LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-11-2023 to 30-11-2023)

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

Prepared & Published by the Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Civil Miscellaneous Applications No. 3577 of 2019 and 9219 of 2023 in Civil Review Petition Nil of 2019 and Civil Review Petition No.266 of 2019 in Suo Motu Case No.7 of 2017.
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._3577_2019_15112023.pdf

Facts: The petitioners/appellants aggrieved by the judgment of Supreme Court passed in Suo Motu Case No.7 of 2017 filed these Civil Review Petitions along with Civil Miscellaneous Applications.

Issue: Whether implementation of any decision of the Supreme Court can be forestalled when review petitions and other applications are pending?

Analysis: It should not need reminding that every decision of the Supreme Court is binding and must be implemented by all executive authorities as stipulated in Articles 189 and 190 of the Constitution. Implementation however may be forestalled when review petitions and other applications are pending.

Conclusion: Implementation of any decision of the Supreme Court can be forestalled when review petitions and other applications are pending.

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2. **Supreme Court of Pakistan**
Muhammad Mumtaz Khan (deceased) through L.Rs and others v. Mst. Siraj Bibi (deceased) through her L.Rs and others
Civil Misc. Application No. 6336 of 2023 in Civil Review Petition No. 272 of 2022
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._6336_2023.pdf

Facts: Earlier main Civil Review Petition was dismissed for non-prosecution, which was sought to be restored through instant application. After granting instant restoration application, main Civil Review Petition was restored and heard as well.

Issues: i) What would be fate of a sale transaction of subject land by an attorney in favour of his own sons despite the fact that relevant power of attorney does not specifically authorize him to do so?
ii) When mutation of unauthorized sale of a woman's land is attested, then how the Revenue Officers/Officials involved in such attestation should be dealt with?

Analysis: i) Sale of subject land by attorney in favour of his own sons would amount to be a misuse of power of attorney, especially when such power of attorney does not specifically authorize attorney to give effect to such transaction.

ii) An unauthorized sale transaction would be a violation of Article 24 (1) of the Constitution of the Islamic Republic of Pakistan, which guarantees that no person shall be deprived of his property save in accordance with law. A mutation based upon unauthorized transaction would be deemed effected in derogation of section 42 of the Land Revenue Act, 1967.

Conclusion: i) If an attorney sells subject land in favour of his own sons despite the fact that relevant power of attorney does not specifically authorize him to do so, then the principal could repudiate the said sale transaction as stipulated in section 215 of the contract Act, 1872.
ii) When mutation of unauthorized sale of a woman's land is attested, then legal action should be initiated against the revenue officers/officials involved in such attestation.

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3. **Supreme Court of Pakistan**
Syed Ghazanfar Ali Shah v. Hassan Bokhari and others
Civil Petition No.946 of 2022
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._946_2022.pdf

Facts: Respondents had submitted an application under section 135 of the Punjab Land Revenue Act, 1967 seeking partitioning of certain lands. The application was objected to by the petitioners. The matter eventually came up before the Member, Board of Revenue, who disposed of the same by consent. However, the petitioners assailed the consent order by filing a writ petition before the High Court. The learned Judge of the High Court reproduced the earlier consent and dismissed the writ petition with cost.

Issue: Whether only possession is a valid ground to oppose partition proceedings?

Analysis: We enquired from the learned counsel why partition is being objected to and he stated that the petitioners are in possession of land and their rights will be adversely effected. This is not a valid ground to oppose partition.

Conclusion: Mere possession of the land and adverse effect upon the rights of petitioner is not a valid ground for opposing partition.

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4. **Supreme Court of Pakistan**
Javid Khan v. Arshid Khan and another
Criminal Petition No.149-P of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._149_p_2023.pdf

Facts: The petitioner sought leave to appeal against an order of the High Court, whereby his post-arrest bail had been declined.

Issues: i) Why the practice of adding the word sahib with one's job title be discontinued?
ii) How prior notice to the state for preparation of the case has lost its seriousness?
ii) Whether the documents sent by e-mail, fax or Whatsapp, can be useful in determining the outcome of bail application?

Analysis: i) The practice of adding the word sahib with one's job title be discontinued, as it unnecessarily elevates the status of public servants, which may instil in them delusions of grandeur and a perception of unaccountability, which is unacceptable since it is against the interests of the public whom they are meant to serve.
ii) A practice has developed whereby despite prior notice to the state preparation of the case is done before the court, rendering court into an office of the prosecution, rather than attending to the matter with the seriousness that it deserves.
iii) Documents sent by e-mail, fax or by Whatsapp, can be useful in determining the outcome of bail application.

Conclusion: i) The practice of adding the word sahib with one's job title be discontinued, as it unnecessarily elevates the status of public servants.
ii) A practice has developed whereby despite prior notice to the state preparation of the case is done before the court instead of coming to the court fully prepared.
iii) The documents sent by e-mail, fax or Whatsapp, can be useful in determining the outcome of bail application

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5. **Supreme Court of Pakistan**
Raja Muhammad Haroon etc. v. Province of Sindh through Board of Revenue and others etc.
Constitution Petition No.34/2023 etc.
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._8758_2018_23112023.pdf

Facts: Bahria Town (Private) Limited ('Bahria Town' or 'BTPL') filed a Civil Miscellaneous Application on the ground that pursuant to the order of this Court Bahria Town was to receive 16,896 acres of land in District Malir in the province of Sindh but only received 11,747 acres of land, that is, there was a shortfall of 5,149 acres. Bahria Town had agreed to pay 460 billion rupees in installments within a period of seven years. Bahria Town was paying the agreed installments but when it discovered the shortfall of 5,149 acres it stopped payments and through CMA this shortfall was brought to the attention of this Court. Bahria Town also filed CMA seeking 'reasonable time/moratorium period for fulfilling its payment obligations under the Order.

Issues: i) When a sale or a lease deed is registered pursuant to the Registration Act, 1908, whether the transaction gets recorded?

ii) Whether record keeping mechanism can protect public and prevent double book-keeping?

Analysis: i) Learned AG states that when a sale or a lease deed is registered pursuant to the Registration Act, 1908 the transaction gets recorded, but, before this stage neither the government nor any official organization maintains the record of the allotments and of their ownership. Allottees suffer in the absence of requisite record keeping. Legislators and governments, who must want to protect the public and ensure proper record keepings, will undoubtedly act to fill this lacuna.
ii) In this age of information technology and computerization, record keeping can easily be undertaken with little capital outlay and every transaction can be recorded. Developers and builders, including public sector authorities and societies, should be required to electronically, and automatically, transmit to a designated record keeper every transaction with complete particulars thereto, and to periodically provide a hard copy of the transactions. In addition to protecting the public this would also prevent double book-keeping by developers/builders and will document the economy. A record keeping mechanism could also be designed to prevent duplicate or multiple allotments in respect of the same plot of land or apartment, and to also prevent arbitrary cancellation of allotments.

Conclusion: i) When a sale or a lease deed is registered pursuant to the Registration Act, 1908, the transaction gets recorded.
ii) Record keeping mechanism can protect public and prevent double book-keeping.

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6. **Supreme Court of Pakistan**
Zahid Sarfaraz Gill v. The State
Criminal Petition No.1192 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1192_2023.pdf

Facts: Through the instant petition the petitioner has challenged the impugned order and sought bail in FIR under section 9(1) (c) of Control of Narcotic Substances Act, 1997.

Issues: i) Whether video recording or taking photograph by the police and members of Anti-Narcotic Force, during search, seizure and/or arrest, permissible as evidence?
ii) How can, use of mobile cameras by police or Anti-Narcotics Force members for recording video or photographing during search, seizure and arrest, be useful?

Analysis: i) …However, we fail to understand why the police and members of the Anti-Narcotics Force (‘ANF’) do not record or photograph when search, seizure and/or arrest is made. Article 164 of the Qanun-e-Shahadat, 1984 specifically permits the

use of *any evidence that may have become available because of modern devices or techniques*, and its Article 165 overrides all other laws.
ii) …If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.

Conclusion: i) Video recording or taking photograph by the police and members of Anti-Narcotic Force, during search, seizure and/or arrest, is permissible in evidence under Article 164 of Qanun-e-Shahadat, 1984.
ii) It would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search & its seizure and to prevent false allegations levelled against ANF/police.

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7. **Supreme Court of Pakistan**
Ghulam Fareed (deceased) through his L.Rs. etc. v. Daulan Bibi
Civil Petition No.3465-L of 2022
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._3465_l_2022.pdf

Facts: The suit filed by the respondent was decreed against which the petitioner filed an appeal which was dismissed. Thereafter, the petitioners invoked the revisional jurisdiction of the High Court but the Civil Revision filed by the petitioners was also dismissed. Hence, the petitioners have filed this civil petition.

Issue: Whether burden to prove the purported sale lies upon the beneficiary of the sale?

Analysis: The burden to establish the purported sale lay upon the beneficiary of the sale but this was not discharged. The respondent was not required to disprove the sale yet she undertook to do so.

Conclusion: Burden to prove the purported sale lies upon the beneficiary of the sale.

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8. **Supreme Court of Pakistan**
M Taimoor Ali v. The State through P.G. Punjab and another
Criminal Petition No.1294 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1294_2023.pdf

Facts: This criminal petition for leave to appeal has been filed against the order of High Court wherein it was recorded that the petitioner's counsel did not press the petition in order to approach the Supreme Court of Pakistan. That bail was disposed of earlier by the Supreme Court while recording that petitioner's counsel

did not press it for the time being.

Issue: Whether an accused should withdraw his bail petition filed on merit if fresh ground for bail becomes available to him?

Analysis: If a fresh ground had become available to the petitioner prior to the passing of the impugned order then counsel should not have withdrawn the petition, but insisted that the petition be decided on merits.

Conclusion: An accused should not withdraw his bail petition filed on merit but insist that the petition be decided on merits even fresh ground for bail becomes available to him.

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9. **Supreme Court of Pakistan**
Province of Sindh through Secretary Agriculture Department, Government of Sindh and others v. Multiline Enterprises
Civil Appeals No.477 and 478 of 2021
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._477_2021.pdf

Facts: The matter has arisen from cross appeals against a judgment of a learned Division Bench of the High Court. The Province of Sindh advertised a tender inviting bids for the supply of 15 crawler tractors. Multiline Enterprises participated in the tender and was awarded the contract. At the time the contract was entered into there was an exemption from the payment of sales tax at import stage. The collection of advance income tax at import stage was also at a concessional rate. However, by the time the goods came to be delivered the exemption from sales tax at import stage was wholly withdrawn, and the rate at which advance income tax was to be collected at that stage was also enhanced. Multiline demanded a reimbursement on the sales tax that it had to pay, as also the payment of advance income tax at the enhanced rate in terms of s. 64A of the Sale of Goods Act. In terms of s. 64A of the Sale of Goods Act, 1930. The Province was aggrieved to the extent that the claim for reimbursement of sales tax at import stage had been decreed. Multiline was aggrieved to the extent that its claim for reimbursement of advance income tax at the import stage at the enhanced rate had been dismissed.

Issues: i) Scope and applicability of s. 64A of the Sale of Goods Act, 1930?
ii) Significance of "Incoterms"?
iii) Basic principles applicable to payment of sales tax in VAT mode?

Analysis: i) Even on a bare perusal s. 64A applies only in relation to three types of taxes: central excise duty, customs duty and sales tax. These are taxes normally classified as indirect. The section makes no mention of income tax, which is normally classified as a direct tax. The finding to the extent of advance income tax since s. 64A did not apply to income tax was upheld. With regard to the sales tax aspect, it was observed that the learned Court by alluding to the "spirit" of s. 64A, found it attracted to the claim for reimbursement of sales tax paid at import

stage in disregard to clause 26 of the general conditions of the contract which stipulated that the contract was on DDP basis, i.e., Delivery Duty Paid.

ii) The Incoterms or International Commercial Terms are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) relating to international commercial law. Incoterms define the responsibilities of exporters and importers in the arrangement of shipments and the transfer of liability involved at various stages of the transaction. They are widely used in international commercial transactions or procurement processes and their use is encouraged by trade councils, courts and international lawyers. The Incoterms rules are accepted by governments, legal authorities, and practitioners worldwide for the interpretation of most commonly used terms in international trade. A contract on DDP basis is most favorable for the buyer in that almost all the risks, costs and tasks are to the account of the seller. Now as the contract was on DPP basis hence the application of Section 64 A was ousted.

iii) It is important to keep in mind that the supply chain, which is such a basic feature of sales tax in VAT mode, was not found in the present case since the contract was directly between the seller/importer (i.e., Multiline) and the buyer/final consumer (i.e., the Province). Furthermore, the distinction between the legal liability to pay a tax on the one hand and (if it be an indirect one) the "liability" to bear its economic incidence or financial burden on the other must be kept in mind. Section 3(3) of the 1990 Act clearly places the legal liability for the tax on the seller.

Conclusion: i) Section 64A was not attracted to a contract made on DPP (Delivery Duty Paid) basis.

ii) The purpose of Incoterms is to provide a mechanism as to how the tasks, costs and risks associated with international trade are to be divided between the buyer and seller.

iii) Although the Sale of Goods Act1990 Act contemplates a supply chain, with there being output tax-input tax payments at each "link" of the chain but the chain was missing in the present case.

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10. **Supreme Court of Pakistan**
Muhammad Yasin and others v. The State
Crl. Petition No. 476-L and Jail Petition No. 337 of 2018
Mr. Justice Ijaz ul Ahsan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._476_l_2018.pdf

Facts: Judgment, rendered in criminal appeal and murder reference by the High Court for the offences under section 302(b) read with 148 and 149 PPC whereby conviction was maintained and sentence was altered to that of imprisonment for life, has been assailed before the august Supreme Court.

Issues: i) Mitigating circumstances justifying reduction of sentence from death to imprisonment for life?
ii) Basis of imposing death penalty only in 'most serious crimes' as expounded by Article 6 of the International Covenant on Civil and Political Rights (ICCPR)?

Analysis: i) Non-proving of the motive i.e. absence of premeditation, in the cases of capital punishment could be considered as a mitigating circumstance justifying reduction of sentence from death to imprisonment for life. The august Court relied on 2013 SCMR 1602 as well 2011 SCMR 1165. Moreover recovery at the instance of the accused was also one of the factors considered for mitigating the sentence.
ii) It is trite that quantum of sentence may be reduced from death penalty to life imprisonment if the prosecution fails to establish motive**.** This principle is in conformity with Article 6 of the ICCPR which stipulates that the death penalty may only be imposed for the 'most serious crimes'. The august court explained the concept of '*inherent right to life'* finding mention in ICCPR's General Comment No. 6 of 1982 as well as Article 9 (right to life) and Article 14 (right of dignity) of the Constitution of Pakistan to discuss the scope for imposing capital punishment. Moreover the Resolution No. 1984/50 by the United Nations Economic and Social Council (ECOSOC) elucidating the safeguards guaranteeing protection of rights of those facing death penalty was also spelt out for the purpose of refining the boundary line for imposing capital punishment.

Conclusion: i) Quantum of sentence may be reduced from death penalty to life imprisonment if the prosecution fails to establish motive.
ii) Death penalty is only to be imposed in most serious crimes in order for it to be in conformity with Article 6 of the ICCPR as well as Articles 9 and 14 of the Constitution of Pakistan.

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11. **Supreme Court of Pakistan**
Zagham Hassan Khan v. The State, etc.
Crl.P.172-L/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._172_l_2023.pdf

Facts: The present case of an accused person suffering from 'schizophrenia' and aged about 60 years prompts us to examine, whether the trial court has reasonably exercised the discretion vested in it under Section 466 of the Code of Criminal Procedure 1898 in declining to release him on sufficient security after postponing the further proceedings in the case under Section 465, CrPC, and also to enunciate the principles that should guide the reasonable exercise of this discretion.

Issues: i) Whether under section 466 of CrPC, the course of releasing the accused who is of unsound mind and incapable of making his defence on sufficient security must be adopted as a rule while the order for detaining him in safe custody is to be made only as an exception?
ii) What may be the circumstances that can justify adopting the exceptional course

of detaining the accused who is of unsound mind and incapable of making his defence in safe custody?

Analysis: i) A bare reading of Section 466, CrPC, shows that in cases where the accused person is found to be of unsound mind and incapable of making his defence, the court has been conferred with special power to release him on sufficient security, notwithstanding whether the case is one in which bail may be taken or not. The sufficient security required is that of a person who binds himself (i) to properly take care of the accused, which includes his proper medical treatment, (ii) to prevent the accused from doing injury to himself or any other person, and (iii) to produce the accused when required before the court or before such officer as ordered by the court. If in the opinion of the court, bail should not be taken, i.e., the accused should not be released, or if the required sufficient security is not given, the court can order the accused to be detained in safe custody in such place and manner as it thinks fit. From the reading of Section 466, CrPC, it transpires that the primary course prescribed is to release the accused, who is of unsound mind and incapable of making his defence, on sufficient security while detaining him in safe custody secondary to the primary course. It, therefore, follows that the course of releasing such an accused on sufficient security must be adopted as a rule while the order for detaining him in safe custody is to be made only as an exception.

ii) Next comes the question: what may be the circumstances that can justify adopting the exceptional course of detaining the accused in safe custody? The answer to this question also lies within the provisions of Section 466. The noticeable point is that while conferring the discretion on the court, by using the word 'may', Section 466 provides an inbuilt guidance for the exercise of that discretion by making it conditional on giving sufficient security to properly take care of the accused and to prevent him from doing injury to himself or any other person. These two conditions are the touchstone on the basis of which the court is to exercise its discretion in either way. If keeping in view the facts and circumstances the court forms an opinion that in releasing the accused on bail, there is an apprehension that he would not be properly taken care of or prevented from doing injury to himself or any other person, it can then decline to release him on bail and direct for keeping him in safe custody in such place and manner as it may think fit. The facts and circumstances that are relevant in forming such an opinion by the court may be that no one from the kith and kin of the accused comes forward to give sufficient security for the fulfillment of the said conditions, or that his kith and kin have previously remained unsuccessful in preventing him from doing injury to other persons.

Conclusion: i) Under section 466 of CrPC, the course of releasing the accused who is of unsound mind and incapable of making his defence on sufficient security must be adopted as a rule while the order for detaining him in safe custody is to be made only as an exception.

ii) If keeping in view the facts and circumstances the court forms an opinion that in releasing the accused on bail, there is an apprehension that he would not be properly taken care of or prevented from doing injury to himself or any other person, it can then decline to release him on bail and direct for keeping him in safe custody in such place and manner as it may think fit.

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12. **Supreme Court of Pakistan**
Mst. Shahida Siddiqa v. Allied Bank Limited through its President, etc.
Allied Bank Limited through its President, etc. v. Mst. Shahida Siddiqa
Civil Appeals No. 836-L, 837-L/2013
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._836_l_2013.pdf

Facts: The appellant filed this appeal, with leave of Supreme Court, against the judgment of Lahore High court whereby the judgments of both the Courts below, the Punjab Labour Appellate Tribunal and the Punjab Labour Court were modified by the High Court.

Issue: Whether penalty imposed for a guilt ought to be harsh?

Analysis: It is a settled proposition of law that a penalty should be proportionate to the guilt. The modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed. Given the fact that the Labour Court and the Appellate Tribunal found the Appellant negligent of not properly keeping the secret code but did not see any merit in the allegations of embezzlement, the imposition of a major penalty of compulsory retirement from service would definitely be harsh.

Conclusion: The modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed.

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13. **Supreme Court of Pakistan**
Pervaiz Hussain Shah v. Secretary to Government of the Punjab Food Department, Lahore, etc.
Secretary to Government of the Punjab Food Department, Lahore and another v. Pervaiz Hussain Shah
Civil Petitions No. 1007 and 1112-L/2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1007_2022.pdf

Facts: The parties seek Leave to Appeal against the judgment of Punjab Service Tribunal, whereby the Tribunal had partially allowed the Appeal of petitioner employee.

Issues: i) What does expression "negligence" connotes and how ordinary negligence

differs from gross negligence?
ii) What is professional negligence?
iii) What is modern notion of proportionality regarding imposing penalty?

Analysis: The expression "negligence" in fact connotes a dearth of attentiveness and alertness or disdain for duty. The genus of accountability and responsibility differentiates and augments an act of gross negligence to a high intensity rather than an act of ordinary negligence. To establish gross negligence, the act or omission must be of a worsened genre whereas ordinary negligence amounts to an act of inadvertence or failure of taking on the watchfulness and cautiousness which by and large a sensible and mindful person would bring into play under peculiar set of circumstances.
ii) Lord President Clyde in *Hunter v Hanley* vis-à-vis negligence, observed: "in relation to professional negligence I regard the phrase 'gross negligence' only as indicating so marked a departure from the normal standard of conduct of a professional man as to infer a lack of that ordinary care which a man of ordinary skill would display."
iii) It is now a settled proposition of law that a penalty should be proportionate to the guilt. Since the current constitutional era has been termed as the 'age of proportionality', the modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed.

Conclusion: i) The expression "negligence" in fact connotes a dearth of attentiveness and alertness or disdain for duty. To establish gross negligence, the act or omission must be of a worsened genre whereas ordinary negligence amounts to an act of inadvertence or failure of taking on the watchfulness and cautiousness which by and large a sensible and mindful person would bring into play under peculiar set of circumstances.
ii) When the conduct of a person is so marked indicating a departure from the normal standard of conduct of a professional man as to infer a lack of that ordinary care which a man of ordinary skill would display, that is professional negligence.
iii) The modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed.

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14. **Supreme Court of Pakistan**
Gul Zaman v. Deputy Commissioner/Collector Gwadar & others
Civil Appeal No.13 -Q Of 2020
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Mussarat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._13_q_2020.pdf

Facts: This direct appeal is by the landowner and arises out of the proceedings brought

by him under Section 18 of the Land Acquisition Act, 1894, seeking enhancement of compensation for his land, which was acquired for the construction of Free Trade Zone.

Issues: i) What are the jurisdictional facts, compliance of which is a condition precedent to the exercise of the power of reference under Section 18 of the Land Acquisition Act, 1894?

ii) Whether the landowner can directly file an application under Section 18 of the Land Acquisition Act, 1894 before the court?

iii) Whether jurisdiction given by a statute only upon certain specified terms can be exercised without complying with such terms?

Analysis: i) When we peruse the various Sections in the Act, particularly Sections 18, 19, 20 and 21 thereof, it becomes abundantly clear that there are certain conditions which have to be fulfilled before the Collector is empowered to make the reference, and then alone the Court has any jurisdiction to entertain the reference. These conditions are:

a) A written application should be made before the Collector.
b) The person applying should be one interested in the subject matter of the reference, but who does not accept the award.
c) The grounds of objection as to the measurement, or the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested should be stated in the application; and
d) The application should be within the period prescribed under the provisos (a) & (b) to Section 18 of the Act.

These are all matters of substance, which may be conveniently called jurisdictional facts, and their compliance is a condition precedent to the exercise of the power of reference under Section 18 of the Act.

ii) The matter goes to Court only upon a reference made by the Collector. It is only after such a reference is made that the Court is empowered to determine the objections made by a claimant to the award. In fact , it is the order of reference which provides the foundation of the jurisdiction of the Court to decide the objections referred to it. The Court is bound by the reference and cannot widen the scope of its jurisdiction or decide matters which are not referred to it. It is thus, not within the domain of the Court to entertain any application under the Act pro inter esse suo (that is, according to his interest) or in the nature thereof.

iii) whenever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with in order to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.

Conclusions: i) See analysis portion.

ii)The matter goes to Court only upon a reference made by the Collector therefore, it is not within the domain of the Court to entertain any application

under the Act pro inter esse suo or in the nature thereof.
iii) It is a universal principle that jurisdiction given by a statute upon certain specified terms contained therein should be complied with, to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.

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15. **Supreme Court of Pakistan**
Mehr Noor Muhammad v. Nazeer Ahmed
Civil Appeal No.317-L of 2011
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._317_l_2011.pdf

Facts: The plaintiff/appellant by a summary suit had sued upon a promissory note claiming that the defendant/respondent owed him Rs.800,000. The defendant traversed the claim and averred that he used to purchase pesticide from the plaintiff and as he was illiterate, some blank papers thumb-marked by him were obtained by the plaintiff in business dealing, which he had now made a promissory note. Both the suit and appeal failed which was assailed now before the august Supreme Court.

Issues: i) Prerequisites for admissibility of a Promissory Note?
ii) Whether a document which has once been admitted in evidence then such admission cannot be called into question at any stage of the suit or in proceedings, on the ground that the instrument has not been duly stamped qua section 36 of the Stamp Act 1899?

Analysis: i) It may be noted that as per Section 4 of the Negotiable Instruments Act, 1881, a promissory note is required to contain four essential ingredients: (i) an unconditional undertaking to pay, (ii) the sum should be the sum of money and certain, (iii) the payment should be to or to the order of a person who is certain, or to the bearer, of the instrument, and (iv) the maker should sign it. If an instrument fulfils these four conditions, it will be called a promissory note, and the requirement of attestation of a document provided under Article 17(2)(a) of the Qanun-e-Shahdat,1984, does not apply to a promissory note. Two more things also need to be clarified here. First, if an instrument, notwithstanding the provisions of Section 4 of the Negotiable Instruments Act,1881, is attested by witnesses, the nature and character thereof shall not be affected. It shall remain a promissory note and shall not be converted into a bond within the meaning of section 2(5)(b) of the Stamp Act, 1899. Secondly, if a promissory note is not witnessed, it does not appear that any third person saw it signed, in which case, the best evidence is the handwriting of the parties but if it is witnessed, then it appears, on the face of the promissory note, that there is better evidence behind it i.e. the evidence of witnesses. Moreover the august Court also discussed the impact of section 118 of the Negotiable Instrument Act, 1881, a section which says that until the contrary is proved, inter alia the presumption that every negotiable instrument was made for consideration shall be drawn. Such a

presumption is only a prima facie, and may be displaced by raising a probable defence. In the case in hand keeping in view the circumstantial evidence payment was not proved.

ii) It is now well settled premised on the import of section 36 of the Stamp Act 1899 that where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, it has to be decided there and then when the document is tendered in evidence. Once the Court, rightly or wrongly, admits the document in evidence and allows the parties to use it in examination and cross examination, so far as the parties are concerned, the matter is closed. It was also not open for the Court then to exclude it from consideration.

Conclusion: i) Promissory Note was not found to be admissible in evidence as it fell foul of the prerequisites discussed above.

ii) Once the Court admits any document in evidence then it was not open for the Court to exclude it from consideration at a later stage.

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16. **Supreme Court of Pakistan**
Amir Waheed Shah & others v. Ajmal Khan & others
C.A.271/2015
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._271_2015.pdf

Facts: The respondent no. 01 filed suit for possession under the Khyber Pakhtunkhwa Pre-emption Act, 1987. During trial an application under Order VII Rule 11 of CPC was filed which was dismissed by trial court. The appellants filed application u/s 115 of CPC which was allowed. The respondent no. 01 filed petition under Article 199 of constitution which was allowed and case was remanded to trial court with direction to decide the suit after recording of evidence. Hence, this appeal.

Issues: i) Whether right of pre-emption arises when gift of property is made?
ii) Whether validity of transaction is examined in a suit of pre-emption?
iii) Whether law of pre-emption can be evaded by devices or disguise?
iv) What is appropriate course for a party who challenges a sale through suit for pre-emption but a second/subsequent gift transaction also exists?

Analysis: i) It is now well settled that the right of pre-emption arises when the sale of land occurs. The sale, per the definition provided in Section 2(d) of the Act, does not include a gift.

ii) In a suit for pre-emption, the validity of the transaction is not examined; however, the nature of the transaction may be determined.

iii) A marked distinction exists between a devise and disguise. Device is permitted but not disguise. When transaction has been given a false colour to evade third party rights, it is not only the function but also duty of the Court to

remove veil, see through disguise and then to determine real and true character of transaction. A person is also equally entitled to evade law of pre-emption by all lawful and legitimate devices, like gift, exchange etc.

iv) So, in the given circumstances of the case, respondent No. 1 (plaintiff) could not ignore the gift mutation while making his demand. The appropriate course for him was to say, firstly, that the second transaction was a sale, but to defeat his right of pre-emption, it had been dubbed as a gift; and secondly, that he had made all the requirements of Talbs regarding the second transaction.

Conclusion: i) The right of pre-emption does not arise when gift of property is made.

ii) In a suit for pre-emption, the validity of the transaction is not examined.

iii) Device is permitted but not disguise. A person is entitled to evade law of pre-emption by all lawful and legitimate devices, like gift, exchange etc.

iv) The appropriate course is that firstly, the second transaction be claimed as sale which is dubbed as gift to defeat the right of pre-emption and secondly, fulfill all requirements of Talbs regarding the second transaction.

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17. **Supreme Court of Pakistan**

Kh. Muhammad Fazil v. Mumtaz Munnawar Khan Niazi (decd.) thr. L.Rs. & another

Civil Petition No. 2351 of 2019

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._2351_2019.pdf

Facts: In a suit for declaration filed by petitioner, the respondent filed an application under Order VII Rule 11 of CPC for rejection of plaint due to non-deposit of court fee. The trial court disposed of the application and ordered the petitioner to pay requisite court fee by next date of hearing failing which the plaint would be deemed as rejected. However, on that date trial court granted last opportunity for deposit of court fee and being aggrieved, the respondent filed revision petition against said order which was accepted and plaint was rejected. The petitioner filed writ petition which was dismissed, hence, this civil petition.

Issues: i) What are distinctive features and characteristics of section 148 of CPC as compared to section 149 of CPC?

ii) Whether section 149 CPC is an exception to the command delineated under sections 4 & 6 of Court Fees Act, 1870?

iii) What does term "*functus officio"* indicate?

iv) In what proceedings, the doctrine of "*functus officio"* is applicable and what would be consequences if this doctrine is not adhered to?

v) What is reason of incorporating section 148 CPC and whether discretion for extending time u/s 148 can be exercised arbitrarily, capriciously or whimsically?

vi) What type of construction of law ought to be avoided?

vii) What is effect of passing conditional order to the effect that in non-compliance of court order, suit/application shall stand dismissed?

viii) Whether rejection of plaint for non-deposit of court fee precludes the plaintiff from presenting fresh plaint?

Analysis: i) The provision for enlargement of time is assimilated under Section 148, CPC which articulates that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the CPC, the Court may, in its discretion from time to time, enlarge such period, even though the period originally fixed or granted may have expired. Whereas Section 149 deals with the power to make up the deficiency of court fee which elucidates in a translucent stipulation that where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

ii) It is visible from Section 149, CPC that it an exception to the command delineated under Sections 4 and 6 of the Court Fees Act, 1870. The exercise of discretion by the Court at any stage is, as a general rule, expected to be exercised in favour of the litigant on presenting plausible reasons which may include bona fide mistake in the calculation of the court fee; unavailability of the court fee stamps; or any other good cause or circumstances beyond control, for allowing time to make up the deficiency of court fee stamps on a case to case basis, and the said discretion can only be exercised where the Court is satisfied that sufficient grounds are made out for nonpayment of the court fee in the first instance. The provisions depicted under Order VII, Rule 11 and Section 149, CPC have to be read collectively.

iii) The Latin maxim “functus officio” denotes that once the competent authority has finalized and accomplished the task for which he was appointed or engaged, his jurisdiction and authority is over and ended or, alternatively, that the jurisdiction of the competent authority is culminated once he has finalized and accomplished his task for which he was engaged. If the Court passes a valid order after providing an opportunity of hearing, it cannot reopen the case and its authority comes to an end and such orders cannot be altered save for where corrections need to be made due to some clerical or arithmetical error.

iv) This doctrine is applicable to both judicial and quasi-judicial authorities, and, if it is not adhered to, it may result in turmoil for the litigating parties. If the authorities or the judges would be able to alter, change or modify orders capriciously and variably then resultantly will leave no certainty and firmness to any order or decision passed by any Court or authority. It is imperative for a sound judicial system to result in finality and certitude to the legal proceedings.

v) The raison d'etre of incorporating Section 148 in the CPC is to deal with genuine cases for extension or enlargement of time in exigency on a case to case basis and despite lapse of time either granted by the Court or the CPC, the Court

has been vested with the jurisdiction to extend time in suitable cases…No doubt the time allowed for doing a thing can be enlarged by the Court under Section 148, CPC, in its discretion from time to time, even though the period originally fixed or granted may have expired, but this discretion cannot be exercised arbitrarily, capriciously or whimsically, rather such discretion must be exercised and structured in a reasonable and judicious manner.

vi) A construction which renders the statute or any of its sections or components redundant should be avoided and must be so construed so as to make it effective and operative.

vii) Such conditional orders are against the spirit of the powers granted to the Court to meet exigencies and as a result, even in genuine cases with proper explanation and sufficient cause of non-compliance or some force majeure circumstances, the party will be non-suited unless the conditional order of dismissal of suit or rejection of plaint or memo of appeal is reviewed by the Court itself or is set aside by the higher fora.

viii) Under Order VII, Rule 13, CPC, the rejection of a plaint on any of the grounds hereinbefore mentioned (i.e. in Order VII) shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Meaning thereby that, as the plaint in this case was rejected due to non-payment of court fee and not for any other cause such as limitation, a pathway was opened to the petitioner/plaintiff to invoke the remedy provided under Order VII, Rule 13, CPC by presenting fresh plaint within the prescribed period of limitation.

Conclusion: i) Section 149 reckons the ratification of time for the payment of court fee in the beginning, while Section 148 is germane to the enlargement of time for the compliance of any act for which any period is fixed or granted by the Court as allowed by the CPC, and the Court in its discretion may enlarge such period from time to time, despite the fact that the period originally fixed or granted has expired.

ii) It is visible from Section 149, CPC that it an exception to the command delineated under Sections 4 and 6 of the Court Fees Act, 1870.

iv) This doctrine is applicable to both judicial and quasi-judicial authorities, and, if it is not adhered to, it may result in turmoil for the litigating parties and would lead to uncertainty.

v) The raison d'etre of incorporating Section 148 in the CPC is to deal with genuine cases for extension or enlargement of time in exigency on a case to case basis. Discretion u/s 148 CPC cannot be exercised arbitrarily, capriciously or whimsically, rather such discretion must be exercised and structured in a reasonable and judicious manner.

vi) A construction which renders the statute or any of its sections or components redundant should be avoided and must be so construed so as to make it effective and operative.

vii) once a conditional order is passed, the Court fastens its own hands and gives

up the jurisdiction so conferred under Section 148, CPC and virtually becomes functus officio.

viii) Rejection of plaint for non-deposit of court fee and not for any other cause such as limitation, does not preclude the plaintiff from presenting fresh plaint within the prescribed period of limitation.

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18. **Supreme Court of Pakistan**
International Islamic University, Islamabad through its Rector and another v. Syed Naveed Altaf and others
Civil Petition No.835 of 2021
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._835_2021.pdf

Facts: The petitioners filed Civil Petition against judgment passed by the Islamabad High Court, Islamabad whereby an intra-court appeal filed by the Petitioners was dismissed on the ground that Section 38 of the International Islamic University Ordinance, 1985 provides for a right of appeal and review against the decision of the Board of Governors.

Issue: What is the essential requirement to invoke the proviso to Section 3(2) of the Law Reforms Ordinance?

Analysis: The relevant law in this case is Section 38 of the Ordinance of 1985, which provides for the remedy of appeal or review before the Board of Governors against any order punishing a teacher or other employees of the university. The Respondents admittedly availed the remedy of appeal provided against the original order by the Board of Governors in terms of Section 38 of the Ordinance of 1985. Consequently, the proviso to Section 3 (2) of the Law Reforms Ordinance creates a bar on the remedy of appeal. As per the dicta of [Supreme] Court, the essential requirement to invoke the proviso to Section 3(2) of the Law Reforms Ordinance is to see whether the remedy of at least one appeal, review or revision is available under the law against the original order, in the proceedings in which the law is applicable to decide the ICA on merit. The law must prescribe for the remedy of appeal, review or revision, and if so Section 3(2) of the Law Reforms Ordinance will be applicable, notwithstanding whether that remedy is available to the person filing the ICA.

Conclusion: The essential requirement to invoke the proviso to Section 3(2) of the Law Reforms Ordinance is to see whether the remedy of at least one appeal, review or revision is available under the law against the original order or not.

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19. **Supreme Court of Pakistan**
Junaid Wazir v. Superintendent of Police, Pru/Dolphin Police, Lahore
Civil Petition No.3186 of 2020
Mr. Justice YahyaAfridi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3186_2020.pdf

Facts: The petitioner was proceeded under the provisions of Punjab Police (Efficiency & Discipline) Rules, 1975 with charge that he remained absent from official duty without any application or prior permission of the competent authority. In regular departmental inquiry, the inquiry officer found the petitioner guilty and the respondent No.1 imposed the penalty of discharge from service, whereas the petitioner's departmental appeal was rejected being not maintainable against the discharge from service under rule 12.21 of the police rules, 1934. Thereafter, the Petitioner's service appeal was dismissed by the learned Tribunal on the point of limitation, hence, this civil petition for leave to appeal.

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Issues: i) Whether a departmental appeal could be filed against the order of discharge from service under Rule 12.21 of Police Rules, 1934?
ii) Whether any adverse decision on representation can be challenged?
iii)What does the doctrine of *ex debitojustitiae* refers to?

Analysis: i)The section 21 of the Punjab Civil Servants Act, 1974 enunciates that where a right to prefer an appeal or apply for review in respect of any order relating to the terms and conditions of his service is allowed to a civil servant by any rule applicable to him, such appeal or application shall, except as may otherwise be prescribed, be made within sixty days of the communication to him of such order and if no provision for appeal or review exists in the rules in respect of any order, a civil servant aggrieved by any such order may, except where such order is made by the governor, within sixty days of the communication to him of such order, make a representation against it to the authority next above the authority which made the order provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post.

ii)Section 4 of the Punjab Service Tribunals Act,1974, provides that if a right of appeal or review was not provided in the aforesaid rule then, in unison, it does not debar or prohibit the civil servant from electing the remedy of filing a representation as of right.

iii) The legal maxim *"ex debitojustitiae"* (latin) means "as a matter of right or what a person is entitled to as of right". This Maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act *ex debitojustitiae* is an inherent power of courts to fix procedural errors.

Conclusion: i) No right of appeal against the discharge from service is provided under rule 12.21 of the Police Rules, 1934, but representation against the order of discharge is maintainable under section 21 of the Punjab Civil Servants Act, 1974.
ii)Any adverse decision on representation can be challenged under section 4 of the Punjab Service Tribunals Act, 1974.
iii) The doctrine of *ex debitojustitiae* refers to the remedies to which a person is entitled as a matter of right as opposed to a remedy which is discretionary.

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20. **Supreme Court of Pakistan**
Akhtar s/o Gul Zameer v. Khwas Khan and another
Criminal Petition No.1054 OF 2023
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1054_2023.pdf

Facts: This Criminal Petition is directed against the order passed by the High Court whereby the application moved for post-arrest bail qua offences under sections 302, 201, 120-B and 109 of the Pakistan Penal Code, 1860 ("PPC"), and Section 15 of the Khyber Pakhtunkhwa (KPK) Arms Act, 2013 ("Arms Act") was dismissed.

Issues: i) Whether a confession made before the police is admissible?
ii) Connotation of the expression "reasonable grounds" as contained under Section 497, Cr.P.C?
iii) Explanation of the expression "Further Inquiry"?

Analysis: i) Article 38 of the Qanun-e-Shahadat Order 1984 is quite lucid that no confession made to a police officer shall be proved as against a person accused of any offence, while Article 39 emphasizes that, subject to Article 40, no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.
ii) The expression reasonable grounds necessitated the prosecution to show that it is in possession of sufficient material or evidence to demonstrate that accused had committed an offence falling within the prohibitory limb of Section 497, Cr.P.C. expression 'reasonable grounds' signifies and corresponds to the grounds which are legally rational, acceptable in evidence and attractive to the judicial mind, as opposed to being imaginative, fallacious and/or presumptuous.
iii) It is a well settled notion of law that further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching a just conclusion.

Conclusion: i) A confession made before the police is not made admissible by dint of the Article 38 of the Qanun-e-Shahadat Order 1984.

ii) Reasonable grounds as contained under Section 497, Cr.P.C., necessitated the prosecution to show that it is in possession of sufficient material or evidence to connect the accused with the offence.
iii) Further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime.

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21. **Supreme Court of Pakistan**
Nasir Khan v. Nadia Ali Butt and others
Civil Petition No. 2885 Of 2022
Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2885_2022.pdf

Facts: Being aggrieved with the ex-parte order, the petitioner preferred an appeal before the Additional District Judge that was dismissed then the petitioner approached the High Court by filing a writ petition which too met with the fate of dismissal. Through this petition for leave to appeal, the petitioner has assailed the order passed by the High Court.

Issues: i) Whether it is essential that a landlord should be the owner of the rented property?
ii) Whether the tenancy is necessarily be created by a written instrument in express terms?
iii) Whether a tenant can prolong his occupation by exercising his right of being subsequent purchaser and what are its reasons?

Analysis: i) It is a well settled principle of law that a landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in the normal circumstances, in the absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as a tenant under the law.
ii) The tenancy may not be necessarily created by a written instrument in express terms, rather may also be oral and implied.
iii) A tenant remains a tenant; he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind are that the tenant has no status to justify his possession and if he denies the relationship of landlord and tenant he will be known to be an illegal occupant. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises and has instituted a suit for declaration in this regard.

Conclusion: i) It is a well settled principle of law that a landlord may not be essentially an owner of the rented property.
ii) The tenancy may not be necessarily created by a written instrument in express terms, rather may also be oral and implied.
iii) See above in analysis clause.

22. **Lahore High Court**
Ghulam Mustafa v. Punjab Labour Appellate Tribunal, Lahore etc.
Writ Petition No. 2842 of 2017/RWP
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5999.pdf

Facts: The Labour Officer filed report/reference before Punjab Labour Court relating to non-payment of bonus to the workers by the petitioner-concern at the end of the financial year, in terms of the Industrial and Commercial Employment (Standing Order) Ordinance, 1968. Upon service of notice, in addition to filing reply to the report/reference, the petitioner-concern filed an application under section 54(i) of the Industrial Relations Act, 2012 before the Labour Court, for return of the challan submitted by the Labour Officer which was dismissed, against which the petitioner-concern filed revision petition before the Punjab Labour Appellate Tribunal, and the same was dismissed; hence this petition.

Issues: i) Whether a Labour Court has the jurisdiction to try an offence under the provisions of the Ordinance, 1968?
ii) Whether jurisdiction of the Labour Court is ousted while dealing with matters of a trans-provincial establishment and the Commission has power to take up any matter arising out of non-payment of bonus by the employer to an employee?
iii) Whether any forum can be allowed to assume the jurisdiction to take cognizance at the whims of a party when parent statute has not vested the jurisdiction in it?
iv) Whether the Industrial and Commercial Employment (Standing Order) Ordinance, 1968 is an independent entity?
v) Whether High Court can upset concurrent findings recorded by the courts below in Constitutional jurisdiction?

Analysis: i) Indisputably, powers of the Inspectors of Mines appointed under Section 4 of the Mines Act, 1923 and those of the Inspectors appointed under Section 10 of the Factories Act, 1934 and such others persons, not being conciliators appointed under the Industrial Relations Ordinance, 1969 have been encapsulated under Standing Order No.6 of the Ordinance 1968… Further Standing Order No.7 deals with penalties and procedure for prosecution against an employer which violates Standing Order No.6… According to Standing Order No.7(6), no Court other than a Labour Court has the jurisdiction to try an offence under the provisions of the Ordinance, 1968, meaning thereby that if any violation of Standing Order has been established on the part of the employer or the worker, the forum is to be determined according to the recitals of the Standing Orders. Even otherwise Standing Order No.7(6) of the Ordinance, 1968 has been couched in negative language barring jurisdiction of any other forum except the Labour Court to deal with the matters relating to violation of Standing Order No.6 and allied matters, thus, it has to be given effect by adopting its plain language.
ii) Taking up the plea of learned counsel, representing the petitioner-concern that

since the petitioner-concern is a trans-provincial establishment, jurisdiction of the Labour Court is ousted, I am of the view that functions of the Commission have been embodied in Section 54 of the Act 2012… According to Section 54, the Commission has jurisdiction inter-alia to adjudicate upon the cases of unfair labour practices specified under Section 31 and 32 of the Act, 2012. Sections 31 deals with unfair labour practices on the part of the employer… As far as section 32 of the Act, 2012 is concerned, same deals with unfair labour practice on the part of the workmen. Conjunctive reading of Sections 31 and 32, renders it crystal clear that no-where the Commission has been empowered to take up any matter arising out of non-payment of bonus by the employer to an employee… During the course of arguments, learned counsel, representing the petitioner-concern, has put much emphasis on the fact that the Inspectors, referred to by learned Law Officer, in relation to Standing Order No.6 of the Ordinance, 1968, have also been empowered under Section 29 of the Act, 2012, hence, while dealing with an issue relating to a trans-provincial establishment, they are bound to act according to the provisions of the Act, 2012, thus, the Labour Officer could not file report/reference before the Labour Court rather he was supposed to file the same before the Commission. With a view to appreciate the said plea, I have gone through the provisions of Sections 29 and 30 of the Act, 2012… According to Section 30(1)(a), the Inspector has been empowered to make a report in writing to the Registrar having jurisdiction of any offence punishable under the provisions of the Act, 2012 in relation to violation of Sections 27 and 28 of the Act, 2012. A joint reading of Sections 27 and 28 makes it abundantly clear that the same in no manner deal with payment of bonus by the employer at the end of financial year, thus, the plea of the petitioner-concern that the Inspectors appointed under the Act, 2012 have the same powers as those appointed under Standing Order No.6 of the Ordinance, 1968 cannot be given any weightage.

iii) It is well established by now that jurisdiction of a forum to take cognizance of a matter can be decided on the basis of parent statute and if any power has not been vested in it, same cannot be allowed to be assumed at the whims of a party.

iv) It is important to observe over here that with a view to give effect to the provisions of the Act, 2012, the Commission with prior approval of the Federal Government has framed National Industrial Relations Commission (Procedure and Functions) Regulations, 2016 (the Regulations, 2016). According to Regulation No. 63 of the Regulations, 2016, the Chairman of the Commission has been empowered to make Standing Orders for general superintendence of affairs of the Commission in terms of Section 54(i) of the Act, 2012. Learned counsel for the petitioner-concern has not been able to convince this Court that if the Ordinance, 1968 had no independent entity as to why the Chairman was empowered to make Standing Orders while exercising powers under Section 54(i) of the Act, 2012. The said fact also lends support to the plea of learned Law Officer that violation of Standing Order No.6 of the Ordinance, 1968 is not covered under the Act, 2012, thus the said issue is to be taken up in accordance with Standing Order No.7 of the Ordinance, 1968.

v) Even otherwise, concurrent findings recorded by the courts below cannot be upset in Constitutional jurisdiction until and unless they are proved to be perverse or result of some arbitrariness…

Conclusion: i) A Labour Court has the jurisdiction to try an offence under the provisions of the Ordinance, 1968.
ii) A Labour Court has jurisdiction to deal with matters of a trans-provincial establishment and the Commission has no power to take up any matter arising out of non-payment of bonus by the employer to an employee.
iii) Any forum cannot be allowed to assume the jurisdiction to take cognizance at the whims of a party when parent statute has not vested the jurisdiction in it.
iv) The Industrial and Commercial Employment (Standing Order) Ordinance, 1968 is an independent entity.
v) High Court cannot upset concurrent findings recorded by the courts below in Constitutional jurisdiction unless they are proved to be perverse or result of some arbitrariness.

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23. **Lahore High Court**
WASA Rawalpindi and another v. Punjab Labour Appellate Tribunal, Lahore etc.
Writ Petition No. 3439 of 2019/RWP
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6121.pdf

Facts: The private respondents filed complaints under sections 33(8), 65 & 66 of the Punjab Industrial Relations Act, 2010. The Labour Court directed the Managing Director and the Director (Admin) WASA to regularize services of the private respondents (petitioners therein) against the posts of said order and fixed the matter for compliance. Being aggrieved of order the department filed revision petition before PLAT which was dismissed, hence this petition.

Issues: i) When a workman attains status of a permanent workman against a post of permanent nature?
ii) Whether the Executing/ Implementing Court sit over the judgment/decision implementation whereof has been sought?
iii) Whether an employee who has been inducted in service without fulfilment of requisite criteria can claim exemption from the scrutiny at the time of regularization of his service?

Analysis: i) According to Standing Order No.1(b) of the Schedule attached with the Ordinance, 1968, a workman who performs duties for more than three months against a post of permanent nature attains status of a permanent workman.
ii) It is well established by now that the Executing/ Implementing Court cannot sit over the judgment/decision implementation whereof has been sought.
iii) The employees did not fulfill the eligibility criteria for appointment/regularization against the posts being held by them in terms of the

service rules framed for the employees of WASA Rawalpindi, in the year 2012, being persuasive, cannot be discarded lightly. Though the eligibility of the employees was to be determined at the time of their induction in service but when they completed the requisite period, they were entitled for regularization against the post being held by them but in this case it is admitted position that the private respondents were hired without adopting the due process, thus, their eligibility to hold any post on regular basis could not be bypassed especially when the service rules were framed by WASA much prior to issuance of orders regarding their regularization. Had the employees been inducted in service upon fulfilment of requisite criteria they could have claimed exemption from the scrutiny at the time of regularization of their services.

Conclusion: i) A workman who performs duties for more than three months against a post of permanent nature attains status of a permanent workman.
ii) The Executing/ Implementing Court cannot sit over the judgment/decision implementation whereof has been sought.
iii) An employee who has been inducted in service without fulfilment of requisite criteria cannot claim exemption from the scrutiny at the time of regularization of his service.

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24. **Lahore High Court**
Roshan Iqbal v. Nazar Muhammad and others
Civil Revision No.2584 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5855.pdf

Facts: The respondents No.1 to 4 instituted a suit under sections 39 & 42 of the Specific Relief Act, 1877 alongwith consequential relief. The trial Court decreed the suit in favour of the respondents No.1 to 4 and against the present petitioner and respondent No.5. Appeal was preferred by the petitioner which was accepted and the respondents No.1 to 4 preferred R.S.A., which was accepted with the consent of the counsel for the parties and remanded the case to the appellate Court for decision of appeal afresh. After remand, the learned appellate Court heard the parties' counsel and dismissed the appeal preferred by the present petitioner; hence, the instant revision petition.

Issues: i) Who is to prove the facts if someone desires any court to give judgment as to any legal right or liability dependent on existence of facts?
ii) Whether it is necessary for the party to state about the particulars of misrepresentation, fraud, breach of trust, default, or undue influence who relies on the same?
iii) Whether the evidence, led by any party regarding the fact which is not mentioned in the pleadings, is acceptable?
iv) Whether any shortcoming or discrepancy in the evidence of the rival party can extend benefit to the other party?

v) What is the situation when the High Court is vested with authority to undo the concurrent findings while exercising revisional jurisdiction?

Analysis: i) Article 117 of Qanun-e-Shahadat Order, 1984 provides that whoever desires any Court to give judgment as to any legal right or liability dependent on existence of facts which he asserts, must prove that those facts exist.
ii) Order VI, Rule 4 of the Code of Civil Procedure, 1908 enunciates that, 'in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items necessary) shall be stated in the pleadings.'
iii) Any evidence led by the respondents No.1 to 4 pertaining to fraud, purportedly committed by the present petitioner, cannot be considered being inadmissible as the same was not pleaded in their plaint because a party cannot go beyond its pleadings.
iv) It is admitted that certain shortcomings and contradictions took place in the depositions of the witnesses the same are natural and are not too fatal to disbelieve the same. Even otherwise, the party has to stand on its own legs and any shortcoming or discrepancy in the evidence of the rival party cannot extend benefit to the other party.
v) When the Courts below have misread evidence of the parties and the position is as such, High Court is vested with authority and ample power to undo the concurrent findings while exercising revisional jurisdiction under section 115, Code of Civil Procedure, 1908.

Conclusion: i) Whoever desires any Court to give judgment as to any legal right or liability dependent on existence of facts which he asserts, must prove that those facts exist.
ii) It is necessary for the party to state about the particulars of misrepresentation, fraud, breach of trust, default, or undue influence who relies on the same.
iii) The evidence, led by any party regarding the fact which is not mentioned in the pleadings, is not acceptable because a party cannot go beyond its pleadings.
iv) Any shortcoming or discrepancy in the evidence of the rival party cannot extend benefit to the other party.
v) See above in analysis clause.

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25. **Lahore High Court**
Hassan Munir v. Province of the Punjab, etc.
W. P. No.70260 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC5943.pdf

Facts: The petitioner has called into question the show cause notice issued by the Vice Chancellor, University of Agriculture, Faisalabad under Section 13(4) of the

Punjab Employees Efficiency, Discipline and Accountability Act, 2006 ("PEEDA Act, 2006') whereby he has been afforded opportunity of personal hearing.

Issue: i) Whether Section 12 of the Protection against Harassment of Women at the Workplace Act, 2010 does exclude possibility of proceedings in any other law?
ii) In case of inconsistency between the Federal and Provincial law, whether the former will prevail?

Analysis: i) The petitioner has allegedly been proceeded under the PEEDA Act for misconduct on account of harassment of a female student. Section 12 of the Act of 2010 states that the provisions of the said Act are in addition to any other law in force. It is clearly manifest from the perusal of above provision that proceedings under the Act, 2010 do not exclude possibility of proceedings in any other law, therefore, there is no illegality or jurisdictional error in proceedings against the petitioner, if allegation falls within the scope and ambit of the PEEDA Act, 2006.
ii) Undisputedly the Act of 2010 is a Federal legislation whereas the PEEDA Act, 2006 has been enacted by the Provincial Assembly. Article 143 of the Constitution provides that in case of any inconsistency between the Federal and Provincial Law, the former will prevail. Hence, it is quite clear that in case of any inconsistency between the Act of 2010 and the PEEDA Act, 2006, the provisions of the Act of 2010 shall prevail in its application to the proceedings for the alleged harassment against respondent No.8.

Conclusion: i) Section 12 of the Protection against Harassment of Women at the Workplace Act, 2010 does not exclude possibility of proceedings in any other law.
ii) In case of inconsistency between the Federal and Provincial law, the former law prevail?

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26. **Lahore High Court**
Muhammad Safdar v. Jameel Ahmed and another
R.S.A.No.195522 of 2018
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5877.pdf

Facts: Appellant/ plaintiff instituted a suit for possession through specific performance of agreement to sell alongwith permanent injunction. The trial Court decreed the suit in favour of the appellant. The respondent No.2 being aggrieved preferred an R.F.A. before High Court, however, due to enhancement of pecuniary jurisdiction of the District Judge, the said R.F.A. was transmitted to the District Judge for decision. The appellate Court accepted the appeal, set aside the judgment and decree passed by the learned trial Court and dismissed suit of the appellant for specific performance, however, held the appellant entitled to receive back earnest money Rs.1,500,000/- from the respondent No.1 in addition to withdrawal of any other amount deposited by him in compliance of judgment and decree hence, the instant regular second appeal.

Issues: i) Whether the relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief?
ii) What is the effect if the appellant did not send any written notice to the respondent showing his readiness to pay the remaining amount and asking him to perform his part of agreement after cut-off date?
iii) Whether the judgment of the appellate Court can be interfered?

Analysis: i) It is a settled proposition of law that to bestow the relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief as enunciated in section 22 of the Specific Relief Act, 1877; even in cases where the agreement to sell is validly proved by the plaintiff, the Courts may refuse to allow the relief of specific performance. Court is neither obliged to grant the relief of specific enforcement nor can the plaintiff claim it as a matter of right.
ii) The time is essence of the agreement as the cut-off date was fixed as 29.09.2009, however, the present appellant for the first time demanded execution of registered sale deed by approaching the respondent No.1 on 25.10.2009, meaning thereby he was not ready to perform his part of purported agreement to sell till the cut-off date. Moreover, after cut-off date, the appellant did not send any written notice to the respondent No.1 showing his readiness to pay the remaining amount and asking him to perform his part of agreement, despite the fact that as per terms and conditions of agreement, if vendee fails to pay balance consideration amount till target date the agreement to sell will stand cancelled.
iii) This a regular second appeal which has a very limited scope as provided under section 100, Code of Civil Procedure, 1908. The judgment of the appellate Court cannot be interfered with unless some procedural defects materially effecting such findings is pointed out by the appellant. Reliance is placed on Bashir Ahmed v. Mst. Taja Begum and others (PLD 2010 Supreme Court 906) and Muhammad Feroze and others v. Muhammad Jamaat Ali (2006 SCMR 1304).

Conclusion: i) The relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief as enunciated in section 22 of the Specific Relief Act, 1877.
ii) If the appellant did not send any written notice to the respondent showing his readiness to pay the remaining amount and asking him to perform his part of agreement even after cut-off date, the agreement to sell will stand cancelled.
iii) See above in analysis clause.

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27. **Lahore High Court**
Ahmad (deceased) through L.Rs v. Haji Saeed Ahmad (deceased) through L.Rs.
Civil Revision No.247 of 2015
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6112.pdf

Facts: Through this civil revision the petitioner(s) being aggrieved by the judgments and

decrees of trial court and appellate court in consequence of the suit for specific performance of agreement to sell filed by the respondents, have challenged the same.

Issues: i) Whether date ,time ,place along with names of witnesses in whose presence the agreement to sell reached upon, are sine qua non to be pleaded and proved?
ii) What is the definition of "Contingent Contract"?
iii) When contingent agreement cannot be enforced?
iv) Whether mere exhibition of the document is sufficient?
v) Whether depositions of witnesses based upon hearsay can be relied?
vi) Whether High Court is vested with ample power to undo the concurrent findings while exercising revisional jurisdiction?

Analysis: i) Once vendee could not plead as to when, where and at what place the alleged agreement to sell was reached at and only pleaded that the vendor entered into agreement to sell with him, without mentioning the names of the witnesses, in whose presence the parties bargained and agreed to enter into the transaction in dispute, which otherwise was necessary and sine qua non to be pleaded and proved, in such circumstances the suit for specific performance cannot be succeeded...
ii) Under section 31 of the Contract Act, 1872, A "Contingent contract" is a contract to do or no to do something, of some event, collateral to such contract, does or does not happen...
iii) When the very basis of the purported agreement to sell did not remain in field, the contingent agreement loses its value and cannot be enforced...
iv) Mere exhibition of the document is not sufficient rather the contents of the same are to be proved…
v) The depositions of P.W.7, P.W.8 and P.W.9 are based on hearsay, so the same have no value in the eye of law and cannot be relied upon…
vi) High Court is vested with authority and ample power to undo the concurrent findings while exercising revisional jurisdiction under section 115, Code of Civil Procedure, 1908…

Conclusion: i) Yes, date ,time ,place along with names of witnesses in whose presence the agreement to sell reached upon, are sine qua non to be pleaded and proved.
ii) See analysis portion.
iii) When the very basis of the purported agreement to sell did not remain in field, then in such situation contingent agreement cannot be enforced.
iv) Mere exhibition of the document is not sufficient rather the contents of the same are to be proved.
v) The depositions of witnesses based upon hearsay cannot be relied upon.
vi) Yes, High Court is vested with ample power to undo the concurrent findings while exercising revisional jurisdiction.

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28. **Lahore High Court**
Raja Asad Kiani v. Addl.Sessions Judge etc
Crl.Rev.No.265 of 2023
Mr. Justice Sadaqat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5822.pdf

Facts: The petitioner filed a criminal revision against an order passed by an Addl.Sessions Judge during the trial in a criminal case, whereby his application for summoning the record/Rapt with Audio recording from the office of Rescue-15 has been dismissed.

Issue: Can the accused be allowed to give evidence or to summon the document in trial of a criminal case during the turn of prosecution evidence?

Analysis: The provisions of section 265-F Cr.P.C. have provided a complete procedure for both; prosecution and the accused to examine the witnesses and to produce document(s), since the procedure has made it clear that accused shall be asked to adduce his evidence after conclusion of the prosecution evidence. If accused wants the court to summon any person to give evidence or to produce any document, he shall have to wait till conclusion of the prosecution evidence (…) petitioner has the right to summon record/relevant witness regarding matter in issue but only on his turn i.e. entering on his defence and not before this stage

Conclusion: In trial of a criminal case the accused cannot be allowed to give evidence or to summon the document during the turn of prosecution evidence.

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29. **Lahore High Court**
Sakhi Muhammad (deceased), through LRs. v. Mst. Maridan Mai and others
Civil Revision No.4290 of 2016
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5844.pdf

Facts: The petitioners assailed the decision of the lower courts through Civil Revision wherein petitioners filed suit against respondents and during pendency of suit, parties referred their dispute to the Arbitration subsequently suit was dismissed as withdrawn. After that petitioners moved application before trial court for pronouncement of judgment according to Award but it was dismissed and appeal met the same fate.

Issues: i) Whether will of parties can fetter the settlement of their disputes out of court?
ii) Whether Code of Civil Procedure allows private resolution of dispute during a suit ?
iii) Whether settlement of disputes out of court is recognized under various statutory jurisdictions?
iv) What is arbitration agreement?
v) What is the scope of appeal filed under Arbitration Act?
vi) Whether after dismissal/withdrawal of a suit, application under section 14 and

17 of Arbitration Act can be dismissed?

vii) Whether Order 23 Rule 3 and proviso to section 47 of Arbitration Act depict the unfettered will of the parties to settle their disputes?

viii) What is sine qua non for a compromise or adjustment of a suit?

ix) Whether a decree under Order 23 Rule 3 of C.P.C, can be passed on Arbitration Agreement without following the provisions of Arbitration Act?

x) What are the requirements for pronouncement of a judgment by Civil Court under section 17 of Arbitration Act?

Analysis: i) It is a basic jurisprudence that the will of parties to get their disputes settled out of court cannot be fettered (proviso to S.47).

ii) The Code of Civil Procedure, 1908 allows private resolution of dispute during a suit, even after invoking jurisdiction of the court under Section 9 of CPC.

iii) Out of court settlement of disputes is recognized under various statutes in our jurisdiction and generally under the Act of 1940, Section 46 of which applies provisions of this Act to Statutory Arbitrations as well.

iv)A written agreement to submit, present or future differences to Arbitration, even without naming the Arbitrator is called Arbitration Agreement, under Section 2(a) of the Act of 1940. It can be independent or in shape of a clause in a contract.

v) Appeal against an order by the court, under the Act of 1940, also has limited scope and the Appellate Court cannot go beyond the scope of jurisdiction available to the court under the Act of 1940.

vi) If the suit is withdrawn after the Arbitration Agreement during pending suit, the question of staying the proceedings in suit shall not arise. Such Arbitration Agreement, with due deference, is not an unlawful agreement and consequent Award shall be treated under Chapter II as Arbitration without intervention of Court. Hence the application under Section 14 & 17 of the Act of 1940, for judgment in terms of Award could not be dismissed, simply because an order of reference under Section 21 was not obtained before entering into an Arbitration Agreement.

vii) Rule 3 of Order XXIII and proviso to Section 47 of the Act of 1940 depict the basic jurisprudence of unfettered will of the parties to settle their disputes privately, even during a suit.

viii) The sine qua non for treating any informal private agreement to settle a dispute as a compromise or adjustment of a suit is consent of all the parties in a pending suit under ordinary jurisdiction under Section 9 of CPC.

ix) If both parties agree, in writing, before the court in a suit to pass a decree in accordance with an Arbitration Award, even if it was reached without following the provisions of the Act of 1940 . The decree shall be under Order XXIII Rule 3, taking such Award as a compromise or adjustment of suit as envisaged under proviso to Section 47 of the Act of 1940.

x) If the Award and Arbitration proceedings were in accordance with the

provisions of the Act of 1940 and there is no suit pending; the Award can be filed in the Civil Court, as defined under Section 2(c) of the Act of 1940, and judgment can be pronounced in conformity with such Award under Section 17.

Conclusion i) Will of parties cannot fetter the settlement of their disputes out of court.
ii) The Code of Civil Procedure, 1908 allows private resolution of dispute during a suit, even after invoking jurisdiction of the court under Section 9 of CPC.
iii) Out of court settlement of disputes is recognized under various statutes in our jurisdiction and generally under the Act of 1940.
iv) See above in analysis clause.
v) Appeal against an order by the court, under the Act of 1940, also has limited scope.
vi) If the suit is withdrawn after the Arbitration Agreement during pending suit, the application under Section 14 & 17 of the Act of 1940, for judgment in terms of Award could not be dismissed.
vii) Rule 3 of Order XXIII and proviso to Section 47 of the Act of 1940 depict the basic jurisprudence of unfettered will of the parties.
viii) The sine qua non for treating any informal private agreement to settle a dispute as a compromise is consent of all the parties.
ix) If both parties agree, in writing, before the court in a suit to pass a decree in accordance with an Arbitration Award, the decree shall be under Order XXIII Rule 3, taking such Award as a compromise or adjustment of suit as envisaged under proviso to Section 47 of the Act of 1940.
x) If the Award and Arbitration proceedings were in accordance with the provisions of the Act of 1940 and there is no suit pending, judgment can be pronounced in conformity with such Award under Section 17.

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30. **Lahore High Court**
Samia Zaman v. Asad Zaman and another
Writ Petition No. 8786 of 2021
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5893.pdf

Facts: Petitioner assailed the decision of appellate court through the writ petition wherein Family court held the petitioner entitled to maintenance allowance from the date of birth till her legal entitlement with annual increment.

Issues: i) Whether the date of annual increment in maintenance allowance would be reckoned from the date of decree or from the date when a person is held entitled?
ii) Whether the applicability of the order/judgment/decree will be prospective?

Analysis: i) A family court while decreeing a suit qua recovery of maintenance allowance apart from determining the quantum of maintenance allowance will also suggest

the annual increase however if the annual increase has to be made applicable keeping in view the evidence of the parties, it has to give a categoric finding in this regard justifying the applicability of the increase from a particular date otherwise if the increase is not suggested from a particular date or no increase is suggested, the same shall be deemed to be applicable from the date of decree.
ii) Applicability of the order/judgment/decree will be prospective unless through a clear and categoric direction, it is made applicable retrospectively.

Conclusion: i) The annual increase has to be made applicable from a particular date and the court has to give a categoric finding otherwise the date of annual increment would be reckoned from the date of decree.
ii) Applicability of the order/judgment/decree will be prospective.

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31. **Lahore High Court**
Commissioner Inland Revenue v. M/S Pakistan Cricket Board Lahore
ITR No. 2590/2023
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5827.pdf

Facts: This and connected Income Tax Reference Application are directed against consolidated order of learned Appellate Tribunal Inland Revenue, Lahore, whereby appeals preferred by Taxpayer were allowed and appeal preferred by the department was dismissed.

Issue: Whether rental income from the property under section 15 of the Income Tax Ordinance of 2001, subject to the fulfillment of the conditions prescribed for charging of Minimum tax under Section 113 of the Ordinance, qualifies as taxpayer's gross receipts for the purposes of turnover for computing Minimum tax?

Analysis: Income from property may be classified as income under one of the different heads of income but not otherwise specifically excluded for the purposes of computation of minimum tax; provided benchmarks under section 113 are otherwise met. Learned counsel failed to convince us that how income from property be brought within the exclusions provided through Explanation to sub-section (1) of section 113 of the Ordinance, 2001 - inserted through the Finance Act, 2012. It is pertinent to mention that meaning of turnover, in sub-section (3) of section 113 of the Ordinance, 2001, underwent change, wherein addition of express 'gross sales' was made. Gross receipts needed to be read in conjunction with sub-section (1) of section 113, „……person's turnover from all sources for that year: Gross receipts include income from non-sales sources, and nor necessarily related to regular business activity. Expression 'gross sales' and 'gross receipts', employed in clause (a) of sub-section (3) of section 113 have had to be construed accordingly – to give effect to the changes made in the definition of turnover. Term 'gross receipts' cannot be confined to activity connected with

sales of goods, when such activity of sale of goods is catered through expression 'gross sales' – added by Finance Act, 2011. Addition of expression 'gross sales' in fact, distinguishes and enlarges the scope and compass of „gross receipts. Expression "gross receipts" needs to be construed and read disjunctively, while distinguishing it from activity of sale of goods, simplicitor. Evidently, coupling of expression 'gross receipts' exclusively with activity of sale of goods would render the expression 'gross sales' redundant, superfluous and have an effect of narrowing down the base of income for the purposes of Minimum tax regime. Hence, in view of the above, rental income from property is not the deemed income and have had to be reckoned for the purposes of considering benchmark for Minimum tax regime.

Conclusion: Rental income from the property under section 15 of the Income Tax Ordinance of 2001, subject to the fulfillment of the conditions prescribed for charging of Minimum tax under Section 113 of the Ordinance, qualifies as taxpayer's gross receipts for the purposes of turnover for computing Minimum tax.

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32. **Lahore High Court**
Ghulam Qadir Khan v. National Accountability Bureau, etc.
W.P.No.2366 of 2023
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC6132.pdf

Facts: The petitioner is amongst the accused in Accountability Reference facing trial before the District & Sessions Judge/ Judge Accountability Court. Through instant petition, he is seeking his release on post-arrest bail.

Issues: i) What is the mandate of the National Accountability Ordinance, 1999 regarding the conclusion of trial of the accused?
ii) Whether the failure to comply the order, on the direction of High Court, will vest a right upon the accused to claim bail?
iii) Whether the Superior Courts have the power to grant bail independent of any statutory source?
iv) Whether only tentative assessment of the material available is to be made for forming an opinion at bail stage?

Analysis: i) Section 16 of the National Accountability Ordinance, 1999 as amended by Act No.XI of 2022 dated 22nd June, 2022 mandates that the trial of accused under the Ordinance shall be completed within one year.
ii) There is no cavil that failure to comply the order on the direction of High Court would not vest a right upon the accused to claim bail but at the same time, expeditious trial is an inalienable right of every accused. Needless to observe that delay in prosecution of accused amounts to abuse the process of law. It is an inalienable right of every accused to have expeditious and fair trial, which right is even guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

iii) It is well settled principle that the Superior Courts have the power to grant bail under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 independent of any statutory source of jurisdiction such as 497 of the Code of Criminal Procedure, 1898.
iv) There is no cavil to the proposition that at bail stage, only tentative assessment of the material available is to be made for forming an opinion as to whether reasonable grounds exist against the accused for the commission of alleged offence.

Conclusion: i) Section 16 of the National Accountability Ordinance, 1999 mandates that the trial of accused under the Ordinance shall be completed within one year.
ii) Failure to comply the order, on the direction of High Court, will not vest a right upon the accused to claim bail.
iii) The Superior Courts have the power to grant bail independent of any statutory source of jurisdiction.
iv) At bail stage only tentative assessment of the material available is to be made for forming an opinion.

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33. **Lahore High Court**
Chaudhary Abdul Majeed v. The Learned Ex-Officio Justice of Peace Rawalpindi and 6 Others
Writ Petition No. 3343 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6035.pdf

Facts: One of the respondents moved a petition under Section 22-A/22-B of the Cr.P.C. While proceeding with the petition, the Ex-Office Justice of Peace requisitioned a report from the concerned police quarters. On receipt of report and after hearing the parties, the Ex-Officio Justice of Peace passed the impugned order, whereby he proceeded to direct the Station House Officer (SHO) to record statement of respondent No.2 under Section 154 of the Code of Criminal Procedure, 1898 in accordance with law. The petitioner impugned this order in this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 after remaining unsuccessful in voicing grievance before higher authorities**.**

Issue: While exercising powers under Section 22-A(6) of the Cr.P.C., after requisitioning a report from the police, whether Ex-Officio Justice of Peace is expected to brush aside such report without assigning any lawful reasoning?

Analysis: It is trite law that functions performed by the Ex-Officio Justice of Peace under Section 22-A of the "Cr.P.C." are quasijudicial in nature and it cannot be termed as executive/administrative or ministerial. At the same time powers exercised by the Ex-Officio Justice of Peace are neither unbridled nor indefinite. While exercising powers under Section 22-A(6) of the "Cr.P.C." the ExOfficio Justice of Peace is not supposed to proceed mechanically and in vacuum. After

requisitioning a report from the police, Ex-Officio Justice of Peace is not expected to brush aside such report without assigning any lawful reasoning.

Conclusion: While exercising powers under Section 22-A(6) of the Cr.P.C., after requisitioning a report from the police, Ex-Officio Justice of Peace is not expected to brush aside such report without assigning any lawful reasoning.

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34. **Lahore High Court**
Usama Bin Maalik v. Federal Public Service Commission through its Chairman etc.
F.A.O No.80183/2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC5972.pdf

Facts: Through these appeals under Section 7(3)(d) of Federal Public Service Commission Ordinance, 1977 the appellants have challenged the validity of Memorandums, whereby the Federal Public Service Commission rejected the representation as well as review of the appellants.

Issues: i) Whether Federal Government across the board allocated 10% quota to Women which does not apply to the vacancies reserved for recruitment on the basis of open merit?
ii) Whether compliance of the decisions of Supreme Court of Pakistan is mandatory for all the organs of the state?
iii) Whether the suitability/eligibility of a candidate for appointment against a post falls within the exclusive domain of an Appointing Authority/Selection Committee?

Analysis: i) In the Memorandum dated 22.05.2007, the Federal Government across the board allocated 10% quota to Women and under paragraph No.3(i) whereof the said percentage/allocation does not apply to the vacancies reserved for recruitment on the basis of open merit.
ii) The compliance of the decisions of Supreme Court of Pakistan is mandatory for all the organs of the state as enshrined in Article 189 of the Constitution of the Islamic Republic of Pakistan...
iii) The suitability/eligibility of a candidate for appointment against a post falls within the exclusive domain of an Appointing Authority/Selection Committee, who are considered the best evaluator/judge on the field...

Conclusion: i) Yes, Federal Government across the board allocated 10% quota to Women which does not apply to the vacancies reserved for recruitment on the basis of open merit.
ii) Yes, compliance of the decisions of Supreme Court of Pakistan is mandatory for all the organs of the state.
iii) Yes, the suitability/eligibility of a candidate for appointment against a post falls within the exclusive domain of an Appointing Authority/Selection

Committee.

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35. **Lahore High Court**
Masha Ali v. The State & another
Crl. Revision No. 67181 of 2023
Mr. Justice Shehram Sarwar Ch., Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC6054.pdf

Facts: Through the instant Criminal Revision petition petitioner challenged vires of the order passed by learned Administrative Judge, Anti-Terrorism Courts through which the custody of the petitioner was handed over to the Investigating Officer of case FIR under offences Sections 440, 395, 386, 148 & 149 PPC read with Section 7 of the Anti-Terrorism Act, 1997, on physical remand. During the pendency of this petition, the impugned order elapsed but through Crl. Misc. No.3/2023, that order has been placed on the record through which a further seven days physical remand of the petitioner was allowed by the Administrative Judge.

Issues: i) What is the scope of revisional jurisdiction of High Court under Section 439 Cr.P.C?
ii) What are the two stages of detention of a person prior to the commencement of an inquiry or trial?
iii) What is the duty of Magistrate while granting remand of an accused?
iv) What is difference between physical remand and judicial remand?
v) What is the meaning and effect of discharge of an accused?
vi) What does "satisfaction of the Court" used in section 21-E of Anti Terrorism Act connote?
vii) Whether Section 21-E, Anti-Terrorism Act bars the application of general principles to be followed by a Magistrate while dealing with the matter of remand under Section 167 of the Code?
viii) What is the duty of investigation officer regarding submission of case diaries during physical remand of an accused?
ix) What are the guidelines regarding remand of accused for the Magistrate/Administrative Judge Anti-Terrorism Court to be followed in the future?

Analysis: i) Under Section 439 Cr.P.C. the High Court is empowered, while exercising its revisional jurisdiction, to examine the vires of any proceedings the record of which has been called for by itself or which otherwise comes to its knowledge. The revisional jurisdiction is very wide and is not a power, but rather a duty, which must be exercised whenever facts calling for its exercise are brought to the notice of the Court.
ii) The Legislature has expressly separated the period for which a person can be detained in custody prior to the commencement of an inquiry or trial into two stages. The first phase is the period of 24 hours as envisaged under Article 10 (2) of the Constitution and Section 61 of the Code. In this period the investigating agency has the power to detain a person, subject to the conditions contained in

Section 54 of the Code, for the purpose of investigation. If the investigation cannot be completed within 24 hours, the police must forward the accused to the nearest Magistrate as mandated by Section 167(1) of the Code.

iii) When an accused is remanded back to the Investigating Officer by the Magistrate, it means that his custody is handed over to the investigating agency for the purpose of further investigation through a well-reasoned order that 'Custodial Interrogation' is indispensable to unearth the truth and collect the further evidence which is not possible in the absence of the accused. The prospect of the collection of further evidence/incriminating material is a substantial premise for remanding the accused to police custody. The Magistrate must undoubtedly be convinced of the need for remand of the accused to such custody while considering the material already available on the record and he must record his reasons in that respect.

iv) The difference between 'physical remand' and the 'judicial remand' is characterized by the degree of access the Investigating Officer has to the accused for the purpose of interrogation. In police custody, an accused is in the exclusive custody of the investigating officer, and the primary aim is to allow the police to conduct "custodial interrogation" to unearth the truth in any given case. On the other hand, judicial custody refers to the custody of an accused in jail. When a person is in jail custody, he is indirectly deemed to be in the custody of the court.

v) Discharge of an accused person does not amount to smothering of the investigation, cancellation of the case, termination of prosecution or acquittal. An investigation, if in progress, can continue unaffected by such an order of discharge. Discharge of an accused by the Magistrate, be it of any kind, cannot be equated with acquittal of the accused person so discharged as there is a world of difference between a discharge and an acquittal and there is no question of mixing one with the other under any circumstances.

vi) It is true that Section 21-E, ATA empowers the special court to grant physical remand, but the words 'satisfaction of the Court' used in the above-referred provision of law are of utmost importance. Satisfaction of the court connotes subjective satisfaction based on the cogent material available on the record to satisfy itself regarding the progress in the investigation made in the previous period of remand and further expectation of availability of evidence.

vii) Furthermore, Section 21-E, ATA does not bar the application of general principles to be followed by a Magistrate while dealing with the matter of remand under Section 167 of the Code. In this regard, Section 32, ATA is relevant which provides an overriding effect of said Act. It has been specifically provided in that Section that the provisions of Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before Anti-Terrorism Court… As per Section 32(1), ATA, provisions of the Code are fully applicable to the Anti-Terrorism Court, if they are not inconsistent with any provision of ATA.

viii) … when he remained on physical remand with the investigating agency as no police diaries for those four days are available on the police file. Rule 25.53 of the Punjab Police Rules, 1934 casts a duty on the Investigating Officer that in

consonance with the provisions of Section 172(1) of the Code a case diary shall be maintained and submitted daily during an investigation.

ix) Before parting with the judgment, it shall be beneficial to formulate guidelines, for the Magistrate/Administrative Judge to be followed in the future, as infra: -

I. The question of remand in cases exclusively triable by the Anti-Terrorism Court is governed by Section 21-E of the ATA but Section 167 of the Code and the relevant considerations shall also be applicable as much as those are not inconsistent with the provisions of ATA.
II. The remand of an accused can only be granted when he is produced before the Magistrate. No remand order should be passed by the Magistrate in the absence of an accused.
III. It is the bounden duty of the Magistrate to apply her/his independent judicious mind to the facts and circumstances of the case to arrive at the decision, whether the physical remand should be granted or refused. Application of an independent judicious mind being *sine qua non* must be reflected in the order passed by the Magistrate and for that purpose, the case diaries and other documents available on the record must be examined to arrive at a just decision.
IV. The Magistrate must pass a speaking order while dealing with the question of grant or refusal of physical remand, furnishing cogent and convincing reasoning as the grant of remand to police custody is not a rule, but an exception, therefore, the accused can only be handed over to investigating agency in cases of real necessity and that too for the shortest possible time required for investigation.
V. Before granting remand, the Magistrate should ensure that *prima facie* evidence is available on the record to connect the accused with the commission of the offence in question and the physical custody of the accused is necessary for the collection of further evidence.
VI. In case the Investigating Officer seeks an extension in physical remand, the Magistrate should examine the progress since the previous order(s), as the longer the accused person has been in custody the stronger should be the grounds required for further remanding him to the police custody. If no investigation was conducted after having obtained the physical remand, further remand should be refused.
VII. The accused must be given a fair opportunity to oppose the request of the Investigating Officer regarding the grant of remand himself or through his counsel. His objections should be brought on the record and the Magistrate should ensure that no physical harm is caused to him during police custody.
VIII. To strike a balance, between the needs of a thorough investigation on the one hand and the protection of the citizens from the oppressive attitude of the Investigating Agency, on the other hand, is the foremost duty of a Magistrate dealing with the question of grant or refusal of physical remand.

Conclusion: i) The revisional jurisdiction is very wide and is not a power, rather a duty, which must be exercised whenever facts calling for its exercise are brought to the notice of the Court.

ii) There are two stages of detention of a person prior to the commencement of an inquiry or trial i.e.

- The first phase is the period of 24 hours as envisaged under Article 10 (2) of the Constitution and Section 61 of the Code.
- In second phase, if the investigation cannot be completed within 24 hours, the police must forward the accused to the nearest Magistrate as mandated by Section 167(1) of the Code.

iii) The Magistrate must pass a well-reasoned order while granting the remand that 'Custodial Interrogation' is indispensable to unearth the truth and collect the further evidence which is not possible in the absence of the accused.

iv) The difference between 'physical remand' and the 'judicial remand' is that in physical remand "custodial interrogation" is allowed and judicial custody refers to the custody of an accused in jail or indirectly in custody of court.

v) Discharge of an accused does not mean smothering of investigation or cancellation of case and it cannot be equated with acquittal of accused.

vi) Satisfaction of the court connotes subjective satisfaction based on the cogent material available on the record to satisfy itself regarding the progress in the investigation made in the previous period of remand and further expectation of availability of evidence.

vii) Section 21-E of Anti Terrorism Act does not bar the application of general principles to be followed by a Magistrate while dealing with the matter of remand under Section 167 of the Code. In this regard, Section 32, ATA is relevant which provides an overriding effect of said Act.

viii) During investigation in physical remand of accused, investigating officer is duty bound to maintain and submit case diaries daily.

ix) See corresponding analysis above.

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36. **Lahore High Court**

Commissioner Inland Revenue, Legal-Zone-LTO, Lahore v. M/s Rasool Nawaz Sugar Mills Ltd.

STR No.77498/2022

Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez

https://sys.lhc.gov.pk/appjudgments/2023LHC5946.pdf

Facts: This Sales Tax Reference Application under section 47 of the Sales Tax Act, 1990 arises out of order, whereby Appellate Tribunal Inland Revenue allowed Sales Tax appeal preferred by the registered person and set-aside the orders concurrently passed by the Commissioner Inland Revenue (CIR) and CIR (Appeals).

Issue: i) Whether there is any amnesty from penalty u/s 33 and default surcharge u/s 34

in the proceedings initiated under section 11(1) of the Sales Tax Act, 1990?
ii) Whether filing of return is mandatory and non-submission of return within due date would amount to commission of an offence and same would hold the registered person liable under the provisions of section 33 of the Sales Tax Act, 1990?

Analysis: i) There is no cavil that sub-section (1) of section 11, ibid, entitles the Officer Inland Revenue, after notice and upon happening of event(s) of default as identified therein, to „make an order of assessment of tax including imposition of penalty and default surcharge in accordance with section 33 and 34 of the Act. Proviso to sub-section (1) of section 11 of Act of 1990 provides an eventuality of abatement of order, if passed, and the notice, provided default is addressed upon payment of tax along with default surcharge and penalty and filing of return(s) after due date. Omission / inaction on the part of registered person in filing return by prescribed date or upon short payment of the tax due, entitles the Officer of Inland Revenue, subject to notice, to make an order of assessment including imposition of penalty and default surcharge in accordance with sections 33 and 34 of the Act. Proviso to sub-section (1) of section 11 provides an opportunity to the registered person to address an event of default, by filing return after the due date and upon payment of tax payable according to the return along with default surcharge and penalty, whereupon show cause notice and order of assessment, if any made, would abate. Provision of law under reference neither contemplates nor absolves the registered person from the consequence of default, triggered upon failing to file return for the tax period by due date or short payment of tax.
ii) In terms of section 11(1) of Act, consequence of incidence of default is a default surcharge and penalty, even if no tax is payable as per the tax return. Default position can only be reversed / addressed by opting for concession prescribed in proviso to sub-section (1) of section 11 of Act, 1990, subject to fulfillment of conditions – upon filing of tax return after due date and making payment of tax along with default surcharge and/or penalty, depending upon the nature of default. Mere filing of delayed return of tax, before issuance of notice, would not be considered an act of compliance, especially when default had triggered, which can be reconciled upon voluntarily meeting the conditions prescribed in proviso to section 11(1) of Act. It is inconceivable how a default, once accrued, would stand reconciled without fulfilling the requirements provided in proviso. Proviso must be given effect, which does not indicate or refers to incidence of any order of assessment of tax or notice, as condition precedent for claiming default surcharge and penalty. Default situation could only be addressed by invoking assistance of the proviso, upon meeting the conditions prescribed. Coupling the necessity of having underlying tax liability for the purposes of defining the scope of order of assessment of tax manifests misreading of sub-section (1) of section 11, ibid, and otherwise tantamount to undermine the individuality and significance of section 34 of the Act of 1990, which opens with a non-obstante expression - Notwithstanding the provisions of section 11. Effect

of non-obstante status of section 34 of the Act, 1990 was neither considered nor dilated upon in the case of Messrs Quetta Electric Supply company Limited, (supra). Even if upon filing of return after due date no tax – defined in terms of section 2(34) of Act, 1990 and subject to the context - is payable, still penalty and default surcharge could be ordered and claimed. Restrictive interpretation of the scope of "order of assessment of tax" would nullifies the disciplined compliance envisaged in law and otherwise render sections 33 and 34 of Act, 1990, redundant.

Conclusion: i) There is no amnesty from penalty u/s 33 and default surcharge u/s 34 in the proceedings initiated under section 11(1) of the Sales Tax Act, 1990.
ii) Irrespective of the fact whether tax has been paid or not, filing of return is mandatory and non-submission of return within due date would amount to commission of an offence and same would hold the registered person liable under the provisions of section 33 of the Sales Tax Act, 1990.

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37. **Lahore High Court**
Muhammad Khawar Ilyas v. Federation of Pakistan through Secretary Finance & Economic Affairs Division, Government of Pakistan, Islamabad & others
W.P No.10464 of 2021/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC5924.pdf

Facts: The petitioner challenged correspondence issued by Chief Commissioner Inland Revenue, Regional Tax Office, whereby pursuant to an Enquiry Report– recommending imposition of major penalty of *dismissal from service* – show cause notice, followed by personal hearing notice, was issued to petitioner in connection with disciplinary proceedings under the Removal from Service (Special Powers) Ordinance, 2000.

Issues: (i) Whether the repeal of the Removal from Service (Special Powers) Ordinance, 2000 can be made a shield to save a person from the disciplinary proceedings commenced before the repeal of the Ordinance?
(ii) Whether the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently?
(iii) Whether the effect of Rule 54-A of the Fundamental Rules is mandatory in nature?
(iv) Whether the power to impose a liability on a retired employee by a public official can be exercised after lapse of statutory timeframe for the exercise of such powers?
(v) Whether a writ is maintainable against a show cause notice?

Analysis: (i) Undeniably, the Ordinance of 2000 was repealed by the Act of 2010, however under sub-section (2) of Section 2 of the Act *ibid*, all proceedings pending under the repealed Ordinance against any person whether in government service or

corporation service were held to be continued. In these circumstances, the repeal of Ordinance of 2000 cannot be made a shield to save petitioner from the disciplinary proceedings commenced much before the repeal. And, under sub-section (3) of Section 2 of the Act ibid, all fresh disciplinary proceedings from 5th March, 2010 onwards relating to persons in government service, to whom the Civil Servants Act, 1973 (LXXI of 1973) and the Government Servants (Efficiency & Discipline) Rules, 1973, apply were held to be governed under the Act *ibid* and the rules made thereunder. In the given circumstances, there is no harm to the disciplinary proceedings initiated under the Ordinance of 2000 well before its repeal and petitioner cannot claim to wriggle out the same on this misconceived plea.

(ii) The purpose of departmental inquiry is to maintain and uphold discipline and decorum in the institution and efficiency of the department to strengthen and preserve public confidence. Whereas proceeding under the penal statutes are altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt, and if proved, punishment is awarded for the offences committed by the accused. It is well-settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect.

(iii) In view of Rule 54-A of the Fundamental Rules, if the disciplinary proceedings, including an inquiry, against an employee or public servant started during his / her service and are not concluded until the age of superannuation, such proceedings shall stand abated upon retirement and such government servant is entitled to get full pensionary benefits. The effect of afore-referred provision is mandatory because of the word "shall" used therein, as a result, the disciplinary proceedings initiated against petitioner stood abated upon his retirement on 08.07.2021, and he is entitled to full post-retirement benefits permissible under the law.

(iv) Generally, a statute which regulates the manner in which public officials exercise the powers vested in them is construed to be directory rather than mandatory, especially when neither private or public rights are injured or impaired thereby. But if the public interest or private rights call for the exercise of the power vested in a public official, the language used, though permissive and directory in form, is in fact peremptory or mandatory as a general rule. This general principle, however, does not apply where the phraseology of the provision, or the nature of the act to be performed, or the consequence of performing or failing to perform it within the prescribed timeframe is such that the prescription of timeframe is actually a limitation on the power of the public functionary. Or where a public functionary is empowered to create liability against a citizen only within the prescribed time, the performance of such a duty within the specified timeframe is mandatory. Where a public official can impose liability on a retired employee if the power is exercised within a certain statutory timeframe and there is a delay in the exercise of such power on the part of a

public official, no such liability can be imposed after the lapse of the statutory period.
(v) So far as objection that Writ Petition against issuance of Show Cause Notice is not maintainable, is concerned, admittedly in routine writ is not maintainable; however, where the show cause notice was barred by law or abuse of process of the Court or was coram non judice, and if the issuance of the show cause notice was without jurisdiction or with mala fide, the same can be challenged in Writ Petition.

Conclusion: (i) The repeal of the Removal from Service (Special Powers) Ordinance, 2000 cannot be made a shield to save a person from the disciplinary proceedings commenced before the repeal of the Ordinance.
(ii) The prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently.
(iii) The effect of Rule 54-A of the Fundamental Rules is mandatory in nature.
(iv) The power to impose a liability on a retired employee by a public official cannot be exercised after lapse of statutory timeframe for the exercise of such powers.
(v) A writ is maintainable against a show cause notice where the show cause notice was barred by law or results in abuse of process of the Court or was coram non judice, or the same was issued with mala fide.

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38. **Lahore High Court**
Imran Mustafa v. Government of Punjab, etc.
Writ Petition No. 16629 of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC6047.pdf

Facts: The facts giving rise to instant writ petition are that, the convict/petitioner was convicted under Section 9-C Control of Narcotic Substances Act, 1997 prior to promulgation of Narcotic Substances Amended Act, 2022 dated 5th September, 2022, by the trial Court and subsequently appellate Court reduced the sentence awarded to him. Moreover, convict/petitioner was declined remissions owing to insertion of section 9(A) (1) through an Act namely Control of Narcotic Substances (Amendment) Act, 2022 (Act No.XX of 2022). Petitioner finally prayed that application of newly inserted Section 9(A)1 be declared as having no legal effect on the petitioner/convict.

Issue: Whether the provisions of section 9(A) (1) of the Amendment Act, 2022 have retrospective effect and in turn depriving of the convict who has been arrested, indicted and convicted before the date of insertion of said section?

Analysis: …Undeniably convict was rounded up on 12.11.2020 in case F.I.R. No.810/2020 dated 12.11.2020, under section 9(c) of CNSA, 1997, registered at Police Station Qutabpur, Multan and after having been sent to face trial, was indicted on 23.12.2020 and was convicted and sentenced on 10.05.2022. There is also no

denial to the fact that section 9(A) (1) was introduced by virtue of an amendment through the Amended Act 2022 dated 06.09.2022… Bare perusal of above would vividly suggest that same have given no retrospective effect by the legislature. Even it does not transpire therefrom that the rights available to an accused involved in case falling within the purview of CNSA, 1997 prior to the amendment made on 06.09.2022 have been taken away in any manner whatsoever. The provisions of section 9(A) (1) of Amendment Act, 2022 from their bare reading are prospective in nature and same cannot be given effect retrospectively by placing any sort of embargo on the right of a convict qua earning remissions who had been arrested, indicted and even convicted prior to insertion of section 9(A) (1) through Amendment Act, 2022.

Conclusion: The provisions of section 9(A) (1) of Amendment Act, 2022 from their bare reading are prospective in nature and same cannot be given effect retrospectively by placing any sort of embargo on the right of a convict qua earning remissions who had been arrested, indicted and even convicted prior to insertion of section 9(A) (1) through Amendment Act, 2022.

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39. **Lahore High Court**
The State v. Shafique Ahmed
Criminal Appeal No. 166 of 2020
Mr. Justice Asjad Javaid Ghural, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5933.pdf

Facts: This appeal against acquittal filed by the State questions the impugned judgment passed by Additional Sessions Judge/CNS Court/MCTC, whereby accused/ respondent was acquitted under section 265-K Cr.P.C., in case FIR under section 9-C of the Control of Narcotic Substance Act, 1997 on the ground that PFSA Analysis Report, though not tendered in evidence, is bereft of necessary protocols.

Issues: i) Whether appeal against acquittal can be decided even in the absence of accused?
ii) Whether there is any difference between the words test or analysis used in Rule-6 of Government Analyst Rules, 2001?
iii) Whether contraband is limited to narcotic drug only?
iv) Whether every contraband requires examination and proper inspection?
v) Whether test or analysis is required for identification and calculation of percentage in any material containing controlled substance or psychotropic substance?
vi) Which types of tests are of international standards and considered sufficient?
vii) What is the meaning of the word “any offence”?
viii) Whether the offender can be tried if he has the possession of Charas?
ix) Whether the prosecution has any option for re-examination of contraband or clarification of report if the report of PFSA is not amenable to be used as cogent evidence?

Analysis: i) Appeal against acquittal can be decided even in the absence of accused as per section 423 of the Code. Under the principle of Audi alteram partem, notice for hearing is necessary as per section 422 of the Code and thereafter power under section 423 of the Code becomes available to the Court. Plain reading of above section explains that if the appellant or his counsel appear in appeal against conviction, the Court would provide him opportunity of hearing and to the Public Prosecutor but it is not mandatory for the Court to hear the appellant in an appeal against acquittal but must hear the accused, if he appears. Non-appearance of accused does not restrict the Court to decide the appeal in his absence.

ii) Perusal of Rule-6 of Government Analyst Rules, 2001 and Form-II transpire that the use of words "test or analysis" is meaningful; though both words sometimes used interchangeably yet maintain subtle difference due to which connotation is changed. Section 36 of Control of Narcotic Substances Act, 1997 (CNSA, 1997) talks about test and analysis of contrabands in the manner as may be prescribed. Therefore, it was prescribed through Government Analyst Rules, 2001 made under section 77 of CNSA, 1997 and perusal of Rule-6 of Government Analyst Rules, 2001 & Form-II throws light that an analyst shall either conduct test or analyze the contrabands.

iii) As per preamble read with section 6, 7 & 8 of CNSA, 1997, contraband is not limited to narcotic drug only rather there are three types of contrabands; Narcotic Drug, Psychotropic Substance and Controlled Substance which show that their identification either require test or analysis.

iv) For the identification, Quantification, Purity Analysis, Adulterant Detection, and its confirmation with regulations, every contraband requires examination and proper inspection that can either be done through naked eye with spot testing including other like methods, or through microscopic analysis with the help of scientific equipment/machines which is also evident from a "Manual For Use By National Law Enforcement and Narcotics Laboratory Personnel" written at New York in year 1994 for 'RAPID TESTING METHODS OF DRUGS OF ABUSE', under the auspices of United Nations International Drug Control Programme, Viena, wherein for different kinds of contrabands, a series of tests are prescribed.

v) It depends upon the nature of contraband and demand of prosecution as to whether, test be conducted or the analysis be preferred. However, generally for identification and calculation of percentage in any material containing controlled substance or psychotropic substance a deep microscopic analysis is required, whereas a narcotic drug can even be identified through a presumptive test.

vi) Three types of tests mentioned in PFSA report like, (i) Analytical balance for weight (ii) Chemical Spot Test (iii) Gas Chromatography-mass spectrometry, are of international standards and were considered sufficient by the Supreme Court in number of cases, only for narcotic drugs.

vii) The word "any offence" means that even if offence is not mentioned in the charge which interpretation stands in conformity with section 237 & 238 of the Code based on the principle that "no offence should go unchecked and no offender should go unpunished'.

viii) Possession of Charas is also an offence under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979, therefore, offender can be tried under such Order if the requirement of section 36 of CNSA, 1997 read with Rule-6 of Government Analyst Rules, 2001 is not fulfilled because section 73 of CNSA, 1997 saves the prevailing Provincial and Special laws.
ix) If the report of PFSA was not amenable to be used as cogent evidence, prosecution still had some options to be exercised like calling of analyst pursuant to section 510 of Cr.P.C., and for re-examination of contraband or clarification of report as per section 11 & 12 of the Punjab Forensic Science Agency Act, 2007.

Conclusion: i) Appeal against acquittal can be decided even in the absence of accused as per section 423 of the Code.
ii) Perusal of Rule-6 of Government Analyst Rules, 2001 and Form-II transpire that the use of words "test or analysis" is meaningful; though both words sometimes used interchangeably yet maintain subtle difference due to which connotation is changed.
iii) As per preamble read with section 6, 7 & 8 of CNSA, 1997, contraband is not limited to narcotic drug only rather there are three types of contrabands.
iv) Every contraband requires examination and proper inspection that can either be done through naked eye with spot testing including other like methods, or through microscopic analysis with the help of scientific equipment/machines.
v) Generally for identification and calculation of percentage in any material containing controlled substance or psychotropic substance a deep microscopic analysis is required.
vi) Three types of tests mentioned in PFSA report like, (i) Analytical balance for weight (ii) Chemical Spot Test (iii) Gas Chromatography-mass spectrometry, are of international standards and considered sufficient.
vii) See above in analysis clause.
viii) Possession of Charas is also an offence under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979, therefore, offender can be tried.
ix) If the report of PFSA is not amenable to be used as cogent evidence, the prosecution still has options for re-examination of contraband or clarification of report.

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40. **Lahore High Court**
Umair Ishtiaq v. Station House Officer etc.
Writ Petition No.70628/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC9665.pdf

Facts: Through this constitutional petition, the petitioner assailed the order of Justice of peace, whereby, he ordered the investigation officer to arrest the petitioner and others named in the cross-version as per law and the Police Rules.

Issues: i) What is the object of investigation?

ii) Whether the police have the statutory right to investigate the circumstances of an alleged cognizable offence and the courts have no authority to interfere in their functions?

iii) Whether the mere fact that FIR has been registered does obligate the Investigating Officer to arrest the accused?

iv) Whether Ex-officio Justice of Peace is competent under section 22-A (6) of Cr.P.C., to direct the police to arrest a person nominated in the FIR (or implicated through a cross-version of the accused party)?

Analysis: i) Section 4(1)(i) of the Code of Criminal Procedure, 1898, defines the term "investigation" and says that it "includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorized by a magistrate in this behalf." It follows that the object of investigation is to collect evidence and determine whether the allegations against a person are true or otherwise.

ii) As far back as the year 1945, in Emperor v. Khawaja Nazir Ahmad (AIR 1945 PC 18), the Privy Council held that the police have the statutory right to investigate the circumstances of an alleged cognizable offence and the courts have no authority to interfere in their functions. The Hon'ble Supreme Court of Pakistan endorsed the above view in Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Baluchistan and another (PLD 1971 SC 677) and ruled that the High Court had no jurisdiction under the Constitution3 or any other law, including the Code, to supervise the investigation of a criminal case or to control the agency conducting it. Again, in Muhammad Hanif v. The State (2019 SCMR 2029), while reaffirming the law laid down in Khawaja Nazir Ahmed's case, supra, the Hon'ble Supreme Court held that our Constitution is based on trichotomy of powers and undue interference by the judiciary in the police investigation militates against that concept. However, there is an exception to the above prohibitions. In Shahnaz Begum's case, supra, the apex Court held that the constitutional jurisdiction of the High Court may be invoked if the investigation is malafide or without jurisdiction.

iii) A perusal of sections 155(2), 156(1), 156(3), 157(1), 174, and 202 Cr.P.C., shows that registration of FIR is not a condition precedent for initiating investigation by the police. Even where the FIR is recorded he may refuse to investigate the case under section 157 Cr.P.C. Importantly, the mere fact that FIR has been registered does not obligate the Investigating Officer to arrest the accused.

iv) The question as to whether the Ex-officio Justice of Peace is competent under section 22-A(6) Cr.P.C., to direct the police to arrest a person nominated in the FIR (or implicated through a cross-version of the accused party) was considered at length by a Full Bench of this Court in Khizer Hayat and others v. Inspector-General of Police (Punjab), Lahore and others (PLD 2005 Lahore 470). According to the principles discussed above, the Investigating Officer should defer the arrest of an accused if he is not satisfied about his involvement in an

offence. There is nothing on the record to suggest that the inaction of the police in the instant case is malafide. Even if Respondent No.6 had been able to make out a case for intervention of the Ex-officio Justice of Peace, the only jurisdiction the latter had was to issue a direction to the SP (Investigation) to look into the matter.

Conclusion: i) The object of investigation is to collect evidence and determine whether the allegations against a person are true or otherwise.
ii) The police have the statutory right to investigate the circumstances of an alleged cognizable offence and the courts have no authority to interfere in their functions. However, constitutional jurisdiction of the High Court may be invoked if the investigation is malafide or without jurisdiction.
iii) The mere fact that FIR has been registered does not obligate the Investigating Officer to arrest the accused.
iv) Ex-officio Justice of Peace is not competent under section 22-A (6) of Cr.P.C., to direct the police to arrest a person nominated in the FIR (or implicated through a cross-version of the accused party). However, he can issue a direction to the SP (Investigation) to look into the matter.

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41. **Lahore High Court**
Asfandyar and others v. The State and another
Criminal Revision No. 37/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6074.pdf

Facts: This Criminal Revision is directed against the order of Additional Sessions Judge, whereby, the application of the petitioners for holding in abeyance the proceedings of challan case and private complaint filed by respondent No.11 till the final decision of private complaint filed by respondent No. 3 was dismissed.

Issues: i) If the police introduce a new individual as an accused who has not been mentioned by the complainant in the private complaint, then whether the proceedings in the private complaint should be prioritized and completed first, while the challan case should be put on hold as directed in Nur Elahi case?
ii) If the rival parties advance different versions of the same incident through cross-cases and such different versions contain different sets of accused persons, whether the trial of such cases is to be held simultaneously and side by side?

Analysis: i) The Code of Criminal Procedure, 1898, does not explicitly outline the procedure for conducting a trial when there is a challan case and a private complaint related to the same offence. Judicial precedents have addressed this lacunae. The procedure outlined in the Nur Elahi case is generally recommended. Nevertheless, some situations may require a departure from it. These can be categorized into two distinct groups: (a) cases where there are two prosecution versions regarding the same incident but entirely or partially different from the one reported earlier through the first information report, and (b) cases where there are different versions of the same incident by rival parties. As regards the first

category, these are as follows: i) Where the party lodging the FIR also files a private complaint containing the same allegations against the same set of accused persons, the trial court will try the complaint case first and put the challan case on hold until its decision. ii) Whenever the facts or circumstances allow, cross-cases involving two different versions of the same incident and two distinct sets of accused must be tried together in the same court. The rationale is that if the two cases giving different accounts of the same incident are not tried concurrently, there is a considerable risk of conflicting judgments. iii) Where the complaint case is instituted after the FIR is lodged and not only there are differences in the names of some of the accused, but at least one person mentioned in the FIR as an accused is excluded and replaced by another individual, the complaint case must be taken up first for trial as stipulated in Nur Elahi. This is particularly essential when the two sets of allegations made in the said two cases regarding the weapons used and the roles ascribed to the various accused are materially different. iv) When the persons nominated as accused in the private complaint are the same as those named in the FIR, the trial court has the authority to summon the individuals listed in Column No. 2 of the report filed by the police under section 173 Cr.P.C. However, if the police introduce a new individual as an accused who has not been mentioned by the complainant in the private complaint, the procedure recommended in the Nur Elahi case is the most suitable approach. In simpler terms, if, during an investigation, the police include or exclude any accused in the report under section 173 Cr.P.C., but the complainant adheres to their initial version, then the proceedings in the private complaint should be prioritized and completed first, while the challan case should be put on hold as directed in Nur Elahi. v) While a consolidated trial of challan and complaint cases is not recommended, the Supreme Court will not interfere with the order of acquittal recorded by the trial court and High Court if such a trial did not cause a failure of justice (due to the unworthy and unreliable evidence available with prosecution), and the complainant did not object to it before the trial court.

ii) If the rival parties advance different versions of the same incident through cross-cases and such different versions contain different sets of accused persons, the trial of such cases is to be held simultaneously and side by side. The same court must hear and decide them to avoid conflicting judgments. There may be instances where the private complaint is instituted by one of the accused persons in the challan case rather than the original complainant party, with different versions, separate sets of witnesses, and different accused. In Abdul Shakoor v. The State (2012 PCrLJ 231), this Court held that in such a situation, the principle laid down in Nur Elahi to try the private complaint and challan case sequentially need not be followed. The two cases should instead be proceeded side by side.

Conclusion: i) If the police introduce a new individual as an accused who has not been mentioned by the complainant in the private complaint, then the proceedings in the private complaint should be prioritized and completed first, while the challan case should be put on hold as directed in Nur Elahi case.

ii) If the rival parties advance different versions of the same incident through cross-cases and such different versions contain different sets of accused persons, the trial of such cases is to be held simultaneously and side by side.

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42. **Lahore High Court**
Faisal Zafar and another v. Siraj-ud-Din and 4 others, GENOME Pharmaceuticals and SECP
Civil Original No.06 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6015.pdf

Facts: The Petitioners filed this petition under Sections 286 and 287 along with all enabling provisions of the Companies Act, 2017 alleging the mismanagement by shareholder Respondents in the affairs of the Respondent Company.

Issue: Whether a corporate dispute under Sections 286 and 287 of the Companies Act, 2017, involving allegation of the mismanagement by members of a company, may be resolved by way of mediation and compromise prior to the determination by the Court?

Analysis: Section 276(1) of the Companies Act, 2017 authorizes the parties to the proceedings before the Securities and Exchange Commission of Pakistan or the Appellate Bench to apply, with mutual consent, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. Section 276(2) of the Act ibid requires the Securities and Exchange Commission of Pakistan to maintain a panel to be called "Mediation and Conciliation Panel". Under Section 277 of the Act ibid, a company, its management/its members or creditors may, by written consent, directly refer a dispute, claim or controversy arising between them or between the members or directors inter-se, for resolution, to any individual enlisted on the mediation and conciliation panel mentioned afore.

Conclusion: A corporate dispute or petition under Sections 286 and 287 of the Companies Act, 2017, involving allegation of the mismanagement by members of a company, may be resolved through mediation and compromise prior to any determination by the Court in light of guideline envisaged in preamble along with Sections 6, 276 and 277 of the Act ibid.

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43. **Lahore High Court**
Mst.Shehnaz Bibi and another v. The State and another
Crl.Misc.No.2945-B of 2023
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC5817.pdf

Facts: The petitioners sought bail after arrest in a criminal case registered against them for offence under sections 302, 34 PPC.

Issue: Is it a fundamental right of every accused to be provided with the grounds of arrest at the time of nabbing him and whether the Magistrates, seized with the matters of physical remand under section 167 Cr.P.C will ensure it?

Analysis: This court in case reported as "Mst.Khatoon Bibi vs. State etc" (2021 P.Crl.L.J 593) reiterated the importance of Articles 9, 10 and 14 of the Constitution of the Islamic Republic of Pakistan in reference to the fundamental right of an accused to be informed about the grounds of his arrest and issued direction to the Inspector General of Police, Punjab for taking following steps:- (i) Station Diaries in all Police Stations be maintained in accordance with 22.48 of Police Rules, 1934 and Article 167 of Police Order, 2002. (ii) In accordance with Article 10 of the Constitution, grounds of arrest must be provided to every accused immediately after taking him in police custody. (iii) Inspections of all police stations be conducted in terms of Chapter-XX, Rule 5 of Police Rules, 1934. (iv) Appropriate steps be taken for educating the police personnel in the Province in accordance with Articles 10 and 11 of UNCAT regarding torture during custody, interrogation, arrest, detention or imprisonment etc (…) It is further expected that the learned Magistrates, seized with the matters of physical remand under section 167 Cr.P.C will ensure that grounds of arrest are provided to the accused by making them part of the police file.

Conclusion: It a fundamental right of every accused to be provided with the grounds of arrest at the time of nabbing him and the Magistrates, seized with the matters of physical remand under section 167 Cr.P.C will ensure that grounds of arrest are provided to the accused by making them part of the police file.

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44. **Lahore High Court**
Umama Islam and others v. The Province of the Punjab and others
W.P.No.67948 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC5917.pdf

Facts: The petitioners through the instant constitutional petition have called into question their purported exclusion from the list of successful candidates qua process initiated for recruitment as Senior Station Assistant (SSA) and Police Station Assistant (PSA) in Punjab Police against vacant posts. Grievance is also voiced by the petitioners that their names were liable to be included in the list of successful candidates as they had cleared written test as well as the interviews.

Issues: i) Whether the call for interview should necessarily entail the conclusion that candidate cleared all criteria?
ii) Whether resolving reliable factual controversy is practicable in summary jurisdiction of High Court under Article 199 of the Constitution?
iii) Whether the presumption of regularity is attached to official acts and same can be annulled on vague allegations?

Analysis: i) Learned counsel for the petitioners at this point wishes to assail typing results by reiterating that the call for interview should necessarily entail the conclusion that they cleared all criteria. There does not appear to be any warrant for such assumption to be made in abstraction on some a priori basis nor could a technical evaluative exercise carried out on merits at the competent departmental level be discredited on such tenuous abstraction as suggested.

ii) As to aspersion on veracity of results, as being impliedly cast, the same presupposes the unjustified expectation that embarking on an exercise for reliable resolution of factual controversy that may present, shall be practicable in summary jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

iii) It is observed that presumption of regularity attached to official acts, could not be dislodged on the basis of bald assertions, by candidates who participated in the recruitment process but remained unsuccessful which unfortunately appears to be the case at hand. This is especially in stark relief when in the pleadings no material particularization of any mala fide is recorded or any other ground established as to give any substance to the assertion that the petitioners despite having failed in typing test were yet liable to be appointed.

Conclusions: i) Calling for interview should not necessarily lead to the conclusion that the candidate has satisfied all the criteria.

ii) It is unjustified expectation to get resolved factual controversy through exercise of Constitutional jurisdiction under Article 199 of the Constitution.

iii) The presumption of regularity is attached to official acts and the same cannot be dislodged on bald assertions.

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45. **Lahore High Court**
Umar Farooq etc. v. Province of Punjab and others
R.F.A. No.80638 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC5905.pdf

Facts: The appellants have preferred this appeal against judgment and decree passed by Civil Judge dismissing their suit seeking decree of declaration challenging legality of mutations, seeking incorporation of their names as owners of suit land in implementation of the exchange between the predecessors of appellants and the school as well as seeking decree for possession.

Issue: Whether the successors may be allowed to question the validity of transactions after the real owner of the property remained alive for number of years having knowledge of the transactions, but he never raised any claim qua the property?

Analysis: When the real owner of the property, who could have a cause of action to file the litigation or to challenge the act or document against his interest, remained alive

for number of years but, despite having knowledge of the transactions, he neither raised any claim qua the property nor challenged the documents of sale in respect of property nor raised the objection, then the successors will have no *locus standi* to question the validity of those transactions.

Conclusion: The successors are not allowed to question the validity of the transactions, when the real owner of the property remained alive for number of years having knowledge of the transactions and he never raised any claim qua the property.

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46. **Lahore High Court**
Zafar Ali and others v. Rashid Ahmad and others.
C.R. No.19540 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC6098.pdf

Facts: Through this civil revision as well as civil revision No.21353 of 2021 against consolidated judgment and decree of the learned Addl. District Judge, wherein by allowing appeals of the respondents against consolidated judgment and decree of the Civil Judge, suit for specific performance of the petitioners was dismissed while the suit for declaration, cancellation and injunction filed by the respondents was decreed.

Issues: i) Whether non-appearance of attesting witnesses of an agreement to sell is fatal in the peculiar circumstances of the case?
ii) Can evidence be led on the facts neither pleaded nor incorporated in the plaint?
iii) Whether withholding of material evidence raises adverse presumption against the beneficiary of an agreement?

Analysis: i) … it was for the petitioners/plaintiffs to prove the existence and execution of sale agreement, the settlement of terms and conditions of the sale and other prerequisites in terms of Articles 17 and 79 of Qanun-eShahdat Order, 1984 which mandated to the effect that if a document is required by law to be attested it shall not be used as evidence until two attesting witness at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive and subject to the process of the court and capable of giving evidence (…) the production of these two persons cited as marginal witnesses was necessary. They were not produced as such Ex. P-1 could not be deemed to be admissible in evidence or have been proved as the said provisions of law being mandatory no exception could be taken thereto.
ii) It is settled rule that on the facts neither pleaded nor incorporated in the plaint, no evidence shall be allowed to be led to prove such facts and that the evidence can be led on facts founded in the pleadings only. It is also a rule that no party can be permitted to lead evidence different from the facts mentioned in the plaint and even if such evidence comes on record the same could not be considered or looked into being inadmissible and against the rule secundum allegata et probata.

iii) To succeed in their case for enforcement of sale agreement the petitioners were required as a matter of law to produce the deed-writer/stamp-vendor in their evidence as they were beneficiary of the agreement and would obviously fail if material evidence is withheld particularly when some of the executants of the alleged documents were claimed to be females and belonged to rural area and were also illiterate. No explanation whatsoever could be given for non-production of the witnesses who were most material to establishing the case which raises serious adverse presumption against the petitioners.

Conclusion: i) Non-appearance of attesting witnesses of an agreement to sell is fatal in the peculiar circumstances of the case.
ii) The evidence cannot be led on the facts neither pleaded nor incorporated in the plaint.
iii) Withholding of material evidence raises adverse presumption against the beneficiary of an agreement.

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47. **Lahore High Court**
Mst. Bhagan Bibi, etc. v. Addl. District Judge, etc.
Writ Petition No.7718 of 2017
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC5886.pdf

Facts: Petitioners assailed the order of Revisional court through the Writ petition wherein Trial Court dismissed the application of the petitioners under Section 12(2) C.P.C, for want of evidence while invoking Order 17 Rule (3) of C.P.C. Their Revision petition was also dismissed.

Issues: i) What is the object of Lahore High Court Amendment of Order XVII, Rule 3(1) of the C.P.C?
ii) When the Rule (3) of Order 17 of C.P.C, applies to a case?
iv) Whether adherence to apply the law is a mere technicality?

Analysis: i) It is clear from the wording of the Order XVII, Rule 3(1) of the C.P.C that on the failure of a party to produce its evidence or to do any other act necessary for the purpose of the case, for which time had been allowed to him, the court shall proceed to decide the suit forthwith.
ii) Rule (3) of Order 17 of C.P.C. 1908 applies to a case where time has been granted to a party at his instance, to produce evidence or to cause the attendance of witnesses or to perform any other act necessary for the progress of the suit and will not apply unless default has been committed by such party in doing the act for which the time was granted.
iii) To apply and to adhere to law is not a mere technicality rather it is duty cast upon the court as per Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 to do so.

Conclusion: i) The object of Lahore High Court Amendment of Order XVII, Rule 3(1) of the C.P.C. is that on the failure of a party to produce its evidence or to do any other act necessary for the purpose of the case, for which time had been allowed to him.
ii) It applies to a case where time has been granted to a party at his instance and default has been committed by such party in doing the act for which the time was granted.
iii) To apply and to adhere to law is not a mere technicality rather it is duty cast upon the court.

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48. **Lahore High Court**
Muhammad Saleem v. The State and another.
Criminal Appeal No. 395 of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC6139.pdf

Facts: Trial court, for offence under Section 376 P.P.C, at the conclusion of trial convicted the appellant under Section 376(1) PPC and sentenced to 14-years rigorous imprisonment with fine of Rs.1,00,000/- and in default thereof to further undergo simple imprisonment for six months. Benefit of section 382-B, Cr.P.C. was, however, extended to him. Feeling aggrieved, the appellant has filed the titled appeal against his conviction and sentence.

Issues: i) What is the definition of "Consent"?
ii) Whether consensual intercourse on the false promise of marriage falls within the definition of rape?
iii) Whether FIR can be registered for an offence of Fornication?
iv) Whether complaint can be termed as police report?

Analysis: i) The term 'consent' has been defined in section 90 of Pakistan Penal Code which is hereby described as-Consent known to be given under fear or misconception-Consent is not such a consent as is intended by any action of this Code, if the consent is given by a person under fear of injury or under a misconception of fact and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception: or-Consent of insane person—If the consent is given by a person Who from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or. Consent of child. Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.
ii) When neither in the crime report nor in the statement of complainant, it has been mentioned that any force was used by the accused for the act of Rape. More so, prosecution evidence is also silent on the point that the victim had allowed the appellant for commission of rape due to putting her in fear of death or hurt. Similarly,when there is no evidence that the accused committed rape with complainant/victim while showing himself as her husband. it is not a case of rape

in terms of section 375, PPC punishable under section 376, PPC rather it is abundantly clear that it is a case of 'fornication'…
iii) It is noteworthy that no FIR can be registered under the offence of fornication as envisaged under section 203(c), Cr.P.C.
iv) The term complaint has been defined in section 4(h), Cr.P.C. Even otherwise, it is a well settled principle of law that complaint and police report have distinctive features. Report of police has been described in Section 173, Cr.P.C. A comparative study of above mentioned sections i.e. 4(h) and 173 Cr.P.C. it is palpable that complaint cannot be termed as police report...

Conclusion: i) See analysis portion.
ii) Consensual intercourse on the false promise of marriage does not fall within the definition of rape rather it amounts to fornication.
iii) FIR cannot be registered for an offence of Fornication.
iv) Complaint cannot be termed as police report.

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49. **Lahore High Court**
Silk Bank Limited v. M/s Haseeb Waqas Sugar Mills Limited and 14 others
C. O. S. No. 16637 / 2020
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC6084.pdf

Facts: This suit is instituted by the Plaintiff Bank for recovery of Rs. 472,715,893.66/- with cost and cost of funds under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the "Ordinance") against contesting Defendants and Proforma Defendants.

Issues: i) When the Banking Court shall grant the defendant leave to defend the suit?
ii) What is the Memorandum of Association of a company?
iii) Whether a company as a juristic person can undertake any lawful act?
iv) Whether it is mandatory requirement for a company of having an object clause in its articles?
v) Whether the Memorandum and Articles of a company includes the power to enter into any agreement for obtaining loans, advances, finances or credit?
vi) Whether a company can carry on or undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities?
vii) What are the consequences and way forward when a suit for recovery under the Ordinance is instituted prematurely but matures during its pendency?
viii) When a suit by a 'financial institution' or a 'customer' can be instituted by one against the other?

Analysis: i) Section 10(9) unequivocally proclaims that the Banking Court shall grant the defendant leave to defend the suit, if on consideration of the contents of the plaint, the application for leave to defend and the reply thereto, it is of the view that substantial questions of law or fact have been raised in respect of which evidence

needs to be recorded. It follows from the provisions of law that in the last resort, the Banking Court can grant leave to defend only if it considers that a substantial question of law or fact has been raised which cannot be determined without recording of evidence. No distinction is made in terms of nature of the issue which can either be a question of law or fact or a mixed question of law and fact. Rather, the only test prescribed in this behalf is the opinion of the Banking Court to determine as to whether the same can be resolved with or without recording of evidence which in turn becomes the barometer to grant or refuse leave to defend to the defendant. Hence, the applicable test is liable to be employed with respect to determination of each issue depending upon its nature and the material required to answer the same.

ii) The Memorandum of Association of a company is the document which forms and constitutes the company. It defines its purposes and objectives for which it is incorporated and determines the ambit of relationship of a company with the outside world. The Articles of Association of a company deal with the internal management of the company and determine inter se relationship between the management and shareholders of the company listing rules as to how it is run, governed and owned.

iii) Increasingly, various jurisdictions in the world are moving to the concept that just like a natural person who may perform any lawful act, a company as a juristic person may also undertake any lawful act. As such, the concept of controlling the company in terms of its activities through its Memorandum of Association is fast eroding.

iv) Section 4 thereof, does away the requirement of a Memorandum and accordingly, the company needs only to submit Articles of Association at the time of incorporation and, thereby, dispenses with the ultra vires doctrine vis-à-vis the Memorandum of Association. However, although the law has removed the mandatory requirement of having an object clause, any company may specify its objects in its Articles if it wishes to do so.

v) Section 30 of the Act provides that notwithstanding anything contained in this Act or any other law for the time being in force or the Memorandum and Articles, the Memorandum and Articles of a company shall be deemed to include and always to have included the power to enter into any agreement for obtaining loans, advances, finances or credit, as defined in the Banking Companies Ordinance, 1962 and to issue other securities not based on interest for raising resources from a scheduled bank, a financial institution or general public.

vi) Section 26(1) of the Act states that a company may carry on or undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities provided that the principal line of business of the company shall be mentioned in the Memorandum of Association of the company which shall always commensurate with name of the company. Further, Section 26(2) thereof proclaims that a company shall not engage in a business which is either prohibited or is restricted by any law, rules or regulations, unless necessary license,

registration, permission or approval has been obtained or compliance with any other conditions has been made.

vii) The question of suit being premature does not go to the root of jurisdiction of the Court and as such, the Court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the Court to grant or refuse decree. The Court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been instituted a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit, a manifest injustice would be caused to the defendant. Taking into consideration, the explanation offered by the plaintiff for institution of suit before the date of maturity of cause of action, the Court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to the plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. However, certain riders are also stated in the said Judgment to the general rule to grant decree in judicial discretion upon maturity of a cause of action including when a mandatory bar is created by a statute which disables the plaintiff from instituting the suit on or before a particular date or the occurrence of a particular event or if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the jurisdiction of the Court.

viii) The Ordinance is a special law which creates specialized Courts and prescribes a summary procedure for settlement of claims between a 'customer' and a 'financial institution'. There is no cavil to the proposition that a suit by a 'financial institution' or a 'customer' can thus be instituted by one against the other only in case of a 'default' in fulfillment of any 'obligation' with respect to any 'finance'. However, the substance of the Ordinance is to determine the entitlement of a 'financial institution' or a 'customer' with respect to a right emanating with respect to 'default' in fulfillment of any 'obligation' with regard to any 'finance'.

Conclusion: i) The Banking Court can grant leave to defend only if it considers that a substantial question of law or fact has been raised which cannot be determined without recording of evidence.

ii) See above in analysis clause.

iii) A company as a juristic person may also undertake any lawful act just like a natural person who may perform any lawful act.

iv) Although the law has removed the mandatory requirement of having an object clause, any company may specify its objects in its Articles if it wishes to do so.

v) The Memorandum and Articles of a company shall be deemed to include and always to have included the power to enter into any agreement for obtaining loans, advances, finances or credit, as defined in the Banking Companies Ordinance, 1962.

vi) Section 26(1) of the Act states that a company may carry on or undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities.

vii) The Court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the Court to grant or refuse decree.

viii) A suit by a 'financial institution' or a 'customer' can thus be instituted by one against the other only in case of a 'default' in fulfillment of any 'obligation' with respect to any 'finance'.

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50. **Lahore High Court**
Nousheen Akram v. Federation of Pakistan etc.
W.P.No. 27148/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5901.pdf

Facts: The petitioner, having secured the highest marks in the written test held for the recruitment against a single post of Assistant (BS-15), in the Department of Archaeology & Museums, Government of Pakistan, Islamabad, was amongst the top five short-listed candidates to be interviewed for the said post. It is her case that she has been non-suited by abuse of process as respondent No.3, who happens to be the father of respondent No.6 and the Chairman of Departmental Selection Committee, has appointed his own son/respondent No.6, hence, the said appointment is result of nepotism and liable to be set aside.

Issue: What is required for maintaining transparency and public confidence in the recruitment process in case a conflict of interest arises before the Departmental Selection Committee?

Analysis: Integrity of a selection panel like the DSC vested with power to award marks in interview matters a lot and it is expected that if any conflict of interest arises, the disclosure is made and such member of the selection committee should recuse from proceeding further in order to lend credence and maintain transparency and public confidence in recruitment process.

Conclusion: In case of any conflict of interest before the Departmental Selection Committee, such member of the selection committee should recuse from proceeding further to lend credence and maintain transparency and public confidence in recruitment process.

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51. **Lahore High Court**
Shamsa Hameed etc. v. Additional District Judge etc.
Writ Petition No.46285/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5982.pdf

Facts: Through this Constitutional Petition the petitioner assailed the order of Trial Court and Revisional Court whereby application of petitioners No.1 and 2 under section 12(2) CPC to set aside the decree passed, while making the award Rule of Court, was dismissed.

Issues: i) If an award is obtained by collusion of the parties and/or the arbitrator appointed by them, whether the decree based upon such an award, having been made Rule of the Court, more particularly defeating the rights of third parties, can be impeached in proceedings under Section 12(2), CPC instead of filing of an application under Section 30 of the Arbitration Act 1940?
ii) Whether an oral gift of immovable property is required to be proved where an arbitration between the donor and the donee took place subsequent to the purported gift and an award was passed in favour of the donee, more particularly, when the same results into depriving the female legal heirs of the donor, from their rights in inheritance of the disputed property of the donor forming subject matter of the award?

Analysis: i) The provisions of CPC in terms of Section 41 of the Act, are applicable to the arbitration proceedings to the extent that the same are not specifically excluded by the Act. Therefore, this Court is of the opinion that if an award is obtained by collusion of the parties and/or the arbitrator appointed by them, the decree based upon such an award, having been made Rule of the Court, more particularly defeating the rights of third parties, could be impeached in proceedings under Section 12(2), CPC instead of filing of an application under Section 30 of the Act read with other provisions since there is no provision under the Act enabling such third parties (like the petitioners) to lay the challenge.
ii) The contents of the impugned award when put in juxta position with the factual background of the matter, analyzed hereinabove, propels this Court to conclude that entire stance of predecessor of the contesting respondents belies logic inasmuch as if the donor, being the real father had divested himself from the disputed property, in favour of his son, by way of an oral gift, would only refuse to incur the meager expense to give effect to the said gift and then readily agrees to refer the matter to the arbitration, in span of one day, and during the arbitration proceedings, the donee (predecessor of the contesting respondents) concedes to pay the expenses where after instead of just getting straightaway registration of the gift deed in his favour, the donee again resorted to the legal proceedings, against the donor (his father), by filing an application under Section 14 of the Act, for making the said award as Rule of the Court and the donor again readily filed a conceding written reply, through a counsel, without even appearing before the Court, in person. Moreover, the fact that the agreement to refer the matter to the arbitrator and the award passed thereon, all were made on the same day, in itself, is sufficient to show the fraud and misrepresentation on part of predecessor of the contesting respondents who was the original beneficiary of the oral gift of the disputed property that deprived the other female legal heirs of the donor (i.e., the

petitioners). As regards comparison of the signatures of the donor by the Court, certainly, there is no legal bar to prevent the Court from comparing signatures or handwriting itself, rather, Article 84 of the QSO empowers the Courts to carry out such exercise, however, the naked-eye comparison without the aid of an expert in this regard, involves fallibility and may not be the conclusive proof thereof, hence, any conclusion drawn thereof is susceptible to error and has been given undue weightage in the present case. As far as absence of evidence on part of the petitioners' side to establish lack of knowledge of the oral gift for the purposes of limitation for filing application under Section 12(2), CPC is concerned, suffice to observe that admittedly, petitioners No.1 & 2 were married step sisters of predecessor of the contesting respondents and residing in their marital abode. Therefore, possibility cannot be ruled out that they were prevented from the knowledge of making of the impugned oral gift and subsequent proceedings, hence, their stance that they came to know about the making of the oral gift only when they were denied access to the disputed property has force that has been erroneously ignored by the Courts below. The impugned oral gift, by all standards was unconscionable as it is inexplicable as to why the donor would want to deprive his daughters from his inheritance in the disputed property (residential house) when, admittedly, he had equitably distributed his other property(ies). It is trite law that the beneficiaries of a gift, more importantly oral in nature, have to establish it by giving particulars of the gift, including when and where the gift was made, which predecessor of the contesting respondents have not provided and the said failure is fatal to the case of the contesting respondents. At this juncture, it is imperative to observe that Islamic philosophy aims to end injustice and oppression of the weak and vulnerable segment of the society by conferring equal status upon the women and ordaining not to abuse and exploit the vulnerables. Glorious Quran recognizes the right of women to inherit which has a close nexus with enjoying a complete legal personality by the females. The Constitution of the Islamic Republic of Pakistan, 1973 also extends protection of rights of the women, inter alia, through Article 25 read with Aricle 37 thereof that talk about equality and special protection, respectively. Moreover, the oral gifts like one, in the present case, forming subject matter of an arbitration proceedings, and the subsequent award and decree based on it, are contracts that have been held to be against the public policy, by the Supreme Court of Pakistan and hence, not enforceable.

Conclusion: i) If an award is obtained by collusion of the parties and/or the arbitrator appointed by them, the decree based upon such an award, having been made Rule of the Court, more particularly defeating the rights of third parties, can be impeached in proceedings under Section 12(2), CPC instead of filing of an application under Section 30 of the Act read with other provisions.

ii) An oral gift of immovable property is also required to be proved where an arbitration between the donor and the donee took place subsequent to the purported gift and an award was passed in favour of the donee, more particularly,

when the same results into depriving the female legal heirs of the donor, from their rights in inheritance of the disputed property of the donor forming subject matter of the award.

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52. **Lahore High Court**
Asmat Bibi v. Addl. District Judge, etc.
W.P. No.50316 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6069.pdf

Facts: This constitutional petition is directed against judgment passed by the Additional District Judge who proceeded to accept the appeal of respondents No.3 to 5 and has suspended the order passed by the Civil Judge and the application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 ("CPC"), filed alongwith her suit for declaration and cancellation of the document as also recovery of possession and permanent injunction, was dismissed.

Issues: i) What elements are to be assessed while examining the pleadings of the parties for grant of temporary injunction?
ii) Can a plaintiff be forced to litigate a person against whom he does not seek any relief?

Analysis: i) It is settled principle of law that in order to succeed in obtaining temporary injunction in a case, a plaintiff has to establish co-existence of three conditions/ingredients i.e., (i) prima facie case; (ii) possibility of suffering irreparable loss if temporary injunction is declined; and (iii) that the balance of convenience leans in favour of the plaintiff. Of the above referred three conditions, existence of prima facie case is foundational and the other two conditions are considered only once the plaintiff establishes a prima facie case in his favour. This assessment is to be carried out by the learned Trial Court while examining the pleadings of the parties.
ii) The general rule is that the plaintiff in a suit is dominus litis and may choose the person against whom he wishes to litigate and cannot be forced to sue a person against whom he does not seek any relief… it is settled legal position regarding the distinction between the non-joinder who ought to have been joined as a party and the non-joinder of a person whose joinder is only a matter of convenience or expediency.

Conclusion: i) Prima facie case, possibility of suffering irreparable loss and balance of convenience are to be considered for grant of temporary injunction.
ii) No, a plaintiff cannot be forced to join a party in litigation against whom he does not seek any relief.

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53. **Lahore High Court**
Azhar Javaid v. Malik Mushtaq Noor
C.R No. 36908 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5955.pdf

Facts: Petitioner through this revision petition challenged the judgment and decree passed by the Additional District Judge as well as judgment and decree passed by the Civil Judge.

Issues: i) Whether time is essence of the contract when real intention of parties to agreement is clear in that behalf?
ii) Whether material fact when not pleaded, can be deposed in the evidence and whether such evidence on those material facts can be given any weight?

Analysis: i) In case titled *"Muhammad Abdur Rehman Qureshi Versus Sagheer Ahmad"* (2017 SCMR 1696), the Supreme Court of Pakistan has observed that in view of rapid increase in prices of immovable properties, seller cannot be left at the mercy of the buyer to bind him and then delay in completion of contract hiding behind an archaic legal principle that in contracts involving immovable properties, time is generally not of the essence…While relying on above judgment, in case titled *"Ms. Sara Bibi Versus Muhammad Saleem and Others*" (PLD 2021 Islamabad 236), the Court observed; *"... Gone are the days when, with respect to agreements for the sale of immovable properties, time was generally held not to be of the essence...*
ii) Order VI Rule 2 of the Civil Procedure Code requires that the pleadings should contain a statement, in a concise form, of the material facts, on which the concerned party relies for his claim or defence. The allegations of failure of condition by not retaining possession or renting out the *suit property* form *facta probanda.* It was material fact and required to be pleaded and then to be proved through evidence. Such material fact when not pleaded, cannot be deposed in the evidence. Neither the evidence in departure of pleading of those material fact(s) can be given any weight…

Conclusion: i) Time is considered essence of the contract when real intention of parties to agreement is clear in that behalf.
ii) When material facts not pleaded cannot be deposed in the evidence and such evidence on those material facts cannot be given any weight.

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54. **Lahore High Court**
Hassan Munir v. Province of the Punjab, etc.
W. P. No.70260 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC5943.pdf

Facts: The petitioner has called into question the show cause notice issued by the Vice Chancellor, University of Agriculture, Faisalabad under Section 13(4) of the

Punjab Employees Efficiency, Discipline and Accountability Act, 2006 ("PEEDA Act, 2006') whereby he has been afforded opportunity of personal hearing.

Issue: Which enactment will prevail in case of inconsistency of two legislations on the same subject?

Analysis: Harassment at workplace has been one of the major contributing factors that hamper women from joining the workforce in Pakistan. The Act of 2010 provides legal protection to women against harassment at the workplace, and reforms the existing legislation regarding women's right to work in Pakistan whereas the PEEDA Act, 2006 provides for proceedings against the employees in Government and corporation service in relation to their conduct, efficiency, discipline and accountability. The petitioner has allegedly been proceeded under the PEEDA Act for misconduct on account of harassment of a female student. Section 12 of the Act of 2010 states that the provisions of the said Act are in addition to any other law in force…It is clearly manifest from the perusal of above provision that proceedings under the Act, 2010 do not exclude possibility of proceedings in any other law, therefore, there is no illegality or jurisdictional error in proceedings against the petitioner, if allegation falls within the scope and ambit of the PEEDA Act, 2006… undisputedly the Act of 2010 is a Federal legislation whereas the PEEDA Act, 2006 has been enacted by the Provincial Assembly. Article 143 of the Constitution provides that in case of any inconsistency between the Federal and Provincial Law, the former will prevail.

Conclusion: In case of inconsistency between the Act of 2010 and the PEEDA Act, 2006, the provisions of the Protection against Harassment of Women at the Workplace Act, 2010 shall prevail in its application to the proceedings for the alleged harassment.

SELECTED ARTICLES

1. STANFORD LAW REVIEW
https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/06/Karp-75-Stan.-L.-Rev.-1431.pdf

What Even Is a Criminal Attitude? —And Other Problems with Attitude and Associational Factors in Criminal Risk Assessment by Beth Karp

This Article provides an overview of several risk assessment instruments currently used in the United States. Part II explains and critiques how risk assessment instruments quantify "criminogenic needs." Part III discusses freedom of speech and the ethical problems inherent to quantification of attitudes. Part IV addresses peer and family associational factors, delving into the constitutional quagmire that is freedom of intimate association, the reasons "criminal family" factors violate equal protection, the traces of eugenics that persist in risk assessment literature, and the ethical and statistical problems with efforts to tabulate criminal associates and family members. Finally, Part V

briefly expands the scope outward to caution against implementing poorly designed and validated instruments just because risk assessment is trendy.

2. MODERN LAW REVIEW
https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12581

What Makes an Administrative Decision Unreasonable? by Hasan Dindjer

The nature of reasonableness review in administrative law has long been obscured behind vivid but uninformative descriptions. In recent years, courts and commentators have recognised that reasonableness review involves assessment of the weight and balance of reasons bearing on a decision. Yet by itself this idea is substantially incomplete, for there are many ways in which issues of weight might be relevant. Drawing on the theory of practical reason, this article offers a new account of the reasonableness standard that explains precisely how the weight of reasons matters. It shows, negatively, that several existing accounts are mistaken. Positively, it proposes that reasonableness be understood as a requirement of 'relativized justification': a decision must be justified relative to some eligible understanding of the balance of reasons. This account explains the standard's central features and yields a coherent, workable test for courts to apply.

3. MANUPATRA
https://articles.manupatra.com/article-details/Legality-of-Recorded-Telephonic-Conversation

Legality of Recorded Telephonic Conversation by Vijay Pal Dalmia and Ankush Mangal

The Allahabad High Court recently in 'Mahant Prasad Ram Tripathi @M.P.R. Tripathi vs. State of U.P. Thru C.B.I./A.C.B. Lucknow has held that a telephonic conversation recorded between two accused, whether illegally obtained or not, would be admissible in evidence.

4. 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

Recently, while hearing a case of a person with color blindness who was denied the post of Assistant Engineer (Electrical) in the Tamil Nadu Generation and Distribution Corporation (TANGEDCO), the Supreme Court expressed concerns about the standards to be met to meet the criteria for "benchmark disabilities" in India.The court explained who a person with disability is, what benchmark disabilities are and what the court proposed in this case.

5. CONSTITUTIONAL COURT REVIEW

https://www.saflii.org/za/journals/CCR/2019/19.pdf

Judicial Independence and the Office of the Chief Justice by C H Powell

This article investigates the extent to which the Office of the Chief Justice (OCJ) promotes the independence of the judiciary in South Africa. Judicial independence is widely understood to be protected by security of tenure, financial independence and administrative independence, three characteristics which are meant to support the judiciary as an institution, as well as the independence of individual judges. However, current jurisprudence and scholarship fail to engage with the relationship between individual and institutional independence, and to identify mechanisms of protection for the institution as such. The factors which have received the most emphasis are the financial independence of the judiciary and the judiciary's control over its own administration. The article reveals that the OCJ has taken over broad areas of the administration of the judiciary, but questions whether the increased control enjoyed by the leadership of the judiciary has translated into improved control for individual judges. It draws on the legal philosophy of Lon L Fuller to suggest how the independence of individual judges relates to the independence of the institution. In particular, it applies Fuller's theory of 'interactional law' to suggest that a process of mutual engagement is needed within those institutions which have to uphold the rule of law. From this perspective, it appears that the OCJ may not be in a position to protect the institutional independence of the judiciary, because it does not contain the mechanisms to accommodate the input of individual judges on the best conditions for effective and independent work.
