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FORTNIGHTLY CASE LAW BULLETIN

(16-12-2024 to 31-12-2024)

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

JUDGMENTS OF INTEREST

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- 1. Supreme Court of Pakistan**
Malik Mahmood Ahmad Khan v. Malik Moazam Mahmood, etc.
C.P.L.A.2250-L/2016
Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 2250_1_2016.pdf
- Facts:** The case involves a child, represented by his maternal grandmother, filing a suit for maintenance against his father following the divorce of his parents and the subsequent death of his mother. The trial court decreed the maintenance, but the father's appeals at higher courts were dismissed. Hence; this petition.
- Issue:**
- i) What is the legal framework guiding the courts in matters involving children in contact or in conflict with the law?
 - ii) What principles under the United Nations Convention on the Rights of the Child (UNCRC) guide child justice systems?
 - iii) What is the judiciary's role in adopting a child-centered approach?
- Analysis:**
- i) As custodians of justice, courts must adopt a child justice approach that prioritizes the best interests of the child, recognizing their vulnerabilities, developmental needs, and potential. This approach demands sensitivity to their circumstances, ensuring access to education, shielding them from exploitation, and fostering an environment conducive to their growth and reintegration into society.(...) Article 25(3) empowers the State to enact special provisions for the protection of children, including measures that may favourably differentiate them from adults. Article 25A mandates free and compulsory education for children aged 5 to 16 years. Article 35 obliges the State to protect children, while Article 37(e) ensures just and humane working conditions, explicitly prohibiting the employment of children in vocations unsuitable to their age or sex.
 - ii) These principles, inter alia, include: (i) Ensuring that the best interests of the child is given primary consideration (...)(ii) Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination;(...)(iii) Advancing the right of the child to express his or her views freely and to be heard;(...) (iv) Protecting every child from abuse, exploitation and violence (...)(v) Treating every child with dignity and compassion (...) (vi) Respecting legal guarantees and safeguards in all processes; (...) (vii) Preventing conflict with the law as a crucial element of any juvenile justice policy; (...) (viii) Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time;
 - iii) A child-centered approach in the judiciary is essential because it acknowledges that children, unlike adults, are still in their formative years and are particularly vulnerable to the psychological and emotional impacts of legal proceedings (...) This approach advocates for judicial processes that are rehabilitative rather than punitive, protecting the child's dignity while fostering rehabilitation and reintegration into society.
- Conclusion:** i) Courts must prioritise children's best interests and protection under constitutional provisions.

- ii) See analysis No.ii.
- iii) A child-centered approach focuses on rehabilitation and dignity.

2. Supreme Court of Pakistan
Mrs. Faryal Arif Latif v. Mr. Arif Latif.
Civil Petition No. 3597-L of 2023 & Civil Petition No.8-L of 2024
Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3597_1_2023.pdf

Facts: The case involves a dispute over ownership of a property, where the plaintiff/respondent claimed to be the actual owner while the defendant/petitioner was alleged to be a mere ostensible owner. The suit was dismissed for non-prosecution due to the plaintiff's failure to produce evidence, but it was later restored by the trial court. The restoration was challenged by the petitioner and upheld through appellate proceedings, hence; these petitions.

Issue:

- i) What is the primary purpose of the Civil Procedure Code (CPC) as a procedural law?
- ii) Is sufficient cause required to restore a dismissed suit, and can past conduct justify denial?
- iii) What constitutes sufficient cause under Rule 9 of Order IX, CPC?
- iv) What is the judiciary's role in ensuring timely justice?
- v) What powers do High Courts have under Articles 202 and 203 of the Constitution of Pakistan, 1973?
- vi) What mechanisms can be proposed for effective case management to prevent delays in judicial proceedings?

Analysis:

- i) It is well renowned that the CPC is a consolidatory law which is primarily procedural in nature and can be defined as a branch of law administering and directing the process of civil litigation. The rules framed under the CPC are for advancing the dispensation of justice, rather than supplementing or complementing it to defeat the ends of justice
- ii) Rule 8 and 9 of Order IX, CPC, do not impose any obligation on the Court to first consider the past record before restoring the suit to its original position. Instead, the Court is only required to determine whether sufficient cause for non-appearance is made out for the day when the suit was dismissed for nonprosecution. Past conduct may be ruminated to assess the seriousness or non-seriousness of a party in the litigation, and due to any past reckless conduct, the Court may impose costs on any default with a warning. However, past conduct alone cannot be considered a ground for dismissing the restoration application if sufficient cause for non-appearance on the date of hearing is otherwise made out.
- iii) sufficient cause for non-appearance was to be shown for that particular day of non-appearance, which is material for the purpose of allowing the restoration application and this has nothing to do with past failures.
- iv) The function of the court is to administer substantial justice between the

parties after providing ample opportunity for hearing which is a significant component and virtue of a fair trial, whereas the procedure serves as a machinery with the object of facilitating and not obstructing the administration of justice. Therefore, it ought to be construed liberally and, as far as possible, technical objections should not be allowed to defeat substantial justice.

v) According to Article 202 of the Constitution of the Islamic Republic of Pakistan 1973, subject to the Constitution and law, the High Court may make rules regulating the practice and procedure of the Court or of any court subordinate to it, while under Article 203, each High Court has been conferred and vested with the powers to supervise and control all courts subordinate to it.

vi) a new/separate chapter ought to be incorporated in the CPC under the nomenclature of “Case Management” with stage-wise, dedicated timelines of each step of proceedings, including provision for caseaging and time-limits for disposal of interlocutory applications from the original to the appellate stage, and it should be implemented across the board with penal consequences of non-compliance, which may include but not be limited to imposing compensatory/exemplary costs. Moreover, a separate Chapter with the same nomenclature ought to be incorporated in the Cr.P.C too, with dedicated stage-wise timelines for proceedings and deciding of cases by the Court from the trial to the appellate stage.

- Conclusion:**
- i) CPC ensures justice through procedures, avoiding technical hindrances.
 - ii) Restoration depends on sufficient cause, not past conduct.
 - iii) Sufficient cause must pertain to the specific day of non-appearance.
 - iv) Substantial justice overrides procedural technicalities.
 - v) High Courts regulate and supervise subordinate courts.
 - vi) Timelines and case management can expedite justice.

3. Supreme Court of Pakistan
The Director General, Intelligence Bureau Government of Pakistan & others
v. Babar Ali Solangi
Civil Petition No. 281-K/2022
Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 281_k 2022.pdf

Facts: The case involved an employee of a disciplined force who was accused of serious criminal conduct, resulting in his suspension and subsequent removal from service following an ex parte departmental inquiry conducted during his incarceration. He was later acquitted of criminal charges through compromise, and the service tribunal reinstated him, prompting a challenge to the tribunal’s decision.

- Issue:**
- i) Can disciplinary proceedings continue after criminal acquittal?
 - ii) Can a disciplinary inquiry be conducted concurrently with a criminal trial, and what standards apply?

- iii) What is the significance of due process and natural justice in departmental inquiries involving an incarcerated employee?
- iv) Can an accused employee in a departmental inquiry be represented by an advocate or attorney?
- v) What is the legal effect of conducting an ex parte departmental inquiry when the respondent is unable to participate due to incarceration?

Analysis:

- i) We are aware that the criminal trial and the disciplinary proceedings can be distinguished from one another, and it is the prerogative of the employer to conduct the disciplinary proceedings despite acquittal.
- ii) the prosecution in criminal cases and departmental inquiries on the same allegations can proceed concurrently at both venues without having any overriding or overlapping effect. The objective of a criminal trial is to penalize offences committed by the accused while a departmental inquiry is inaugurated to enquire into the allegations of misconduct in order to preserve the discipline and decorum in the institution and ensuring efficiency of the department to strengthen and preserve public confidence.
- iii) It is a most valuable and instinctive human right of every Under Trial Prisoner (UTP) and a convicted person to defend or challenge his indictment and conviction in accordance with the law. (...)In fact, in order to answer and defend the allegations of misconduct, the personal appearance of the delinquent ought to be ensured and he should be afforded not only a right to adduce evidence and call witnesses to support his innocence, but he should also be given a fair opportunity to cross-examine the witnesses who deposed against him.
- iv) The right of proper defence is a vested right and not providing ample opportunity of defence is also against Article 10-A of the Constitution of the Islamic Republic of Pakistan. In court proceedings, either criminal or civil, an incarcerated person may defend the proceedings by appointing an advocate, and even through an attorney in civil cases, but in the departmental regular inquiry instituted on the charges of misconduct under the civil servant or labour laws, there is no provision, or any custom or practice, on the basis of which the accused employee may be represented through advocate or attorney.
- v) Therefore, conducting an ex parte proceeding, knowing that the respondent is unable to defend the charges of misconduct was nothing but a sheer violation of due process and the principles of natural justice, thus, rendering the entire exercise ineffectual and inconsequential.

Conclusion:

- i) Disciplinary actions can proceed despite criminal acquittal.
- ii) Criminal and departmental inquiries can run concurrently without conflict.
- iii) Accused individuals have a right to fair defense and cross-examination.
- iv) See analysis No.iv.
- v) Ex parte proceedings breach due process and are invalid.

4. **Supreme Court of Pakistan**
Province of Punjab thr. Chief Secretary, Lahore & others v. Qasim Mehmood & others
(Civil Petition No.3520 of 2020)
Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3520 2020.pdf

- Facts:** The respondents were performing their duties as Teachers in the School Education Department, Government of Punjab, under the Continuous Professional Development (CPD) scheme. According to the terms and conditions, the DTEs were required to serve at least for a period of 3 years from the date of joining under the CPD programme, which was discontinued on 05.05.2017, and their services were repatriated to their parent department for adjustment vide letter dated 19.06.2017. The respondents, after the discontinuation of the CPD programme, filed the Writ Petition in the Lahore High Court, Rawalpindi Bench, which was disposed of vide the impugned order, with the observation that the respondents were contract employees for more than 3 years hence the department is liable to consider them for regularization under the Act. The instant Civil Petition for leave to appeal was directed against the said judgment passed by the learned Lahore High Court, Rawalpindi Bench.
- Issue:** Whether the District Teacher Educators (DTEs) are entitled to the benefit of regularization under the provisions of the Punjab Regularization of Service Act, 2018 or not?
- Analysis:** The inventiveness and prescience of the Punjab Regularization of Service Act, 2018 was to provide an opportunity to certain employees, serving on contractual basis, to be appointed on a regular basis, and the Act was made applicable to all contractual employees performing their duties in different Government Departments having completed 3 years of continuous service before or after the commencement of the Act. According to Section 2 (Definitions clause), clause (c), “contract employee” means an eligible person appointed on contract in a department immediately before the commencement of the Act but does not include a person appointed to a post in a project, programme, project management unit, project management office, time bound (one-time) development activity or as work-charged employee or an employee on daily wages, and according to clause (f), “regularization” means the appointment of an eligible contract employee on regular basis, with immediate effect, in accordance with the Act. The Act depicts the intention of legislature that in order to strengthen the enforceability of the aforesaid Act across the board without any discrimination, by clearly expounding under Section 3 that notwithstanding the mode or manner of appointment, or any deficiency or defect in the procedure or anything contained in the Punjab Civil Servants Act 1974, the rules framed thereunder or any recruitment policies, any person appointed on contract, immediately before the commencement of the Act, shall be deemed to have been validly appointed and

such appointment shall not be called in question. Section 4 of the Act bifurcates the procedure of the regularization of contract employees in different stages and categories. For instance, the case of a contract employee appointed on the recommendations of the Commission (Punjab Public Service Commission) shall be submitted to the appointing authority for regularization without reference to the Commission or the Scrutiny Committee, but if the post falls within the purview of the Commission yet the contract employee was appointed otherwise than on the recommendations of the Commission, the case shall be referred to the Commission for recommendations, and finally, if the post is outside the purview of the Commission, the case of the contract employee shall be placed before the Scrutiny Committee constituted under the Act for recommendations.

Conclusion: The respondents/ District Teacher Educators (DTEs) are liable to be considered for regularization under the Act and the appointing authority was directed to send their cases for consideration to the competent authority.

5. Supreme Court of Pakistan.

Aurangzaib Alamgir v. Muhammad Sajid & others

Criminal Petition No. 58-K of 2023

Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan

https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 58 k 2023.pdf

Facts: The petitioner brought this Criminal Petition against order passed by the Hon'ble High Court of Sindh, whereby the application of petitioner for quashment of proceedings was dismissed; which was filed against orders of the learned Sessions Judge, summoning him in a private complaint under Illegal Dispossession Act.

Issues:

- i) What is the nature of, 'Inherent Powers' of High Court under section 561A of Cr.P.C and when to be exercised?
- ii) What does the expression, "Abuse of Process" provided in section 561A Cr.P.C mean?
- iii) Whether taking cognizance by the trial court, is sufficient ground to dismiss a petition for quashment of proceedings?

Analysis:

i) This inherent jurisdiction cannot be deemed to be an alternative jurisdiction or additional jurisdiction and cannot be exploited to disrupt or impede the procedural law on the basis of presumptive findings or hyper-technicalities. Instead, it is intended to protect and safeguard the interests of justice and to redress grievances of aggrieved persons, for which no other procedure or remedy is provided in the Cr.P.C...The remedy provided under Section 561-A, Cr.P.C. cannot be construed as an alternate remedy or substitute for an express remedy provided under Sections 249-A or 265-K, Cr.P.C...According to the judicial consensus and unanimity matured on the characteristics of inherent jurisdiction of the High Court under Section 561-A, Cr.P.C., it is well-established that the inherent jurisdiction so conferred is curative in nature.

ii) In fact, the expression “abuse of process” used under Section 561-A, Cr.P.C., connotes an unwarranted or irrational use of legal proceedings or process which also includes the presence of ulterior motives for activating the process for unjustified arrest or groundless criminal prosecution. The essential purposefulness of this doctrine is to foster and safeguard the judicial system, ensuring that it is not misused or blemished. This terminology can be comprehended as an acuity that if a Court has jurisdiction to hear a case, it may terminate the prosecution if an abuse of process is floating on the surface on record, with logical reason and probability of exasperation, persecution, and unfairness to the opposite side.

iii) It reflects from the impugned Order that the main reason for dismissing the quashment petition was that the learned Trial Court has already taken cognizance on 15.12.2021, and no other reason has been assigned. It is quite common that sometimes, a quashment petition is filed after availing the remedy provided under Section 249-A or 265-K, Cr.P.C., as the case may be, and other times, it is directly filed in an extreme or extraordinary circumstance to demonstrate an apparent and perceptible abuse of process that does not warrant or justify initiating legal proceedings. It is not the case that the petition was rejected due to the non-availing of an alternate remedy by the petitioner as provided under Section 265-K Cr.P.C, but the only reason was that the Trial Court has taken cognizance which, in our view, is neither a lawful justification nor is it persuasive enough to dismiss the petition summarily without considering the grounds raised for the culmination of proceedings in the petition moved under Section 561-A, Cr.P.C., as to whether any prima facie case is made out which actually warrants the prevention of the abuse of process, or otherwise, to secure the ends of justice.

- Conclusion:**
- i) Inherent powers are neither alternative, nor additional jurisdiction. It is intended to protect and safeguard the interests of justice and to redress grievances of aggrieved persons, for which no other procedure or remedy is provided.
 - ii) An unwarranted or irrational use of legal proceedings or process which also includes the presence of ulterior motives for activating the process for unjustified arrest or groundless criminal prosecution.
 - iii) Taking cognizance by the trial court is not a sufficient ground to dismiss a petition for quashment of proceedings.

6. Supreme Court of Pakistan
Government of the Punjab through Chief Secretary, Punjab, Lahore and another v. Zaka Ullah and others
Civil Petition No.1114-L of 2022
Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1114_1_2022.pdf

Facts: The respondents, employed on a contractual basis in a government department, sought the regularization of their posts. Despite cabinet sub-committee recommendations and subsequent approvals at various levels, the regularization was deferred due to the lack of formal cabinet approval and the requisite

budgetary sanction. The respondents approached the High Court, which issued directions for their regularization, leading to the review and subsequent appeal before the Supreme Court.

- Issues:**
- i) What is the significance of Rule 25 of the Punjab Government Rules of Business, 2011 regarding cabinet decisions?
 - ii) Can regularization of employees occur without the consent of the finance department?
 - iii) Do employees have a vested right to regularization as a matter of law?
 - iv) Is judicial intervention permissible in matters of regularization of employees?
 - v) Can courts alter the terms of employment contracts through constitutional jurisdiction?

- Analysis:**
- i) It is now settled law that powers conferred upon the government must be exercised collectively through the Cabinet's decisions and cannot be exercised otherwise. (...) This principle equally applies, by necessary implication, to provincial governments⁵. Furthermore, the Punjab Government Rules of Business, 2011 (2011 Rules), which delineate the manner in which the Provincial Government's decisions must be executed, clearly state that the cabinet's approval is mandatory. Rule 25 of the 2011 Rules provides that decisions taken by a committee of the cabinet, including sub-committees, are provisional until ratified by the full cabinet, unless explicitly delegated otherwise.
 - ii) No department shall, without previous consultation with Finance Department, authorize any orders (...) No proposal, which requires previous consultation with Finance Department under the rules but in which that Department has not concurred, shall be proceeded with unless a decision to that effect has been taken by the Cabinet.
 - iii) this Court has held repeatedly in numerous judgments that employees cannot claim regularization as a matter of right⁷. This principle is grounded in the understanding that regularization requires a statutory or legal backing, and in the absence of such a framework, courts cannot impose any obligation on the government.
 - iv) this Court has consistently maintained that regularization is not merely a procedural formality but a prerogative of the executive, reflecting its autonomy in determining institutional priorities and resource allocation. Regularization is thus fundamentally a policy matter which falls squarely within the domain of the Executive. Courts cannot usurp this role.
 - v) The High Court in its Constitutional Jurisdiction cannot alter the scope of the terms that have been agreed upon by the parties and put an additional burden upon the employer. At best, a contract employee can approach the appropriate forum for recovery of damages against an employer for breach of contract, if a case is made out against the employer.

- Conclusion:**
- i) Cabinet decisions must be collective, sub-committee approvals are provisional.
 - ii) Finance Department's concurrence is mandatory for financial decisions.
 - iii) Regularization requires legal or statutory backing.

- iv) Regularization is a policy matter within the executive's prerogative, not subject to judicial interference.
- v) Courts cannot modify employment terms.

7. Supreme Court of Pakistan
Muhammad Yousaf Etc. v. Member Judicial-IV, Board of Revenue, Punjab, Lahore, Maratab Ali and others
Civil Petitions No. 3297 of 2024 and 1921-L of 2024
Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan & Mr. Justice Shahid Bilal Hassan

https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3297_2024.pdf

Facts: The respondent, being Lambardar, was allotted some land of charagah under the lambardari grant vide notification of 2006 issued by BOR. This allotment was cancelled by the order of Additional Deputy Commissioner (A.D.C), the order of A.D.C was upheld till the Board of Revenue (BOR). These orders were set aside by the Hon'able High Court. Hence, these petitions have been filed.

Issues:

- i) What is distinction between the state land and charagah land?
- ii) What are the purposes and usages of both two lands i.e state land and charagah land?
- iii) Whether charagah land can be converted into the state land?
- iv) Which land and for what period a land can be given to a lambardar as a lambardari grant?
- v) Whether charagah land can be leased out, if yes, on the permission of which authority and for what period?

Analysis:

- i) Historically, charagah referred to open pasture, a field or meadow used for grazing cattle. This land was considered as common land reserved for grazing purposes, for the benefit of the village and not of any individual.--- State land, on the other hand, is land owned and controlled by the State. The Land Record Manual¹² defines it as government land, crown land and nazool land. The record of rights shows the land in the ownership of the State which means they can allot it, lease it or use it for public purposes, as per government policy. Usually, this land is used for revenue generation as opposed to charagah land which was a common resource for the village.--- However, as already noted above, charagah land is distinct from state land.
- ii) This land was considered as common land reserved for grazing purposes, for the benefit of the village and not of any individual. It was historically considered as non-cultivable, explicitly used for a collective purpose, as part of the collective rights of the village. Charagah land was found in the form of a strip of land, three squares or rectangle in extent, all around the village abadi which would give a clear space of 500 feet width between the outer houses and the nearest cultivation. This strip of land was always maintained by the village and was not to be allotted

or sold or exchanged but could, if required, be used for public purpose. Some of the public purposes included extension of schools and playgrounds, pits for temporary storage of manure, for village tanks and for planting of trees. The basic concept of charagah was that it was used for grazing purposes for the residents of the locality.--- State land, on the other hand, is land owned and controlled by the State. The Land Record Manual¹² defines it as government land, crown land and nazool land. The record of rights shows the land in the ownership of the State which means they can allot it, lease it or use it for public purposes, as per government policy. Usually, this land is used for revenue generation as opposed to charagah land which was a common resource for the village.

iii) Accordingly, this notification sets the policy of the government that charagah land cannot be converted into state land nor can it be allotted for any purpose other than a public purpose and that too with the permission of the BOR.--- There is no notification or provision under which charagah land could be converted as state land.

iv) With reference to the lambardari grant, lambardars appointed as village headman were granted land under specific schemes such as the Pedigree Livestock Breeding Scheme or the Temporary Cultivation Scheme. By way of Notification of 2006, a criterion was set for grant of state land on lease to lambardars, on the basis of which, state land could be given to lambardars for the duration of their tenure. They would hold the land on lease during this time and no proprietary rights could be granted even for state land. The purpose of the lambardari grant was to give the lambardar a stake in the village revenue collection and to exercise as lambardar. Although much has changed over time, the lambardari grant continues even today as a form of compensation provided to the lambardar, and continues for long duration.

v) Charagah land is distinct from state land and despite different notifications which permitted the lease of charagah land it is clear from the Notification of 2001 and further from Notification of 2013 that charagah land could only be leased out on specific conditions with the permission of the BOR.--- In this regard, we are clear on the fact that charagah land was always considered as a common resource for the benefit of the village and, if at all, this land had to be leased out, it would be for a public purpose that too for a specified period of time with the permission of the BOR.

- Conclusion:**
- i) See analysis No.i.
 - ii) See analysis No.ii.
 - iii) No. It cannot be converted.
 - iv) See analysis No.iv.
 - v) See analysis No.v.
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8. **Supreme Court of Pakistan**
Zeeshan Pervez (Late) through his Legal heirs v. Muhammad Nasir
C.P.L.A.812-K/2022 AND CMA NO.572-K/2022
Mr. Justice Mr. Justice Munib Akhtar, ACJ, Mr. Justice Shahid Waheed,
Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 812 k 2022.pdf

Facts: The case concerns a sale agreement for immovable property where the vendor failed to fulfill his obligations to clear encumbrances and obtain a No Objection Certificate (NOC), while the vendee sought specific performance after making the requisite payments. The vendor's suit for cancellation of the agreement was dismissed, and the vendee's suit for specific performance was decreed by the Single Judge, a decision upheld by the Division Bench of the High Court, which decision was impugned in this case.

Issues:

- i) Was the payment obligation under Clause 2 of the Agreement fulfilled within a legally acceptable timeframe?
- ii) Did the vendor breach the contract by failing to fulfill conditions precedent for completing the sale?
- iii) Was the vendor legally justified in rescinding the Agreement?

Additional Note:

- iv) Is the vendee entitled to specific performance of the Agreement under the law?
- v) Did the vendor fulfill the obligations required to enable the balance payment by the vendee?

Analysis:

- i) The Agreement presented before this Court, clearly shows a misprint with regards to the date on which the PKR 3,415,000/- sum towards the total sale consideration was payable, which also happens to be an admitted position before the two fora below... It is prima facie apparent that the amount in contemplation is an amount to be paid post execution of the Agreement... The Vendor demonstrably and admittedly received and realized the relevant payment in the third week of May 2013. Reliance on the *contra proferentem* rule... leads us to conclude that a reasonable interpretation of the clause does not create a breach where there is no ambiguity in the payment schedule post-agreement execution.
- ii) Clause 4 of the Agreement specifies that after the payment of Rs.34,15,000/- the Vendor shall be responsible to fully pay off the debt/loan against the said property and obtain the Clearance Certificate/NOC from the Bank concerned... Evidence indicates that as late as the 9th of September, 2013, the property remained mortgaged... undermining the Vendor's ability to fulfill his obligations to enable the sale by 15.08.2013... The condition precedent requiring the vendor to secure a NOC and clear encumbrances was unfulfilled, constituting a breach on the vendor's part.
- iii) The Vendor attempted to shift the burden of his shortcomings onto the Vendee by issuing a Notice dated 2nd of September, 2013, claiming that the contract had been cancelled due to the alleged non-payment of the balance amount... The principle of *nullus commodum capere potest de injuria sua propria* applies, barring the vendor from benefiting from his own failure to perform the contractual

obligations... The vendor's rescission notice was premised on an incorrect interpretation of the vendee's performance and lacked legal validity.

iv) The Respondent/Vendee demonstrated readiness and willingness to perform his obligations by depositing the remaining balance in Court, even exceeding the owed amount, as required under the law... Under Section 55 of the Contract Act, 1872, the vendor's failure to fulfill the conditions precedent rendered the contract voidable at the option of the vendee, justifying specific performance... The Single Judge's grant of specific performance, endorsed by the Division Bench, was consistent with established legal principles governing contracts of immovable property.

v) It was the Petitioner/Vendor's responsibility to pay off the outstanding debt and obtain a NOC from the bank concerned. This was a necessary condition to be fulfilled by the Petitioner/Vendor to conclude the sale by 15.08.2013... Clause 2 and Clause 4 of the Agreement point towards the Agreement being a conditional contract. A failure to fulfill those responsibilities on part of the Petitioner/Vendor points towards a breach of this conditional contract/agreement... Despite the vendee paying additional amounts to facilitate the process, the vendor delayed fulfilling his obligations.

- Conclusion:**
- i) The payment obligation was legally fulfilled within the accepted timeframe under the agreement.
 - ii) The vendor breached the Agreement by failing to meet his obligations under Clause 4, rendering specific performance of his obligations impossible.
 - iii) The vendor's rescission of the Agreement was legally unjustified.
 - iv) The vendee is entitled to specific performance as per the law governing contracts and the equitable principles of readiness and willingness.
 - v) The vendor failed to meet his obligations, resulting in his breach of the conditional agreement.

9. Supreme Court of Pakistan

Amna Naz v. The State

CRL.P.L.A.No.1038 of 2024

Ms. Justice Musararat Hilali, Mr. Justice Malik Shahzad Ahmad Khan

https://www.supremecourt.gov.pk/downloads_judgements/crl.p.1038.2024.pdf

Facts: Allegedly petitioner was found in possession of 26 foreign made iPhones while using green channel of International Arrival Hall of Airport and she could not produce any document of ownership or any document of import. Petitioner's post arrest bail was declined by the both courts below considering that the offence falls within the prohibitory clause of section 497 Cr.P.C.

Issue:

- i) What merits should be taken into account to decide a post arrest bail especially when a petitioner is a woman?
- ii) What is relevance of due Process clause at a bail stage?

Analysis: i) Admittedly, the petitioner is a woman and her case should have been examined by the courts below under first proviso to section 497(1) Cr.P.C if she was not found entitled to bail under section 497(1) Cr.P.C. The courts below should have considered the bail application of the petitioner on its own merits taking into account the petitioner's background, nature of offence and the likelihood of abscondence. The court's decision to dismiss the bail application solely based on the sentence prescribed under the law is unjust.

ii) The prosecution has already gathered all necessary evidence and the petitioner is no more required for custodial interrogation, therefore, keeping her in jail without a court verdict would be equivalent to convict the petitioner without due process.

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

10. Supreme Court of Pakistan
Sadaqat Ali and another v. Mst. Nasreen Akhtar
Civil Petition No.832-K of 2024
Mr. Justice Irfan Saadat Khan, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 832 k 2024.pdf

Facts: The petitioners have challenged the order of the High Court, which upheld the decisions of the lower courts regarding their default in rent payments and illegal subleasing. The Rent Controller had ruled that the petitioners were in default and that the order issued previously was not obtained through fraud or misrepresentation, as claimed by the petitioners in their application under section 12(2) of the Code of Civil Procedure, 1908.

Issues: When a party duly notified through all modes at the correct address, whether ex parte proceedings and ex parte judgment can be construed as a result of fraud or misrepresentation?

Analysis: Despite notice, through all its modes and at the correct address, the Petitioners have failed to enter appearance and absented themselves from proceedings in the eviction application. The order for ex parte proceedings and ex parte judgment that followed cannot, therefore, be considered as a result of fraud or misrepresentation but of the wilful absence of the Petitioners.

Conclusion: It cannot be considered as a result of fraud or misrepresentation but of the wilful absence of the party.

11. Supreme Court of Pakistan
Syed Ali Ahmed Shah v. Syed Shoukat Hussain Shah & Others
Civil Petition No. 1218-K of 2023
Mr. Justice Munib Akhtar, Mr. Justice Irfan Saadat Khan, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 1218 k 2023.pdf

Facts: Petitioner filed Civil petition for Leave to appeal, assailing the order of learned Sindh High Court whereby the review application filed under Order 47 Rule 1 CPC read with Section 114 and Section 151 CPC seeking review order passed in Civil Revision was dismissed.

Issues:

- i) Whether a review petition, in case of serious allegation against the court proceedings, can be filed without a supporting affidavit of the petitioner or the counsel representing the petitioner?
- ii) Under what circumstances and on what grounds an order, judgment or proceedings of the court can be reviewed?
- iii) Whether presumption of correctness and sanctity is attached to all judicial proceedings, orders, decisions and the judgments passed by the courts?

Analysis:

- i) Whereas, in the instant case no error of such nature has been pointed out except an allegation to the effect that the counsel representing the petitioner did not give any consent for disposal of the aforesaid revision application in terms of order dated 16.12.2022, however, such allegation is not duly supported by affidavit to this effect by the learned counsel, therefore, cannot be a ground or basis for seeking review of the consent order dated 16.12.2022.
- ii) However, in exceptional cases, any order or judgment passed by the competent Court of jurisdiction, or any proceedings can be subjected to review under Order XL VII Rule 1 C.P.C. and Section 114 read with Section 151 CPC by showing some error on the face of the record and the impugned order/decision sought to be reviewed, which otherwise could be rectified without reappraisal of the evidence or re-examination of the merits of the case.
- iii) It is settled legal position that presumption of correctness and sanctity is attached to all judicial proceedings, orders, decisions and the judgments passed by the Courts, whereas, the same can be assailed by an aggrieved party by filing appeal, revision as may be provided in accordance with law. However, in exceptional cases, any order or judgment passed by the competent Court of jurisdiction, or any proceedings can be subjected to review under Order XL VII Rule 1 C.P.C. and Section 114 read with Section 151 CPC by showing some error on the face of the record and the impugned order/decision sought to be reviewed.

Conclusion:

- i) No. It must be supported with an affidavit.
- ii) It can be reviewed by showing some error on the face of the record.
- iii) Yes, presumption of correctness and sanctity is attached to all judicial proceedings, orders, decisions and the judgments of courts.

12. Supreme Court of Pakistan
State Life Insurance Corporation of Pakistan, Karachi v. Nina Industries Limited, Karachi and others
Civil Petition No.1721-K of 2021
Mr. Justice Irfan Saadat Khan, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 1721 k 2021.pdf

- Facts:** A petition was filed under Sections 284 and 285 of the Companies Ordinance, 1984, seeking court sanction for a Scheme of Arrangement, which was approved by a majority of secured creditors. Minority shareholders and unsecured creditors objected to the scheme, alleging it was oppressive and disregarded their interests.
- Issues:**
- i) Did the Scheme of Arrangement unfairly cater to secured creditors at the expense of minority shareholders and unsecured creditors?
 - ii) Was the Scheme of Arrangement sanctioned in compliance with the procedural and legal requirements of the Companies Ordinance, 1984?
- Analysis:**
- i) The scheme of arrangement is for secured creditors and not for shareholders and unsecured creditors. The shareholdings of the company will remain the same and State Life will continue to hold the shares it has in the company. Moreover, State Life Insurance Company Ltd., when the business of the Respondent No.1 was going well, was benefited from the shareholding in the company. Even State Life did not attend the shareholders meeting and 100% members present and voted for the sanction of the Scheme; therefore, the objections raised by the State Life are not sustainable under the law.
 - ii) From perusal of the provision of Section 284 read with Section 285 of the Companies Ordinance, 1984, it can be safely concluded that a company can enter into compromise or arrangement with its creditors or any class of them, and its members or any class of them, subject to meeting of creditors or members of the company to be called, held and conducted in such manner as the Court may direct... In the instant case, all the codal formalities appear to have been complied with, whereas, the objectors before the learned Single Judge, who are admittedly minor shareholders and unsecured creditors, could not point out any illegality or violation of the provisions of the Companies Ordinance, 1984, in the ‘Scheme of Arrangement’.
- Conclusion:**
- i) No, the Scheme of Arrangement did not unfairly cater to secured creditors at the expense of minority shareholders and unsecured creditors.
 - ii) Yes, the procedural and legal requirements under the Companies Ordinance, 1984, were properly complied with.

13. Supreme Court of Pakistan
Defence Housing Authority thr. its Secretary DHA Complex Lahore Cantt.
v. Secretary to Government of the Punjab Cooperatives Department Lahore
etc.
C.P.L.A.1378-L/2013 and C.P.L.A.1563-L/2018
Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1378_1_2013.pdf

- Facts:** The petitioner through instant petition for leave to appeal has impugned the order of the Lahore High Court, Lahore whereby the constitutional petition of the

petitioner was dismissed. The respondent is an allottee of a residential plot at the Local Government and Rural Development Employees Cooperative Housing Society Limited Lahore. He had a dispute with the society and stopped payment of dues, filed petition before Deputy District Officer Cooperative, Lahore but during pendency of the petition, a merger between DHA (the Authority) and the Society took place. The Registrar Cooperative Societies restored his membership directing Society for refund of amount paid by allottee or alternate plot. He approached the Secretary who ordered for the allotment of same plot or a fresh of same value. The Authority challenged the authority of the Secretary Cooperative Societies before the Lahore High Court.

Issues: i) When the Defence Housing Authority enters into merger with another housing society, what would be the status of original allottees of the society?

Analysis: i) We have heard the learned counsel for the parties and have gone through the available record. The record of the case reveals that the member of the Society and also an per available record took place vide agreement dated 12.08.2005 and as per agreement, now it is the Authority to handover the possession of the allotted plots to the owners/ allottees of the Society and all such allottees of the Society would be deemed to be the members of the Authority in accordance with the rules, regulation and the by-laws of the Authority. Similarly, it was agreed upon between the parties that all the liabilities and issues of the members would be the liability of the Authority..

Conclusion: i) All such allottees of the Society would be deemed to be the members of the Authority in accordance with the rules, regulation and the by-laws of the DHA.

14. Supreme Court of Pakistan
Raja Shahzad Ahmad v. Incharge Baggage Routing Pakistan International Airline, Lahore and Others
C.P.L.A.No.944-L of 2014
Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 944 1 2014.pdf

Facts: The petitioner filed a complaint regarding the missing family baggage, which was dismissed by the Consumer Court being time-barred under the Punjab Consumer Protection Act, 2005.

Issues: i) Does the Punjab Consumer Protection Act, 2005, permit the application of Section 5 of the Limitation Act, 1908, for condonation of delay in filing a complaint?
 ii) Can the Consumer Court condone delays in filing complaints under the Punjab Consumer Protection Act, 2005?

Analysis: i) Section 5 of the Limitation Act in the given situation, is not applicable to the proceedings before the Consumer Court.

ii) The Act of 2005 does not provide application of Limitation Act 1908 rather proviso to subsection 4 of section 28 of the Act, 2005 empowers the Consumer Court to condone the delay in filing a plaint if a sufficient cause is shown to the satisfaction of the court.

Conclusion: i) The Punjab Consumer Protection Act, 2005, excludes the application of Section 5 of the Limitation Act, 1908, for condonation of delay.
ii) Yes, the Consumer Court can condone delays under the Punjab Consumer Protection Act, 2005, if sufficient cause is demonstrated.

15. Supreme Court of Pakistan
Zakirullah and others v. Muhammad Rehman and others
C.P.L.A.No. 159-P/2014
Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 159_p 2014.pdf

Facts: The petitioners filed a suit for possession through partition of a joint property, which was rejected by lower courts under Rule 11 of Order VII of the Civil Procedure Code (CPC) on the grounds of res judicata. The petitioners appealed the dismissal, arguing that the principle of res judicata does not apply to their suit for partition as it is an independent right.

Issues: i) Whether the principle of res judicata apply to a subsequent suit for partition of joint property when an earlier suit for declaration regarding the same property was dismissed without a decision on merits?
ii) Can the right of partition of joint property be considered barred under Order II Rule 2 of the CPC if not claimed in earlier proceedings?

Analysis: i) The earlier suit for which the present suit for partition has been dismissed/rejected was for a declaration under section 42 of the Specific Relief Act, 1877 and that admittedly was not decided on merits but that would not bar the subsequent suit for partition. The right of partition of one's property is an independent right and cannot be considered as a subsequent suit being barred by the principle of res judicata.
ii) The right of partition is an independent right and cannot be connected with any previous suit even with regard to the same property and cannot be declared as barred by Rule 11 of Order VII CPC. The respondents argued that the suit was also barred under Order II Rule 2 of CPC. However, the argument appears to be based on some misconception of law.

Conclusion: i) The principle of res judicata does not apply to a subsequent suit for partition of joint property when the earlier suit for declaration was not decided on merits.
ii) The right of partition cannot be barred under Order II Rule 2 of the CPC for not being claimed in earlier proceedings.

- 16. Lahore High Court Lahore**
Abid Ali etc. v. The State etc.
Ms. Chief Justice Aalia Neelum
Crl. Appeal No.79031-J of 2019
Crl. Appeal No.2384 of 2020
Crl. Revision No.2385 of 2020
Murder Reference No.29 of 2020
<https://sys.lhc.gov.pk/appjudgments/2024LHC5924.pdf>

Facts The case involves conviction and sentencing of three accused individuals for a double murder. Through the judgment Hon'ble High Court decided Criminal Appeals preferred by the accused against their conviction, Criminal Revision petition filed by the complainant against acquittal of some of the accused as well as the Murder Reference forwarded by the trial court.

Issues:

- i) Who is an interested witness?
- ii) Whether there is any link between "previous enmity" and "motive"?
- iii) Whether delay in registration of FIR affects its authenticity?
- iv) What presumption judgment of acquittal gives to an accused?

Analysis:

- i) The eyewitnesses were related to the deceased, and therefore, it was submitted that they were interested and chance witnesses. The term "interested" postulates that the witness must have some direct interest in having the accused convicted somehow or other due to some animus or other reason. An interested witness is interested in securing the conviction of a person out of vengeance or enmity.
- ii) As is well known, enmity is a double-edged weapon that cuts both ways. If, on the one hand, it provided a motive for the accused to commit the occurrence in question, on the other hand, it equally provided an opportunity for the first informant to implicate his enemy. Proof of motive by itself may not be a ground to hold the accused guilty. In this background, the appellants' implication in the case is quite probable. Due to the involvement of the complainant's son-in-law in the murder case, it is quite probable for prosecution witnesses to implicate the accused in a criminal case. Motive is a double-edged weapon for the occurrence and also for false implication. Different motives always operate in the mind of the person making the false accusation. The accused, based on his motive to commit the crime, cannot by itself lead to a judgment of conviction.
- iii) The prosecution failed to explain the delay in reporting the incident and what the complainant did for 07 hours. This aspect of the matter is sufficient to cast doubt about the authenticity of the F.I.R. This creates serious doubt about the genuineness of the prosecution story, including the complainant's presence at the scene of the occurrence. Delays in lodging the FIR often result in embellishment, a creature of an afterthought.
- iv) We have also taken note of the settled principle of criminal jurisprudence, which states that unless it can be shown that the lower court's judgment is perverse or that it is entirely illegal, No other conclusion can be drawn except the guilt of the accused or misreading or non-reading of evidence resulting in a

miscarriage of justice. Even otherwise, when a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to their case. The acquittal order cannot be interfered with, whereby a charge earns double presumption of innocence as held in Muhammad Mansha Kausar v. Muhammad Ashgar and others (2003 SCMR 477).

Conclusion: i) See above analysis(i)
 ii) See above analysis (ii)
 iii) Delay creates serious doubt about the genuineness of the prosecution story.
 iv) When a court of competent jurisdiction acquits the accused, double presumption of innocence is attached to their case

17. Lahore High Court
Pakistan Railway, etc. v. Abdul Rasheed, etc.
W.P. No. 13846/2011
Mr. Justice Shujaat Ali Khan
<https://sys.lhc.gov.pk/appjudgments/2024LHC5745.pdf>

Facts: Succinctly, the case involves individuals filing for the regularisation of their services, initially dismissed by a Labour Court but later remanded for fresh adjudication. During the post remand proceedings, other employees were regularised, while the claimants were excluded, leading to further legal challenges. The matter revolves around the jurisdiction of the Labour Court and the right to regularization under prevailing employment policies.

Issues: i) Does the Service Tribunal have exclusive jurisdiction under Section 3(2) of the Federal Service Tribunal Act, 1973?
 ii) How is 'civil servant' defined under Section 2(a) of the Federal Service Tribunal Act, 1973?
 iii) How worker/workman is defined under Section 2 (xxx) of the Industrial Relations Ordinance (IRO), 2002?
 iv) Can daily wage employees file a grievance petition under Section 46 of the IRO, 2002?
 v) Is Railway an industrial establishment under Labour Court jurisdiction?
 vi) Is being in service essential for regularization?
 vii) Can services be terminated without due process under Order 12 of the Industrial and Commercial Employment (Standing Orders), Ordinance, 1968?
 viii) Can courts review actions taken during pending proceedings?
 ix) Can concurrent findings be reviewed under Article 199 of the Constitution?

Analysis: i) As per section 3(2) of the Federal Service Tribunal Act, 1973, the Service Tribunal has exclusive jurisdiction in respect of matters relating to the terms and conditions of civil servants including disciplinary matters.
 ii) The term 'civil servant' has been defined under section 2(a) of the Federal Service Tribunal Act, 1973 according to which a civil servant means a person

who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973.

iii) “(xxx) "worker" and "workman" means any and all persons not falling within the definition of employer who is employed in an establishment or industry for remuneration or reward either directly or through a contractor, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute but does not include any person who is employed mainly in a managerial or administrative capacity.”

iv) they were not employed in managerial or administrative capacity, they were covered under the definition of workman, thus they rightly filed grievance petition before the Labour Court.

v) Railway falls within the purview of an industrial establishment thus its daily wage/work charge employees cannot be brought out of the jurisdiction of the Labour Court.

vi) There is no cavil with the fact that for seeking regularization, it is incumbent upon the person concerned to prove that he is in service.

vii) Moreover, if respondents No.1 & 2 attained the status of a permanent workmen much prior to filing the grievance petition, their services could not be terminated without adhering to the procedure laid down under Order 12 of the Industrial and Commercial Employment (Standing Orders), Ordinance, 1968, thus, their termination, without adopting the due process, could not be used to impede the way of respondents No.1 and 2 for regularization.

viii) Even otherwise, if any action is taken against a party during pendency of any proceedings before a court of law, the same is subject to scrutiny by the relevant court as it is clothed with the power to take note of subsequent events while deciding lis between the parties.

ix) concurrent findings of facts recorded by the courts below cannot be upset in Constitutional jurisdiction until and unless they are proved to be perverse or result of arbitrariness.

- Conclusion:**
- i) See analysis No.i.
 - ii) See analysis No.ii.
 - iii) See analysis No.iii.
 - iv) Non-managerial employees qualify as workmen.
 - v) Railway is an industrial establishment under Labour Court jurisdiction.
 - vi) Proof of being in service is essential for regularization.
 - vii) Termination without due process cannot bar regularization.
 - viii) Actions during proceedings are subject to court review.
 - ix) Concurrent findings stand unless shown to be arbitrary.

18. Lahore High Court
Rida Qazi etc. Vs. Government of Punjab etc.
Writ Petition No.16322/2010
Mr. Justice Abid Aziz Sheikh
<https://sys.lhc.gov.pk/appjudgments/2024LHC6036.pdf>

Facts: A constitutional petition was filed seeking reforms to address overcrowding, improve prison infrastructure, and ensure compliance with constitutional and legal principles concerning the treatment of prisoners in Punjab.

Issues:

- i) Mechanism for assessing the needs and risks of prisoners eligible for parole under Section 12 of the Punjab Probation and Parole Service Act, 2019.
- ii) Whether an Electronic Prisoner File Management System can improve efficiency and transparency of Prison management system?
- iii) Whether digital integration of court, prison, and prosecution records could streamline legal processes?
- iv) The need of external inspection mechanism established for transparency in Punjab's Prison system.
- v) Revision of Prison Rules in conformity with international standards and court directions.
- vi) Need to establish regional psychiatric wards or hospitals for mentally ill prisoners?
- vii) Recommendations of the Parole Board, established under Section 10 of the Punjab Probation and Parole Service Act, 2019.

Analysis:

- i) The Punjab Probation Service may develop the quantifiable mechanism to conduct need assessment and risk assessment of the prisoners to be released on parole as enunciated under Section 12 of the Punjab Probation and Parole Service Act, 2019.
- ii) In line with Rule 6 of the Standard Minimum Rules for the treatment of prisoners, Punjab Prisons may introduce Electronic Prisoner File Management System to impart transparency and efficiency in Prisons Management and digitalize all the prisoners record with NADRA.
- iii) To streamline the legal process and reduce delays, digitalization of Courts records, Prisons, and the Prosecution and their integration is required. At the same time, option of the trial through video link may be exercised, if possible, to reduce delay.
- iv) In line with Rule 83 of the United Nation Standard Minimum Rules for treatment of the prisoners (Nelson Mandela Rules), Punjab Prisons should establish external inspection mechanism to ensure the accountability and transparency in Prisons System.
- v) Revisions of relevant Rules in conformity with the United Nation Standard Minimum Rules (Nelson Mandela Rules) are required alongwith the directions of the High Courts and the Supreme Court of Pakistan passed in different cases to

protect the rights of prisoners enshrined in the Constitution of the Islamic Republic of Pakistan, 1973.

vi) In this regard, it is proposed that Psychiatric Ward or independent hospital on the analogy of Punjab Institute of Mental Health may be established at regional level, especially at Rawalpindi and Multan to ensure the treatment and confinement of mentally ill prisoners in conformity with the guidelines stipulated by Supreme Court in case titled “*Safia Bano Vs. The State*” (PLD 2021 SC 488).

vii) The recommendations of the Parole Board, established under Section 10 of the Punjab Probation and Parole Service Act, 2019, may also include nature of work and employment of the prisoner assessed on the basis of qualification, skill and age, to be released on parole. Parolees may preferably be employed by an organization, institution, or industrial unit.

- Conclusion:**
- i) A quantifiable mechanism for need and risk assessment of parole candidates should be developed.
 - ii) An Electronic Prisoner File Management System should be implemented.
 - iii) Integration of court, prison, and prosecution records digitally is recommended.
 - iv) See above analysis No iv.
 - v) See above analysis No v.
 - vi) See above analysis No vi.
 - vii) A quantifiable mechanism for need and risk assessment of parolees should be developed.

19. Lahore High Court
Babar Sultan v. Government of the Punjab etc.
W.P. No.1982/2013
Mr. Justice Abid Aziz Sheikh
<https://sys.lhc.gov.pk/appjudgments/2024LHC5993.pdf>

Facts: Respondent No.2 advertised four posts of SSE (Engineer) in the newspaper under the Recruitment Policy (Policy of 2011). The petitioner applied and selected while placing at serial No.5. All the four successful candidates joined their services but subsequently the services of one of them were terminated under Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (PEEDA Act). The petitioner applied for his appointment being next on the merit list, but his request was declined through impugned orders, which brought about the filing of instant constitutional petition.

Issues:

- i) Which policy was the governing factor of the recruitment process for the posts of SSE (Engineer)?
- ii) In what circumstances, the next candidate shall be given offer as per policy of 2011?
- iii) What does the Interpretation of Clause ix of the Policy of 2011 reveal?

Analysis: i) The recruitment process for the posts of SSE (Engineer) was initiated under the Policy of 2011.

ii) Clause ix in policy of 2011 manifests that the next candidate on merit list shall only be given offer, if the selectee either does not join training or fails to join the post within fifteen days or where a written refusal is received from the selectee or in case a person joins and leaves the same within a period of 190 days.

iii) Interpretation of Clause ix of the Policy of 2011 is not only explicit but also logical because when a person does not leave voluntarily after joining but is dismissed from service, there is stigma attached to the said dismissal. Such removal from service order is subject to challenge and the next candidate on merit list cannot be appointed unless and until the decision of dismissal attains finality from all relevant forums, however, the position is altogether different and next candidate can be appointed without objection from third party, in case the candidate does not join or leave voluntarily after joining.

- Conclusion:**
- i) See above analysis No. i
 - ii) The next candidate, as per Clause ix of the policy of 2011, shall be given offer, if i). the selectee does not join training, ii). fails to join the post within fifteen days iii). where a written refusal is received from the selectee iv). When a person joins and leaves within a period of 190 days.
 - iii) See above analysis No. iii

20. Lahore High Court Lahore
Sheikh Rasheed Ahmed v. The State
(Criminal Revision No. 327 of 2024)
Mr. Justice Mirza Viqas Rauf, Mr. Justice Sardar Muhammad Sarfraz
Dogar
<https://sys.lhc.gov.pk/appjudgments/2024LHC5726.pdf>

Facts: The petitioner was implicated in the case on the basis of statement of co-accused recorded under Section 164 of Cr.P.C. In order to get his acquittal, the petitioner moved a petition under Section 265-K of Cr.P.C. before A.T.C. which was dismissed through the impugned order. The instant Criminal Revision under Section 435 read with Section 439 of The Code of Criminal Procedure, 1898 stems from order, whereby learned Judge Anti-Terrorism Court proceeded to dismiss the petition under Section 265-K of Cr.P.C.

Issue: Whether the petitioner is entitled to acquittal under section 265-k of The Code of Criminal Procedure, 1898?

Analysis: The powers of acquittal with the court embodied in Sections 249-A and 265-K of Cr.P.C. can be exercised at any stage of the trial, if in the opinion of the court, there is no probability of the accused, being convicted of the offence but such powers cannot be exercised in an omnibus fashion. The court while proceeding in terms of above provisions of law first has to assure itself that in all probabilities, there is no chance of conviction of the accused. In simple words, we can say that for the purpose of invoking the powers either under Section 249-A or Section 265-K of Cr.P.C., the approach of the court should neither be inventive nor

adventurous, instead facts of the case itself require and persuade the court to exercise such powers so as to save the accused from the agony of protracted and futile trial. After dismissal of petition under Section 265-K of Cr.P.C., the petitioner has been confronted with charge sheet, we feel no cavil to observe that at this initial stage, it would not be apt for us to make any comment upon worth and credence of statement of the co-accused recorded under Section 164 of Cr.P.C. as it may cause prejudice to any of the side before the trial court.

Conclusion: Acquittal of the petitioner in terms of Section 265-K of Cr.P.C. in the facts and circumstances of the case, at this early stage, would amount to stifle the proceedings before the trial court, who already refused to exercise its powers in favor of the petitioner.

21. Lahore High Court
Tariq Mehmood etc. v. Fateh Muhammad etc.
C.R.No.3843/2014
Mr. Justice Ch. Muhammad Iqbal
<https://sys.lhc.gov.pk/appjudgments/2024LHC6077.pdf>

Facts: Natho, predecessor-in-interest of the parties to the lis was owner of land and he was Muslim by faith. After his death, the property was devolved upon Ali Muhammad, Abdul Rehman, Ghulam Qadir (sons), Mst. Fatima and Mst. Noor Bibi (daughters) through mutation in the year 1954. The respondents/plaintiffs challenged the mutation to the extent of Ghulam Qadir by stating that Ghulam Qadir was a Qadiani by faith (disbeliever) as such he could not inherit the property from the estate of his deceased Muslim father.

Issue: i) Whether a non-Muslim is entitled to inherit share from the estate of his Muslim Relative/father?
 ii) Whether Article 260 of the Constitution of the Islamic Republic of Pakistan, 1973 is applicable retrospectively?

Analysis: i) A non-Muslim is not entitled to inherit any share from the estate of his Muslim relative as successor or predecessor.
 ii) Provisions of Article 260(3) of the Constitution of the Islamic Republic of Pakistan, 1973 are applicable retrospectively.

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

22. Lahore High Court
Punjab Group of Colleges v. Province of the Punjab through Chief Secretary, Lahore & others
ICA No.1379 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed
<https://sys.lhc.gov.pk/appjudgments/2024LHC6083.pdf>

- Facts:** The appellant challenged the vires of judgment of learned single bench dismissing its constitutional petition. Initially it challenged the vires of two notifications issued by the Punjab Govt. with regard to revised fee for issuance of registration of new/extension in registration certificates to private educational institutions.
- Issues:**
- i) Whether Sections 3 and 6 of the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984 provide any specific period for validity of registration?
 - ii) What would be the fate of a notification issued without mentioning the provisions of applicable law or rules to derive the authority, and whether any executive authority can take action without the backing of any valid law?
- Analysis:**
- i) From perusal of above provisions, we observe that no specific duration for the validity of the registration is stipulated therein.
 - ii) No provision of applicable law or rules has been cited to show from where Respondent No. 2 derived the authority to issue the impugned notifications. These notifications appear to have been issued in a legal vacuum, beyond the scope of both the provisions of the Ordinance and the Rules of 1984. No executive authority can take action without the backing of a valid law. Otherwise, such action would be void and liable to be struck down. It is also settled law that an Act or Statute (in this case, the Ordinance of 1984 and the rules framed under it) cannot be amended through a notification or subordinate enactment.
- Conclusion:**
- i) No specific duration for the validity of the registration is stipulated therein.
 - ii) No executive authority can take action without the backing of a valid law. Otherwise, such action would be void and liable to be struck down

23. Lahore High Court.
Jahanzaib & another v. Additional Collector of Customs (Adjudication),
Collectorate of Adjudication, Dry Port, Faisalabad & another
Customs Reference No.34648 of 2024
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan
Syed,
<https://sys.lhc.gov.pk/appjudgments/2024LHC5865.pdf>

- Facts:** A vehicle carrying diesel was intercepted, and the applicants were accused of transporting smuggled goods. The vehicle was confiscated, and the confiscation was upheld by the Customs Appellate Tribunal. The applicants challenged the legality of the confiscation, arguing it was done without fulfilling the requirements of the law.
- Issues:**
- i) Did the Customs Appellate Tribunal err in upholding the confiscation of the vehicle without evidence of prior smuggling activity or hidden compartments under clause (b) of SRO 499(I)2009?
 - ii) Was the Tribunal wrong in refusing vehicle redemption under clause (f) of

SRO 499(I)2009 for cases not covered by clause (b)?

iii) Did the Tribunal disregard established legal precedents in reaching its decision?

- Analysis:**
- i) The words ‘shall be liable to confiscation’ as used in Section 157 of the Customs Act, 1969, are not synonymous to ‘shall be confiscated,’ therefore, do not mean automatic confiscation. The vehicle in question should have been given due consideration for the lack of evidence regarding prior smuggling activities or false compartments.
 - ii) Clause (f) of SRO 499(I)2009 empowers the adjudicating authority to redeem vehicles not falling under clause (b). This discretion must be exercised in adherence to principles of natural justice, such as providing an opportunity to be heard and considering redemption in appropriate cases. The Tribunal did not appropriately apply this discretion.
 - iii) The Hon’ble Supreme Court has consistently held that confiscation under ‘liable to confiscation’ is discretionary and subject to principles of natural justice. The Tribunal’s decision, which ignored these principles and established precedents, does not align with binding rulings of this Court.

- Conclusion:**
- i) Yes, the Tribunal erred in upholding the confiscation without sufficient evidence as required under clause (b) of the notification.
 - ii) Yes, the Tribunal failed to consider its discretionary powers under clause (f) for redemption of the vehicle.
 - iii) Yes, the Tribunal's decision violated established legal precedents.

24. Lahore High Court
Sabir Press Calendar v. The Commissioner Inland Revenue, Faisalabad & others STR No.73619 of 2024
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed
<https://sys.lhc.gov.pk/appjudgments/2024LHC5858.pdf>

Facts: A taxpayer challenged a sales tax demand arising from discrepancies between income tax and sales tax returns for the tax year 2022. The adjudicating authority’s decision was upheld by the Commissioner Inland Revenue (Appeals) and the Appellate Tribunal, leading to the filing of a Reference Application before the High Court.

Issues:

- i) Did the Appellate Tribunal fail to provide a speaking order in compliance with Section 24A of the General Clauses Act, 1897?
- ii) Did the tax authorities exceed the scope of the allegations specified in the original show cause notice?

Analysis:

- i) A bare perusal of the record reveals that the learned Appellate Tribunal has not independently addressed the material aspect of the matter. As a result, the

impugned order fails to meet the requirements of a speaking order as contemplated under Section 24-A of the General Clauses Act, 1897. It was obligatory for the Appellate Tribunal to examine the case with proper application of mind and to provide reasons in support of the impugned order. However, such reasoning is conspicuously absent in this case, rendering the impugned order unsustainable in the eyes of the law.

ii) The stance of the learned counsel for the applicant-taxpayer is that the learned forums below have exceeded the scope of the allegations raised in the show cause notice. Specifically, the alleged suppression of sales for the purpose of sales tax was based on a single claim: that there was a difference in the sales declared in the Income Tax Returns and the Sales Tax Returns. The rationale for not exceeding the scope of the show cause notice is that the aggrieved party must be given the chance to present their case; otherwise, this would violate the principles of natural justice, as the aggrieved party would not have been aware of the new grounds or factual elements and could not have properly defended themselves before the concerned authority.

Conclusion: i) The Appellate Tribunal failed to meet the requirement of a speaking order, making its decision legally unsustainable.
ii) The tax authorities acted beyond the scope of the show cause notice, violating principles of natural justice.

25. Lahore High Court

Arshad Abbas v. Anti-Corruption Establishment Sargodha, etc.

Writ Petition No.53631/Q/2024

Mr. Justice Asjad Javaid Ghural

<https://sys.lhc.gov.pk/appjudgments/2024LHC5847.pdf>

Facts: Petitioner preferred the instant Constitutional Petition for quashing the FIR registered against him by Anti-Corruption Circle on the allegation that he, while serving as a Halqa Patwari, prepared *Tatima Shajra*.

Issues: i) On what principle High Court refrains from interfering in the investigating process?
ii) When the High Court interferes in the matters of quashing of FIR?
iii) In what situation, it is incumbent upon Kanugo and Patwari to visit the spot?

Analysis: i) Ordinarily, time and again this Court has shown reluctance in interfering in the ongoing investigating process on the well cherished principle that the functions of Investigating Agency and judiciary are complementary and not overlapping and the combination of individual liberty with due observance of law and order can only be achieved if both the organs are allowed to function independently.
ii) This principle in any way cannot be construed an absolute bar on the power of this Court in quashing of FIR in cases where the Court is satisfied that investigation is launched with malafide intention and without jurisdiction.

iii) It is thus manifestly clear that in cases where the transaction was based on registered deed, it was incumbent upon the Revenue Officer to ensure that Kanungo and Patwari must visit the spot and prepare Tatima shajra, if necessary, on the basis of material given in the registration memorandum alone(...) Moreso, Board of Revenue, Punjab vide letter No.4149-2009/1565-LR(II) dated 12.12.2009 has issued instructions to all the concerned including patwaries to follow the provisions of Land Record Manuals, reproduced supra, regarding preparation of Tatima Shajra, in case the transaction is based on registered deed, after personally verifying the possession of the party.

Conclusion: i) See above analysis No.1
 ii) High Court interferes in the matters of quashing of FIR when it is launched with malafide intention and without jurisdiction.
 iii) See above analysis No.3

26. Lahore High Court Lahore
Imran Khan Niazi V. Government of Punjab and others.
Mr. Justice Tariq Saleem Sheikh
Writ Petition No.45901/2024
<https://sys.lhc.gov.pk/appjudgments/2024LHC5766.pdf>

Facts: Petitioner was arrested in cases registered under Anti-Terrorism Act, 1997 and the Government, through a notification, citing concerns for law and order, directed petitioner to appear via video link from jail before Anti-Terrorism Court. The petitioner, through writ petition, challenged the notification.

Issues: i) What safeguards are necessary for upholding the principles of the International Covenant on Civil and political Rights (ICCPR) while incorporating video link technology in judicial process?
 ii) What protection has been provided by Article 10(2) of the Constitution of Islamic Republic of Pakistan and section 61 and section 167 of the Criminal procedure code, 1898 against arrest and detention?
 iii) What principles are to be followed while interpreting a statute when its wording is clear?
 iv) Under what circumstances court can deviate from literal construction of statute to its purposive interpretation?
 v) Whether remand of an accused through video link can be an alternative of physical production before court?
 vi) What is difference between remand of an accused under section 167 Cr.PC and section 344 Cr.PC?
 vii) Whether physical remand of an accused is possible through video link in cases registered under Anti-Terrorism Act, 1997?

Analysis: i) To uphold the principles of the ICCPR, careful consideration and stringent safeguards are necessary when incorporating video link technology into judicial processes. Firstly, there must be a clear legal framework governing the use of

video links, outlining the conditions under which they can be used and providing safeguards to protect the fair trial rights of the detainee. Secondly, the detainee must be able to participate fully in the proceedings... Thirdly, the judge must be able to adequately assess the detention conditions and the detainee's wellbeing, ensuring that they are not subjected to coercion or ill-treatment. Finally, the decision to use a video link should be made on a case-by-case basis, considering the specific circumstances. In other words, video links should be an option, not an automatic replacement. Strong justification is required if the detainee does not consent, such as exceptional public health concerns, logistical challenges, or security issues.

ii) Article 10(2) of the Constitution safeguards the fundamental right of an arrested person to be brought before a magistrate within twenty-four hours. The terms "produced" and "excluding the time necessary for the journey from the place of arrest to the nearest magistrate" indicate a requirement for physical presence. This provision is vital in ensuring judicial oversight of the detention process, protecting the rights of the detainee/accused from the moment of arrest... To conclude, the existing language of Article 10(2) of the Constitution does not support video link remand hearings. Employing purposive interpretation to justify it would contradict both the text and the provision's intent. This cannot be permitted. The Code provides a comprehensive legal framework for the administration of criminal justice in the country and applies unless a specific procedure is laid down by a special law that overrides it. Section 61 Cr.P.C. stipulates that no police officer shall detain a person arrested without a warrant for longer than is reasonable under the circumstances, and such detention shall not, in the absence of a special order from a magistrate under section 167, exceed twenty-four hours, excluding the time required for the journey from the place of arrest to the magistrate's court. Section 167(1) Cr.P.C. states that whenever a person is arrested and detained in custody, and it becomes apparent that the investigation cannot be completed within the twenty-four hours period fixed by section 61, and there are grounds to believe that the accusation or information is well-founded, the officer in-charge of the police station or the investigating officer, if he is not below the rank of Sub-Inspector, must immediately transmit to the nearest magistrate a copy of the relevant entries in the case diary and forward the accused to the magistrate. Section 167(2) states that the magistrate to whom the accused is forwarded under this section may, whether or not he has jurisdiction to try the case, authorize the detention of the accused in such custody as he deems fit for a term not exceeding fifteen days in total. If he lacks jurisdiction to try the case or send it for trial and considers further detention unnecessary, he may order the accused to be forwarded to a magistrate who has such jurisdiction. However, no Magistrate of the Third Class, and no Magistrate of the Second Class who is not specially empowered by the Provincial Government, shall authorize detention in police custody... Sections 61 and 167 Cr.P.C. and the High Court Rules echo the command of Article 10(2) of the Constitution. In section 167 Cr.P.C., "from the words 'the magistrate to whom an accused person is forwarded under this

section’, it is clear that the prosecution [is] under a duty to produce the accused person before the magistrate not only at the stage of obtaining initial remand but also on subsequent occasions having regard to the specific powers of the magistrate to authorise detention ‘from time to time’. The power to authorise detention was only in the event of the police forwarding an accused person to the magistrate; if there was no forwarding of the accused person, there [is] no authorisation of detention. As the authorisation of detention [is] only subsequent to the forwarding of the accused person, it necessarily implies that the accused person must be produced every time authorisation for detention [is] sought.

iii) It is a fundamental legal principle that when a law’s wording is clear and perspicuous, courts must apply it as written because it is presumed that the text reflects the legislature’s intent. In such instances, there is no need to go beyond the text. S.M. Zafar explains: “A statute is not open to construction as a matter of course. It is open only where the language used in the statute requires interpretation... In *McCowan v. Baine*, [1891] AC 401, p.409, Lord Watson stated: “It is said that, for some reason, the primary and natural meaning of the words is to be extended ... In *M/s Hiralal Ratan Lal v. The Sales Tax Officer and another* (AIR 1973 SC 1034), the Supreme Court of India (SCI) observed: “In construing a statutory provision, the first and the foremost rule of construction is the literal construction. In *B. Premanand and others vs. Mohan Koikal and others* (AIR 2011 SC 1925), the SCI held: “Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule ... In *Abdul Nafey v. Muhammad Rafique and others* (2023 SCMR 2096), the Supreme Court of Pakistan held: “It is settled law that when meaning of a statute is clear and plain language of statute requires no other interpretation, then intention of Legislature conveyed through such language has to be given full effect.. In *Dawood Abdul Ghafoor v. Justice of Peace and others* (2021 PCr.LJ 1527), it was held that the literal rule of interpretation is nearly “biblical” when interpreting a statute.

iv) The law must be meticulously followed, in both letter and spirit, when a person’s liberty is at risk of being restricted or curtailed. However, courts may deviate from a literal or strict construction and resort to purposive interpretation when the literal meaning leads to an ambiguous, absurd, or unjust outcome. The purposive approach focuses on the law’s underlying purpose to ensure it achieves its intended objective. According to Aharon Barak, purposive interpretation involves three key elements: language, purpose, and discretion. The language of the text determines the range of semantic possibilities within which the interpreter acts as they choose the legal meaning from various explicit or implicit possibilities. The purposive component is central to interpreting a legal text. It implies “the values, goals, interests, policies, and aims that the text is designed to actualize”. Finally, Barak emphasizes that interpretive discretion is indispensable in determining the ultimate purpose of the norm: “It is the choice that purposive interpretation gives the judge from among a few interpretive possibilities, all of which are legal” in order “to formulate the purpose at the core of the text”.

v) The requirement for physical production of an accused before a magistrate is a crucial deterrent to abuse and enhances the accountability of law enforcement agencies. Allowing video link remand in place of physical production can undermine these protections, especially in our country where custodial torture is a pervasive issue. The impersonal nature of video communication may not offer the same level of scrutiny as an in-person meeting, potentially leading the magistrate to miss subtle signs of distress, coercion, or mistreatment that would be more noticeable face-to-face. Additionally, technical issues such as poor video quality, delays, or disruptions could impair the magistrate's ability to provide effective oversight.

vi) The remand under section 167 Cr.P.C. differs from that under section 344. Section 167 allows a magistrate, whether or not he has jurisdiction to try the case, to remand the accused to either police or judicial custody, depending on the judicial determination. Remand to police custody under this section is specifically for the purpose of investigation. In contrast, section 344 applies where, due to the absence of a witness or any other reasonable cause, it becomes necessary for the court to postpone the commencement of any inquiry or trial. In such instances, the court may, at its discretion, postpone or adjourn proceedings and, if the accused is in custody, remand them by warrant. However, no magistrate can remand an accused to custody under section 344 for more than 15 days at a time. Remand under section 344 is strictly to judicial custody and can only be to a judicial lock-up. In short, section 167 deals with detention during the investigation, while section 344 pertains to detention during the inquiry or trial.

vii) The ATA, enacted in 1997, has undergone several amendments over time. Section 21 of the Act was substituted/re-enacted, and section 21E was introduced through Ordinance XXXIX of 2001.²⁵ Section 21 allows the Anti-Terrorism Court to conduct trials on jail premises or through video links. However, section 21E, which specifically addresses the issue of remand, does not include any provisions for video link usage. It is completely silent on this matter. This suggests that video links are intended to be limited solely to trial proceedings. A general rule of construction of the Acts of Parliament is *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of another). When interpreting statutes, it is presumed that the legislature chooses its words carefully. Therefore, if a word or phrase is included, it is not considered redundant; similarly, if a word or phrase is omitted, such omission is not deemed inconsequential. A change in language implies a change in intent. Courts are not empowered to read into or delete any words or provisions in an enactment unless specifically adopted or imported by reference. They do not legislate but interpret statutes according to their plain and ordinary meaning, without importing or borrowing provisions from other laws, no matter how desirable such modifications may seem. In section 21E of the ATA, the legislature deliberately chose not to allow video link remand... The offences under the ATA are the most heinous, and the perpetrators are dangerous criminals – or at least they are presumed to be so. Still, they have fundamental rights. Being hazardous criminals,

they are more prone to custodial torture by the police than other criminals. The legislature has designedly chosen not to allow video link remand because it wanted to secure their fundamental rights more effectively. Lastly, since the wording of section 21E of the ATA closely mirrors that of Article 10(2) of the Constitution and sections 61 and 167 Cr.P.C., there is no reason for us to interpret it differently from our interpretation of those provisions... It should be appreciated that section 21E of the ATA is a special provision that specifically addresses the issue of remand. In contrast, section 21(2) is a general provision that enables the Government to take necessary steps to protect judges, accused individuals, witnesses, prosecutors, defence counsel, and others involved in court proceedings. Section 21(2) cannot override section 21E and should not be interpreted in a way that nullifies or undermines it.

- Conclusion:**
- i) See above analysis (i)
 - ii) See above analysis (ii)
 - iii) See above analysis (iii)
 - iv) When the literal meaning leads to an ambiguous, absurd, or unjust outcome the court may resort to purposive interpretation.
 - v) The impersonal nature of video communication may not offer the same level of scrutiny as an in-person meeting
 - vi) See above analysis (vi)
 - vii) No existing statute explicitly permits remand hearings via video link in ATA cases

27. Lahore High Court.
Zain Tariq v. The State etc.
CrI. Misc. No. 56457/B/2024
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2024LHC6099.pdf>

Facts: The petitioner, accused of committing rape under Section 376 of the Pakistan Penal Code, allegedly invited the complainant to a warehouse, where he, along with a co-accused, committed the act using threats and coercion. The complainant asserted non-consensual intercourse, threats with a pistol, and the taking of objectionable photographs. After the Sessions Court denied pre-arrest bail, the petitioner approached the Lahore High Court, which dismissed the application due to the gravity of allegations and lack of exceptional circumstances.

Issues:

- i) What are the legal principles governing consent under Section 375 PPC?
- ii) Can the alleged offence be categorized as a consensual act under Section 496-B PPC (fornication) or a non-consensual act under Section 376 PPC (rape)?
- iii) Is the petitioner entitled to the extraordinary relief of pre-arrest bail in this case?

Analysis:

- i) Section 375 PPC outlines seven specific circumstances under which the law deems there is no consent if a perpetrator commits any of the acts specified in clauses (a) to (d) of the section. These include, firstly, when these acts are

committed against the victim's will and, secondly, when they are done without the victim's consent... Consent necessarily implies agreement as a free agent, with the presence of a free mind and free will. Therefore, when an individual (victim) is subjected to an act that they would not have consented to or permitted had they been free to make a genuine choice, such an act is deemed to have been done against their will... Explanation 2 elaborates on the concept of consent, emphasizing that it must be an unequivocal voluntary agreement to participate in a specific sexual act. It must be given freely, without pressure or coercion. Silence, passivity, or lack of resistance cannot be deemed consent... Consent must be an affirmative and conscious decision, clearly communicated through words, gestures, or other verbal or non-verbal forms of expression. It must be given freely, without pressure or coercion.

ii) Rape is a non-consensual act and, as adumbrated, rooted in violence, coercion, and domination, where the perpetrator disregards the victim's autonomy and consent. In contrast, fornication refers to consensual sexual relations between individuals who are not married to each other... The Complainant has nominated the Petitioner in the FIR, alleging that he exploited their interactions and raped her. She has also accused him of threatening her and taking objectionable pictures to coerce her into silence. She reiterated these allegations in her statement recorded under section 164 Cr.P.C. Medical and forensic evidence confirm that sexual intercourse occurred on the relevant day... During the investigation, the police concluded that the case involved fornication rather than rape. These findings are essentially based on CCTV footage, pictures, and WhatsApp messages exchanged between the parties. While this evidence suggests a close relationship, possibly closer than the Complainant acknowledges, it does not definitively establish whether the act was consensual... As previously discussed, under section 375 PPC, threats, intimidation, or coercion invalidate consent. Therefore, if proven, the allegations of pointing a pistol and threatening to release objectionable content would render any apparent consent irrelevant... The trial court is the appropriate forum to evaluate the evidence, including the CCTV footage, WhatsApp messages, and other material, to determine the nature of the offence.

iii) Pre-arrest bail is an extraordinary remedy reserved for cases where the accused can demonstrate that the FIR was lodged with mala fide intent, personal animosity, or the like. The Petitioner has failed to satisfy this requirement... Claims of inconsistencies in the prosecution's evidence, such as discrepancies between the FIR and the Complainant's statement under section 164 Cr.P.C., necessitate detailed scrutiny alongside other evidence. Such an evaluation is beyond the purview of a pre-arrest bail application... Considering the seriousness of the allegations and the absence of any exceptional circumstances justifying pre-arrest bail, this application is dismissed.

Conclusion: i) Under Section 375 PPC, consent must be a voluntary, unequivocal agreement given freely, without coercion, pressure, or deception.

- ii) The nature of the offence cannot be conclusively classified as fornication under Section 496-B PPC or rape under Section 376 PPC until all evidence is thoroughly evaluated during the trial
- iii) The petitioner is not entitled to pre-arrest bail as the allegations are serious, and no exceptional circumstances have been established.

28. Lahore High Court Lahore
Irfan Arshad V. Mst. Zainab Noor etc.
Mr. Justice Jawad Hassan
Writ Petition No.452 of 2024
<https://sys.lhc.gov.pk/appjudgments/2024LHC5971.pdf>

Facts: Guardian petition for permanent custody of a minor was declined by the Guardian Court but the order was set aside by District Court. The judgment of District Court was assailed before Hon'ble high Court through constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues:

- i) What factors are to be taken into consideration by court while determining question of custody of minor?
- ii) What is meant by "welfare" of minor?
- iii) Whether entitlement as per Muslim Personal law is sole ground for granting custody of a minor?

Analysis: i) Before advertng to the merits of the case, the Court is of the considered view that the utmost priority of the Court in determining the custody of a minor is to see his/her welfare and well-being. This is the reason, law provides a parental jurisdiction to the Guardian Judge in such cases. The objective of the law is not just handing over the custody of the minor, but to examine all the aspects which are ancillary to it. The power and duty of the Court while considering the question of custody of a minor is to thoroughly and comprehensively take into consideration the minor's welfare. The word "welfare" in such cases is to be taken in its widest sense, which includes not only the monetary expenses of the minor but also his mental and physical health, educational needs, psychological well-being, religious and moral values. The Courts are duty bound to consider such cases in the best interest and healthy up-bringing of the minor which sometimes may yield the rights of the parents. No doubt according to certain Muslim jurists, custody of a minor son till the age of seven years may remain with the mother and in the case of minor daughter till she attains the age of puberty and thereafter, normally their custody should be restored to the father. However, it is an established principle of law that the paramount consideration in all such situations would be the betterment of the minor and even a mother may be deprived of the custody of a minor if circumstances of the case so allow. In the cases, concerning the custody of a child, the Guardian Court is not required to go into the intricacies/technicalities of the matter, rather is obliged to confine itself to the extent of the welfare of the child/minor, which is a paramount consideration.

ii) This Court in case titled as SAJIDA REHMAT ULLAH versus GUARDIAN JUDGE-II and others (PLD 2022 183) has expounded the concept of welfare and held that welfare is a question of fact and has to be determined on the basis of the material placed before a judge and not on the presumption and is also includes material welfare as well as a sense of adequacy of care to ensure the good health and due personal right are maintained and also it signifies the stability and the security the loving and understanding care and guidance, the warm and compassion made relationship for the essential of the full development of the child on character.

iii) suffice is to observe that entitlement as per Muslim personal law is not the sole ground for granting custody of a minor to either side rather the determining principle to rule the question of custody of a minor in favour of any side is the question of welfare of minor. The Supreme Court in Raja MUHAMMAD OWAIS versus Mst. NAZIA JABEEN and others (2022 SCMR 2123) has also laid down the same principle...Similarly, the Supreme Court of Pakistan in MEHMOOD AKHTAR versus DISTRICT JUDGE ATTOCK and 2 others (2004 SCMR 1839) categorically laid down that entitlement to have custody of a minor in accordance with the Muslim Personal Law is not the sole and ultimate criteria for granting custody rather it is qualified and dependent upon the determinative factor of welfare of the minor. The Supreme Court of Pakistan in FIRDOUS IQBAL versus SHIFAAT ALI (2000 SCMR 838) also examined the question of entitlement of custody from the perspective of provisions of Muslim Personal Law as contained in Muhammdan Law by D.F.Mulla and held that notwithstanding the right for custody of minor under the personal law, this right is always subject to the welfare of the minor which is the paramount consideration for determining the question of custody of minor. Likewise, in Mst. SEEMA CHOUDHARY versus AHSAN ASHRAF SHEIKH (PLD 2003 SC 877) the Supreme Court has held that notwithstanding the right of mother or father for the custody of male or female child under the personal law, the predominant consideration in determining the question of custody of minor is always the welfare of the minor...

Conclusion: i) See analysis (i).
 ii) See analysis (ii)
 iii) The preferential right to claim custody of a minor in accordance with Para 353 and 355 of Mohammdan Law by D.F. Mulla is not the sole criteria rather it is always dependent upon the primary consideration of welfare of child

29. Lahore High Court
Adnan Arif v. Province of Punjab etc.
Writ Petition No. 3768 of 2024
Mr. Justice Jawad Hassan
<https://sys.lhc.gov.pk/appjudgments/2024LHC5811.pdf>

Facts: The petitioner challenged the reduction in the rate of advertisement fee by the Secretary, Local Government & Community Development Department, asserting

the impugned order was beyond the Secretary's authority and detrimental to his interests as a contractor collecting advertisement fees.

- Issues:**
- i) What are the responsibilities and functions of the heads of government departments?
 - ii) What is the mechanism for levy of taxes under the Punjab Government Local Government Act, 2022?
 - iii) What is the legal authenticity of the Punjab Government Rules of Business, 2011 and the actions taken there-under?

- Analysis:**
- i) Under Rule 3(3) of the Rules, business of the Government has been distributed amongst several Departments in the manner indicated in the Second Schedule and functions of the Secretary are described under Rule 10 of the 2011 Rules...the Secretary, being official head of the department, is responsible for its efficient administration and discipline, for the conduct of business assigned to the department and for the observance of laws and rules...as per Rule 10 read with First Schedule and Second Schedule of the 2011 Rules, which have been framed under Article 139 of the Constitution, he is fully competent to administer the laws [including the rules framed under the said laws] mentioned under Clause 15 of Second Schedule to the Rules.
 - ii) Section 99 of the Act provides mechanism for levy of tax and Part-I (1) of Fifth Schedule of the Act deals with the fee for regulation of advertisement through sign boards, hoardings, cutouts, neon-signs, pole signs, sky signs and boards; billboards; directional boards, banners, streamers, moppy signs, temporary advertisement structures and stalls, posters, one way visions, hot air balloons and blimps, moving vehicles, electronic display screens including Light Emitting Diode (LED) and Surface Mounted Device (SMD), etc.
 - iii) The (Secretary) Respondent No.1 is the incharge of the Local Government & Community Development Department and he has passed the impugned order strictly as per mandate of Rule 10(1) of the Rules, which are made under Article 139(2) of the Constitution, providing that the Provincial Government shall by rules specify the manner in which orders and other instruments made and executed shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any Court on the ground that it was not made or executed by the Governor.

- Conclusion:**
- i) the Secretary, being official head of the department, is responsible for its efficient administration and discipline, for the conduct of business assigned to the department and for the observance of laws and rules.
 - ii) Section 99 of the Act provides mechanism for levy of tax and Part-I (1) of Fifth Schedule of the Act deals with the fee for regulation of advertisement.
 - iii) The Rules of 2011 are made under the Article 139(2) of the Constitution and the validity of any order or instrument so authenticated shall not be questioned in any Court on the ground that it was not made or executed by the Governor.

**30. Lahore High Court, Multan Bench, Multan
Director, Directorate of Intelligence & Investigation, Customs, Multan v.
Customs Appellate Tribunal, etc.
Customs Reference No.07 of 2024
Mr. Muzamil Akhtar Shabir, Mr. Justice ASIM HAFEEZ
<https://sys.lhc.gov.pk/appjudgments/2024LHC5731.pdf>**

Facts: Applicants through this Customs Reference under section 196 of the Customs Act, 1969 (“Act”), have impugned a consolidated judgment, whereby Collector of Customs (Adjudication), Faisalabad has decided two separate customs appeals, relating to allegedly smuggled Foreign Origin goods i.e. Cloth, Cigarettes, Betel Nuts, Welding Electrodes etc. Both the appellants in their separate defense took stance that they had purchased the same against payment of price and duties through official auction of seized smuggled goods conducted by different camps/offices of Customs department.

Issues:

- i) What is the scope and essential ingredients of “right of fair trial” enshrined in Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 “the Constitution”?
- ii) Whether the right to be represented by a counsel of own choice included is “right of fair trial” and “due process” enshrined in Article 10-A of “the Constitution”?
- iii) Whether “due process” includes the right of hearing which is recognized as a fundamental principle of Natural justice?
- iv) Is right to fair trial is a fundamental right?
- v) What is the concept of natural justice?
- vi) Is court responsible to protect the right of natural justice?
- vii) Principle of natural justice is applicable to which kind of proceedings?
- viii) What is the pragmatic importance of the rule of natural justice?

Analysis: i) The Supreme Court of Pakistan in the case titled Jawad S. Khawaja and another v. Federation of Pakistan and others (PLD 2024 SC 337) while considering scope and essential ingredients of right of fair trial in reference to Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 “the Constitution” has held that basic ingredients for a fair trial in the light of Article 10-A of the Constitution are that there should be an independent, impartial court, a fair and public hearing, right of counsel, right to information of the offence charged for with an opportunity to cross examine witnesses and an opportunity to produce evidence. It also includes the right to a reasoned judgment and finally the remedy of appeal. Hence, the ultimate objective is to ensure fairness in the process and proceedings and fairness itself being an evolving concept cannot be confined to any definition or frozen at any moment, with certain fundamentals which operate as constants. Independence of the decision maker and their impartiality is one such constant. A reasoned judgment before a judicial forum is another constant without which the right of fair trial would become meaningless.

Right of an independent forum of appeal is another relevant constant which ensures fair trial.

ii) Moreover, it is also important to note that Article 10-A, of the Constitution had provided the right of a fair trial and due process to accused or person likely to be affected, which included his right to be represented by a counsel of his own choice or at least a counsel in order to protect his rights. Every person accused of howsoever heinous crime, has the right under the law to be represented by a counsel of his own choice and if, for some reason, it was not possible, Court if possible, might take care thereof in accordance with law. Reliance in this regard in addition to aforementioned judgment of Supreme Court may also be placed on the judgments reported as *Tahir Mehmood vs. The State* (1997 PCrLJ 565), *Muhammad Umair vs. The State and another* (2024 PCrLJ 183) and *Rajab Ali vs. The State* (2019 MLD 1713).

iii) It is pertinent to mention here that due process also includes reasonable right of hearing for the purpose of explaining position of a party before proceeding against it and the same is recognized as a fundamental principle of Natural justice and very important right in justice system to ensure that injustice and unfairness is not done to any party. While explaining the same, the Supreme Court of Pakistan in case titled *Muhammad Yousaf vs. Province of Sindh and others* (2024 SCMR 1689) has observed that due process is a prerequisite that needs to be respected at all stratum.

iv) Right to fair trial is a fundamental right.

v) The concept of natural justice is intended to restrain arbitrary actions within the bounds of upholding and protecting the supremacy of law.

vi) In case of stringency and rigidity in affording this right, it is the function, rather a responsibility, of the court to protect this right so that no injustice and unfairness is done to anybody.

vii) This fundamental principle is consistently and squarely applicable to the proceedings, whether judicial, quasi-judicial or administrative, except where the law specifically and unambiguously excludes its application in the peculiar facts and circumstances of the case.

viii) The solitary pragmatic importance of the rule of natural justice is to prevent injustice and miscarriage of justice, and ensure that justice is not only done, but is also manifestly and undoubtedly seen to be done.

- Conclusion:**
- i) See above analysis No.i)
 - ii) The right to be represented by a counsel of own choice is included in “right of fair trial” and “due process” enshrined in Article 10-A of “the Constitution.
 - iii) See above analysis No.iii).
 - iv) Right to fair trial is a fundamental right.
 - v) See above analysis No.v)
 - vi) Court is responsible to protect the right of natural justice.
 - vii) Principle of natural justice is applicable to the proceedings, whether judicial, quasi-judicial or administrative.
 - viii) See above analysis No.viii)

31. Lahore High Court
Ghulam Hassan v. Mst. Wasso Mai (deceased) through L.Rs, etc.
C.R. No. 273-D of 2000
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2017LHC5914.pdf>

Facts: Respondent No.1 brought her suit for declaration in respect of her claim in the property of her deceased nephew alleging that inheritance mutation in favor of petitioner was based on wrong premise and liable to be cancelled. After going through the procedural formalities suit was decreed by the trial court. Petitioner preferred appeal but un-successful, resultantly, the instant Civil Revision.

Issues:

- i) What are the classifications of legal heirs in the Muhammadan Law?
- ii) What is the order of preference with regard to the distribution of estate of a deceased?
- iii) To what extent, mother can inherit in presence of her child?
- iv) What is the share of mother in absence of child or child of son of deceased how low so ever?
- v) Whether distant kindred are entitled to inherit in presence of sharers or reliquaries?

Analysis:

- i) There are three classes of heirs, i.e. Sharers, Residuaries and Distant Kindred.
- ii) First the Sharers are to be allocated their shares in inheritance, if, there is no Sharer or if after allocating share to sharers some property is left behind which is called residue, it is to be transferred to the residuaries. In case, there is neither any sharer nor residuary, the property is to be transferred to distant kindred.
- iii) The normal share of the mother is $\frac{1}{6}$ th share in the property of the deceased in the presence of his child or child of his son or where the deceased has two or more brothers or sisters or even one brother and one sister.
- iv) The mother in special circumstances is entitled to inheritance of $\frac{1}{3}$ rd share in the property when there is no child or child of son of the deceased how low so ever ('h.l.s.') and not more than one brother or sister (if any), but if there is also a wife or husband and the father, then only $\frac{1}{3}$ of what remains after deducting the wife's or husband's share.
- v) The distant kindred are not entitled to inherit in the presence of sharers or residuaries.

Conclusion:

- i) See above analysis No.1
- ii) See above analysis No.2.
- iii) Mother's share is $\frac{1}{6}$ th when she is having child or child of his son or deceased has two or more brothers or sisters or one brother and one sister
- iv) Mother is entitled to $\frac{1}{3}$ rd share when she is having no child or child of son of the deceased how low so ever and not more than one brother or sister (if any), but if there is also a wife, husband or the father, then only $\frac{1}{3}$ of what remains after deducting the wife's or husband's share
- v) See above analysis No.5.

32. Lahore High Court.
Punjab College Multan v. Commissioner Wages Court, Multan, etc.
W.P. No. 15488 of 2024
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2024LHC5966.pdf>

Facts: The petitioner challenged an order of the Wages Court dismissing their objection to jurisdiction, claiming to be a trans-provincial organization under NIRC's domain. The High Court dismissed the petition, finding no conclusive evidence of the petitioner's trans-provincial status.

Issues:

- i) Can claims before the Payment of Wages Authority be rejected summarily if trans-provincial status requires evidence?
- ii) Can the question of jurisdiction be raised at the final stage of proceedings?
- iii) Are claims of employees of trans-provincial organizations exclusively under the jurisdiction of NIRC?
- iv) Can factual controversies regarding trans-provincial status be resolved within the constitutional jurisdiction of the High Court?

Analysis:

- i) Although, matters relating to employees of trans-provincial organizations are to be dealt with by N.I.R.C. and not by forums constituted under provincial laws, yet where to determine that whether employer organization is a trans-provincial organization or not requires recording of evidence, claim before payment of wages authority cannot be summarily rejected.
- ii) It is an established principle of law that question as to whether the Court, Tribunal, or Authority was not properly constituted, hence, proceedings must be held to be coram non iudice is a question relating purely to jurisdiction of Court which could be raised and decided at any stage if the dictates of justice so require.”
 “Reliance is placed upon judgment reported as (1971 PLC 499) ‘Chittaranjan Cotton Mills Ltd. Vs. Staff Union’ and (1998 SCMR 2029) ‘Syed Javaid Iqbal Bukhari Vs. Government of Pakistan and another.
- iii) There is also no cavil to the preposition that in terms of judgments reported as (2018 SCMR 802) 'Messrs Sui Southern Gas Company Ltd. and others Vs. Federation of Pakistan and others' and (2023 PLC 163) 'President, The Bank of Punjab and 2 others Vs. Authority Under Payment of Wages Act, Vehari and another' only the N.I.R.C. has jurisdiction to entertain claims of employees/workers relating to trans-provincial organizations and provincial laws are not applicable but the same is subject to the condition that matter in issue relates to a trans-provincial organization and not otherwise.
- iv) It is yet to be determined that whether and under what capacity the Educational Excellence Limited, Lahore holds the Punjab College, Multan under its umbrella for which neither ground was raised through original reply filed against the claim of respondent No.2 nor issues were got framed or evidence was

led. Even otherwise, there is no document available on the record whereby the said question could be determined with certainty without requiring deeper appreciation into the internal affairs of the petitioner and Educational Excellence Limited, Lahore which cannot be done in constitutional jurisdiction of this Court.

- Conclusion:**
- i) Claims before the Payment of Wages Authority cannot be summarily rejected when determining the trans-provincial status requires recording evidence.
 - ii) Question of jurisdiction can be raised and decided at any stage if the dictates of justice so require.
 - iii) Only the N.I.R.C. has jurisdiction to entertain claims relating to trans-provincial organizations, provided the organization qualifies as such.
 - iv) The question of trans-provincial status cannot be determined without deeper appreciation of disputed facts, which is beyond the scope of constitutional jurisdiction.

33. Lahore High Court
Muhammad Ramzan v. Addl. District Judge, Shujabad etc.
Writ Petition No. 15231 of 2024
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2024LHC6013.pdf>

Facts: The petitioner contested orders of the trial court and appellate court, which set aside an ex parte decree obtained against the respondent. The respondent claimed she was unaware of the proceedings due to incomplete and incorrect address as provided by the petitioner. The respondent's application for setting aside the decree was filed after a significant delay, invoking Section 5 of the Limitation Act for condonation.

Issues:

- i) Can the delay in filing the application to set aside the ex parte decree be impliedly condoned when the courts are aware of the pendency of the application for condonation but do not explicitly address it?
- ii) Is it obligatory for courts to remand a case when an application critical to the root of the matter remains undecided?

Analysis:

- i) Even if application filed under Section 5 of the Act was not decided, as proprietary rights of the parties are involved, hence it was appropriate to condone the delay in filing application for setting-aside ex parte decree and consequently order passed by both the courts below are interpreted in the manner that as while setting aside ex parte decree the courts below were conscious of pendency of the application for condonation of delay, hence the delay in filing the application for setting aside ex parte proceedings and decree although not dealt with in express terms had been impliedly condoned which is permissible in view of the principles laid down in the aforementioned judgments...
- ii) Although it is general practice of procedural law that where an application going to the root of the matter remains undecided usually the courts remand the matter for decision of the same afresh, while also keeping in view the contents of

the said application, but the same is not an absolute rule of law and the courts may refuse to set aside the decision *inter alia* for the reasons that prejudice has not been caused to the rights of the parties or by the said decision justice has been done and to set aside the said decision would result in prejudice to the right(s) of any of the parties.

Conclusion: i) See above analysis No i.
ii) The same is not an absolute rule of law and the courts may refuse to set aside the decision *inter alia* for the reasons that prejudice has not been caused to the rights of the parties.

34. Lahore High Court
M/s Khan Petroleum Services v. Government of the Punjab, etc.
Writ Petition No.9424 of 2024
Mr. Justice Muhammad Tariq Nadeem
<https://sys.lhc.gov.pk/appjudgments/2024LHC6021.pdf>

Facts: The petitioner challenged orders issued by a government official that sealed their petrol pump and imposed a substantial penalty, including imprisonment for non-payment. The petitioner alleged that these actions lacked lawful authority and were contrary to the applicable rules and regulations.

Issues: i) Can courts protect rights from public officials' power misuse?
ii) Can a writ petition be entertained when an adequate alternative remedy exists?
iii) Do the Pakistan Oil (Refining, Blending, Transportation, Storage and Marketing) Rules, 2016 and Oil and Gas Regulatory Authority Ordinance, 2002 override the **Pakistan Petroleum (Refining, Blending and Marketing) Rules, 1971**?
iv) Who holds authority under the Ordinance 2002 and Rules of 2016?
v) Can the Authority delegate its powers under the 2002 Ordinance?
vi) Is the imposition of penalties under the Rules of 1971 permissible after the introduction of the Rules of 2016?
vii) Does failure to follow procedural safeguards under the Code of Criminal Procedure invalidate penalties imposed by summary trial?
viii) Are actions taken under rules that have been overridden by subsequent legislation valid?

Analysis: i) Article 199 of the "Constitution" empowers this Court to issue directions and pass appropriate orders for the protection of rights of any aggrieved party from violation at the hands of public functionaries, who have upper hand in affairs of the people and may misuse their power or authority vested in them.
ii) Writ petition under Article 199 of the 'Constitution' is only competent when no alternate or efficacious remedy is provided under the law. Wisdom behind this scheme of law is that where a specific remedy is provided, the aggrieved person is normally encouraged to avail such remedy instead of invoking writ jurisdiction of this Court. The availability of an alternative adequate and effective remedy,

however, would not impair the High Court's authority to consider a constitutional petition under Article 199 of the 'Constitution,' where the sole question for decision-making is whether the Court's discretion should be used in a given case under the relevant circumstances.

iii) As the “Rules of 2016” have been given overriding effect upon the “Rules of 1971”, therefore, everything had to be done by the concerned authority in pursuance of the “Rules of 2016” as well as the “Ordinance of 2002”.

iv) In view of Rule 43A of the “Rules of 1971”, the District Coordination of the district may have exercised certain powers relating to rules 34, 35, 36, 38 and 43, which otherwise had to be exercised by the Director General Oil and the Oil and Gas Regulatory Authority in view of Rule 2(b) of the “Rules of 1971”. But after promulgation of the Oil and Gas Regulatory Authority Ordinance, 2002, the definition of “Authority” has been substituted as “Oil and Gas Regulatory Authority established under section 3 of the W.P. No.9424 of 2024 9 “Ordinance of 2002”. In this regard, section 2(1)(i) of the “Ordinance of 2002” reads as infra:
- “Definitions.--- (1) In this Ordinance, unless there is anything repugnant in the subject or context,--- (a) “Authority” means the Oil and Gas Regulatory Authority established under section 3;” Section 44(3)(a) of the “Ordinance of 2002”, is also quite relevant qua the definition of term “Authority”, which is reproduced as under:

- “44. Repeal and savings.- (1)
..... (2)
..... (3) (a) The definition for
“Authority” set out in the rules referred to in clause (b) shall be substituted by the following definition, namely:--- “Authority” means the Oil and Gas Regulatory Authority established pursuant to the Oil and Gas Regulatory Authority Ordinance, 2002”; (b) the substitution referred to in clause (a) shall apply to the following rules, namely:- (i) the Pakistan Petroleum (Refining, Blending and Marketing Rules, 1971; (ii) the Compressed Natural Gas (Production and Marketing) Rules, 1992; and (iii) the Liquefied Petroleum Gas (Production and Distribution) Rules, 2001; and

v) At this stage, I would also like to refer here section 10(1) of the “Ordinance of 2002”, which deals with the delegation of powers, and the same is reproduced as under:- “Delegation of powers.- (1) The Authority may, by general or special order, delegate to any officer of the Authority the power to exercise on behalf of the Authority any of its powers, duties or functions under this Ordinance subject to such conditions as it may think fit to impose.”

vi) Since an explicit procedural and enforcement mechanism has been mentioned in Rules 54 and 55 of the “Rules of 2016”, superseding similar provisions under the “Rules of 1971”, so the “Rules of 2016” have to be followed in such circumstances, therefore, the acts which have been done as per the “Rules of 1971” have no legal backing.

vii) respondent No.3 has completely ignored the relevant provisions given in Chapter-XXII of the Code of Criminal Procedure (Act V of 1898) while conducting summary trial, in the light of which the penalty of Rs.10,00,000/- or

imprisonment of one year in default thereof could not have been imposed by respondent No.3 through summary trial of the petitioner.

viii) after promulgation of the Oil and Gas Regulatory Authority Ordinance, 2002 and making as well as approval of the Pakistan Oil (Refining, Blending, Transportation, Storage and Marketing) Rules, 2016, respondent No.3 being the Deputy Commissioner of Bahawalpur district was not authorized to seal the business premises of the petitioner or impose any penalty upon him in terms of Rule 44 of the Pakistan Petroleum (Refining, Blending and Marketing) Rules, 1971, as these rules have already been overridden by the provisions contained in the “Ordinance of 2002” as well as the “Rules of 2016”.

- Conclusion:**
- i) Courts can protect rights from misuse of power under Article 199.
 - ii) Writs are valid only if no alternative remedy exists, with exceptions.
 - iii) 2016 Rules override 1971 Rules; they must be followed with the 2002 Ordinance.
 - iv) Authority under the 2002 Ordinance replaced the 1971 Rules.
 - v) The 2002 Ordinance allows conditional delegation of powers.
 - vi) Actions under conflicting 1971 Rules lack validity
 - vii) See analysis No.vii.
 - viii) Deputy Commissioner lacked authority under the 2016 Rules and 2002 Ordinance.

35. Lahore High Court
Usama Ali. v. The State
Criminal Appeal No. 77969-J of 2019.
Muhammad Aslam v. The State & another
Criminal Revision No. 62123 of 2019.
Mr. Justice Muhammad Amjad Rafique
<https://sys.lhc.gov.pk/appjudgments/2024LHC6062.pdf>

Facts: Three individuals were found dead with gunshot wounds near a canal. The prosecution alleged that the accused person committed the murders, relying on circumstantial evidence and forensic findings. The accused was convicted and sentenced to life imprisonment by the trial court. The accused filed an appeal against the conviction, while the complainant sought enhancement of the sentence through a criminal revision.

Issues:

- i) Whether the circumstantial evidence, including "last seen" testimony, meets the legal standard to establish guilt beyond a reasonable doubt.
- ii) Whether the forensic evidence, including DNA and shoe recoveries, was collected and analyzed in accordance with the law.
- iii) Whether the investigation and prosecution were influenced by tunnel vision, leading to a biased and flawed case against the accused.

Analysis: i) Case of the prosecution was structured through last seen evidence as a first clue for the involvement of accused/appellant, which was deposed by Muhammad

Nadeem (PW-7) and Muhammad Imran (PW-8).. Testimony of PW-7 does not inspire confidence, and I have reached the conclusion that his presence at the acclaimed place was highly doubtful due to above-highlighted facts... These witnesses have not seen any weapon in the hand of accused/appellant, nor claimed seeing the accused/appellant coming back on motorcycle without left shoe in his foot. Prosecution has not opted to procure CDR of these witnesses to justify their acclaimed presence near BRB Canal at the relevant time. Last but not the least they have not seen the commission of murder by the accused/appellant.

ii) Circumstantial evidence, in the form of DNA matching with some hair in the clenched palm of one of the deceased and on swabs taken from shoe, is mind-boggling evidence and raises many questions that how such evidence was collected and procured by the police... None of the pictures (P1-P20) shows the recovery of human hairs from the fist of Rabi Umair deceased... Thus, above evidence was created to book the accused/appellant.

iii) After evaluating the evidence in this case, it is apparent that this case is a worst form of tunnel vision on the part of police and prosecution. In an article... tunnel vision is described as a process that leads investigators, prosecutors, judges, and defense lawyers alike to focus on a particular conclusion and then filter all evidence in a case through the lens provided by that conclusion... Public Prosecution Service of Canada... explains that tunnel vision in the criminal justice context can be described as a tendency of participants in the system, such as police or prosecutors, to focus on a particular theory of a case and to dismiss or undervalue evidence which contradicts that theory. This mental process leads to "...unconscious filtering in of evidence that will build a case against a particular suspect, while ignoring or suppressing evidence respecting the same suspect that tends to point away from guilt.

- Conclusion:**
- i) The circumstantial evidence of last seen failed to meet the requisite standard of proof.
 - ii) The forensic evidence was unreliable and improperly handled.
 - iii) The investigation and prosecution demonstrated tunnel vision, filtering evidence through a biased perspective,

36. Lahore High Court
Pir Syed Ghulam Samdani & another v. Chief Administrator Auqaf & 03 others
FAO No. 63 / 2022
Mr. Justice Abid Hussain Chattha
<https://sys.lhc.gov.pk/appjudgments/2024LHC5831.pdf>

Facts: The appellants challenged a notification issued under Section 7 of the Punjab Waqf Properties Ordinance, 1979, by the Chief Administrator Auqaf. The notification declared certain properties, including a shrine, as Waqf property, transferring their administration, control, and management to the Auqaf Department. The appellants claimed ownership and possession of the properties

as hereditary tenants and administrators, arguing the notification was issued without due process and violated their legal rights.

- Issues:**
- i) What are the procedural requirements under Section 7 of the Punjab Waqf Properties Ordinance, 1979, for declaring property as Waqf property?
 - ii) What is the minimum procedural threshold required under Section 7 of the Punjab Waqf Properties Ordinance, 1979, for the Chief Administrator of the Auqaf Department to issue and implement a notification declaring property as Waqf property?
 - iii) Can a survey report be used to bypass the mandatory requirement of prior service of notification under Section 7 of the Punjab Waqf Properties Ordinance, 1979?

- Analysis:**
- i) Section 7 of the Ordinance... necessitates a prior declaration that the property is actually a Waqf property in terms of Section 2(e) of the Ordinance if not already registered as Waqf property under Section 6 of the Ordinance... The act of declaring a property as Waqf property can only be exercised by issuance of a notification with a mandatory caveat to effect prior service of such notification upon the management or the Mutawalli and by affixing the same on some prominent part of the property sought to be taken over.
 - ii) The process entails determination of objections and interests of all concerned to ensure that legitimate and lawful rights of any person are not compromised. Once such an exercise is complete, only then the issued notification is ripe for publication followed by its implementation. This is the minimum threshold for scrutiny regarding the powers exercised by the Chief Administrator of the Auqaf Department pursuant to Section 7 of the Ordinance in the wake of a legal challenge in the Court of law.
 - iii) The survey report having the signature of Appellant No. 1 could not be made basis to circumvent the mandatory requirement of prior service of the impugned Notification upon the Appellants being in possession of the suit property before it was published in official Gazette.

- Conclusion:**
- i) See above analysis No i.
 - ii) See above analysis No ii.
 - iii) The survey report could not be made basis to circumvent the mandatory requirement of prior service of the impugned Notification before it was published in official Gazette.

37. Lahore High Court, Lahore
Nasir Ali v. Mst. Raheela Mahdi
C.R. No.241-D/2022
Mr. Justice Anwaar Hussain
<https://sys.lhc.gov.pk/appjudgments/2024LHC5787.pdf>

Facts: The plaintiff filed a suit for specific performance of an oral agreement to sell,

which was decreed by the trial court and upheld by the appellate court. The petitioner challenged these concurrent findings in a civil revision, citing contradictions in the evidence and legal deficiencies in the plaintiff's case.

- Issues:**
- i) Did the plaintiff establish the existence and enforceability of the oral agreement to sell?
 - ii) Were the concurrent findings of the lower courts legally sustainable in light of evidence and law?

- Analysis:**
- i) It is a settled principle of law that the parties can execute a lawful contract, orally or in writing, and such oral agreements are enforceable, provided legal requirements are fulfilled as envisaged under Section 2(b) read with Section 10 of the Contract Act, 1872 ('the Act, 1872'), which contemplate that all the agreements are valid and enforceable if entered into by parties who are competent to contract... In the present case, the respondent ... did not clearly specify the place and time of negotiations which led to the conclusion of the oral agreement ... bringing the case of the respondent under the maxim 'Allegans Contraria Non Est Audiendus... It was imperative for the respondent to personally appear as a witness, as her special attorney (husband) was neither present during the transaction nor could depose for acts that only the principal had knowledge of.
 - ii) The courts below erred by relying on the report of the local commission (CW-1), which was full of procedural irregularities, and on a minor weakness in the defendant's testimony to decree the suit... It is well evident that the concurrent findings of the courts below are a result of grave misreading and non-reading of evidence and incorrect application of settled principles of law governing the grant of a decree in a suit for specific performance of an oral agreement"

- Conclusion:**
- i) The plaintiff failed to prove the oral agreement to sell.
 - ii) The lower courts' findings were not legally sustainable.

38. Lahore High Court
Farida Khanum v. Abdul Qayyum Baig (deceased) through his legal heirs, etc.
RSA No.694/2021
Mr. Justice Anwaar Hussain
<https://sys.lhc.gov.pk/appjudgments/2024LHC6002.pdf>

Facts: The appellant challenged the vires of judgment of first appellate court, whereby; her suit for specific performance was dismissed setting aside the decree and judgment of the trial court.

- Issues:**
- i) How the non-production of stamp vendor as a witness would impact the plaintiff's case?
 - ii) What is the principle of 'feeding the grant by estoppel'?
 - iii) Whether a decree can be passed in a suit for specific performance of contract, based on a written agreement to sell that does not contain a stipulation regarding

registration of a sale deed in respect of the immovable property forming subject matter of the sale?

iv) What is the meaning of connotation, 'in the absence of contract to the contrary', used in the section 55 of the Transfer of Property Act?

Analysis:

i) The law envisages production of two marginal witnesses of an agreement, to prove its execution, in terms of Article 17 read with Article 79 of the Qanun-e-Shahadat Order, 1984 ("QSO"). In present case, both the marginal witnesses were produced. In addition, notary public also appeared as PW-1, who also supported the stance of the appellant. PW-2 is scribe of the agreement albeit his name is not recorded in the agreement. Learned counsel for the respondent has not pointed out any legal requirement to the effect that scribe must reflect his name in the agreement or a litigant must specify so in his pleadings. Similarly, production of the stamp vendor who deposes in favour of a party can be taken as supporting evidence but his nonappearance cannot be considered as fatal in view of the fact that marginal witnesses of the agreement were produced, who despite lengthy cross-examination remained firm with respect to their respective deposition.

ii) The above quoted provision of the Act, 1882 governs the transfers of immovable property where the transferor (predecessor of the respondents in present case), to begin with, had no authority to transfer the property on account of lack of title and/or interest in said immovable property, yet he entered into the agreement with a misrepresentation in respect of his title to the property, making the other party-the appellant in present case, act on the same and then acquired a good title in the property. In such cases, if the transferee does not repudiate the contract, the transferee has the option to go ahead and seek specific performance of the contract to the extent or the interest which the transferor obtained in the property. Willingness or otherwise of the transferor to go ahead with the transfer is immaterial.

iii) In this regard, it is imperative to understand the law governing execution of the contract in general and the agreements related to immovable property in particular. The provisions of the Contract Act, 1872 read with Section 55 of the Act 1882 contain the answer to the core controversy in this case. Section 55 of the Act 1882 contemplates certain rights and obligations of the buyer and the seller. These obligations, imposed by the sanction of law, are covenants and are in the nature of statutory obligations, the breach whereof confers a right on either party to take legal recourse, which, inter alia, includes, the duty of the seller "to execute the proper conveyance".

iv) In the absence of contract to the contrary, it is the duty of the seller-the respondents in present case, to execute the proper conveyance, on the payment of the amount due in respect of the price. Conveyance means the transfer of ownership that is done by signing of the sale deed. Here it will be appropriate to understand the meaning and scope of the term "contract to the contrary". It is a significant concept in various legal contexts, particularly in relations to the transfer of property allowing the parties to deviate from the statutory provisions

through explicit agreements. It refers to an agreement that explicitly contradicts statutory provisions or established legal principles, in present case clause (d) of subsection (1) of Section 55 of the Act 1882, quoted hereinabove. However, such contracts to the contrary must be clear and unambiguous to effectively override the statutory obligations. Without an express term to the contrary, the statutory obligations envisaged under the law remain operative. While the contracts to the contrary can be implied, they must be sufficiently clear to indicate an intention to deviate from statutory provisions and the ambiguity may lead to the enforcement of the statutory provisions instead. Thus, in the absence of contract to the contrary, the rights and corresponding liabilities of seller and buyer envisaged under the law are to be read as part and parcel of the agreement(s) executed by them respectively.

- Conclusion:**
- i) Production of the stamp vendor who deposes in favour of a party can be taken as supporting evidence but his nonappearance cannot be considered as fatal in view of the fact that marginal witnesses of the agreement were produced.
 - ii) The transferee has the option to go ahead and seek specific performance of the contract to the extent or the interest which the transferor obtained in the property.
 - iii) Obligations, imposed by the sanction of law, are covenants and are in the nature of statutory obligations, the breach whereof confers a right on either party to take legal recourse, which, inter alia, includes, the duty of the seller “to execute the proper conveyance.
 - iv) See above analysis (iv).

39. Lahore High Court
Mst. Zaib un Nisa, etc. v. Additional District Judge, etc.
W.P. No.3346/2018
Mr. Justice Anwaar Hussain
<https://sys.lhc.gov.pk/appjudgments/2024LHC5824.pdf>

Facts: The petitioner filed a suit for recovery of dower, dowry articles, and maintenance allowance for a minor, resulting in a decree entitling her to 07-Tola gold ornaments or their alternate value. During execution, she sought either the gold or its current market value, but the appellate court limited recovery to the alternate value. Contesting this, the petitioner argued for adherence to the original decree. The executing court upheld her right to choose between the actual dower and its alternate value. Hence; this petition.

- Issues:**
- i) What is the purpose of determining alternate value in family matters?
 - ii) What is the legal significance of "alternate" as a noun and an adjective in a decree?
 - iii) What is the significance of timely discharging obligations in Columns No.13 and 16 of the Nikahnama?
 - iv) How should family laws and decrees be interpreted and executed in cases of ambiguity or dispute?

- Analysis:**
- i) the purpose of determining alternate value is to enable the decree holder to obtain adequate compensation when the principal item (in family matters, dowry articles or the dower property) is not traceable or is in a condition/position that the same cannot be returned or recovered, for example a dowry article has been lost or damaged.
 - ii) Moreover, the word “alternate” has special significance. It can be used both as noun or an adjective. In the legal context, when used as an adjective, it describes something that offers or expresses a choice. When used as noun, it describes something that substitutes another. In the context of a decree passed in a case, this choice is vested with the decree holder-the petitioner in present case.
 - iii) The Supreme Court held that the entries recorded in Columns No.13 and 16 of the Nikahnama are obligations of husband and any act whereby the said obligations are not discharged in timely manner is highly deplorable.
 - iv) The matter can be examined from another angle. The family law and the provisions of the enactments such as the West Pakistan Family Courts Act, 1964 and the Muslim Family Law Ordinance, 1961 have to be considered and interpreted favourably towards the females being the beneficial legislation. The same principle is to be followed in construing and interpreting a decree passed in a family suit, if any ambiguity is found or dispute arises therein between the parties regarding scope of the decree. The duty of the Executing Court is to carry out the decree and not to add to it or hang it any way.

- Conclusion:**
- i) Alternate value ensures fair compensation when the principal item is unavailable.
 - ii) ‘Alternate’ empowers the decree holder to choose or substitute.
 - iii) Delays in fulfilling Nikahnama obligations are condemned.
 - iv) Family laws favour women and decrees must be enforced as issued.

40. Lahore High Court
Miss Shabnam Riaz V. Naila Karim and another
CrI. Misc. No.80981-T/2024
Mr. Justice Ali Zia Bajwa
<https://sys.lhc.gov.pk/appjudgments/2024LHC6096.pdf>

Facts: The petitioner filed an application under Section 526 Cr.P.C., the applicant sought transfer of the trial of private complaint of offences under Section 499, 500 & 501 PPC from the court of Additional Sessions Judge, Lahore to any other court of competent jurisdiction on the ground that the learned trial judge has allegedly become prejudiced and biased against the applicant, raising concerns that a just and impartial decision may not be possible

- Issue:**
- i) What should be the grounds for accepting an application for transfer of case from one court to another court of competent jurisdiction?
 - ii) How the bias in a judge should be demonstrated to an application for transfer of case?

- Analysis:**
- i) The apprehension of not receiving a fair and impartial inquiry or trial must be reasonable and grounded in facts, rather than being speculative or based on conjecture and surmise. The proceedings pending before one competent court should not be transferred to another court merely on bald assertions or allegations of any of the parties unless the same are supported by strong, cogent reasons and convincing evidence.
 - ii) The bias in a judge must be demonstrated as a fact, not merely as an opinion. A real likelihood of bias must be established, grounded in personal prejudice so significant that it impairs the judge's ability to act impartially in the specific case.

Conclusion: Mere allegations of bias or prejudice against a judge are insufficient grounds for transferring a case; such allegations must be substantiated with clear and credible evidence demonstrating a reasonable apprehension of bias to warrant a transfer.

LATEST LEGISLATION/AMENDMENTS

1. Vide Federal Board of Intermediate and Secondary Education (Amendment) Ordinance, 2024 dated 07-12-2024, amendments in section 5, 8, 11, 12 & 13 are made in Federal Board of Intermediate and Secondary Education Act, 1975.
2. Vide notification No. SO(E-III)/L&DD/3-3/2019(B) dated 01-11-2024, amendments at serial No.1 to 3 regarding "Academic Qualifications, Professional & Leadership experience and publications, Honours & Awards" respectively are made in the University of Veterinary and animal Sciences Lahore Ordinance 2002.
3. Vide notification No. SO(E-III)/L&DD/3-3/2019(B) dated 01-11-2024, amendments at serial No.1 to 3 regarding "Academic Qualifications, Professional & Leadership experience and publications, Honours & Awards" respectively are made in the Cholistan University of Veterinary and Animal Sciences Bahawalpur Act 2018.
4. Vide notification No.1873-2024/2489-CL-II dated 11-11-2024, Statement of Conditions for disposal of certain available State Land on Lease falling in Bahawalpur Division in favour of the President of United Arab Emirates.
5. Vide notification No.334EDH/EPA/F-24/2024 dated 18-11-2024, amendments in regulations No.2, 3, 4, 6 10 & 14 and schedule I, II, III, IV & VI are made in the Punjab Environmental Protection (Production and Consumption of Single-use Plastic Product) Regulations 2023.
6. Vide Notification No. SOR-III(S&GAD)1-10/2007(PI) dated 12-12-2024, amendments are made at serial No.4 & 11 of Punjab Social Welfare & Bait-ul-Mall Department (Directorate) Service Rules, 2009.

7. Vide notification No.SO(Cab-I)2-18/2018(ROB) dated 12-12-2024, amendment is made in second schedule at serial No.3 under heading 'Primary and Secondary Healthcare Department of The Punjab Government Rules of Business, 2011.
8. Vide notification No. SOR(LG)38-17/2015 dated 12-12-2024, the clause (g) of sub rule (1) of rule 2 is omitted and rule 3 is substituted in The Punjab Local Government (Accounts) Rules, 2017.
9. Vide notification No. SOR.IV(S&GAD) 14-19/2024 dated 10-12-2024, the Services and General Administration Department Regulations Wing has added para No.68 after para No.67 vide Instructions about Confidential Reports.

SELECTED ARTICLES

1. MANUPATRA

<https://articles.manupatra.com/article-details/Extending-the-Clock-Analysing-the-New-Limitation-Period-Under-the-POSH-Amendment-Act-2024>

Extending the Clock: Analysing the New Limitation Period Under the POSH Amendment Act, 2024 by Nandika Kaul

The menace of sexual harassment against women has existed in society for as long as its patriarchal structure itself. Over the past decades, researchers have made a significant shift from viewing sexual harassment as isolated behaviours motivated by sexual desires, to identifying them as a structural tool for asserting power over the other gender and maintaining a patriarchal status quo.² Although laws to combat sexual harassment in the Indian society have been dealt with in the Indian Penal Code³, the issue of sexual harassment at the workplace was first acknowledged following the incident of sexual violence against social activist Bhanwari Devi in Rajasthan. Following the judgement in Vishaka v. State of Rajasthan⁴, the "Vishaka Guidelines" were laid down by the Hon'ble Supreme Court in 1977 and workplace sexual harassment was recognized as a human rights violation. In 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013⁵ was introduced. It stands as a key statute in India's legislative history, directed towards the upliftment of women through elimination of gender-based harassment in the workplace.

2. MANUPATRA

<https://articles.manupatra.com/article-details/NAVIGATING-THE-FRONTIERS-THE-EVOLVING-LANDSCAPE-OF-TECHNOLOGY-LAW-IN-THE-21ST-CENTURY>

Navigating the Frontiers: The Evolving Landscape of Technology Law in the 21st Century by Ujalambe Abhay Dayanand & Ishika Singh

The rapid advancement of technology in the 21st century, spurred by milestones such as the dot com boom and the rise of social media and artificial intelligence, has profoundly

transformed the legal framework. This Article explores the dynamic interplay between law and emerging technologies, delving into critical issues like digital ethics, data privacy, cybersecurity, and intellectual property rights protection. As intellectual property protection takes the spotlight, it becomes evidence of its special position in the current digital age and stands as the optimal in spurring new ideas and protecting the originality of original idea creators. Legal remedies like patents, trademarks, copyrights, and trade secrets are the main instruments by which inventors and their inventions are protected, and they are permitted to grant their business exclusive rights during the specified period free from any unauthorised copying or use of these ideas. The need for legal principles to be both comprehensive and clear attracts focus as such tenets have to strike a balance between technological progress and ethical reasoning. It states that policies and laws should not only motivate innovations in digital space but protect as well crucial factors such as privacy and security. When aid is rendered concerning the ongoing technological modifications, the legal systems can simply remain relevant and effective, thereby facilitating the provision of services depending on the demands of contemporary society without the risks of them being outmoded due to changes. This approach assists in the accumulation of rapid technical growth while simultaneously giving attention to the ethical implications associated with new paradigms of digital communication.

3. HARVARD LAW REVIEW

<https://harvardlawreview.org/print/vol-138/the-counterfeit-sham/>

The Counterfeit Sham by Sarah Fackrell

There's a new front in the IP rhetoric wars. Plaintiffs in "Schedule A" cases tell judges that they need to secretly seize the assets of hundreds of defendants all at once in order to defeat the machinations of nefarious foreign "counterfeiters" — even in cases where no counterfeiting (or even plain trademark infringement) is alleged. Proponents of bills that would allow Customs and Border Protection to seize products that might infringe design patents try to equate those products with "counterfeits," invoking the specter of counterfeit drugs to suggest that design patent infringement threatens the health and safety of U.S. citizens. Although design patent infringers may sometimes also be counterfeiters, these two legal offenses are actually and meaningfully different. Unlike counterfeiting, design patent infringement does not require the use of any trademarks or any likely consumer confusion. Even if we're discussing "counterfeiting" in the more colloquial sense, a competitor need not identically copy a product — or do anything deceptive at all — in order to infringe a design patent. A product that infringes a design patent is not necessarily more dangerous or harmful than any other product. For these reasons and others, the direct equation of design patent infringement to counterfeiting is false and the appeal to fear is fallacious. This Article argues that policymakers, judges, and other decisionmakers should not fall for this sham.

4. LEGAL VISION

<https://legalvision.com.au/acronym-trade-mark/>

How Can I Use an Acronym of a Registered Trade Mark? By Kate Tognolini

In Australia, trade marks are protected under the Trade Marks Act 1995, ensuring that registered trade marks are not used without authorisation in a manner that could cause confusion or dilute the brand's value. Using an acronym of a registered trade mark raises unique legal considerations. This article explores the steps you should take if you plan to use an acronym of a registered trade mark.

Using an acronym derived from a registered trade mark can potentially infringe on the rights of the trade mark owner. A registered trade mark grants the owner exclusive rights to use the trade mark concerning the goods or services for which it is registered. This protection includes preventing others from using similar marks that could cause confusion among consumers.

5. Lawyers Club India

<https://www.lawyersclubindia.com/articles/tom-cruise-receives-usa-navy-award-10-most-coveted-awards-of-the-us-and-the-rules-and-laws-that-govern-them-17299.asp>

Tom Cruise Receives USA Navy Award: 10 Most Coveted Awards of the US and the Rules and Laws That Govern Them by Navaneeth E M

Awards, whether in the arts, sciences, public service, or even national security, are vital because they honour those who've made exceptional contributions to society. These are more than just accolades; they act as reminders of the values a nation holds dear and symbolize appreciation. In the United States, for example, awards like the Medal of Honor and the Presidential Medal of Freedom highlight acts of bravery or service that inspire others and bring a sense of unity to society. To ensure fairness, there are rules and regulations—laws, really—that govern how these awards are given, especially when it comes to distinguishing between civilian and military honors. Military awards, such as the Medal of Honor, require a rigorous review process to confirm the merit of nominees. Civilian awards, on the other hand, have their own set of criteria for nominations and eligibility. This all ensures transparency and equity. Beyond the symbolism of achievement, these awards set a standard, a kind of bar for excellence, that pushes others to aspire for greatness too. The recent recognition of actor 'Tom Cruise' with the 'U.S. Navy's Distinguished Public Service Award' highlights the importance of these honours. Tom Cruise, who acted as a naval aviator in Top Gun, has improved the public awareness of the Navy and its core values. This award not only acknowledges Cruise's impact but also shows how such recognitions can strengthen the bond between the citizens and the military. In an era where public trust is important, awards which are governed by clear guidelines ensure that they remain symbols of integrity.
