 of PEEDA Act 2006?

Analysis: i) Textual reading of referred provision of law places no such restriction on the competent authority regarding re-ordering of de novo inquiry, once de novo inquiry was ordered, previously. Interpretation proposed by counsel for the petitioner is fallacious. Such interpretation, if attributed to provision of law under reference, would in fact suggests curtailing / limiting the authority / power of the competent authority to examine the inquiry report, presented in the wake of order of de novo inquiry, earlier made. Additionally, such interpretation, as proposed by the counsel, if accepted would implies that inquiry report, submitted post de novo inquiry order, would attain finality, ipso facto. Incidentally no final order was passed qua the innocence or guilt of the petitioner in the context of relevant facts, nor any finality could be attributed to inquiry report, unless any order is passed by competent authority. Since no order, in terms of sub-section (5) of section 13 of PEEDA Act, was passed, therefore option to invoke jurisdiction under sub-section (6) of section 13, ibid. was available and rightly invoked – in wake of reasoning extended.
ii) The only limitation sub-section (6) of section 13 of PEEDA Act provides is the condition of recording reasons and passing of such directions, as competent authority considers appropriate. Yes, competent authority cannot order de novo inquiry, once order in writing has been passed under sub-section (5) of section 13 of PEEDA Act – in such situation it would become functus officio.

Conclusion: i) Order of de novo inquiry can be passed in wake of de novo inquiry previously ordered on same allegations under sub-section (6) of section 13 of PEEDA Act 2006.
ii) Competent authority cannot order de novo inquiry, once order in writing has been passed under sub-section (5) of section 13 of PEEDA Act 2006.

43. **Lahore High Court**
Muhammad Iqbal, etc. v. The State and another
Criminal Appeal No.55/2013.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5119.pdf

Facts: Through this petition under section 426 (2B) Cr.P.C. petitioners seek suspension of sentences as altered by this Court vide judgment passed in Murder Reference and the appeals filed against the judgment passed by learned Additional Sessions Judge, in a private complaint arising out of case under sections 302, 324, 148/149, 109 PPC registered at Police Station.

Issues: i) What connotes 'special leave to appeal' under subsection (2B) of section 426 Cr.P.C.? How and from whom it is availed?
ii)Why 'special leave to appeal' has been inserted through subsection (2B) in section 426 Cr.P.C.?
iii)What does the word 'may' used in sub-section 426 (2B) of section 426 Cr.P.C. connote?

Analysis: i) Constitution of the Islamic Republic of Pakistan, 1973 and Supreme Court Rules, 1980 only talk about 'leave to appeal' and not 'special leave to appeal'. A remedy for "special leave to appeal" is not an omnibus remedy rather true meanings of special leave are "leave granted on special grounds" and issuance of certificate for fitness to appeal on special grounds is one mode of the grant of special leave to appeal; therefore, when High Court in a criminal case permits to appeal to the Supreme Court from the sentence of High Court on special grounds, the High Court may, in its discretion, suspend the sentence and grant bail pending the appeal.
ii) Subsection (2B) of section 426 Cr.P.C. is parametria to section 382A Cr.P.C. which is further reflected from the enacted sequence of subsections 2, 2A & 2B in section 426 Cr.P.C.; all sub-sections are of same kind dealing with different situations in which accused seeks bail enabling him to present appeal against the impugned judgment of conviction. If it was a different provision for vesting a special jurisdiction on High Court, then it could have been numbered differently within the section 426 Cr.P.C. which is usually required in the format of an enactment pursuant to legislative drafting technique.
ii) The word 'may' used in sub-section 426 (2B) of section 426 Cr.P.C. makes it discretionary to grant bail to the seekers, and High Court can well refuse the same.

Conclusion: i) "Special leave to appeal" means "leave granted on special grounds". When High Court in a criminal case permits to appeal to the Supreme Court from the sentence of High Court on special grounds, the High Court may, in its discretion, suspend the sentence and grant bail pending the appeal.
ii) Subsection (2B) of section 426 Cr.P.C. is parametria to section 382A Cr.P.C.

iii) The word ‘may’ used in sub-section 426 (2B) of section 426 Cr.P.C. makes it discretionary.

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44. **Lahore High Court**
Sajid Hussain v. The State
Criminal Appeal No. 289-J of 2019
Murder Reference No. 45 of 2019
Malik Muhammad Saleem v. The State etc.
Criminal Appeal No. 457 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5291.pdf

Facts: Murder Reference in, and appeal against conviction & acquittal passed in, judgment handed down by Additional Sessions Judge u/s 302/34 PPC, whereby accused was convicted u/s 302(b) PPC and sentenced to death as ta’zir and ordered to pay compensation of Rs. 200,000/- to the legal heirs of deceased, for default to undergo SI for six months, and co-accused was acquitted.

Issues: i) Whether the testimony of complainant can be relied upon as trustworthy if he is not present at the place of occurrence?
ii) What is the object of preparing two site plans in law?
iii) What is the effect of contradiction between medical and ocular account?
iv) Whether one reasonable doubt is sufficient to acquit an accused?

Analysis: i) The complainant was not present at the place of occurrence; therefore, his testimony cannot be relied upon as trustworthy.
ii) The requirement of site plan in law is referred in Rule 25.13 of Police Rules, 1934. However, requirement of preparing two site plans shows that in the first plan, reference relating to facts observed by the police officer should be entered while in the latter, references based on the statement of witnesses which are not relevant in evidence may be recorded. Thus, the law requires that one site plan prepared by the police officer or expert shall be on the basis of their own observation of crime scene and second shall include some facts based on the statement of witnesses to show connection of this site plan with the case under inquiry and this second site plan shall not be sent to the court but can help the investigating officer to refresh his memory when appearing in the dock to depose as witness. We have observed that both expert or the investigating officer have failed to perform their duty to prepare the site plan accurately which is a violation of sub-rule (v) of Rule 25.13 of Police Rules, 1934 .
iii) The conflict in medical and ocular account shows that occurrence was not committed in the manner as being claimed by the prosecution. This contradiction is fatal to the prosecution. Such contradiction also leads us to draw an inference that as a matter of fact the prosecution witnesses were not truthful in their stance and were not present at the place of occurrence at the relevant time and had not witnessed the occurrence.

iv) It is trite that to extend benefit of doubt to an accused person, it is not necessary that there should be several circumstances creating doubt, rather one reasonable doubt is sufficient to acquit an accused.

Conclusion: i) Testimony of complainant cannot be relied upon as trustworthy if he is not present at the place of occurrence.
ii) The law requires that one site plan prepared by the police officer or expert shall be on the basis of their own observation of crime scene and second shall include some facts based on the statement of witnesses to show connection of this site plan with the case under inquiry and this second site plan shall not be sent to the court but can help the investigating officer to refresh his memory when appearing in the dock to depose as witness.
iii) The conflict in medical and ocular account shows that occurrence was not committed in the manner as being claimed by the prosecution.
iv) It is not necessary that there should be several circumstances creating doubt, rather one reasonable doubt is sufficient to acquit an accused.

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45. **Lahore High Court**
Muhammad Yar alias Mumna v. The State and another
Crl. Misc. No. 21405-B of 2023
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5417.pdf

Facts: After dismissal of pre-arrest bail petition by learned Additional Sessions Judge, instant petition has been filed under section 498 of the Code of Criminal Procedure, 1898 (Cr.P.C.) by the petitioner seeking pre-arrest bail in case F.I.R. registered for the offence under section 379 of the Pakistan Penal Code, 1860 (PPC).

Issues: i) Whether person of an accused be handed over to police for effecting recovery without any tangible evidence to connect him with commission of alleged offence?
ii) Whether source and details of alleged suspicion is necessary for affecting arrest of an accused?
iii) Whether any confession of accused before complainant be termed as extra-judicial confession?
iv) What is reasonableness in a complaint or suspicion and credibility of information?
v) What is malice in law?

Analysis: i) …Person of an accused cannot be given in the custody of police for effecting any recovery where in the first place no positive, tangible either direct or indirect evidence is available with the investigator to connect the accused with the commission of crime falling within the purview of section 379 of PPC.
ii) …Mere bald allegation of theft is not sufficient for holding the petitioner liable for the commission of alleged crime. In case of non-availability of direct

evidence, the investigator is required to have collected even some circumstantial or indirect evidence during the investigation to justify arrest of the petitioner in the instant case. No details whatsoever have been given by the complainant that how and under what circumstances he gathered suspicion against the petitioner. Mere allegation of theft in the incident that admittedly was unwitnessed, without disclosing the source and the details on the basis of which complainant gathered the suspicion that it was the petitioner who committed the theft, would not be sufficient to connect the petitioner with the commission of alleged crime.

iii) … Assertion of complainant that petitioner along with his co-accused confessed to have committed theft of ox and promised to return the same, even cannot be considered to be extra judicial confession by the accused.

iv) …It is hard to give a precise or general definition of what constitutes "reasonableness" in a complaint or suspicion and the credibility of the information; rather, it must depend on the presence of concrete legal evidence in the police officer's cognizance, and he must determine whether it is sufficient to establish the reasonableness and credibility of the charge, information, or suspicion.

v) … In the instant case, undeniably, no incriminating material is available with the prosecution to connect the petitioner with the commission of alleged crime, despite that insistence of I.O to arrest the petitioner depicts his malice. This type of malice is ‘malice in law’ which is distinct from ‘malice of fact’. Malice in law is considered as implied malice that means to say the malice inferred from a person’s conduct.

Conclusion: i) Person of an accused cannot be handed over to police for effecting recovery without any tangible evidence to connect him with commission of alleged offence.

ii) Mere bald allegation is not sufficient and source and details of alleged suspicion is necessary for affecting arrest of an accused.

iii) Confession of accused before complainant cannot be termed as extra-judicial confession.

iv) Reasonableness in a complaint or suspicion and the credibility of the information depend on the presence of concrete legal evidence in the police officer's cognizance.

v) Malice in law is considered as implied malice that means to say the malice inferred from a person’s conduct.

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46. **Lahore High Court**
Mehmood (*deceased*) through LRs etc. v. Siraj Ahmad (*deceased*) through LRs.
Civil Revision No.1463 of 2023
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC5072.pdf

Facts: The petitioners filed Civil Revision against the judgments/orders of Courts below whereby the objections raised by the petitioners upon the maintainability of the

execution petition pertaining to a decree in a pre-emption suit, were dismissed concurrently.

Issues: (i) Whether the Revenue Authorities are obligated to sanction mutation in favor of a decree holder in a suit for pre-emption on deposit of decretal amount even if the decree was not put to execution or the execution has become time barred?
(ii) In what circumstances an execution court must necessarily be involved in case of execution of a decree in a suit for pre-emption?

Analysis: (i) The Revenue Authorities are under obligation to sanction mutation on the basis of the decree of a Civil Court and cannot refuse attestation of mutation on the ground that the decree was not put into execution within the prescribed period of limitation and had become ineffective. The view taken by the Member Board of Revenue is in conflict with the dictum led down by the august Supreme Court. He was on legal misconception in assuming that the implementation of the decree of a Civil Court could be declined by a revenue officer on the plea of having not been put into execution for a period of three years or that its execution had become barred by time. The said Member did not consider that the decree which was being implemented was a decree in a pre-emption matter which has its own significant features. The decree holder in a suit for pre-emption on deposit of decretal amount, in term of order XX Rule 14, C.P.C., became absolute owner of the suit property, and such ownership would remain operative and intact even if such decree was not put to execution. Revenue Officer was under statutory duty to implement such decree in revenue record even if execution petition had become time barred. The pre-emptor/decree holder becomes absolute owner of the suit property and sanction of mutation could be made on the basis of said decree without resorting to execution proceedings.
(ii) The executing Court in such matters would only be involved in case where the judgment debtor fails to deliver the possession of the land in pursuance of such decree and in such case the executing court will be required to deliver the same by issuance of warrant of possession.

Conclusion: (i) The Revenue Authorities are obligated to sanction mutation in favor of a decree holder in a suit for pre-emption on deposit of decretal amount even if the decree was not put to execution or the execution has become time barred.
(ii) An execution court in such matters would only be involved in case where the judgment debtor fails to deliver the possession of the land in pursuance of such decree.

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47. **Lahore High Court**
Mst. Sara Akhtar, etc. v. Mehmood Khan, etc.
Civil Revision No.1376 of 2022
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC5185.pdf

Facts: The petitioner instituted a suit for declaration and permanent injunction against respondents and the same was decreed which remained intact upto this Court. Thereafter, the petitioner filed an execution petition for recovery of possession through warrant of possession and the respondents challenged the same. Executing Court, after hearing the parties, dismissed the execution petition. The petitioner preferred an appeal which was allowed. Being dissatisfied, both parties approached this Court through their independent Civil Revisions.

Issues: i) Whether the decree passed in a suit for declaration creates or confers any new right?
ii) Whether the possession of one co-sharer is considered to be possession on behalf of all co-sharers?
iii) What is the pre-requisite for the execution of a decree?
iv) Whether a decree is to be executed in accordance with its terms and conditions without modification?

Analysis: i) The decree passed in a suit for declaration did not create or confer a new right but the same would declare a pre-existing right. Any person entitled to any legal character, or to any right as to any property may institute a suit against any person denying, or interested to deny his title to such character or right and the Court may in its discretion make a declaration that he is so entitled.
ii) According to law, possession of one co-sharer is always considered to be possession on behalf of all co-sharers. Co-sharer having possession even on the fractional share of the joint land has a right, title and interest in every part of the joint land till such land stands partitioned by metes and bounds in accordance with law.
iii) A decree sought to be executed should be capable of execution i.e. it should order the doing of an act or restrain the doing of an act.
iv) It is settled law that a decree is to be executed by the Executing Court in accordance with its terms and conditions without modification.

Conclusion: i) The decree passed in a suit for declaration does not create or confer a new right but the same would declare a pre-existing right.
ii) According to law, possession of one co-sharer is always considered to be possession on behalf of all co-sharers.
iii) A decree sought to be executed should be capable of execution.
iv) It is settled law that a decree is to be executed by the Executing Court in accordance with its terms and conditions without modification.

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48. **Lahore High Court**
Muhammad Anwar and others v. Atta Ullah (deceased) through L.Rs.
Civil Revision No.1200-D of 2002
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC5083.pdf

Facts: Through this civil revision the petitioners have assailed the judgments and decrees

of Courts below, whereby, the petitioners' suit for recovery of possession through pre-emption was dismissed, concurrently.

Issues: i) Whether it is imperative for pre-emptor to prove performance of requisite Talbs for proving suit for possession through pre-emption?
ii) Whether jumping demand is the foundation of the claim of pre-emption?
iii) Whether for proving Talb-i-Muwathibat the plaintiff is required to state exact date, time and place of gaining knowledge of sale?
iv)Whether it is necessary to produce the postman for proving the delivery of notice of Talb-i-Ishhad if the said fact is denied by the defendant?
v)Whether parties are required to lead evidence in consonance with the pleadings?
vi)Whether a person who wishes to avail himself of a right under pre-emption law is always required to be vigilant to comply with the conditions imposed upon him?
vii)Whether the statement made by the party was to constitute admission only if the same was during the subsistence of interest?

Analysis: i) To prove the suit for possession through pre-emption, it is imperative for the pre-emptor to prove performance of requisite talbs through cogent, reliable and confidence inspiring evidence, in accordance with law. Talbs as enumerated in Section 13 of the Punjab Pre-emption Act X of 1991 being essential for claiming right of pre-emption, strict proof for observance thereof would be necessary. In case of failure, the pre-emptor would be legally debarred. Performance of requisite talbs in other words is a sine qua non for decree of pre-emption suit.
ii) The Talb-i-Muwathibt literally means immediate demand, that is commonly known as jumping demand and foundation of claim of pre-emption rested on making an immediate declaration of intention to assert one's right and if the same is not done that would be fatal for whole claim of pre-emption and making of valid demands namely the Talb-i-Muwathibat and Talb-i-Ishhad, the condition precedent to exercise of the right of pre-emption.
iii) For proving Talb-i-Muwathibat the plaintiffs are required to state exact date, time and place of gaining knowledge because without proving the specific time, date and place of knowledge, the plaintiffs cannot prove jumping demand. When petitioners prove that on such date at such specific time and place they gained knowledge only then they could prove that they announced their intention forthwith to file the suit for pre-emption which is called jumping demand.
iv) It is held in the judgments reported as "MUHAMMAD BASHIR AND OTHERS V. ABBAS ALI SHAH"(2007 SCMR 1105) and "BASHIR AHMED V. GHULAM RASOOL"(2011 SCMR 762) by the august Supreme Court of Pakistan that where the plaintiff alleged performance of Talb-i-Ishhad by sending of notice of Talb-i-Ishhad through registered post and if the said fact is denied by the defendant then the plaintiff of such a suit must produce the postman to prove the delivery of the notice to the defendant or its refusal by the later as the case may be but in the instant case said mandatory requirement of production of

postman was not fulfilled and the pre-requisite of notice of Talb-i-Ishhad was not complied with. The oral assertion, with regard to the performance of Talb-i-Ishhad, was not sufficient to get the relief as sought for and such default is fatal for the pre-emption suit on account of the failure of performance of Talb-i-Ishhad

v) It is settled principle of law that parties are required to lead evidence in consonance with their pleadings and no evidence beyond the pleadings is permissible and even if it has been led by a party, the Court shall exclude or ignore the same from consideration.

vi) Judicial Concept Law is that provisions of Pre-emption Law must strictly to be complied with to attract its rigour and even the technicalities, therefore, are also relevant provisions of law. A person, who wishes to avail himself of a right under such law, is required to be vigilant and see that he complied with all the conditions imposed upon him.

vii) According to Article 31 of the Qanun-e-Shahadat Order, 1984 the statement made by the party was to constitute admission only if same was during the subsistence of interest… the pre-emptors have to prove the Talbs even if suit for pre-emption was not contested by the defendant.

Conclusion: i) Yes, it is imperative for pre-emptor to prove performance of requisite Talbs for proving suit for possession through pre-emption.

ii) Yes, jumping demand is the foundation of the claim of pre-emption.

iii) Yes, for proving Talb-i-Muwathibat the plaintiff is required to state exact date, time and place of gaining knowledge of sale.

iv) Yes, it is necessary to produce the postman for proving the delivery of notice of Talb-i-Ishhad if the defendant denied the said fact.

v) Yes, parties are required to lead evidence in consonance with the pleadings.

vi) Yes, a person who wishes to avail himself of a right under pre-emption law is always required to be vigilant to comply with the conditions imposed upon him.

vii) Yes, the statement made by the party was to constitute admission only if the same was during the subsistence of interest.

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49. **Lahore High Court**
Rashida Bibi v. Station House Officer & another
Crl. Misc. No. 4043-H of 2023
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC5052.pdf

Facts: Through this petition filed under Section 491 Cr.P.C, the petitioner supplicated for the recovery of her real brother from the illegal and improper custody of respondents through Bailiff of this Court.

Issues: i) Whether extrajudicial confession before Investigating Officer can be valid ground for arrest of accused and grant of physical remand?

ii) Whether accused can be arrested if sufficient incriminating material is not available?

iii) Whether police can arrest an accused on suspicion of complainant or while

using term that complainant has come to know through reliable source (without disclosing that source)?

Analysis: i) The first version of accused recorded vide case diary shows that he made extra-judicial confession before the Investigating Officer during police custody which was not a valid ground for the grant of physical remand because confession before the police is not admissible in evidence in terms of Articles 38 & 39 of The Qanun-e-Shahadat Order, 1984… Not a single complainant or PW of cases has got recorded statement against the detenu. Mere extra judicial confession of accused before the investigating officer of case FIR during police custody was not sufficient ground for his arrest, as it was not an admissible piece of evidence…
ii) It has been well settled by now that arrest of accused cannot be made if some sufficient incriminating material is not available against him. It is also held that arrest of any person cannot be made without any evidence.
iii) This Court has also observed that in such like cases police oftenly arrest the accused on the ground that the complainant has strong suspicion or firm belief against him. Similarly, using the term that the complainant has come to know through reliable source (without disclosing that source) or land lord's clue (zameendara gawera) that any person is involved in the commission of crime is also not a legal evidence and arrest cannot be made solely on this ground.

Conclusion: i) Extrajudicial confession before Investigating Officer is not valid ground for arrest of accused and grant of physical remand.
ii) Arrest of accused cannot be made if some sufficient incriminating material is not available against him.
iii) Police cannot arrest an accused on suspicion of complainant or while using term that complainant has come to know through reliable source (without disclosing that source).

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50. **Lahore High Court**
Muhammad Aslam v. The State and another
Criminal Revision No.206/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5014.pdf

Facts: The petitioner filed a criminal revision against an order passed by a Sessions Judge during the trial in a criminal case, whereby permission was declined to cross-examine a prosecution witness/medical officer owing to the fact that he had also conducted medico-legal examination of the accused persons of the case.

Issue: Whether during cross-examination, questions can be asked by defence counsel from a prosecution witness/medical officer about a fact which is not part of his/her examination-in-chief?

Analysis: Defence counsel must have been allowed to ask such questions from the medical officer during the cross-examination and defence counsel can refer MLCs and

radiologist report for asking question while showing it to the witness for the purpose of refreshing the memory as mentioned in Article 155 of Qanun-e-Shahadat Order, 1984 and such witness can also be testified for the facts mentioned in such MLCs and Radiologist report, whereas prosecution has also right to cross-examine such witness to this aspect while seeking permission from the court pursuant to Article 150 of Qanun-e-Shahadat Order, 1984; however, during cross-examination such documents can simply be referred, and could only be tendered in evidence at a stage mentioned in section 265(7) Cr.P.C.

Conclusion: During cross-examination questions can be asked by defence counsel from a prosecution witness/medical officer about a fact which is not part of his/her examination-in-chief.

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51. **Lahore High Court**
Muhammad Sufyan Qasim (deceased) through Legal Heirs v. Manzoor Ahmad & two others
W. P. No. 7834 / 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC5180.pdf

Facts: This constitutional Petition brings a challenge to the impugned Order and Judgment passed by the Courts below. The application of the petitioners for setting aside the ex-parte judgment and decree was concurrently dismissed by the Courts below, vide impugned Order and Judgment.

Issue: Whether legal representatives of missing person prior to passing of ex-parte decree against him have the right to challenge the same in appeal?

Analysis: When one of the legal representative of a person pleaded before the Trial Court that he went missing prior to passing of ex-parte decree against him, the right to challenge the same in appeal would accrue to the legal representative.

Conclusion: Legal representatives of missing person prior to passing of ex-parte decree against him have the right to challenge the same in appeal.

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52. **Lahore High Court**
Shamim Ismail, etc. v. Addl. District Judge, etc.
Writ Petition No.66966 of 2020
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5329.pdf

Facts: Through this petition, the petitioner challenged the visitation schedule on the ground that the impugned judgment is against welfare of the minor inasmuch as the age factor of the minor had been ignored, who had attained the age of 15-years. At the time of hearing of this petition, the petitioner attained the age of majority, therefore, High Court lacks jurisdiction to pass any direction.

Issues: i) What is aim and object of the Guardians & Wards Act, 1890?
ii) Whether lis becomes infructuous when at any stage of the proceedings in a guardian case, the minor attains the age of majority?
iii) Whether power of High Court to issue a writ of certiorari is an independent jurisdiction?

Analysis: i) Before answering the legal question, it will be in fitness of things to examine the object of the Act, which is a special enactment. The Act aims at ensuring that welfare of a minor is kept at forefront while deciding the guardian petition and chalking out the visitation schedule for which the jurisdiction vests with the Guardian Courts. Jurisdiction of the Court, in law, refers to authority vested with a Court to hear and adjudicate the cases according to the subject matter of the cases. One cannot lose sight of the fact that it is the Act that vests jurisdiction in the Guardian Court to ensure that a minor's person and property is extended proper protection through appointment of a guardian since a minor is presumed to suffer from disability and is not in a position to appreciate his/her welfare. Therefore, through appointment of a guardian, the minor is brought to the protection of the Guardian Court which is obligated to exercise the jurisdiction vested with it to ensure continuity of the welfare of a minor. Once a guardian is appointed, such a minor is treated as a "Ward" in terms of Section 4(3) of the Act that reads as under: "ward" means a minor for whose person or property, or both there is a guardian;"

ii) Such protection of the minor and the jurisdiction of the Courts continues so long as the ward is under the legal disability (minority); however, the moment the said disability transforms into the legal capacity, on attaining the age of majority, the jurisdiction of the Guardian Court ceases to exist along with the power of the guardian so appointed by the Guardian Court. Section 41(1)(c) of the Act is amply clear in this regard…The law in its wisdom envisages that once a minor attains the age of majority, he becomes sui juris, and it is believed that such person is well aware of the consequences of his/her acts and omissions. He/she is also vested with certain fundamental rights under the Constitution to decide what is in his/her best interest and cannot be compelled to meet someone against his/her wishes, even if such other person is his/her real father. Since on attaining the age of majority, the Guardian Court ceases to have any jurisdiction... Therefore, the moment, at any stage of the proceedings in a guardian case, the minor attains the age of majority, the lis becomes infructuous as the Courts cease to have jurisdiction, under the Act and cannot pass any directions. As a natural corollary, any further proceedings by this Court would be coram-non-judice, therefore, the constitutional jurisdiction of this Court also comes to an end…

iii) Power of this Court to issue a writ of certiorari is not an independent jurisdiction but supervisory in nature and is used to bring into the High Court, the decisions of subordinate Courts in order to investigate the same and if any jurisdictional defect or procedural impropriety is pointed out, the same are quashed.

Conclusion: i) The aim and object of the Guardians & Wards Act, 1890 is to ensure that welfare of a minor is to be kept at forefront while deciding the guardian petition and chalking out the visitation schedule.
ii) The moment, at any stage of the proceedings in a guardian case, the minor attains the age of majority, the lis becomes infructuous as the Courts cease to have jurisdiction.
iii) Power of High Court to issue a writ of certiorari is not an independent jurisdiction but supervisory in nature.

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53. **Lahore High Court**
Muhammad Afzal v. Asia Zaheer
Civil Revision No.5252/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5404.pdf

Facts: The petitioner filed a suit for specific performance which was dismissed by trial court and appellate court upheld the decision. Both courts allowed the respondent to forfeit the earnest money paid by the petitioner under the agreement, hence, this civil revision.

Issues: i) Whether failure on part of vendor to fulfill a condition/stipulation of agreement disentitles him to forfeit the earnest money on non-payment of balance consideration amount by vendee?
ii) Whether a promise to perform an act without intention to perform the same amounts to fraud?

Analysis: i) Generally, the agreements to sell do not contain a clause whereby it is stipulated that gas meter/connection shall be got installed by the seller, rather, the sales are made with the amenities/facilities like electricity or water connections, at the site/property, existing on the date of execution of an agreement. The incorporation of the said clause in itself indicates the intention of the parties that the said term was material in reaching the consensus ad idem. Therefore, it runs counter to equitable principles to penalize the petitioner for failure of the respondent to fulfill material term of the agreement. Moreover, allowing forfeiture of the earnest money in favour of the respondent belies logic as this would amount to putting premium on failure of the respondent to fulfill his part of the agreement what seems to be material term thereof by the respondent himself. The vendor who admittedly agreed to get the gas meter installed in the suit property but did not honour his word; in such circumstances the vendor is not entitled to forfeit the earnest money…
ii) The respondent incorporated the condition of installation of gas meter when admittedly there was no ban imposed and no effort was made to get it installed and now that the ban has been imposed by M/s SNGPL, refuge is being taken before this Court on ground of imposition of ban. Meaning thereby that incorporation of the stipulation in respect of the installation of gas meter appears

to be a promise without intent to perform the same and hence, amounts to fraud as contemplated under subsection (3) of Section 17 of the Contract Act, 1872.

Conclusion: i) If the vendor agreed to fulfill a condition/stipulation but did not honour his word, in such circumstances the vendor is not entitled to forfeit the earnest money on non-payment of balance consideration amount by vendee.
ii) Yes, a promise to perform an act without intention to perform the same amounts to fraud.

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54. **Lahore High Court**
Akash Masih v. Senior Superintendent of Police, etc.
Writ Petition No.59263 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5453.pdf

Facts: The petitioner challenged the rejection of his application by police Department on the ground that as per Standing Order, a candidate having criminal record shall not be appointed in police Department even though he successfully completed all formalities of job.

Issues: i) Whether High Court can interfere in the policy decision of police Department while exercising constitutional jurisdiction?
ii) Whether a Judicial Magistrate has jurisdiction to nullify or to make redundant a policy decision of the police Department?

Analysis: i) [High] Court in Constitutional jurisdiction cannot sit over the wisdom of the department reflected in a policy unless the same is found to be violative of fundamental rights or based on mala fide as observed hereinabove. In addition, such an observation may hold some persuasion in any other department but not in police force. Standard expected of a person intending to join a uniformed service like the Police Department is quite distinct, from other services, which is required to be more disciplined institution and inclusion of person having criminal antecedents could have bearing on the discipline of the force that is tasked to maintain law and order in the society.
ii) …moreover, besides the lack of jurisdiction of judicial magistrate to nullify or make redundant the policy of the Police Department, there is another aspect of the matter from which this case can be examined. In the instant case, the learned judicial magistrate has made observations that sending the petitioner on parole would have no bearing on his recruitment to any department in future whereas there is possibility that some other judicial magistrate in such like case(s) may not make any such observations with respect to some other applicant. This would engender a discrimination of its own kind having no lawful justification and possibility thereof cannot be ruled out. This also necessitates that in such eventualities it is left to the Police Department to scrutinize the cases of candidates, on individual basis, in accordance with its policy, envisaged under the Standing Order, without any discrimination.

Conclusion: i) High Court cannot interfere in the policy decision of police Department while exercising constitutional jurisdiction unless the same is found to be violative of fundamental rights or based on mala fide.
iii) Judicial Magistrate lacks the jurisdiction to nullify or make redundant the policy of the Police Department.

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55. **Lahore High Court**
Fayyaz Ahmad v. Subay Deen
C.R No. 66481 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5286.pdf

Facts: Petitioner through this revision petition challenged the order and decree passed by learned Civil Judge upon special oath alongwith judgment and decree passed by learned Additional District Judge.

Issue: Whether petitioner can back out from a careful statement/offer of a special oath filed in the form of an application and whether principle of approbate and reprobate attract in such situation?

Analysis: The revision-petitioner offered in terms of section 9 of the *Act*. The *application* is signed by the revision-petitioner as well as his learned counsel. The *application* was filed after three days of the relevant event i.e. the statement of Muhammad Riaz / DW-2, upon which the revision-petitioner showed satisfaction to make the offer in question. This offer was accepted by the other side as well as the witness concerned and the learned Court proceeded to administer the special oath of Muhammad Riaz son of Khushi Muhammad in terms of the *Act*…There appears to be no haste, in making the offer or its acceptance. The revision-petitioner took his time, then instructed learned lawyer to make the offer, who after drafting the *application* obtained signatures of the revision-petitioner on the *application*…The revision-petitioner was fully aware that the statement on oath, if given shall be binding upon him and it can have consequence of dismissal of the suit…The consequences of the offer were very clear to the revision-petitioner. The revision-petitioner cannot be allowed to back out from a statement / offer after it has culminated into a binding contract and when the contract has been acted upon. This attempt to withdraw from the statement and the dual stance also attract the principle of *approbate* and *reprobate* with its full force.

Conclusion: Petitioner cannot back out from a careful statement/offer of a special oath, which is made with awareness as to its consequences and principle of approbate and reprobate attract with full force in such situation.

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56. **Lahore High Court**
Muhammad Islam v. Learned Additional District Judge and others
Writ Petition No.3722 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC10060.pdf

Facts: Through this writ petition, the petitioner has challenged the order whereby his application for leave to contest was dismissed and as a result thereof eviction petition was accepted, as well as the judgment whereby appeal against the aforementioned order was also dismissed.

Issue: Whether a tenant can question the authority of his landlord to receive the rent?

Analysis: As provided in the Punjab Rented Premises Act, 2009, definition of landlord includes not only the owner but the one authorized to receive rent of the rented premises. Therefore, any person entitled to claim rent is a landlord. The petitioner, who admittedly obtained rented premises on lease from respondent and paid him the rent for four years, has no right to question his authority to lease the premises in question. Where conduct of the tenant is found to be inequitable in denying the status of landlord, he is disentitled for the grant of any equitable relief.

Conclusion: A tenant cannot subsequently challenge the authority of landlord to receive rent.

LATEST LEGISLATION/AMENDMENTS

1. In Punjab Safe Cities Authority Service Regulations, 2017, sub clause 15(6) has been inserted and amendments in column no. 02 of row no. 07 of Annexure-I has been made through Notification No.163 of 2023.
2. First schedule of the Punjab Central Business District Development Authority Act, 2021 has been amended through Notification No.162 of 2023.
3. Vide Notification No.S.R.O.1326 (I)/2023, Anti-Rape (Sex Offenders Register) Rules, 2023 has been made.
4. In pursuance of section 4 of the Anti-Rape (Investigation and Trial) Act, 2021, Anti- Rape Crises Cells in 26 Public Hospitals of Province of Sindh have been established through Notification No.S.R.O.899 (I)/2023.
5. Amendments have been made in Instructions about Confidential Reports after para 66 through Notification No.171 of 2023.
6. Amendments in the Notification No.197-2023/0334-CS. II(IX) dated 20.02.2023 regarding conditions for lease of specified State land for corporate agriculture farming at paras no. 05, 13, 16 & 17 have been made through NotificationNo.172 of 2023.
7. Entry at serial no. 1 of Notification No. SOR(LG)1-11/2019 dated 20.10.2022 regarding Punjab Local Government Act 2022, has been modified through Notification No.173 of 2023.
8. Master Conservation and Re- Development Plan has been notified with regard to Walled City of Lahore Act 2012 through Notification No.164 of 2023.

SELECTED ARTICLES

1. LEGAL VISION
https://legalvision.com.au/authority-to-fundraise/#content-next

What should a businesses and charities include in an authority to fundraise? By Stephanie Mee

Fundraising allows charitable and not-for-profit organizations to engage a business to raise funds. In order to legally raise funds on behalf of a charity, require that businesses possess an authority to fundraise. An authority to fundraise is a formal document that outlines the terms and conditions under which a business or charity can seek funds from external sources. This article explains the key elements that should be included in an authority to fundraise. The first element in an authority to fundraise document is the identification of all parties involved. This section should clearly specify the name, contact information of the business and charity and licensing information under which the charity can grant the authority to fundraise. This section ensures that there is clarity regarding who is authorized to fundraise and who is providing this authorization. The law requires charities to have a clear purpose and cause. When undertaking charitable fundraising activities in the form of a partnership, both parties must strive towards a unified purpose that matches the charitable purpose for which the charity is established. After all, donors will want to know what their money goes toward.. The parties also need to define that how funds are collected and disbursed and what percentage or fee (if any) the authorized party will retain for fundraising services. An authority to fundraise is a vital document for businesses and charities seeking external financial support, not only to clarify expectations but also to ensure compliance. Crafting a comprehensive document ensures that you conduct fundraising legally and build productive relationships that align with the charity's purpose and social responsibility.

2. LEGAL VISION
https://legalvision.com.au/termination-rights-franchisee/

What Are My Termination and Cooling-Off Rights as a Franchisee? By Caroline Snow

Deciding to operate a franchise can be an excellent way to run a business with an established brand and reputation. After meeting with the franchisor and signing the franchise agreement, there may be times when you are unsure of your decision. Running a franchise is a significant commitment. Even though you have already signed the franchise agreement, you may still have options to leave without attracting legal penalties. This article explores the termination and cooling-off rights of a franchisee. A franchising agreement is a legally binding contract. Once you sign the agreement, you are bound by its terms. However, most franchise agreements will include a cooling-off period, where you can exercise your right to terminate the agreement. This gives you an

opportunity to really think about whether being a franchisee is what you really want. A cooling-off period is a specific time period within which you may exercise your right to terminate the franchise agreement. If you decide to terminate your franchise agreement within the cooling-off period, the franchisor is required to refund your franchise fee payment. Importantly, franchisors can deduct reasonable expenses from this refund. Although you would expect your freedom after terminating the franchise agreement within the cooling-off period, it is not as easy as that. You will be released from most of your obligations but may still be subject to certain legal obligations under the franchise agreement. These might include clauses concerning restraint of trade, confidentiality provisions and the intellectual property rights of the franchisor. These clauses generally survive the termination of a franchise agreement.

3. MANUPATRA

https://articles.manupatra.com/article-details/Courts-Should-Be-Inclusive-When-Dealing-with-the-Rights-of-People-with-Disabilities

Courts Should Be Inclusive When Dealing with the Rights of People with Disabilities by Nyaaya

A person with disability is a person with long-term physical, mental, intellectual or sensory impairment, which restricts their full and effective participation in society equally with others. A person with benchmark disability is someone who has at least 40% of a 'specified disability'. These specified disabilities include physical disability which is an inability to perform activities associated with movement. People with locomotors disability include those with cerebral palsy, dwarfism, muscular dystrophy, acid attack victims; etc. Visual impairment is a condition of blindness or low vision. Hearing impairment is a deafness or loss of hearing. Speech and language disability is a permanent disability affecting speech and language. Intellectual disability is a significant limitation in intellectual functioning (reasoning, learning, problem solving) and adaptive behavior (everyday social and practical skills) including specific learning disabilities and autism spectrum disorder. Mental illness is a substantial disorder of thinking, mood, perception, orientation or memory that severely impairs judgment, behavior and capacity to recognize reality or ability to meet the ordinary demands of life. This does not include mental retardation. Disability caused due to chronic neurological conditions, multiple sclerosis, Parkinson's disease, blood disorders: Hemophilia, Thalassemia, Sickle cell disease. Multiple disabilities: more than one of the above specified disabilities. Any other disability as specified by the Central Government. This principle promotes equality and prevents discrimination based on disability, health condition or personal belief. It calls for making necessary and appropriate adjustments, while ensuring that they do not impose an undue burden on others, to help exercise their rights equally.

4. **CANADIAN JOURNAL OF LAW**
https://www.cambridge.org/core/journals/canadian-journal-of-law-and-society-la-revue-canadienne-droit-et-societe/article/digital-space-of-ones-own-rethinking-childrens-online-privacy/313FCE4D7BCA3D77C3FD76F9E8C5A662

A Digital Space of One's Own: Rethinking Children's Online Privacy by Stephanie Belmer

In a digitalized environment, children seek out opportunities to experiment, take risks, and communicate with their friends, without feeling the pressure of adult norms. According to legal scholar and professor Shauna Van Praagh: "Cyberspace can be conceptualized as a new terrain for play—play in which young people take risks, learn from mistakes, sometimes get hurt and sometimes hurt others." ... such extensions of analog experience into the digital are necessary if we are to avoid demonizing cyberspace at young people's expense. By reconceptualizing personal space and privacy, I offer a more precise rendering of how we might conceive of the harms made available by online experience. Not the novel harms of online technology but rather the harms newly inscribed upon a historical self, whose freedoms require constant reappraisal.

5. **YALE LAW JOURNAL**
https://www.yalelawjournal.org/pdf/132.8.Ahdout_f44smiqr.pdf

Separation-of-Powers Avoidance by Z. Payvand Ahdout

Separation-of-powers avoidance is one tool that judges use to cool conflict with coordinate branches, and it is motivated, at least in part, by judicial concerns. This Article has traced the link between avoidance and doctrine in certain constitutional areas and the distortion that is caused when that doctrine is taken outside the courtroom. More importantly, it has shown that just as scholarship has recognized that doctrine is not necessarily coterminous with law for individual rights, so, too, legal discourse must recognize the gap between doctrine and the structural constitution.
