LAHORE HIGH COURT

BULLETIN

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

Volume - IV, Issue - XI

01 - 06 - 2023 to 15 - 06 - 2023

Published By: Research Centre, Lahore High Court, Lahore

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

Disclaimer

Due care and caution has been taken in preparing and publishing this bulletin. Where required, text has been moderated, edited and re-arranged. The contents available in this Bulletin are just for Information. Users are advised to explore and consult original text before applying or referring to it. Research Centre shall not be responsible for any loss or damage in any manner arising out of applying or referring the contents of Bulletin.

FORTNIGHTLY CASE LAW BULLETIN

(01-06-2023 to 15-06-2023)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

7.	Supreme Court	Interference of Supreme Court with concurrent findings on issues of facts; Legislative policy in promulgating the Competition Act 2010; Concept of Free and Fair competition; Prohibition of deceptive marketing practices; Distributing false or misleading information; Relevancy of intention of defendant; Restricted meaning of the word 'use'; Criterion to determine the confusing similarity in trademark; Necessity of registration of trademark; Difference between misrepresentation in a passing-off action and misrepresentation in an injurious falsehood action; Locus standi of an adjudicatory body	Civil Law	11
8.		Use of the word 'process'; Power to process and power to decide a representation; Object of the requirement of the nominated officer; Role of the nominated officer; Agreement of president with nominated officer; Delegation of power to decide representation to nominated officer		16
9.		Object of civil and criminal proceedings; Simultaneous running of civil as well as criminal proceedings; Stoppage of criminal proceedings; Relevancy of finding of criminal court in civil proceedings; Essential ingredients to invoke Order 7 Rule 11 CPC; Chances of divergent judgments by civil and criminal courts		19
10.		Basic element to prove the enforcement of valid agreement; Meaning of a written agreement; Legal requirement for a valid written agreement; Requirement to prove written agreement; Validity of written agreement not signed by either or one of the parties; Requirement to prove unsigned agreement		21
11.		Consideration for grant of pre-arrest bail and post arrest bail; Taking away liberty of person merely on bald and vague allegations	Criminal Law	22
12.		Meaning of word sexual and its relevancy; Limitation of harassment to sexual activity; Restricted meaning	Civil Law	23

	Supreme Court	given to sexual nature; Application of the Protection against Harassment of Women at the Workplace Act; Meaning of sexual harassment; Purpose of harassment law; Standard to determine the harassment		
13.		Probative strength of evidence of waj takar witness; Related witness; Importance to discrepancies in prosecution evidence; Motive not proved with evidence; Weightage to a long abscondence	Criminal Law	26
14.		Consideration by court regarding contradicted opinion of a medical officer regarding injuries; Taking away liberty of an individual on bald and vague allegations		27
15.		Claiming rebate or exemption being a public servant; Meaning of deeming clause; Effect of the absence of public servant in definition clause; Nature of alternate remedy to bar the jurisdiction of High Court	Service Law	28
16.		Enrolment of students before obtaining their accreditation from the Pakistan Engineering Council	Civil Law	29
17.	Lahore High Court	Appeal before Supreme Court against an order of administrative tribunal	Service Law	30
18.		Option to approach High Court for remediless person; Show cause notice issued in violation of law; Departmental action against an employee availing legal remedy; Abatement of Departmental proceedings; Proof of misconduct on the part of a retiree; Withholding right to pension; Invoking clause (a) of the rule 1.8 of the Punjab Civil Services Pension Rules		30
19.		Effect of promptness in reporting the matter to police; Motive as an essential ingredient to provide foundation to crime; Quality of evidence instead of number of witnesses; Mere relationship of eye-witness with deceased; Production of all witness; Effect of recording statement u/s 161 Cr.P.C belatedly due to act of investigation officer; Significance of minor discrepancies; Effect of delay in conduct of autopsy;	Criminal Law	32

		Inconsequential fact of recovery; Absconsion as conclusive proof of guilt		
20.		Obligation of police officer whenever he receives information regarding cognizable offence; FIR lodged after unexplained delay; Evidence of a related witness; Evidentiary value of site plan		35
21.		Avoiding obligation under subsequent agreement to sell; Interference in concurrent findings by revisional court	Civil Law	36
22.	Lahore High Court	Evasive denial of facts asserted; Salient features for assessing the compensation of acquired land; Dominant factor for determining the compensation of acquired land; Legal inference regarding a witness not summoned by the orders of the court; Immunity under Article 34 of Qanun-e-Shahadat Order 1984; Document made part of record through the statement of counsel; Limitation of more than one appeal arising out of common judgment; Duty of Land Acquisition Collector while determining the amount of compensation		37
23.		Summoning of record from any Government Department where controversy is between private parties	Tax Law	40
24.		Competency of appellate or revisional court to reject plaint while dealing appeal against order of ad-interim injunction; Difference between scope of proceedings of an application for grant of temporary injunction and the rejection of the plaint	Civil Law	40
25.		Right of pre-emption regarding property located in colony area and owned by province of punjab	Civil Law	42
26.		Effect of break in chain of custody; Entitlement of owner for return of vehicle; Mechanism regarding adoption of procedure by Chemical Examiner; Extension of benefit of doubt; Seizure of vehicle	Criminal Law	43
27.		Delay in post mortem examination; Definition of chance witness; Evidentiary value of testimony of a witness whose presence at the place		45

		of occurrence not proved; Adverse inference regarding not producing the driver of vehicle on which dead body was shifted to hospital; Evidentiary value of witness whose clothes were smeared with blood while handling deceased but same has not been produced; Distance at which blackening appears; Motive alleged but not proved; Corroborating eye witnesses themselves; Effect of disbelieving prosecution witnesses with respect to co-accused		
28.		Transfer of matter to any other bench; Engagement of a blocked lawyer		47
29.		Attraction of 489-F PPC where cheque is given as security or as a guarantee	Civil Law	48
30.		Directives essentially to be followed by magistrate and police for conducting Test Identification Parade	Criminal Law	49
31.	Lahore High Court	Importance of a preamble; Basis to form the fulcrum of jurisdiction; Establishment of court's jurisdiction on the basis of registered office of defendant firm	Banking Law	50
32.		Restraining a bona fide purchaser/owner of the property from constructing thereupon or be prevented from using the property for own purpose	Civil Law	51
33.		Remand of case when sufficient evidence is available on record; Powers of appellate court in remanding case; Power of appellate court to decide matter by resettling the issues; Procedure to follow by appellate court when trial court has omitted to frame or try any issue	Civil Law	52
34.		Characteristics of evidence required from prosecution; Sufficiency of medical evidence to connect the accused with the offence; Evidentiary value of improved statement of a witness; Effect of failure to prove motive; Standard of proof required in criminal case	Criminal Law	54
35.		Consideration of admission or confession as whole; Definition of Mistake (Khata); Infliction of punishment of dismissal; Application		55

<table>
<tr><td></td><td rowspan="11">Lahore High Court</td><td>of PEEDA Act on employees in police service; Dismissal from service on conviction in all types of offence</td><td rowspan="2"></td><td></td></tr>
<tr><td>36.</td><td>Transfer of case from court of ordinary jurisdiction to Anti-terrorism court; Effect of inclusion of an offence in the third schedule of Anti-terrorism Act; Course for sending the case to Anti-terrorism court; Transfer of case by magistrate directly to Anti-terrorism court after cognizance; Power of High Court to transfer case from court of ordinary jurisdiction to Anti-terrorism court</td><td>57</td></tr>
<tr><td>37.</td><td>Seeking guidance from judgment while executing decree</td><td>Family Law</td><td>59</td></tr>
<tr><td>38.</td><td>Conferment of estate of deceased to his legal heirs immediately after his death; Requirement to establish the claim of bonafide purchaser for value; Possession of undivided share from a joint un-partitioned immovable property</td><td rowspan="2">Civil Law</td><td>59</td></tr>
<tr><td>39.</td><td>Nature of order dismissing the application under Order 1 Rule 10 CPC and maintainability of appeal against said order</td><td>61</td></tr>
<tr><td>40.</td><td>Interference by High Court in concurrent findings of courts; Obligation to prove the correctness of mutation; Establishing ownership while seeking possession of property</td><td rowspan="2">Civil Law</td><td>62</td></tr>
<tr><td>41.</td><td>Meaning of the term ‘case decided’; Maintainability of revision petition against interlocutory</td><td>63</td></tr>
<tr><td>42.</td><td>Rights of a fugitive from law; Getting back rights by accused which he lost being fugitive from law; Depriving a citizen of his right to return to home</td><td>Criminal Law</td><td>64</td></tr>
<tr><td>43.</td><td>Necessity of tenancy to be in writing; Effect of any other agreement between the landlord and tenant on their relationship inter-se; Presumption regarding ownership of premises in absence of evidence to contrary</td><td>Civil Law</td><td>65</td></tr>
</table>

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Islamabad High Court Bar Association Islamabad through its President Muhammad Shoaib Shaheen, ASC Islamabad etc. v. Election Commission of Pakistan through the Chief Election Commissioner, Islamabad and others
Suo Motu Case No. 1 of 2023 etc.
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/s.m.c._1_2023_12062023.pdf

Facts: After dissolution of assemblies of two provinces i.e. Punjab and KPK, the dates of elections to theses provincial assemblies were not announced, therefore, petitioners filed constitutional petitions whereas Supreme Court also took suo motu notice.

Issues: i) Whether General Elections means collective Elections to National and all Provincial Assemblies?
ii) Which is the authority in whom is reposed the constitutional power and responsibility to appoint the date for the holding of a general election?
iii) Whether the President, in exercising his power under s. 57(1), can act on his own or is bound to act on the advice of the Prime Minister?
iv) Is there is any difference between "announcing" the date for the general election, and fixing or appointing said date?
v) Whether Supreme Court should have never taken up matter of holding of general election which was pending before High Court in ICA, as jurisdiction of the Court under Article 184(3) was co-extensive or concurrent with that of the High Courts under Article 199 for the enforcement of fundamental rights?

Analysis: i) Given the federal nature of the Constitution each Assembly is for this purpose a separate "unit" which must, even though the substantive and procedural constitutional and statutory requirements are essentially the same, be treated in its own right and in and of itself. Thus, e.g., if in relation of a given election cycle elections to the National Assembly and all the Provincial Assemblies are held on the same day, it must always be kept in mind that, constitutionally speaking, there are in law and fact five separate general elections that are being so held.
ii) Keeping in mind the constitutional provisions and also Parliament's legislative expression in the shape of s. 57(1), in principle three possibilities offer themselves: the President, the Governor or the Commission. Now, the Constitution does not expressly refer to any power of the Commission with regard to the appointment of the date. Both the President and the Governor find express mention in the Constitution in the present context, in terms of Articles 48(5) and 105(3) respectively. However, that power is conditional: "Where the [President/Governor] dissolves the [National/ Provincial] Assembly…." Finally, the President is expressly the repository of the power in terms of s. 57(1) of the 2017 Act. The Governor finds no mention in the Act, and the role of the

Commission in this context is consultative. Where the Constitution is silent as to which is the authority for appointing the date for the general election, it is Parliament's identification that must prevail and be applied. It will be seen that as originally enacted the power in terms of s. 11 to appoint the date for a general election lay with the Commission. However, it was an oblique grant in the sense that it was but the last step of the election schedule which had to be issued by the Commission. Section 11 was then substituted/amended such that the power to announce the date lay with the President. This position was maintained in s. 57. Focusing on s. 11 as originally enacted, there were two possibilities. One was that the power to appoint the date for the general election lay only with the Commission in terms of Articles 218 and 219. On this view, all that Parliament could do was to give statutory expression to the constitutional grant, and therefore any statute (here the 1976 Act) was limited only to conferring the power on the Commission. No other authority could be identified as the repository of the power. The second view was that since the Constitution was silent as to which authority could be empowered to appoint the date for the holding of the general election, it lay within the legislative competence of Parliament to identify the same and, by statute, make it the repository of the power. It is important to keep in mind that even here the power itself sounded on the constitutional plane. It was simply that Parliament had more leeway in identifying the specific authority that was to exercise it. On this view, when Parliament first acted it chose to identify the Commission as the repository of the power, which was then shifted to the President by successive statutory alterations to s. 11. That position was maintained when Parliament enacted fresh legislation on the subject, i.e., the 2017 Act… It follows from the foregoing that in those situations of dissolution where the Constitution is silent as to which is the authority for appointing the date for the general election, it is Parliament's identification that must prevail and be applied. Those are the situations identified in para 10(b) of the short order. Therefore, in the case of the Punjab Assembly the power to appoint the date for the general election lay with the President in terms of s. 57(1) and not the Governor. It follows that the Commission fell into error when it sought, and continued to seek, the date for the general election from the Governor of Punjab, and the latter was correct in refusing to give such date. Furthermore, the refusal of the Commission to consult with the President was also legally incorrect. In particular, its refusal to do so by means of its letter of 19.02.2023 when called upon by the President with express reference to s. 57(1) was an error that is only excusable (and was excused in the short error) on account of the lack of legal clarity. It also follows that the order of 20.02.2023 made by the President appointing the date for the Punjab Assembly was correct and well within his power and constitutional responsibility…

iii) Had the grant of power being entirely statutory in nature then the answer may well have been that the President would be bound to act on advice. However, as has been seen, s. 57(1) merely identifies the authority that is to exercise the power, the locus of which remains on the constitutional plane. Thus, the President

is discharging a constitutional obligation and responsibility. Having considered the point, we are of the view that the President, in appointing the date for the general election under s. 57(1), does not act on advice but rather on his own. In order to understand why this is so, we begin by looking at Article 48. Clause (1) provides that the President, in exercise of his functions, is to act on and in accordance with the advice of the Cabinet or the Prime Minister, as the case may be. The proviso to this clause allows for the President to require reconsideration of any advice tendered within fifteen days thereof and goes on to provide that when the advice is tendered again, he is to act on it within ten days thereof. Thus, if the proviso is applicable to a given situation, it could be up to almost a month before the advice is acted upon. Clause (2) of Article 48 provides that notwithstanding anything contained in clause (1) the President shall act in his discretion in respect of any matter "in respect of which he is empowered by the Constitution to do so". It is to be noted that the application of Article 48(2) is not necessarily limited only to those constitutional provisions where the word "discretion" is expressly used. There are provisions where the term is not used and yet the application thereof, on any sensible approach, is meaningful only if the President is to act on his own and not on advice. For example, consider Article 91(7). The term "discretion" is not used therein. It empowers the President to ask the Prime Minister to take a vote of confidence from the National Assembly. But the power can only be exercised if the President is satisfied that the "Prime Minister does not command the confidence of the majority of the members of the National Assembly". Is the President to act on advice here? A moment's reflection will show that that cannot be so. No Prime Minister (who can in any case take a vote of confidence from the Assembly at any time) would sensibly advice the President to take recourse to Article 91(7). To require that this provision can only be invoked on advice would be reduce it to a dead letter. This is therefore a provision where, even though the term "discretion" is not used, the President is empowered to act on his own.

iv) A distinction between "announcing" the date for the general election, and fixing or appointing said date, is without any merit. The President is not a mere mouthpiece for anyone else. He is acting on his own, and discharging a constitutional responsibility. The "announcement" is not a mere formality but a substantive act. In the context of the general elections required by the Constitution, it must have, and be given, real meaning, content and effect. In our view, it can mean nothing less than the appointment of the date for the general election.

v) The matter of holding a general election to an Assembly is constitutionally time bound and moves within a narrow locus in this regard. The holding of the general election is subject to strict temporal constraints. The record of the proceedings of the High Courts was placed before the Court. It became clear that while the learned Single Judge in the Lahore High Court had acted with admirable promptitude the same could not, unfortunately and with all due respect, be said of the learned Division Bench nor of the Peshawar High Court. Dates of hearing

were being given repeatedly and matters were proceeding at what, in the present context, can only be described as a rather relaxed pace. Several weeks had already elapsed. Furthermore, it was almost certain that whatever be the decisions in the High Courts they would be appealed to this Court. So, the matter would essentially be back where it already was, the only difference being that out of the constitutional time limit several more days (at the very least) if not weeks would be consumed. Furthermore, the possibility of a difference of opinion between the two High Courts could not be ruled out, with further attendant confusion and delay. All of these factors satisfied us that these were fit matters to be proceeded with here directly under Article 184(3) notwithstanding the proceedings pending in the High Court. For this Court to hold its hand and allow for the routine litigation process to play out would, in the facts and circumstances before us, detract from rather than serve the public interest. In the present matters, there are no such issues or questions. None of the learned counsel disputed any of the facts and the entire record was read several times without any objection of a factual nature being taken in relation thereto. The whole case has turned entirely on matters of law and high constitutional importance. It is now well settled that proceedings under Article 184(3) are also to be regarded as inquisitorial where, if so warranted, the Court may itself examine disputed factual questions and issues as well. To insist on these matters being, in effect, returned to the High Courts would be tantamount in the present circumstances to a denial of justice of a matter of high constitutional importance, involving the fundamental rights of the electorate at large and relatable to one of the salient features of the Constitution. Therefore, for essentially the same reason, in principle, why the objection of maintainability was not accommodated in the Benazir Bhutto case, we also declined to accept the objection for the matters at hand.

Conclusion:

i) If elections to the National Assembly and all the Provincial Assemblies are held on the same day, it must always be kept in mind that, constitutionally speaking, there are in law and fact five separate general elections that are being so held.

ii) Both the President and the Governor find express mention in the Constitution in the present context, in terms of Articles 48(5) and 105(3) respectively. However, that power is conditional: "Where the [President/Governor] dissolves the [National/ Provincial] Assembly…." Finally, the President is expressly the repository of the power in terms of s. 57(1) of the 2017 Act. The Governor finds no mention in the Act, and the role of the Commission in this context is consultative.

iii) In appointing the date for the general election under s. 57(1), the President does not act on advice but rather on his own.

iv) A distinction between "announcing" the date for the general election, and fixing or appointing said date, is without any merit.

v) The matter of holding a general election to an Assembly is constitutionally time bound and moves within a narrow locus in this regard. A considerable time has been consumed by the High Courts and the possibility of a difference of

opinion between the two High Courts could not be ruled out, with further attendant confusion and delay. All of these factors satisfied the Supreme Court that these were fit matters to be proceeded with here directly under Article 184(3) notwithstanding the proceedings pending in the High Court. For this Court to hold its hand and allow for the routine litigation process to play out would, in the facts and circumstances before us, detract from rather than serve the public interest. Facts are not disputed and the entire record was read several times without any objection of a factual nature being taken in relation thereto. The whole case has turned entirely on matters of law and high constitutional importance. Furthermore, it is now well settled that proceedings under Article 184(3) are also to be regarded as inquisitorial where, if so warranted, the Court may itself examine disputed factual questions and issues as well.

---

2. **Supreme Court of Pakistan**
Chairman, National Accountability Bureau, Islamabad v.
Yar Muhammad Solangi and others etc.
Civil Petitions No.101 to 110 of 2020
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._101_2020.pdf

Facts: The instant Civil Petitions have arisen from a consolidated judgment of the High Court of Balochistan, wherein ad-interim pre-arrest bail granted to the respondents was confirmed.

Issue: Where NAB did not seek the arrest of an accused during the course of initial inquiry or during the investigation and the accused is no longer required for investigation, whether it can seek the arrest of such accused when the reference has been filed and the matter is before the trial court?

Analysis: NAB did not seek the arrest of any of the respondents during the course of initial inquiry or during the investigation. The learned DPG, NAB does not deny this fact and is unable to explain why NAB seeks their arrest now, at this stage, given that the Reference has been filed and the matter is now before the trial court. Furthermore, the respondents have fully cooperated during the course of the investigation, as they have been attending all proceedings and according to the prosecution the respondents are no longer required for investigation. Further, NAB has taken into possession all the relevant record and no recovery is to be effected from the respondents.

Conclusion: Where NAB did not seek the arrest of an accused during the course of initial inquiry or during the investigation and the accused is no longer required for investigation, it cannot seek the arrest of such accused when the reference has been filed and the matter is before the trial court.

---

3. **Supreme Court of Pakistan**
Mian Azam Waheed, etc. v. The Collector of Customs through Additional Collector of Customs, Karachi.
Civil Petitions No. 3215/2021 etc.
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3215_2021.pdf

Facts: The petitioners through these Civil Petitions have challenged the judgment passed by the learned High Court whereby the questions of law framed in the Reference Applications were answered in favour of present respondent (Collector of Customs) and consequently thereof, the impugned judgment passed by the Customs Appellate Tribunal, was set aside and the orders passed by the lower fora were restored.

Issues: i) Whether the Constitutional Jurisdiction of the High Court can directly be availed by bypassing the equally efficacious, alternate, and adequate remedy provided under the law?
ii) Whether an interim order survives after the final adjudication, or it merges into the final order?

Analysis: i) The writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses, and plights regardless of having equally efficacious, alternate, and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The profound rationale accentuated in this doctrine is that the litigant should not be encouraged to circumvent or bypass the provisions assimilated in the relevant statute paving the way for availing remedies with precise procedure to challenge the impugned action.
ii) It is a well settled exposition of law that no interlocutory order survives after the original proceeding comes to an end. … The interim orders are made in the aid of the final order that the court may pass and which merges into final order and does not survive after the final adjudication. The issue and effect of an interlocutory order, final order and merger was considered in detail in paragraph 25 of the judgment in the case of Gen. (Retd.) Pervez Musharraf through Attorney Vs. Pakistan through Secretary Interior and others, (PLD 2014 Sindh 389) which was affirmed by this Court vide judgment reported as PLD 2016 Supreme Court 570.

Conclusion: i) The Constitutional Jurisdiction of the High Court cannot directly be availed by bypassing the equally efficacious, alternate, and adequate remedy provided under the law.

ii) An interim order does not survive after the final adjudication as it merges into

the final order.

---

4. **Supreme Court of Pakistan**
Habib Bank Ltd thr its Attorney v. Mehboob Rabbani
Civil Appeal No. 371/2020
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali nAkbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._371_2020.pdf

Facts: Through this instant Appeal by leave of the Court, the Appellant has challenged a judgment of the High Court of Sindh at Karachi whereby the appeal of the Appellant was dismissed, and the judgment of the Single Judge of the High Court was upheld.

Issues: (i) Whether High Court is barred from adjudicating on the matter in exercise of its original civil jurisdiction where service rules are non statutory?
(ii) What is the concept and scope of "Damages"?
(iii) On whom burden to prove lies in a suit for damages on breach of contract?
(iv) What are the general principles for ascertaining the quantum of general and special damages?
(v) Whether right of an opportunity to defend under Rule 39 of Habib Bank Limited (Staff) Service Rules of 1981 can be dispensed with?

Analysis: (i) The High Court of Sindh was exercising its original civil jurisdiction in terms of notifications in this regard issued from time to time. Therefore, the argument of the learned ASC for the Appellant that the service rules were non-statutory and internal in nature and therefore no Court had jurisdiction in the matter is repelled as misconceived. Admittedly, the Respondent alleged a wrong committed against him and it would be absurd to suggest that he could be left remediless. Whenever a Court is adjudicating a civil suit, it is regulated by the requisite laws and civil procedure applicable to it at the time the suit is filed and adjudicated upon. At no point has the Appellant taken the stance that the Civil Courts set up under the 1908 CPC were barred from adjudicating a suit for damages arising out of a breach of contract or taken the ground that the High Court exercising its original civil jurisdiction was not the appropriate forum for adjudicating the matter. In the absence of any such plea relating to lack of jurisdiction, the Appellant could not have sought preliminary dismissal of the suit on the ground that the service rules of the Appellant were non-statutory in nature and therefore, the High Court was barred from adjudicating on the matter in exercise of its original civil jurisdiction.
(ii) The etymology of the word "damages" reveals that the word damages stems from the words "dommage" in French and "damnum" in Latin, signifying that a thing is being taken away or that a thing is being lost which a party is entitled to have restored to him so that they may be made whole again.(…) Damages therefore are costs that are imposed not as a deterrent or as a means to punish person(s) or party(s) who has/have breached a contract but instead to bring the

person(s) or party(s) who has/have suffered from the breach of contract into a position which they would have been had the breach of contract not accrued. This principle is now legally known known as the principle of restitutio in integrum (restoration to original condition). It therefore stands to reason that damages are in fact the compensation that the law awards when a breach of contract occurs as compensation for the loss that a person or party has suffered from a breach of contract. (…) The concept of awarding damages is, by its very nature, inclusive of awarding both general as well as special damages. However, the nature of general and special damages and proving the two are different compared to each other.

(iii) Onus would lie on a plaintiff or claimant to prove that there had been a contract entered into between the parties; that there had been a breach of contract; and the extent of the damages claimed thereof.

(iv) General damages naturally arising according to the usual course of things from the breach of contract are recoverable in the ordinary circumstances. Special damages are awarded in cases, as may reasonably, be supposed to have been in contemplation of both parties at the time of contract. The law does not record consequential damages arising of delay in respect of money.(…) The rationale behind Section 73 of the 1872 Contract Act is to award damages for breach of contract which include damages that would "naturally arise in the usual course of things" or "which the parties knew, when they made the contract, to be likely to result from the breach of it". However by reason of the breach" It would go without saying that one aspect of a breach of contract would be the direct damages a party would be entitled to if a contract were to be broken. However, often, a breach of contract results, in other consequences which may be harmful or detrimental to the party who suffers from the breach of a contract.

(v) The Enquiry Committee dispensed with the requirements under Rule 39 of the 1981 Regulations but in doing so has infringed on the right of the Respondent to present oral evidence and cross examine anyone who might have testified against him. By dispensing with the requirements of Rule 39, the Respondent was denied a fundamentally important right of an opportunity to defend himself. The Enquiry Committee could only have dispensed with Rule 39 by assigning cogent reasons for doing so, which it failed to do, and in doing so the Enquiry Committee had breached a tenet of natural justice which enshrines that a person must not be condemned unheard and must be given a fair opportunity to defend himself before any adverse order is to be passed against them.

Conclusion:

(i) High Court is not barred from adjudicating on the matter in exercise of its original civil jurisdiction even where service rules are non statutory.

(ii) Damages are in fact the compensation that the law awards when a breach of contract occurs as compensation for the loss that a person or party has suffered from a breach of contract.

(iii) The onus to prove lies on the plaintiff in a suit for damages on breach of contract.

(iv) Ordinary damages arising out of breach of contract are normally recoverable

under normal circumstances. In such cases special damages are awarded as are reasonably believed to have been contemplated by both the parties at the time of the contract.

(v) The Enquiry Committee could only dispensed with under Rule 39 of Habib Bank Limited (Staff) Service Rules of 1981 by assigning cogent reasons for doing so because person must not be condemned unheard and must be given a fair opportunity to defend himself before any adverse order is to be passed.

---

5. **Supreme Court of Pakistan**
Allied Bank Limited v. Federation of Pakistan thr. Collectorate of Customs, Peshawar & others.
Civil Appeal No.196-P of 2014
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._196_p_2014_13062023.pdf

Facts: Through the instant Appeal by leave of this Court, the Appellant has challenged the judgment of the Peshawar High Court whereby the constitutional petition of the Respondent No.5 was dismissed.

Issues: i) Whether the parties between whom a guarantee is executed would be bound by the terms and conditions of the guarantee irrespective of any independent obligation of the principal debtor towards the creditor including its date of expiry?
ii) Whether a contract of guarantee is a standalone and independent contract between the guarantor and the beneficiary for a limited period?

Analysis: i) Since a guarantee is, for the purposes of the Contract Act, a contract under the law, the parties to the guarantee are deemed to be regulated by the terms of the guarantee which they have mutually agreed upon keeping in view the legal principle of consensus ad idem (meeting of the minds) when it comes to construction of contracts. Once a guarantee is executed between the parties (i.e. between a guarantor/surety and a creditor), they would be bound by the terms and conditions of the guarantee irrespective of any independent obligation of the principal debtor towards the creditor. That rule is firmly entrenched in our as well as common law jurisprudence… The parties to the guarantee contract are bound by the terms and conditions of the guarantee including its date of expiry. Unless a valid call is received by the Guarantor within the time specified in the guarantee, the Guarantor is released of any and all obligations under the contract and the contract itself expires.

ii) It may be emphasized that a contract of guarantee is a standalone and independent contract between the guarantor (in this case, the Appellant) and the beneficiary (in this case, Respondents 1-4/Federation) for a limited period (unless the guarantee contract specifically states that it is a continuing guarantee or language to that effect and no date or event of expiry thereof is specified) and for a limited purpose (that is, to pay the amount mentioned therein on a call being

made within the time specified) without reference to any third party or the underlying transaction that constituted the basis for issuance of the guarantee.

Conclusion: i) Yes, the parties between whom a guarantee is executed would be bound by the terms and conditions of the guarantee irrespective of any independent obligation of the principal debtor towards the creditor including its date of expiry.
ii) Yes, a contract of guarantee is a standalone and independent contract between the guarantor and the beneficiary for a limited period (unless the guarantee contract specifically states that it is a continuing guarantee or language to that effect and no date or event of expiry thereof is specified).

---

6. **Supreme Court of Pakistan**
Kashmali Khan & others v. Mst. Malala
Civil Appeal No.795 of 2017
Mr. Justice Ijaz ul Ahsan, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._795_2017.pdf

Facts: The suit out of which this appeal arises is one for pre-emption. The Court of first instance and, on appeal, the lower Appellate Court had held the plaintiffs, who are now appellants, to be entitled to the right of pre-emption claimed, but on an application for revision by the defendant, respondent herein, the High Court dismissed the claim, and reversed the decree drawn by the subordinate Courts.

Issues: i) Whether in order to strengthen the claim for pre-emption, it is mandatory for the plaintiff to first state the names of the witnesses for Talb-iIshhad in his plaint and then prove their attestation by producing them in Court?
ii) Whether mere signing and sending a notice of Talb-iIshhad to the vendee is sufficient without confirming the intention to exercise the right of pre-emption?
iii) Whether as per Section 14 of the Khyber Pakhtunkhwa Pre-emption Act, 1987, Talb-i-Ishhad can be done by an agent?
iv) Whether the right of pre-emption is strictissimi juris (strict rule of law) and the slightest deviation from the formalities required by law will prevent its accrual?

Analysis: i) As such, it was mandatory for the plaintiffs to first state the names of the witnesses for Talb-iIshhad in their plaint and then prove their attestation by producing them in Court. Keeping this legal obligation in mind, we examined the contents of the plaint to ascertain whether the names of the witnesses of Talb-i-Ishhad had been disclosed therein. On perusal, it was found that the plaintiffs had omitted to mention the names of such witnesses in the plaint. The right of pre-emption is but a feeble right. As it disseizes another who has acquired a property in bona fide manner for good value, it entails that the ritual of the Talbs must be observed to the letters, and any departure, howsoever slight it may be, defeats the right of pre-emption.
ii) Section 13(3) of the Khyber Pakhtunkhwa Pre-emption Act, 1987 makes it mandatory that pre-emptor while making Talb-i-Ishhad by sending a notice in

writing attested by two truthful witnesses, under registered cover acknowledgment due to the vendee, shall confirm his intention to exercise the right of pre-emption. It is for this reason that this Court in Muhammad Zahid vs. Muhammad Ali has held that mere signing and sending a notice to the vendee without confirming the intention to exercise the right of pre-emption is not sufficient to found Talb-i-Ishhad.

iii) It is true that Talb-i-Ishhad can be done by an agent, as provided in Section 14 of the Khyber Pakhtunkhwa Pre-emption Act, 1987. But the context shows that this is only an exception in the case of person who is unable to make the demand personally. The exception cannot supersede the general rule.

iv) It is now well recognized that the right of preemption is strictissimi juris (strict rule of law) and the slightest deviation from the formalities required by law will prevent its accrual.

Conclusion:

i) In order to strengthen the claim for pre-emption, it is mandatory for the plaintiff to first state the names of the witnesses for Talb-iIshhad in his plaint and then prove their attestation by producing them in Court.

ii) Mere signing and sending a notice of Talb-iIshhad to the vendee is not sufficient without confirming the intention to exercise the right of pre-emption.

iii) As per Section 14 of the Khyber Pakhtunkhwa Pre-emption Act, 1987, Talb-i-Ishhad can be done by an agent when the pre-emptor is unable to make the demand personally.

iv) The right of pre-emption is strictissimi juris (strict rule of law) and the slightest deviation from the formalities required by law will prevent its accrual.

---

7. **Supreme Court of Pakistan**

A. Rahim Foods (Pvt) Limited v. K&N's Foods (Pvt) Limited and others
Competition Commission of Pakistan v. A. Rahim Foods (Pvt) Limited and another
Civil Appeals No. 444 & 445 of 2017
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._444_2017.pdf

Facts:

The K&N's Foods (Pvt) Limited filed a complaint against A. Rahim Foods (Pvt) Limited with the Competition Commission of Pakistan asserting involvement of Rahim Foods in deceptive marketing practices on which the Commission after enquiry and notice, imposed the penalties on Rahim Foods for contravention of the provisions of Section 10, under Section 38 of the Competition Act 2010. Rahim Foods appealed the order of the Commission before the Competition Appellate Tribunal which allowed the appeal partially. Hence, Rahim Foods and the Commission filed these appeals against the judgment of the Competition Appellate Tribunal under Section 44 of the Act.

Issues:

i) Whether Supreme Court can interfere with the concurrent findings of the courts below on the issues of facts?

ii) What is the legislative policy in promulgating the Competition Act 2010?

iii) What is concept of Free and Fair competition?
iv) Whether the Competition Act 2010 prohibits deceptive marketing practices?
v) Whether distributing false or misleading information is a wrongful act under the Competition Act 2010 or before the promulgation of the Act?
vi) Whether intention of the defendant is relevant for holding him liable under the expression 'fraudulent use' as mentioned Section 10(2)(d) of the Act?
vii) Whether the word 'use' in the phrase of Section 10(2)(d) of Act restricted to use of same trademark or it also include similar trademark?
viii) What is the criterion to determine the confusing similarity in trademark?
ix) Whether registration of trademark is necessary for the applicability of the provisions of Section 10(2)(d) of the Act?
x) What is difference between misrepresentation in a passing-off action and misrepresentation in an injurious falsehood action?
xi) Whether an adjudicatory body has locus standi to contest for upholding its quasi-judicial decision?

Analysis:

i) In the exercise of its appellate jurisdiction in civil cases, this Court as a third or fourth forum, as the case may be, does not interfere with the concurrent findings of the courts below on the issues of facts unless it is shown that such findings are on the face of it against the evidence available on the record of the case and is so patently improbable or perverse that no prudent person could have reasonably arrived at it on the basis of that evidence. A mere possibility of forming a different view on the reappraisal of the evidence is not a sufficient ground to interfere with such findings.
ii) The preamble to the Act sets out the objective of the Act and provides for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive forces. The Act aims to address the situations that tend to lessen, distort or eliminate competition, such as (i) actions constituting an abuse of market dominance, (ii) competition restricting agreements, and (iii) deceptive marketing practices… Article 18 of the Constitution of Pakistan provides that every citizen shall have the right to conduct any lawful trade or business and clause (b) of the proviso to the said Article states that nothing in this Article shall prevent the regulation of trade, commerce or industry in the interest of free competition. Therefore, regulation in the interest of free competition actualizes the fundamental freedom guaranteed under the Constitution to conduct lawful trade and business. As free and fair competition ensures freedom of trade, commerce and industry and therefore forms an intrinsic part of the fundamental right to freedom of trade and business guaranteed under Article 18 of the Constitution. The preambular objective of the Act is to ensure "free competition" in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from "anticompetitive behaviour".
iii) Free and Fair competition is a fundamental concept in economics that involves providing a level playing field for all market participants. It is based on the

principles of a free market where businesses compete on equal terms, and consumers make decisions based on price, quality, and preference. Free and fair competition is competition that is based on quality, price, and service rather than unfair practices. Predatory pricing, competitor bashing, and the abuse of monopoly-type powers, for example, are unfair practices. When competitors can compete freely on a 'level playing field,' economies are more likely to thrive. On the other hand, unfair competition is using illegal, deceptive, and fraudulent selling practices that harm consumers or other businesses to gain a competitive advantage in the market. However, free and fair competition is encouraged and enforced through legislation and regulation to promote economic efficiency, innovation, and consumer welfare. Violations of fair competition principles can lead to legal consequences, penalties, or other corrective measures. Competition is not only healthy for businesses, but pivotal for innovation. It sparks creativity and nurtures transformation and progress.

iv) The "free competition" envisaged by the Constitution and aimed to be ensured by the Act, therefore, means a competition through fair means, not by any means. To ensure fair competition in trade and business, Section 10 of the Act has prohibited certain marketing practices by categorising them as deceptive marketing practices, and Sections 31, 37 and 38 of the Act have empowered the Commission to take appropriate actions to prevent those practices. With this constitutional underpinning in the background, we now proceed to examine the meaning and scope of clauses (a) and (d) of Section 10(2) of the Act.

v) The acts of distributing false or misleading information that is capable of harming the business interests of another undertaking and fraudulent use of another's trademark, firm name, or product labelling or packaging, which constitute deceptive marketing practices as per clauses (a) and (d) of Section 10(2), were in themselves wrongful acts even before the promulgation of the Act. The common law actions of 'injurious falsehood' and 'passing-off' were the well-known remedies for these wrongs. The Act has codified the common law on these two actions in clauses (a) and (d) of Section 10(2) and entrusted the adjudication of the same to the specialised forums – the Commission and the Tribunal. The main objective of codifying common law is to create a coherent and clear system of laws that is readily accessible and understandable to the public. Codification adds consistency, accessibility, clarity, uniformity and predictability. Any such codification may or may not amend or modify the common law.

vi) The expression 'fraudulent use' in Section 10(2)(d) has made the intention of the defendant (user of another's trademark, firm name, or product labelling or packaging) also relevant for holding him liable under the Act. However, as the Act has not defined the term 'fraudulent' and thus not given any particular meaning to it, the expression 'fraudulent use' in Section 10(2)(d) is to be understood in its ordinary sense of 'intentional and dishonest use' in contrast to a mere 'mistaken or negligent' use. Needless to mention that 'intention', being a state of mind, can rarely be proved through direct evidence, and in most cases, it is to be inferred from the surrounding facts and circumstances of the case.

vii) The word ‘use’ in the phrase of Section 10(2)(d), that is, ‘fraudulent use of another’s trademark, firm name, or product labelling or packaging’, also requires elaboration: whether it only relates to the use of the same trademark, firm name, or product labelling or packaging, or it includes the use of the similar trademark, firm name, or product labelling or packaging and whether it covers the ‘parasitic copying’ of another’s trademark, firm name, or product labelling or packaging. Since Section 10(2)(d) of the Act has codified the common law on passing-off action, we need to see how the use of another’s trademark, firm name, or product labelling or packaging is understood and applied in such common law action and whether the language of Section 10(2)(d) suggest any change. In this regard, it is notable that though the common law of passing-off action and the statutory law of infringement of registered trademarks deal in different ways with deceptive marketing practices, their basic principle is common. It is that ‘a trader may not sell his goods under false pretences, either by deceptively passing them off as the goods of another trader so as to take unfair advantage of his reputation in his goods, or by using a trade sign the same, or confusingly similar to, a registered trade mark.’ The misrepresentation alleged in a passing-off action is therefore also judged on the same or confusingly similar standard as it is done in a trademark-infringement action. Further, the criterion to determine the confusing similarity (also referred to as deceptively similar), which is described hereinafter, is also common in both these actions. As ‘nobody has any right to represent his goods as the goods of somebody else’, it is unlawful for a trader to pass off his goods as the goods of another by using the same or confusingly similar mark, name, or get-up. In a passing-off action, ‘the point to be decided’, as said by Lord Parker, ‘is whether, having regard to all the circumstances of the case, the use by the defendant in connection with the goods of the mark, name, or get-up in question impliedly represents such goods to be the goods of the plaintiff’. There is nothing in the language of Section 10(2)(d) of the Act that the meaning of the word use has been restricted therein to the use of the same trademark, firm name, or product labelling or packaging. We, therefore, hold that the word “use” in Section 10(2)(d) of the Act includes the use of trademark, firm name, or product labelling or packaging which is confusingly similar (also referred to as deceptively similar) to that of another undertaking.

viii) So far as the criterion to determine the confusing similarity is concerned, the same is well-established in our jurisdiction in passing-off and trademark-infringement actions, which also applies in deciding disputes under Sections 10(2)(d) of the Act. It is whether an unwary ordinary purchaser is likely to be confused or deceived into purchasing the article of the defendant carrying the contentious mark, name or get-up as that of the plaintiff (complainant). The criterion is thus that of such an ordinary purchaser ‘who knows more or less the peculiar characteristics of the article he wants; he has in his mind’s eye a general idea of the appearance of the article and he looks at the article not closely, but sufficiently to take its general appearance’. It is not that of a careful purchaser neither is it of a ‘moron in a hurry’. The purchaser is unwary in the sense that he

does not when he buys the article 'look carefully to see what the particular mark or name upon it is' but not that he does not even know the peculiar characteristic of the article he wants to buy. An ordinary customer is not supposed to precisely remember every detail of the mark, name or get-up of the article he intends to buy. The standard is therefore also described as that of a purchaser of average intelligence and imperfect recollection. Further, to determine the confusing or deceptive similarity from the point of view of an unwary ordinary purchaser, the leading characteristics, not the minute details, of the two marks, names or get-ups (labelling or packaging) are to be considered. As the competing marks, names or get-ups when placed side by side, may exhibit many differences yet the overall impression left by their leading characteristics on the mind of an unwary purchaser may be the same. An unwary ordinary purchaser acquainted with the one and not having the two side by side for comparison, may well be confused or deceived by the overall impression of the second, into a belief that he is buying the article which bears the same mark, name or get-up as that with which he is acquainted.

ix) The question, whether registration of trademark (or for that matter, registration of firm name, or product labelling or packaging) is necessary for the applicability of the provisions of Section 10(2)(d) of the Act, is not difficult, as neither the common law action of passing-off requires such registration nor does the language of Section 10(2)(d) provide for any such requirement. The statutory law and common law stand together on this point. We, therefore, endorse the view of the Tribunal on this point. One must remember, in this regard, the difference between the objectives of a passing off action and a trademark-infringement action. A passing-off action essentially aims to protect 'property in goods' on account of its reputation (goodwill), not the trademark thereof, whereas the trademark-infringement action is meant to protect 'property of trademark' as a trademark itself is a property.

x) The general difference between misrepresentation in a passing-off action and misrepresentation in an injurious falsehood action is that in the former action, the misrepresentation is made by the defendant concerning his own goods while in the latter it is made concerning the goods of the plaintiff. In a passing-off action, the defendant by misrepresentation primarily attempts to take the undue benefit of the reputation (goodwill) of the goods of the plaintiff though he thereby also causes damage to the business of the plaintiff indirectly; but in an injurious falsehood action, the direct and express purpose of the misrepresentation is to cause damage to the reputation (goodwill) of the goods of the plaintiff though it may also impliedly or indirectly benefit the business of the defendant.

xi) In this regard, we may observe that though the role of the Commission under the Act is primarily of a regulatory body, it is quasi-judicial as well under some provisions of the Act. The provisions of clauses (a) and (d) of Section 10(2) of the Act, in our view, envisage the quasi-judicial role of the Commission while deciding upon the divergent claims and allegations of two competing undertakings. And, as held by this Court in Wafaqi Mohtasib case, an

adjudicatory body deciding a matter in exercise of its quasi-judicial powers between two rival parties under a law cannot be treated as an aggrieved person if its decision is set aside or modified by a higher forum under that law or by a court of competent jurisdiction and such body thus does not have locus standi to challenge the decision of that higher forum or court.

Conclusion:

i) Supreme Court can not interfere with the concurrent findings of the courts below on the issues of facts unless it is shown that such findings are on the face of it against the evidence available on the record of the case and is so patently improbable or perverse.

ii) The legislative policy in promulgating the Competition Act 2010 is to address the situations that tend to lessen, distort or eliminate competition, such as (i) actions constituting an abuse of market dominance, (ii) competition restricting agreements, and (iii) deceptive marketing practices.

iii) The concept of Free and Fair competition is a competition that is based on quality, price, and service rather than unfair practices.

iv) The Competition Act 2010 prohibits the deceptive marketing practices.

v) Distributing false or misleading information is a wrongful act under the Competition Act 2010 and it was a wrongful act even before the promulgation of the Act.

vi) Intention of the defendant is relevant for holding him liable under the expression 'fraudulent use' as mentioned Section 10(2)(d) of the Act.

vii) The word 'use' in the phrase of Section 10(2)(d) of Act is not restricted to use of same trademark but it also include the use of trademark, firm name, or product labelling or packaging which is confusingly similar.

viii) The criterion to determine the confusing similarity in trademark is not the minute details but when competing marks, names or get-ups placed side by side, may exhibit many differences yet the overall impression left by their leading characteristics on the mind of an unwary purchaser may be the same.

ix) Registration of trademark is not necessary for the applicability of the provisions of Section 10(2)(d) of the Act.

x) The general difference between misrepresentation in a passing-off action and misrepresentation in an injurious falsehood action is that in the former action, the misrepresentation is made by the defendant concerning his own goods while in the latter it is made concerning the goods of the plaintiff.

xi) An adjudicatory body has no locus standi to contest for upholding its quasi-judicial decision.

---

8. **Supreme Court of Pakistan**
Prof. Dr. Manzoor Hussain, etc. v. Zubaida Chaudhry, etc.
Civil Petition No.1942/2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1942_2022.pdf

Facts: The respondent No.1 alleged harassment at her workplace by the petitioners.

After her departmental complaint was not processed, she filed a complaint before the Federal Ombudsman under Section 8(1) of the Protection against Harassment of women at the Workplace Act, 2010 ("Act of 2010"). The complaint was allowed by imposing a minor penalty of censure on the petitioners along with a fine of Rs. 1,00,000/- each payable by the petitioners to respondent No.1. Against the said order of the Ombudsman, petitioner Nos. 2 and 3, and respondent No.1 filed their respective representations before the President. The President accepted the representations of the petitioners and dismissed the representation of respondent No.1. Respondent No.1 then filed a writ petition before the High Court assailing the order of the President. The writ petition was disposed of without adverting to the merits of the case, it was held that the President could not have delegated his decision-making authority to any other person or official, therefore, the order of the President was set aside and the matter was remanded. Hence, this civil petition has been filed against the judgment passed by High Court.

Issues:

i) How the word "process" used under Section 14(4) of the Federal Ombudsmen Institutional Reforms Act, 2013 can be defined?
ii) Whether the power to process and the power to decide a representation are distinct functions?
iii) What is object of the requirement of the nominated officer under the Act, 2013?
iv) What is role of the nominated officer under the Act, 2013?
v) Whether it is necessary for the president to agree with nominated officer for deciding the representation?
vi) Whether Section 14(4) of the Act of 2013 indicates that power to decide representation has been delegated to the nominated officer?

Analysis:

i) "Process" is defined as "a series of actions or steps towards achieving a particular end" or "a mode, method, or operation, whereby a result or effect is produced". Processing the representation therefore comprises of the actions or steps towards achieving the required objective i.e. a decision on the representation by the President.
ii) It is important to note that the power to process a representation, by preparing the case, and the power to decide that representation, after due application of mind, are inherently distinct functions and cannot be equated or conflated. The function of processing a representation by the nominated officer is only ancillary to the main objective of decision on the representation by the President. According to De Smith's Judicial Review5, Courts have even conceded that an authority has an implied power to entrust to a group of its own members with the authority to investigate, to hear evidence and make recommendations in a report, provided that (a) it retains the power to make decisions in its own hands6 and receives a report full enough to enable it to comply with its duty to "hear" before deciding, and (b) the context does not indicate that it must perform the entire

adjudicatory process itself.

iii) It is also evident that the object of the requirement of the nominated officer, a person of high legal standing who has acted or is qualified to act in a judicial or quasi-judicial capacity, to process the representation, which might involve significant substantive and technical legal questions, and to express his views on the said representation before sending the case to the President for decision thereon, is only to assist the President in deciding the representation. The President may or may not be a person with a legal background and, along with deciding representations filed under other diverse laws, has various other overbearing and important functions and duties as head of State, which include the functions, powers and duties of the President under the Constitution, and under other laws.

iv) As such, in view of the demanding and arduous position that the President holds, and, therefore, for practical purposes, the role of the nominated officer is only to consolidate and simplify the record, and prepare the case before him so that it can be presented before the President for his decision.

v) This in no manner dilutes the decision-making powers of the President because the discretion to accept or reject a representation is retained and vested entirely in the President himself, who, while deciding the representation, may agree with the recommendations/proposals so forwarded by the nominated officer, by adopting the reasons given by the nominated officer and/or also for his own reasons, or disagree with them for his own reasons and decide the representation after assessing the available record and independently applying his mind to the matter.

vi) As such, it is apparent that even though the views of the nominated officer in the form of such recommendations/proposals may assist the President in coming to a decision regarding the representation, however, it is only the President who decides the representation after conscious application of independent mind on the strength of tangible and material evidence, as is required under the law.14 Consequently, the power of the President to decide the representation himself remains intact and cannot be said to have been delegated to any other officer nominated by him under Section 14(4) of the Act of 2013.

Conclusion:

i) "Process" is defined as "a series of actions or steps towards achieving a particular end" or "a mode, method, or operation, whereby a result or effect is produced".

ii) The power to process and the power to decide a representation are distinct functions.

iii) The object of the requirement of the nominated officer is to nominate a person of high legal standing who has acted or is qualified to act in a judicial or quasi-judicial capacity, to process the representation.

iv) The role of the nominated officer is only to consolidate and simplify the record, and prepare the case before him so that it can be presented before the President for his decision.

v) It is not necessary for the president to agree with nominated officer for

deciding the representation and the president can disagree with nominated officer.
vi) Section 14(4) of the Act of 2013 does not indicate that power to decide representation has been delegated to the nominated officer.

---

9. **Supreme Court of Pakistan**
Salman Ashraf v. Additional District Judge, Lahore, etc.
Civil Petition No.2000-L of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2000_l_2020.pdf

Facts: The petitioner seeks leave to appeal against an order of the Lahore High Court, whereby the High Court has dismissed his writ petition and upheld the order of the revisional court. By its order, the revisional court had dismissed the revision petition of the petitioner filed against the order of the trial court, dismissing the application of the petitioner for rejection of the plaint. All three courts below have thus decided the matter against the petitioner.

Issues: i) What is the object of civil and criminal proceedings?
ii) Whether civil as well as criminal proceeding could run simultaneously in one and the same matter?
iii) When the criminal proceedings may be stopped pending civil proceedings?
iv) Whether finding of a criminal court on a fact constituting the offence tried by that court is relevant in a civil proceeding?
v) What are essential ingredients to invoke the provisions of clause (d) of Rule 11 of Order 7, CPC?
vi) Whether there may be divergent judgments by the civil and criminal courts on the facts that give rise to both civil and criminal liabilities?

Analysis: i) It hardly needs reiteration that the object of a civil proceeding is to enforce civil rights and obligations while that of a criminal proceeding is to punish the offender for the commission of an offence.
ii) It is, therefore, a well-established legal position in our jurisdiction that both the civil proceeding and criminal proceeding relating to one and the same matter can be instituted and ordinarily proceeded with simultaneously.
iii) Although there is no bar to the simultaneous institution of both proceedings, the trial in the criminal proceeding may be stopped in certain circumstances. And the guiding principle in this regard is also well-defined. It is that where the criminal liability is dependent upon or intimately connected with the result of the civil proceeding and it is difficult to draw a line between a bona fide claim and the criminal act alleged, the trial in the criminal proceeding may be postponed till the conclusion of the civil proceeding. Thus, where either of these two conditions is not fulfilled, i.e., where the subject matter of civil proceeding and that of criminal proceeding are distinct, not intimately connected, or where the civil proceeding is instituted mala fide to delay the criminal prosecution, not bona fide,5 the criminal proceeding may not be stayed.

iv) It is notable that the whole jurisprudence on the subject, as briefly stated above, has developed while dealing with the question of staying criminal proceeding till the conclusion of the connected civil proceeding. Not a single case is brought to our notice wherein the question of staying civil proceeding till the culmination of the criminal proceeding had been raised. The reason is not far to see. The decision of a civil court as to any right, title or status, which only that court can finally decide, may have a substantial bearing upon a constituent ingredient of the offence being tried by the criminal court. On the other hand, any finding of a criminal court on a fact constituting the offence tried by that court is irrelevant in a civil proceeding to decide the same fact in the course of adjudicating upon and enforcing civil rights and obligations.

v) Section 9, CPC, provides that the civil courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. And as per clause (d) of Rule 11 of Order 7, CPC, a plaint can be rejected where the suit appears to be barred by any law. Thus, to succeed in his plea for rejection of the plaint in the suit of the respondent, the petitioner is to show under which law the suit of the respondent is either expressly or implied barred.

vi) Needless to mention that the standard of proof required in civil and criminal proceedings is different. In the former, a mere preponderance of probability is sufficient to decide the disputed fact but in the latter, the guilt of the accused must be proved beyond any reasonable doubt. There are, therefore, chances of giving divergent judgments by the civil and criminal courts on the facts that give rise to both civil and criminal liabilities.

Conclusions:

i) Object of a civil proceeding is to enforce civil rights and obligations while that of a criminal proceeding is to punish the offender.

ii) Both civil and criminal proceedings relating to one and the same matter can be instituted and ordinarily proceeded with simultaneously.

iii) Where the criminal liability is dependent upon the result of the civil proceeding and it is difficult to draw a line between a bona fide claim and the criminal act alleged, the trial in the criminal proceeding may be postponed till the conclusion of the civil proceeding.

iv) Any finding of a criminal court on a fact constituting the offence tried by that court is irrelevant in a civil proceeding.

v) To succeed in plea for rejection of the plaint it is to show under which law the suit is either expressly or implied barred.

vi) Because of different evidential standards, judgments of civil and criminal courts on the facts that give rise to both civil and criminal liabilities may be divergent.

10. **Supreme Court of Pakistan**
Said Rasool v. Maqbool Ahmed etc.
Civil Appeal No. 102 -L of 2017
Mr. Justice Munib Akhtar, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._102_l_2017.pdf

Facts: The predecessor of the respondents filed a suit for specific performance of an agreement for sale. The suit was decreed by the Trial Court. The appeal filed by the appellant was partly allowed by the Additional District Judge. The respondents filed a Revision Petition before the Lahore High Court, Lahore, which was allowed, hence, this appeal.

Issues: i) What are the basic elements to be proved for the enforcement of valid agreement and how are these elements determined?
ii) What is written agreement and when the parties are bound by it?
iii) What is legal requirement for a valid written agreement, when it pertains to financial or future obligations?
iv) How the written agreement is required to be proved?
v) Whether written agreement which is not signed by either or one of the parties, is valid and enforceable?
vi) How unsigned agreement is required to be proved and whether the same is enforceable?

Analysis: i) Therefore, the basic elements required to be proved for a valid agreement to be legally enforceable are mutual consent, expressed by a valid offer and acceptance; adequate consideration; capacity; and for it to be subject to the laws of the jurisdiction. These may be determined by looking at the objective manifestations of the intent of the parties as gathered by their expressed words and deeds, as well as objective evidence establishing that the parties intended to be bound.
ii) An agreement may be oral or in writing. A written agreement is an instrument whereby parties perform the act of declaring their consent as to any act or thing to be done by some or all parties through the process of writing. Where the parties to an agreement intend not to be bound until their agreement is reduced to writing and signed, neither party is bound until the writing is executed.
iii) If the written agreement pertains to financial or future obligations, it is to be compulsorily attested by two men or one man and two women , as provided by Article 17(2) of the Qanun-e-Shahadat Order, 1984 ("QSO, 1984 ") which is sine qua non for a valid agreement.
iv) Such written document should not be used as evidence until the attesting witnesses are called for the purpose of proving its execution in a manner enumerated in Article 79 of the QSO, 1984.
v) However, this situation must be distinguished from that in which the parties intend to bind themselves orally or by their conduct, but have the further intention of reducing their agreement to a writing after the oral agreement is made. In such case, the written agreement of the completed oral contract remains unaffected

even if it is not signed by either party. The requirement of signing the agreement by the parties is to show their free consent and intention to be legally bound by their oral offer and acceptance. In circumstances where the agreement is reduced into writing and is not signed by either or one of the parties, it may still be valid and enforceable, however, its legal effect will be limited and the enforceability may be more difficult to establish in such case.

vi) It is, therefore, necessary that it must be pleaded in the pleadings and the requirements of a valid contract must be proved through cogent evidence by the party relying upon it. These factors will be considered by the courts in determining the intent of the parties and steps partially taken for giving effect to the agreement. Thus, if the courts are satisfied that the party relying upon an unsigned agreement has proved the necessary ingredients for its validity, it may be enforced in favour of the party claiming its performance.

Conclusion:

i) Basic elements required to be proved for a valid agreement to be legally enforceable are mutual consent, expressed by a valid offer and acceptance; adequate consideration; capacity; and for it to be subject to the laws of the jurisdiction. These may be determined by looking at the objective manifestations of the intent of the parties.

ii) A written agreement is an instrument whereby parties perform the act of declaring their consent as to any act or thing to be done by some or all parties through the process of writing. Where the parties to an agreement intend not to be bound until their agreement is reduced to writing and signed, neither party is bound until the writing is executed.

iii) Written agreement is to be compulsorily attested by two men or one man and two women, when it pertains to financial or future obligations.

iv) Written agreement is required to be proved by producing the attesting witnesses in a manner enumerated in Article 79 of the QSO, 1984.

v) When the parties have the intention of reducing their agreement to a writing after the oral agreement is made and is not signed by either or one of the parties, it may still be valid and enforceable.

vi) It is necessary that unsigned agreement must be pleaded in the pleadings and the requirements of a valid contract must be proved through cogent evidence.

---

11. **Supreme Court of Pakistan**
Jamaluddin etc. v. The State
Criminal Petition Nos. 41-K & 42-K of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Zazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._41_k_2023.pdf

Facts: Through the instant petitions, the petitioners have assailed the order passed by the learned Single Judge of the High Court of Sindh, with a prayer to grant pre-arrest bail and post-arrest bail in case/FIR under Sections 324/148/149 PPC.

Issues: i) Whether the principle that consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings applies where the petitioners/accused are ascribed the same role?
ii) Whether liberty of a person which is a precious right can be taken away merely on bald and vague allegations?

Analysis: i) As far as the principle enunciated by this Court regarding the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings is concerned, we have noticed that in this case both the petitioners are ascribed the same role. For the sake of arguments if it is assumed that the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency.
ii) Liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.

Conclusion: i) The principle that consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings does not apply where the petitioners/accused are ascribed the same role?
ii) Liberty of a person which is a precious right cannot be taken away merely on bald and vague allegations.

---

12. **Supreme Court of Pakistan**
Nadia Naz v. The President of Islamic Republic of Pakistan, President House, Islamabad and others
Civil Review Petition No.255 and 570 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._255_2021.pdf

Facts: Civil Review Petitions are directed against judgment passed by this Court, the Petitioners pray for review and recall of the judgment due to its interpretation of the definition of harassment in Section 2(h) of the Protection against Harassment of Women at the Workplace Act, 2010.

Issues: i) Whether the word sexual includes gender, how it becomes relevant and gives meaning in the context of harassment and becomes actionable as per the Harassment of Women at the Workplace Act, 2010?
ii) Whether harassment is limited to sexual activity and when it becomes workplace harassment?

iii) What will be the impact if the conduct of harasser is given restricted meaning to sexual nature or form?
iv) Whether the Protection against Harassment of Women at the Workplace Act 2010, is restricted to female victims?
v) What is the meaning of sexual harassment at the workplace?
vi) What is the purpose of harassment laws?
vii) What should be the standard to determine the harassment?

Analysis:

i) If the definition of the word sexual is taken to also include the gender, the impact is significant when reading Section 2(h) of the Act as harassment means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes. So in the context of harassment, the word sexual and sexually are relevant and give meaning to the word harassment, which in this context becomes actionable when it relates to the gender, being sex-based discrimination as opposed to only meaning coital relations and advances.
ii) The definition of harassment explains that sex-based discrimination does not have to be limited to sexual activity, rather it is behaviour which is promoted on account of the gender as a result of gender-based power dynamics, which behaviour is harmful and not necessarily a product of sexual desire or sexual activity. Such harassment is motivated to degrade and demean a person by exploitation, humiliation and hostility which amounts to gender-based harassment and can include unwanted sexual alleviation and sexual coercion. Such behaviour in law becomes harassment at the workplace when it causes interference with work performance or creates an intimidating, hostile or offensive work environment and has the effect of punishing the complainant for refusal to comply with a request or is made a condition for employment.
iii) If the conduct of the harasser is given a restricted meaning to being of sexual nature or form, it takes away the essence of the meaning of harassment, its purpose and reduces its impact and scope and ignores that sexual harassment is oftentimes less about sexual interest and more about reinforcing existing power dynamics. Such an application of the law limits the protection offered under the Act and effectively excludes many instances where the victim may be harassed but cannot bring action against the harasser since the conduct was not sexual in nature.
iv) The Act is not restricted to female victims, as the word employee defined in Section 2(f) of the Act means any regular or contractual employee and does not simply state women employees. Furthermore, complainant defined in Section 2(e) under the Act means a woman or man who has made a complaint. Hence, the Act recognizes that harassment is gender-based and that the victim can be a man or a woman.
v) Sexual harassment at the workplace means that the presence of women at the workplace triggers this gender-based harassment, which in turn undermines a women's right to public life, her right to dignity and most important, her basic

right to be treated equal. Sexual harassment compromises these rights of a woman which entails being economically and financially independent and being able to make independent decision and more importantly to be considered as a productive member of society.

vi) The purpose of harassment laws is to address gender-based discrimination at the workplace and not to limit it to sexual forms of harassment. It includes a broad range of conduct and behaviour which results in workplace problems with serious consequences, one of the main being gender inequality. Being an issue grounded in equal opportunity and equal treatment of men and women in matters of employment, sexual harassment in any form violates the dignity of a person as it is a demeaning practice that aims to reduce the dignity of an employee who has been forced to endure such conduct. Sexual harassment as gender-based discrimination is gender-based hostility, which creates a hostile work environment. It is a reflection of the unequal power relations between men and women which translates into a form of abuse exploitation and intimidation at the workplace which makes it a violation of a basic human right.

vii) In cases of harassment, the victim's perspective is relevant as against the notion of acceptable behaviour. The standard of a reasonable woman should be considered to determine whether there was harassment, which rendered the workplace hostile and all relevant factors should be viewed objectively and subjectively.

Conclusion:

i) The word sexual includes the gender so, in the context of harassment, the word sexual and sexually are relevant and give meaning to the word harassment, which in this context becomes actionable when it relates to the gender.

ii) Harassment is not limited to sexual activity; rather it is behaviour which is promoted on account of the gender. Such behaviour in law becomes harassment at the workplace when it causes interference with work performance.

iii)) If the conduct of the harasser is given a restricted meaning to being of sexual nature or form, it takes away the essence of the meaning of harassment that sexual harassment is oftentimes less about sexual interest and more about reinforcing existing power dynamics.

iv) The Act is not restricted to female victims, as the word employee defined in Section 2(f) of the Act means any regular or contractual employee and does not simply state women employees.

v) Sexual harassment at the workplace means that the presence of women at the workplace triggers this gender-based harassment, which in turn undermines a women's right to public life, her right to dignity and most important, her basic right to be treated equal.

vi) The purpose of harassment laws is to address gender-based discrimination at the workplace and not to limit it to sexual forms of harassment.

vii) The standard of a reasonable woman should be considered to determine whether there was harassment.

13. **Supreme Court of Pakistan,**
Muhammad Ijaz v. The State,
Jail Petition. No. 206 of 2019,
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi.
https://www.supremecourt.gov.pk/downloads_judgements/j.p._206_2019.pdf

Facts: The trial Court convicted the petitioner under Section 302(b) PPC and sentenced him to imprisonment for life and payment of compensation to the legal heirs of the deceased or, in default whereof, to undergo simple imprisonment for further six months, and his conviction and sentence was maintained in appeal by the High Court. Hence, this jail petition.

Issues: i) What is probative strength of evidence of witnesses in the nature of *waj takar?*
ii) In what situation a related witness would become an interested witness?
iii) Which discrepancies in prosecution evidence need not be given importance?
iv) How a court would treat a motive which is not proved with evidence?
v) How a long abscondence of an accused would be weighed if same is not denied by him?

Analysis: i) The doctrine of *res gestae* is based upon the assumption that statements of witnesses constituting part of the *res gestae* are attributed a certain degree of reliability, because they are contemporaneous making them admissible by virtue of their nature and strength of their connection with a particular event and their ability to explain it comprehensively.
ii) A related witness cannot be termed as an interested witness under all circumstances. A related witness can also be a natural witness. If an offence is committed in the presence of the family members, then they assume the position of natural witnesses. The Court is required to closely scrutinize the evidence of an eye-witness who is a near relative of the victim.
iii) If discrepancies and contradictions in the statements of the eye-witnesses are agitated without pointing out any major contradiction amounting to shatter the case of the prosecution, then such discrepancies do not need be given much importance because they are of minor character and do not go to the root of the prosecution story.
iv) Motive is considered as vaguely formulated if material evidence is not available to prove same.
v) When there is no denial to fact that the accused remained absconder for a long period of more than five years, then evidentiary value of such abscondence should be weighed against accused.

Conclusion: i) If evidence of witnesses is in the nature of *waj takar*, then probative strength of such evidence rests in the doctrine of *res gestae* in view of Article 19 of the Qanun-e-Shahadat Order, 1984.
ii) A related witness would become an interested witness when his evidence is tainted with malice and it shows that he is desirous of implicating the accused by fabricating and concocting evidence.

iii) Discrepancies do not need be given much importance if those do not shake the salient features of the prosecution version.
iv) Court would be right to disbelieve motive, if no evidence produced to prove it.
v) If his long abscondence is not denied by accused, it would be a corroboratory piece of evidence against him.

---

14. **Supreme Court of Pakistan**
Saeed Ullah, Yar Muhammad, Inayat Ullah v. The State and another
Criminal Petition No. 245 of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._245_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the judgment passed by the learned Single Judge of the High Court, with a prayer to grant post-arrest bail in case under Sections 324/34 PPC, in the interest of safe administration of criminal justice.

Issues: i) What can be considered by the court when on the one hand the medical officer declared the injuries as "simple" and on the other hand he held the same to be "grievous"?
ii) Whether liberty of an individual can be taken away merely on bald and vague allegations?

Analysis: i) When the medico legal report reveals that at the one hand the medical officer declared the injuries as "simple" and on the other hand he held the same to be "grievous". Then his observation declaring the injuries as "simple" can be considered as it is now well settled principle of law that if two views are possible from the evidence adduced in the case then the view favorable to the accused is to be adopted.
ii) Liberty of an Individual is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.

Conclusion: i) When the medico legal report reveals that at the one hand the medical officer declared the injuries as "simple" and on the other hand he held the same to be "grievous". Then his observation declaring the injuries as "simple" can be considered.
ii) Liberty of an individual cannot be taken away merely on bald and vague allegations.

---

15. **Supreme Court of Pakistan,**
Dr. Abdul Nabi, Professor, Department Of Chemistry, University Of Balochistan v. Executive Officer, Cantonment Board, Quetta,
Civil Petition No.47-Q of 2016,
Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail,
Mr. Justice Muhammad Ali Mazhar.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._47_q_2016.pdf

Facts: This civil petition for leave to appeal is filed against the order of the learned Balochistan High Court, Quetta, dismissing constitution petition of the petitioner i.e. a Professor in the Basic Pay Scale 21, pertaining his claim that he is a government servant within the meaning of section 39 of the University of Balochistan Act, 1996, but the respondent declined to recognize his status as a Government Servant (BPS-21) and refused to grant the claimed exemption and/or rebate.

Issues: i) Whether an employee of the University can claim rebate or exemption being a public servant?
ii) What is a deeming clause and how much the Court is obligated to give effect to the deeming provisions in order to interpret the statute?
iii) What will be effect of the absence of 'public servant' in definition clause of an enactment?
iv) What will be adequate or alternate remedy to effectively bar the jurisdiction of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan,1973?

Analysis: i)Under Section 2(k) of the University of Balochistan Act, 1996, an "Employee" means a person borne on pay roll of the University but shall not include (a) a person holding purely fixed tenure post, (b) a person appointed by the University on contract basis, or (c) a person on deputation with the University. The section 39(1) of the University of Balochistan Act, 1996 states that all employees of the university including employees appointed on contract basis and/or on fixed tenure posts shall be deemed to be provincial public servants as defined by section 21 of Pakistan Penal Code. The employees of the University, in line with the provisions of the University of Balochistan Act, 1996 are deemed to be public servants within the meaning of section 21 of PPC; therefore they shall be dealt with strictly during the course of duties as compared to other classes and genres of persons mentioned in the definition of public servant.
ii) According to Black's Law Dictionary, Ninth Edition,Pg. 477-478, the meaning of the word "Deem" is to treat something as if it was really something else, or it has qualities that it does not have. 'Deem' is necessary to establish a legal fiction either positively by 'deeming' something to be what it is not or negatively by 'deeming' something not to be what it is..." When a statute contemplates that a state of affairs should be deemed to have existed, it clearly proceeds on the assumption that in fact it did not exist at the relevant time, but by a legal fiction we have to assume as if it did exist. In order to interpret the statute, the Court is obligated to give effect to the deeming provisions while taking into consideration its object and the intention of legislature, so it should not cause any injustice. The purpose of importing a deeming clause is to place an artificial construction upon a word/phrase that would not otherwise prevail and sometimes it is to make the construction certain.

iii) The absence of 'public servant' in definition clause of an enactment does not mean that the persons concerned who are covered by the enactment are not to be treated at all as public servants. What it means is that section 21 of the PPC will determine which of such persons can be treated as falling in the category of public servant.

iv)The extraordinary jurisdiction of the High Court under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry into disputed facts. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy, which should also be *remedium juris* i.e. more convenient, beneficial and effective.

Conclusion:

i) The employee of the University, in line with the provisions of the University of Balochistan Act, 1996 can claim rebate or exemption being a public servant within the meaning of section 21 of PPC.

ii) A deeming clause is a fiction, which cannot be extended beyond the language of the section by which it is created or by importing another fiction.

iii) In absence of 'public servant' in definition clause of an enactment, section 21 of the PPC would come into play.

iv)To effectively bar the jurisdiction of the High Court under Article 199 of the Constitution, the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a writ petition.

---

16. **Supreme Court of Pakistan**
Chancellor Preston University, Kohat & others v. Habibullah Khan
Civil Appeal No. 1833 of 2019
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1833_2019.pdf

Facts:

The suit of the Respondent, an ex-student, for damages against the Appellant University for the reason that the University established its Faculty of Engineering without accreditation and consequently, his degree would not be recognized by the HEC and he would not be recognized with the Council, was decreed by the learned Trial Court and through this Civil Appeal, the Appellant has challenged the judgment of the High Court whereby his Regular First Appeal against the judgment and decree of the learned Civil Court was dismissed.

Issue:

Whether an institution and/or university can offer engineering education and can enroll students before obtaining their accreditation from the Pakistan Engineering Council?

Analysis:

The fulfilment of the requirements prescribed in the Pakistan Engineering Council Act, 1976 and the Engineering Council Regulations for Engineering Education in Pakistan with regard to the accreditation of engineering disciplines, accreditation of the institutions offering engineering qualifications, and registration of persons completing BEng programs from the accredited institutions, is mandatory in nature. In such view of the matter, it is necessary for each institution and/or

university to obtain their accreditation from the Council before offering engineering education. It is, therefore, incumbent upon them to disclose and inform the students regarding their accreditation status before offering admissions. The HEC, the Council, and any other relevant authority, if so empowered in this behalf, while keeping within their respective domains, shall ensure that no institution/university offers engineering education without prior accreditation.

Conclusion: An institution and/or university cannot offer engineering education and cannot enroll students before obtaining their accreditation from the Pakistan Engineering Council because it is necessary for each institution and/or university to obtain their accreditation from the Council before offering engineering education.

---

17. **Lahore High Court**
Sarfraz Ahmed v. Member (VI),
Punjab Service Tribunal, Lahore etc.
W.P. No. 38694 of 2023
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC3262.pdf

Facts: Through the instant writ petition, the petitioner has assailed the order passed by the Punjab Service Tribunal (PST).

Issue: Whether the remedy of appeal lies before the Supreme court against an order of Administrative Tribunal only when it is established under Article 212(2) of the Constitution?

Analysis: It is crystal clear that the remedy of appeal before the Apex Court of the country against an order of Administrative Tribunal, established through a provincial enactment, is not available until and unless the Parliament, by law, extends the provisions of Article 212(2) of the Constitution to include a Court or Tribunal established under provincial law..

Conclusion: Yes, the remedy of appeal lies before the Supreme court against an order of Administrative Tribunal only when it is established under Article 212(2) of the Constitution.

---

18. **Lahore High Court**
Safdar Iqbal Chaudhry v. Chief Operating Officer,
Technical Education & Vocation Training Authority
Writ Petition No.65818 of 2020
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC3238.pdf

Facts: Through this Writ Petition, the petitioner assailed the order of Chief Operating Officer, Technical Education & Vocational Training Authority (TEVTA), whereby, he while issuing retirement notification of the petitioner ordered to withhold Rs.37,73,122/- from his pensionary emoluments till the decision of

denovo inquiry/Public Accounts Committee Audit Para, in terms of rule 1.8 of the Punjab Civil Services Pension Rules, 1963. Through the connected petition, the petitioner has also assailed the validity of letters, asking him to appear for inquiry.

Issues:

i) Whether an aggrieved person who is remediless can approach the High Court?
ii) Where the show cause notice has been issued in violation of the law on the subject, whether the same can be challenged in Writ Petition?
iii) Whether availing of legal remedy by an aggrieved employee does entail any departmental action?
iv) Whether the departmental proceedings, pending against a government servant, stand abated in the event of his retirement from government service?
v) To initiate proceedings against a retiree under rule 1.8 of the Punjab Civil Services Pension Rules, 1963, whether it is condition precedent that the Competent Authority should prove misconduct on the part of a retiree?
vi) Whether right to pension can be withheld without fulfillment of the conditions enumerated under sub-section 3 of section 18 of the Punjab Civil Servants Act, 1974?
vii) When a specific amount of recovery is involved whether the relevant authority can invoke clause (a) of the rule 1.8 of the Punjab Civil Services Pension Rules, 1963?

Analysis:

i) Since no final order has been passed against the petitioner, he cannot approach the Punjab Service Tribunal as urged by learned Law Officer as well as learned counsel appearing on behalf of the respondent-TEVTA, rather the petitioner being remediless has only option to approach this Court.
ii) It is important to observe over here that in routine, Writ Petition against issuance of Show Cause Notice is not maintainable, however, where the show cause notice has been issued in violation of the law on the subject, the same can be challenged in Writ Petition.
iii) It was alleged that instead of complying with the transfer order, the petitioner resorted to file various Writ Petitions before this court, which prima facie stands proof of the fact that departmental authorities, being annoyed with the petitioner on account of filing proceedings before this court, put up the matter before the competent authority for initiation of disciplinary proceedings against the petitioner despite the fact that availing of legal remedy by an aggrieved employee does not entail any departmental action.
iv) According to Fundamental Rule 54-A, the departmental proceedings, pending against a government servant, stand abated in the event of his retirement from government service.
v) To initiate proceedings against a retiree under rule 1.8 ibid, it is condition precedent that the Competent Authority should prove misconduct on the part of a retiree.
vi) According to section 18 of the Punjab Civil Servants Act, 1974, a retiree has indefeasible right to pension on his retirement and the same can only be withheld

upon fulfillment of the conditions enumerated under sub-section 3 of section 18.
vii) When a specific amount of recovery is involved the relevant authority can invoke clause (b) instead of clause (a). As far as the case in hand is concerned, admittedly the departmental authorities want to recover Rs.37,73,122/- allegedly paid to the petitioner during the period when he did not perform any duty, thus, clause (a) is inapplicable to his matter rather the department could start proceedings under clause (b) of rule 1.8 ibid.

Conclusion: i) An aggrieved person who is remediless can approach the High Court.
ii) Where the show cause notice has been issued in violation of the law on the subject, the same can be challenged in Writ Petition.
iii) Availing of legal remedy by an aggrieved employee does not entail any departmental action.
iv) The departmental proceedings, pending against a government servant, stand abated in the event of his retirement from government service.
v) To initiate proceedings against a retiree under rule 1.8 of the Punjab Civil Services Pension Rules, 1963, it is condition precedent that the Competent Authority should prove misconduct on the part of a retiree.
vi) Right to pension cannot be withheld without fulfillment of the conditions enumerated under sub-section 3 of section 18 of the Punjab Civil Servants Act, 1974.
vii) When a specific amount of recovery is involved the relevant authority can invoke clause (b) instead of clause (a) of the rule 1.8 of the Punjab Civil Services Pension Rules, 1963.

---

19. **Lahore High Court**
Muhammad Anwar etc v. The State etc.
Criminal Appeals No.s 204964, 204976, 204979, 204982, 204968, 204969, 204973 of 2018
The State v. Abdul Rehman, etc
Murder Reference No. 189 of 2018
Mst. Rani Bibi v. Shabbir Hussain etc.
Criminal Revision No.213819 of 2018
Justice Miss Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC3163.pdf

Facts: Through the afore-titled criminal appeals under Section 410 Cr.P.C.,the appellants have challenged the vires of judgment rendered by the learned Addl. Sessions Judge in case FIR, in respect of offence under Sections 302, 324, 148, 149, 427 & 109 PPC whereby they were convicted and sentenced. The learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the appellants whereas complainant also preferred criminal revision seeking enhancement of sentence of those appellants who were not awarded with death sentence through this common judgment.

Issues: i) Whether promptness in reporting the matter to the police diminishes chances of

consultation or deliberation at the part of the prosecution?

ii) Whether the motive is considered as an essential ingredient to provide foundation to any crime?

iii) Which is important in the matter of appreciation of the evidence, quality of evidence or number of witnesses?

iv) Whether mere relationship of the eye-witnesses with the deceased is sufficient to discard their evidence?

v) Whether the prosecution is bound to produce all the witnesses?

vi) Whether any lapse due to act of the investigating officer for recording statements under Section 161 Cr.P.C. belatedly can benefit to the defence in any eventuality?

vii) Whether minor discrepancies appeared upon surface after lengthy cross-examination have any significance in criminal justice system?

viii) Whether delay in conduct of autopsy of deceased on the part of hospital can benefit the accused?

ix)Whether inconsequential fact of recovery can be ground for lessor punishment when the ocular account is found to be confidence inspiring?

x)Whether absconsion is conclusive proof of guilt of an accused?

Analysis:

i) When unfortunate incident took place at certain time and which was reported to the police promptly on the same day within about one hour and formal FIR was chalked out accordingly despite the fact that inter-se distance between the place of occurrence and the police station was several kilometers containing names of the appellants with their specific role of making fire shots at the deceased as well as the injured witnesses, which not only confirms presence of the eye witnesses at the spot but also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case and also rules out the possibility of mistaken identification or substitution…

ii)The motive is considered as an essential ingredient to provide foundation to any crime. No doubt previous enmity, being motive, is always considered as a double edged weapon.

iii) In the matter of appreciation of the evidence it is not the number of witnesses rather quality of evidence is worth importance. There is no requirement under the law that a particular number of witnesses are necessary to prove/disprove a fact. It is time honoured principle that evidence must be weighed and not counted.

iv) It is well established principle in criminal administration of justice that mere relationship of the eye-witnesses with the deceased is not sufficient to discard their evidence, if the same was otherwise found confidence inspiring and trustworthy.

v) It is well settled by now that the prosecution is not bound to produce all the witnesses. If the accused persons were sure that the leftover witnesses were not ready to support the prosecution witnesses, they had ample opportunity rather at liberty to examine them in their defence or even submit application before the trial Court to summon them as Court Witnesses but merely on that basis other

overwhelming and confidence inspiring prosecution evidence cannot be discarded…

vi) No doubt delay in recording statements of the eye-witnesses is mostly seen with doubt but when in situation of unfortunate incident where many persons sustained fire arm injuries, out of which two breathed their last at the spot, whereas, rest were in semi-conscious condition. In such scenario, the natural human reaction should be to make all out efforts to save the lives of injured persons despite being in the condition of sorrow and anguish due to death of close kith and kin. It can be safely concluded that both the injured witnesses sustained injuries during the occurrence and if there was any lapse due to act of the investigating officer for recording their statements under Section 161 Cr.P.C. belatedly, its benefit cannot be extended to the defence in any eventuality…

vii) It is well settled principal of criminal administration of justice that the witnesses who were subjected to fatiguing, taxing and tiring cross-examination for days together are bound to get confused and made some inconsistent statements, therefore, discrepancies cited by learned defence counsels should not be blown out of proportion. It is well settled by now that the discrepancies of minor character which neither go to the root of the prosecution version nor shake its salient features are of no significance.

viii) When all the codal formalities including lodging of crime report, recording of statements of prosecution witnesses U/S 161 Cr.P.C. have already been completed than It can safely be concluded that it was pattern of the hospital to conduct autopsy after a certain period either due to some administrative issue or non-availability of doctor, therefore, its benefit cannot be extended to the accused persons…

ix) Non-recovery of weapons of offence from accused persons after such a long period is immaterial. Even otherwise, it is well settled law that when the ocular account is found to be confidence inspiring and trustworthy, mere fact that recovery is inconsequential by itself could not be a ground for lessor punishment…

x) No doubt absconsion is not a conclusive proof of guilt of an accused but at the same time it cannot be overlooked when the evidence available on record suggests that the accused had deliberately and intentionally avoided to face the trial due to their guilty conscious.

Conclusion: i) Yes, promptness in reporting the matter to the police diminishes chances of consultation or deliberation at the part of the prosecution.

ii) Yes, the motive is considered as an essential ingredient to provide foundation to any crime.

iii) In the matter of appreciation of the evidence it is not the number of witnesses rather quality of evidence is worth importance.

iv) Mere relationship of the eye-witnesses with the deceased is not sufficient to discard their evidence.

v) Prosecution is not bound to produce all the witnesses.

vi) Any lapse due to act of the investigating officer for recording statements under Section 161 Cr.P.C. belatedly cannot benefit to the defence in any eventuality.
vii) Minor discrepancies appeared upon surface after lengthy cross-examination have no significance in criminal justice system.
viii) Delay in conduct of autopsy of deceased on the part of hospital cannot benefit the accused.
ix) Inconsequential fact of recovery cannot be ground for lessor punishment when the ocular account is found to be confidence inspiring.
x) Absconsion is not conclusive proof of guilt of an accused but subject to intentional avoidance to face the trial due to his guilty conscious.

---

20. **Lahore High Court**
The State v. Ali Ahsan alias Sunny
Murder Reference No.164 of 2018
Ali Ahsan alias Sunny v. The State, etc.
Crl. Appeal No.193932 of 2018
Muhammad Khalid v. The State, etc.
Crl. Appeal No.206624 of 2018
Miss. Justice Aalia Neelum, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2869.pdf

Facts: Feeling aggrieved by the trial court's judgment the appellant has assailed his conviction and sentence by filing the instant appeal. The trial court also referred to confirm the death sentence awarded to the appellant. Whereas the complainant also filed appeal against the acquittal of respondent No.2. All the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

Issues: i) What is the obligation of a police officer whenever he receives the information regarding cognizable offence?
ii) What will be the consequence if the FIR is lodged after unexplained delay?
iii) Whether the evidence of a witness can be discarded only on the ground that he is a related witness?
iv) Whether the site plan is a substantive piece of evidence?

Analysis: i) Whenever an information regarding cognizable offence is lodged with the police officer, he is obliged to take the same down in writing if it is made orally or receive the complaint in writing and straightaway proceed to enter the substance of it in the book/register kept for that purpose in terms of Section 154 of the Criminal Procedure Code.
ii) The evidential value of the First Information Report will be reduced if it is made after the unexplained delay, particularly when the same was not entered in the printed Form 24.5 (1) of Police Rules 1934.
iii) It is settled law that the evidence of a witness cannot be discarded only on the ground that he is a related witness. But it is only the rule of prudence, the rule of caution, that evidence of such witness is scrutinized with some extra caution.

Once the Court is satisfied that the witness was present at the scene of occurrence and his evidence inspires confidence, the same cannot be discarded on the sole ground of relationship with the deceased or chance witness.
iv) The site plan is not a substantive piece of evidence in Article 22 of the Qanune-e-Shahdat Order 1984 as held in the case of Mst. Shamim Akhtar v. Fiaz Akhter and two others (PLD 1992 SC 211), but it reflects the view of the crime scene, and the same can be used to contradict or disbelieve eyewitnesses.

Conclusion: i) Whenever an information regarding cognizable offence is lodged with the police officer, he is obliged to take the same down in writing if it is made orally or receive the complaint in writing.
ii) The evidential value of the First Information Report will be reduced if it is made after the unexplained delay.
iii) The evidence of a witness cannot be discarded only on the ground that he is a related witness.
iv)) The site plan is not a substantive piece of evidence.

---

21. **Lahore High Court**
Abdul Shakoor deceased through his Legal Heirs etc. v.
Rana Abid Mahmood etc.
Civil Revision No.63321 of 2020,
Mr. Justice Masud Abid Naqvi.
https://sys.lhc.gov.pk/appjudgments/2023LHC2978.pdf

Facts: Suit of respondent No.1 seeking decree for specific performance of agreement to sell alongwith possession of subject property was decreed and consequent appeal was dismissed by learned Additional District Judge and, being dissatisfied, the petitioners/defendants No.1 to 8 have now filed the instant Revision Petition challenging the validity of the said judgments and decrees mentioned.

Issues: i) If the owner of subject property executed earlier agreement to sell whilst specifically allowing the buyer to execute subsequent agreement to sell with someone else and to receive earnest money, then can said buyer's successors avoid his obligation under such commitment/subsequent agreement to sell?
ii) When concurrent findings of the Trial Court and Appellate Court may be interfered by a Revisional Court whilst exercising jurisdiction under Section 115 of the Code of Civil Procedure, 1908?

Analysis: i) Owner of subject property in earlier agreement to sell had allowed the buyer to execute subsequent agreement to sell with someone else and to receive earnest money, so the subsequent agreement to sell executed by the said buyer is binding upon his successors.
ii) When both the learned Courts below have properly discussed in detail the pleadings and oral & documentary evidence adduced by both the parties as well

as have elaborately discussed the factual and legal controversy between the parties to arrive at concurrent conclusion, then no scope is left for interference by Court of Revision.

Conclusion: i) Successors in interest of buyer of earlier agreement to sell cannot wriggle out of his commitment in subsequent agreement to sell executed by him after his such act had been allowed in earlier agreement to sell executed by original owner of subject property.
ii) A Revisional Court may interfere in concurrent findings of the Courts below only if any misreading or non-reading of evidence or any infirmity, legal or factual, is pointed out there in such concurrent findings.

---

22. **Lahore High Court**
National Command Authority, etc. v. Zahoor Azam, etc.
R.F.A No.83 of 2014
Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3306.pdf

Facts: This appeal and connected appeals are arising from award whereby land measuring 177- Kanal 2-Marla situated in village Lab Thathoo, Tehsil Taxila, District Rawalpindi was acquired for the expansion and protection against any security hazard to Air Weapons Complex. The appellants assailed the decision of learned Senior Civil Judge on a reference petition.

Issues: i) Whether an evasive denial of the facts asserted in the petition amounts to an admission of facts as per contemplation of Order VIII Rule 5 of CPC?
ii) What are the salient features to be taken into consideration for assessing the compensation of acquired land as outlined by the Superior court?
iii) Whether the dominant factor for determining the compensation against the acquired land is the potential value of the land?
iv) What legal inference can be drawn if a witness is not summoned by the orders of the Court as is required under Order XVI Rule 6 of CPC?
v) Whether Article 134 of the Qanun-e-Shahadat Order, 1984 only immunes a witness from the test of cross-examination if he is summoned to produce a document?
vi) Whether a document which is made part of record through the statement of counsel and does not come within the exceptions ordained in Articles 111, 112 and 113 of the Qanun-e-Shahadat Order, 1984 can be termed as admissible?
vii) If more than one appeals are arisen out of a common judgment and if one or more of those appeals are even barred by time, whether same can be dismissed on account of limitation?
viii) Whether Land Acquisition Collector is always bounden duty to take into consideration all the relevant factors, while determining the amount of compensation?

Analysis:

i) While responding these assertions, the beneficiary department did not specifically deny the facts asserted in the petition. In para-1 in the latter portion of their reply, an evasive denial to this effect was though made, which is nothing but an admission of fact on their part as per contemplation of Order VIII Rule 5 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as "CPC").

ii) While interpreting the true import of section 23 of the "Act", the Superior Courts have outlined the salient features to be taken into consideration for assessing the compensation of acquired land. Most commonly derived of which are as under: - (a) its market value at the prevalent time and its potential; (b) one year average of sale taken place before publication of notification under section 4 of the Act of the similar land; (c) its likelihood of development and improvement; (d) a willing purchaser would pay to a willing buyer in an open market arms length transaction entered into without any compulsion; (e) loss or injury occurred by severing of acquired land from other property of the land owner; (f) loss or injury by change of residence or place of business and loss of profit; (g) delay in the consummation of acquisition proceedings and; (h) peculiar facts and circumstances of each case.

iii) Section 23 of the Land Acquisition Act, 1894, thus, does not hinge upon a single factor, rather it provides for various matters to be taken into consideration while determining compensation. Initially, there was a trend that while determining the compensation, market value of the land at the date of publication of notification under section 4 of the "Act" was mainly taken into consideration but with the passage of time, law to this effect has gone under radical change and now the dominant factor is the potential value of the land. Market value is only one of such factors to be considered for the purpose of award of compensation to the land owners. Location, neighborhood, potentiality or other benefits, which may ensue from the land in future could not be ignored. The most dominant and guiding factor would be that the compensation should be determined at the price, which a willing buyer would pay to a seller as per his satisfaction.

iv) It is though stance of the "land owners" that he was only examined for the purpose of tendering report Exh.A1 but admittedly he was not summoned by the orders of the Court as is required under Order XVI Rule 6 of "CPC". The said witness was even not the court witness, so no other legal inference can be drawn except that he was produced by the "land owners" for their own cause, as such he shall be treated as their witness, being examined to support their claim.

v) Article 134 only immunes a witness from the test of cross-examination if he was summoned to produce a document but this is not the case. As already observed that said witness was never summoned as was required under Order XVI Rule 6 "CPC", rather he was produced by the "land owners" as their own witness. Article 134 of the Qanun-e-Shahadat Order, 1984 would thus not come into play and as such said witness was rightly cross-examined.

vi) It appears that the Referee Court, while ignoring the above noted material pieces of evidence, rested its findings mainly on Exh.A8, which was made part of record through the statement of counsel for the "land owners" depriving the

"beneficiary department" to raise any objection qua its admissibility. Coming to the admissibility of the document Exh.A8, after having an overview of the principles mentioned hereinabove, it is observed that in the light of principles laid down in MANZOOR HUSSAIN (deceased) through L.Rs. v. MISRI KHAN supra, since the document does not come within the exceptions ordained in Articles 111, 112 and 113 of the "Order, 1984", so it cannot be termed as admissible.

vii) It is trite law that if more than one appeals are arisen out of a common judgment and if one or more of those appeals are even barred by time, same could not be dismissed on account of limitation.

viii) It is always bounden duty of the Land Acquisition Collector to take into consideration all the relevant factors, while determining the amount of compensation instead of relying upon the compensation assessed by the price assessment committee or the Board of Revenue.

Conclusion:

i) An evasive denial of the facts asserted in the petition amounts to an admission of facts as per contemplation of Order VIII Rule 5 of CPC.

ii) The Superior Courts have outlined the salient features to be taken into consideration for assessing the compensation of acquired land. Most commonly derived of which are as under: - (a) its market value at the prevalent time and its potential; (b) one year average of sale taken place before publication of notification under section 4 of the Act of the similar land; (c) its likelihood of development and improvement; (d) a willing purchaser would pay to a willing buyer in an open market arm's length transaction entered into without any compulsion; (e) loss or injury occurred by severing of acquired land from other property of the land owner; (f) loss or injury by change of residence or place of business and loss of profit; (g) delay in the consummation of acquisition proceedings and; (h) peculiar facts and circumstances of each case.

iii) The dominant factor for determining the compensation against the acquired land is the potential value of the land.

iv) If a witness is not summoned by the orders of the Court as is required under Order XVI Rule 6 of CPC, a legal inference can be drawn the he is produced by the party for his own cause and shall be treated as his witness.

v) Article 134 of the Qanun-e-Shahadat Order, 1984 only immunes a witness from the test of cross-examination if he is summoned to produce a document.

vi) A document which is made part of record through the statement of counsel and does not come within the exceptions ordained in Articles 111, 112 and 113 of the Qanun-e-Shahadat Order, 1984 cannot be termed as admissible.

vii) If more than one appeals are arisen out of a common judgment and if one or more of those appeals are even barred by time, same cannot be dismissed on account of limitation.

viii) Land Acquisition Collector is always bounden duty to take into consideration all the relevant factors, while determining the amount of compensation instead of relying upon the compensation assessed by the price assessment committee or the

Board of Revenue.

---

23. **Lahore High Court**
Sufi Abdul Qadeer, etc v. Learned Addl. District Judge, etc.
W.P.No.3868 of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC3225.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 stems from the judgment, whereby the Additional District Judge, while allowing the revision petition filed by respondent No.2 set aside the order passed by the learned Civil Judge in which an application claiming privilege under section 216 of the Income Tax Ordinance, 2001 for production of record was dismissed.

Issue: Whether a court can summon record from any Government Department in proceedings where controversy involves between private parties?

Analysis: From the bare reading of the section 216 of the Income Tax Ordinance, 2001 it is manifestly clear that in terms of sub-section 2, a bar is imposed upon the powers of the Court or other authority to require any public servant to produce before it any return, accounts, or documents contained in , or forming a part of the records relating to any proceedings under the "Ordinance" or declarations made under the Voluntary Declaration of Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018 or the Assets Declaration Act, 2019 or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof except in the manner provided in the "Ordinance". Subsection 3, however, ordains that nothing contained in subsection (1) shall preclude the disclosure of any such particulars to a Civil Court in any suit or proceedings to which the Federal Government or any income tax authority is a party which relates to any matter arising out of any proceedings under the "Ordinance". Though in terms of sub-section 4, it is stated that nothing in section 216 shall apply to the production by public servant before a Court of any document, declaration, or affidavit filed or the giving of evidence by a public servant in respect thereof but said provision cannot be read in isolation to sub-section 3.

Conclusion: A court cannot summon record from any Government Department in proceedings where controversy involves between private parties.

---

24. **Lahore High Court**
Shah Muhammad v. The Province of Punjab and others.
C.R. No. 568 of 2014/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC3220.pdf

Facts: Through instant revision petition, petitioner has challenged judgment, passed by learned District Judge, whereby appeal filed by respondents No. 2 to 5 against order suspending implementation of order, regarding change of design and size of outlet in question was allowed and plaint of the suit was rejected under Order VII Rule 11 CPC being barred by law.

Issues: i) Whether the Appellate or Revisional Court is competent to reject the plaint of the suit under Order VII Rule 11, C.P.C. while dealing with an appeal filed against order of ad-interim injunction?
ii) What is difference between the scope of proceedings of an application for grant of temporary injunction and the rejection of the plaint?

Analysis: i) No doubt an incompetent suit shall be taken off the file at its inception and plaintiff be allowed to retrace his steps. At the same time, it is settled law that plaint can be rejected even before summoning the defendants or later-on at any stage of suit proceedings but this power must be exercised by the Court where the plaint is pending or under challenge because scrutiny is only permissible pertaining to the matter pending before that Court. There is no cavil with the proposition that the plaint of a suit can be rejected by Appellate as well as Revisional Court, however, it was not proper to reject the plaint of the suit under Order VII, Rule 11 C.P.C. while dealing with an appeal filed against the order granting or refusing interim injunction. Admittedly, learned Appellate Court was not seized of the main suit as the same was pending before Learned Trial court. The scope of appeal before the learned Appellate Court was as to whether the appellant was entitled for the ad-interim injunction in accordance with law or not. In short, adjudication upon merits of lis/suit without its pendency before the appellate forum is restricted/prohibited.
ii) Needless to observe here that there is striking difference between the scope of proceedings of an application for grant of temporary injunction in a pending proceeding and the rejection of the plaint under Order VII, Rule 11, C.P.C. on account of failure to disclose a cause of action in the plaint or the plaint being barred under some provision of law. The reason for different approach while rejecting a plaint under Order VII, Rule 11, C.P.C. is quite obvious. In the former proceedings, even if the Court reaches the conclusion that the plaintiff has failed to make out a prima facie case, it can only refuse to grant temporary injunction, but this rejection cannot result in the dismissal of the suit which proceeds to trial notwithstanding a finding by the Court that the plaintiff has failed to make out a prima facie case for grant of temporary injunction. On the contrary, if the Court reaches the conclusion that the plaint failed to disclose any cause of action or suit appears to be barred under some law, the proceedings come to an end immediately and the plaintiff is non-suited before he is allowed an opportunity to lead evidence and substantiate his allegation made in the plaint. We are, therefore, of the view that the rejection of plaint at a preliminary stage when the plaintiff has not led any evidence in support of his/her case, is possible only if the Court

reaches this conclusion on consideration of the statements contained in the plaint and other material available on record before the Court which the plaintiff admits as correct.

Conclusions: i) The plaint of a suit can be rejected by Appellate or Revisional Court, however, it is not proper to reject the plaint of the suit under Order VII, Rule 11 C.P.C. while dealing with an appeal filed against the order granting or refusing interim injunction.

ii) If the Court reaches the conclusion that the plaintiff has failed to make out a prima facie case, it can only refuse to grant temporary injunction, but if the Court reaches the conclusion that the plaint failed to disclose any cause of action or suit appears to be barred under some law, the proceedings come to an end immediately.

---

25. **Lahore High Court**
Province of Punjab through EDO (R) v. Mehnga Khan (deceased) through Legal Heirs, etc.
C.R. No.80-D of 2010
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC3209.pdf

Facts: Petitioner assailed vires of judgments and decrees passed by Civil Judge and Addl. District Judge respectively, whereby suit for possession through pre-emption filed by respondents No.1 to 6 was decreed by trial court and appeal filed by the petitioner was dismissed by the appellate court.

Issues: Whether right of pre-emption can be claimed regarding a property located in colony area and owned by the Province of Punjab?

Analysis: The scheme of the Colonization of Government (Punjab) Lands Act, 1912 indicates that right to acquire property is a grant by the government and the government has the power to allot or refuse allotment of a property. The discretion of government to select the person as transferee of colony land is so important that even the original allottee cannot transfer or sell the land in his occupation to a third person without obtaining permission by the Collector under Section 19 of the Act, which provides that rights or interests vested in a tenant cannot be transferred without written consent of the Commissioner…Similarly, the cases of tenants under the Schemes where there is an inbuilt concept of conferment of proprietary rights to the extent provided in the Scheme would also be covered subject to continuance of the tenancies as per terms and conditions governing them. Therefore, all Government grants are required to take effect according to their tenor in the statement of conditions governing them. It is difficult to press into service a right of tenant other than that enforceable under the law in accordance with the statement of conditions providing for the same. Such a right or a vested interest in terms of section 19 of the Act of 1912 is created in a tenant on the examination of his eligibility for conferment of proprietary rights in

his favour. As a necessary consequence so long as a property in colony area is owned by the Government and not by a private party, any transaction done under section 19 of the Act of 1912 would not be pre-emptible.

Conclusion: The right of pre-emption cannot be claimed regarding a property located in colony area and owned by the Province of Punjab.

---

26. **Lahore High Court**
Shahadat Ali v. The State, etc & The State v. Shahadat Ali
Criminal Appeal No.1303 of 2019, 2096 of 2019 & Capital Sentence Reference No. 15-N of 2018
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC2967.pdf

Facts: Having faced trial in case FIR, offence under section 9(c) of The Control of Narcotic Substances Act, 1997, registered with the Police Station RD ANF, the appellant, was convicted by the learned Judge special Court (CNS), Lahore under section 9(c) of The Control of Narcotic Substances Act, 1997 and sentenced him to death with direction to pay Rs. 1,00,000/- (rupees one lac only) as fine and in case of default the same shall be recovered as arrears of land. The appellant has challenged his above-said conviction and sentence before this Court by way of filing the instant Criminal Appeal under section 48 of The Control of Narcotic Substances, Act, 1997, whereas, a Capital Sentence Reference sent by the learned trial Court under Section 374, Act V of 1898 is also under consideration, for confirmation or otherwise of the sentence of death awarded to the appellant. However, the ANF/the State has also challenged the vires of judgment qua releasing of vehicle/car in favour of its original owner, by filing of Criminal Appeal. We are deciding all these matters together through this consolidated judgment.

Issues: (i) Whether any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the samples?
(ii) Whether owner is entitled to the return of the vehicle if prosecution failed to establish against even his knowledge?
(iii) What is the complete mechanism given in Rule 5 and 6 of The Control of Narcotic Substances (Government Analysts Rules, 2001) regarding adoption of procedure by Chemical Examiner while preparing the report?
(iv) Whether benefit of doubt can be extended to the accused in Narcotic cases?
(v) Under what situations the vehicle can be seized under the Control of Narcotic Substances Act, 1997?

Analysis: (i) The prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the

conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction.

(ii) Section 32 of the Act, 1997 deals with the final confiscation or release of the vehicle to the owner, after the conclusion of the trial, if he proves that he has no knowledge about the offence, which allegedly had been committed in the vehicle. Not only that an innocent owner of the vehicle is entitled to the return of the vehicle but the burden has been placed on the prosecution to establish that the owner had the knowledge of his vehicle being used in the crime. As far as the question of knowledge is concerned, undisputedly it is required to be proved by leading evidence and the learned trial Court can form such opinion after having taken into consideration the facts of the case.

(iii) A complete mechanism has been given in Rule 5 and 6 of The Control of Narcotic Substances (Government Analysts Rules, 2001), the Chemical Examiner is required to adopt complete procedure and then the report is to be submitted after referring necessary protocols and mentioning the tests applied and their results. In the instant case, required test was not applied on the basis of which chemical examiner has concluded that the samples sent to him for chemical examination contained opium or charas. The said agency has failed to provide the details that how much quantity, he has tested and when the report is not prepared in the prescribed manner then it may not qualify to be called a report in the context of section 36 of the Control of Narcotic Substances Act, 1997 and such report of National Institute of Health, Drugs Control and Traditional Medicines Division, Islamabad, Pakistan would loses its sanctity and that cannot be relied upon for the purposes of conviction.

(iv) It is by now well settled that since the provisions of the Control of Narcotic Substances Act, 1997 provides stringent punishments, therefore, its proof has to be construed strictly and the benefit of any doubt in the prosecution case must be extended to the accused.

(v) A vehicle can be seized under the Control of Narcotic Substances Act, 1997 only in three situations, i.e. firstly, where it is carrying unlawful narcotics along with some lawful narcotics, secondly, where it is a part of the assets derived from narcotic offences and, thirdly, where narcotics have been recovered from its secret chambers, cavities or compartments, etc. Apart from the above mentioned three implied situations we have not been able to find any other express or implied situation or provision in the context of the Control of Narcotic Substances Act which may make it permissible for seizure of a vehicle or conveyance in a case of narcotic.

Conclusion:

(i) Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness.

(ii) If prosecution fails to establish the knowledge of owner about the offence then he is entitled to the return of the vehicle.

(iii) When the report is not prepared in the prescribed manner then it may not qualify to be called a report in the context of section 36 of the Control of Narcotic Substances Act, 1997 and such report would loses its sanctity and that cannot be relied upon for the purposes of conviction.
(iv) The benefit of doubt can be extended to the accused even in Narcotic cases.
(v) There are three situations under the Control of Narcotic Substances Act, 1997 to seize the vehicle; firstly, where it is carrying unlawful narcotics along with some lawful narcotics, secondly, where it is a part of the assets derived from narcotic offences and, thirdly, where narcotics have been recovered from its secret chambers, cavities or compartments, etc.

---

27. **Lahore High Court**
Mansab Ali v. The State etc.
Criminal Appeal No. 220945-J of 2018
Ameen Bibi v. Mansab Ali etc.
Criminal Revision 218894 of 2018
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC3287.pdf

Facts: The appellant and his co-accused were tried under section 302/34 PPC and the Additional Sessions Judge while acquitting co-accused, found the appellant guilty of the offence under section 302 (b) PPC and sentenced him for imprisonment of life with direction to pay compensation. The appellant has preferred criminal appeal through jail, while the complainant has filed criminal revision for enhancement of sentence awarded to the appellant. Criminal Appeal and revision has been disposed of together through this single judgment.

Issues: i) What the delay in post mortem examination of the dead body suggests?
ii) How a chance witness can be defined?
iii) What is evidentiary value of testimony of a witness whose presence at the place of occurrence not proved by prosecution beyond scintilla of doubt?
iv) Whether adverse inference can be drawn when driver of vehicle on which dead body was shifted to hospital has not been produced during the trial?
v) What is evidentiary value of a witness who claims that his clothes were smeared with blood while handling the deceased but the same has not been produced?
vi) What is distance of deceased at which blackening appears on the body?
vii) Whether prosecution suffers the consequences when motive alleged but not proved?
viii) Whether eye witnesses can corroborate themselves?
ix) Whether once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused?

Analysis: i) No doubt, the noticeable delay in post mortem examination of the dead body is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses before preparing police papers

necessary for the same.

ii) In ordinary parlance, a chance witness is the one who, in the normal course is not supposed to be present on the crime spot unless he/she offers cogent, convincing and believable explanation, justifying his/her presence there.

iii) It needs no elaboration that presence of eyewitnesses at the spot is not to be inferred rather is to be proved by prosecution beyond scintilla of doubt. In the absence of some confidence inspiring explanation regarding their presence at crime scene, the two witnesses are found to be chance witnesses and their testimony can safely be termed as suspect evidence.

iv) Though investigating officer (CW12) claims that the complainant had produced one driver who shifted the dead body to hospital along-with the complainant party, but astonishingly the driver of the said wagon had not been produced by the prosecution during the trial which give rise to an adverse inference that had he been entered the witness-box he would have deposed against the prosecution.

v) Both the witnesses (PW2) and (PW3) had claimed that while handling the deceased their clothes had been smeared with the blood of the deceased but admittedly no such blood-stained clothes of the said eye-witnesses had been secured or produced which otherwise could prove conveniently that they took the deceased to the hospital. It is also significant to note that both the PWs during the cross-examination stated that their clothes were smeared with blood but at the same breath they took somersault by stating that they washed the same. This omission on the part of the eyewitnesses strikes at the roots of the case of the prosecution and bespeaks volumes about the dishonest and false claim of the said witnesses.

vi) It is a settled law that blackening appears on the dead body in case the deceased has received injuries at a distance of 4 feet according to medical jurisprudence by Modi.

vii) The motive part of the occurrence, being words of mouth, could not get corroboration from any other independent source of the evidence, which remains unproved and a shrouded mystery as well. It is by now well settled that once the motive is setup by the prosecution, but thereafter fails to prove the same, then prosecution must suffer the consequences and not the defence.

viii) It is fundamental principle of justice that corroboratory evidence, must come from independent source providing strength and endorsement to the account of the eyewitnesses, therefore, eye-witnesses, in the absence of extraordinary and very exceptional and rare circumstances, cannot corroborate themselves by becoming attesting witness/witnesses to the recovery of crime articles. In other words, eye-witnesses cannot corroborate themselves but corroboratory evidence must come from independent source and shall be supported by independent witnesses other than eye-witnesses.

ix) It is a trite principle of law and justice that once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory

evidence coming from independent source and shall be unimpeachable in nature.

Conclusion:

i) Delay in post mortem examination of the dead body suggests that time has been consumed by the police in procuring and planting eye-witnesses.
ii) A chance witness is the one who, in the normal course is not supposed to be present on the crime spot.
iii) Testimony of a witness whose presence at the place of occurrence not proved by prosecution beyond scintilla of doubt can safely be termed as suspect evidence.
iv) Adverse inference can be drawn when driver of vehicle on which dead body was shifted to hospital has not been produced during the trial.
v) Evidence of a witness who claims that his clothes were smeared with blood while handling the deceased but the same has not been produced, his claim can be termed as dishonest and false.
vi) Blackening appears on the dead body in case, the deceased may receive injuries at a distance of 4 feet.
vii) Prosecution must suffer the consequences when motive alleged but not proved.
viii) Eye-witnesses cannot corroborate themselves but corroboratory evidence must come from independent source.
ix) Once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature.

---

28. **Lahore High Court**
Muhammad Talha v. The State etc.
Case No: Crl.Misc.No.27751-B-2023
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC3185.pdf

Facts:

This is second petition U/S 497 Cr.P.C. whereby, the petitioner seeks his post arrest bail in case, in respect of an offence U/S 489-F PPC. The first one was opted to be withdrawn by the petitioner.

Issues:

i) Whether the matter can be transferred to any other bench, upon which counsel has partially addressed the arguments?
ii) What will be the effect if the petitioner engages such lawyer, who is blocked by any of Benches and what should be the fate of such practice?

Analysis:

i) Keeping in view the dictum laid down by the Apex Court in famous Zubair's case (PLD 1986 SC 173), such matter cannot be transferred to any other Bench, upon which counsel partially addressed the arguments.
ii) If the petitioner engages an Advocate, who is blocked by any Bench, on the one hand, this act of the petitioner is colored with malafide while on the other hand, providing professional services to the petitioner by the advocate, despite

having knowledge that the Bench has already blocked his name is highly unprofessional. This practice should be discouraged with iron hands, otherwise it would become very easy for every litigant to control fixation of cases. Falling prey of these strategies would not only encourage these types of elements but also bring the judicial system in disrepute.

Conclusion: i) The matter cannot be transferred to any other bench, upon which counsel has partially addressed the arguments.
ii) If the petitioner engages an Advocate, who is blocked by any of the Benches, on the one hand, this act of the petitioner is colored with malafide while on the other hand, despite having knowledge that the Bench has already blocked lawyer's name is highly unprofessional. This practice should be discouraged with iron hands.

---

29. **Lahore High Court**
Hayat Kimya Pakistan (Private) Limited v. Humair Yusuf and others
Writ Petition No. 3103/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2938.pdf

Facts: Petitioner through this writ petition has challenged the order of ex-officio Justice of Peace whereby its application filed under section 22-A Cr. P.C 1898 for the registration of FIR, on account of dishonouring of cheques, was dismissed.

Issues: Whether a cheque given as a 'security' or as a 'guarantee' would attract section 489-F PPC if it is returned unpaid?

Analysis: The general rule is that the cheques, which are not intended to settle any specific transaction but to foster trust between the parties in their usual business operations, are not susceptible to criminal prosecution under section 489-F PPC. This issue was raised before the Supreme Court of Pakistan for the first time in Mian Allah Ditta v. The State and others (2013 SCMR 51). In that case, the Investigating Officer informed the Court that during the investigation, he found that the parties had a dispute, which they agreed to resolve through arbitration. The arbitrator took the cheque from the accused as security before initiating the proceedings, and the sum written on it was never adjudicated against him. The Supreme Court observed that if the cheque was not issued to repay an outstanding loan or fulfilment of an existing obligation but to meet a prospective future liability that may be determined as a result of another exercise, then one of the key elements of section 489-F PPC is lacking. Given the facts of the case, the Supreme Court held that the cheque in question was furnished as security and admitted the accused to pre-arrest bail. However, it avoided detailed deliberation on the issue lest it may prejudice anyone during the investigation or trial. In Indus Airways Private Limited v Magnum Aviation Private Limited [(2014) 12 SCC 539], the purchaser delivered post-dated cheques as an advance payment against a

purchase order that was subsequently cancelled. The supplier presented those cheques, but they were not cashed. The Supreme Court ruled that section 138 would only apply if a legally enforceable debt existed on the date of the drawing of the cheque. Post-dated cheques may be classified into three broad categories: (a) cheques issued to discharge a liability that has already accrued or that is determined and would accrue on a specific date; (b) cheques issued to satisfy a future liability which may or may not occur; and (c) cheques provided for the payee's comfort under an express agreement and are not the product of any specific transaction. Criminal liability under section 489-F PPC generally arises only in respect of the cheques falling in category (a) unless the one-transaction or the continuing act theory can be applied.

Conclusion: No. A cheque given as a 'security' or as a 'guarantee' would not attract section 489-F PPC if it is returned unpaid.

---

30. **Lahore High Court**
Muhammad Ramzan etc. v. The State etc.
Writ Petition No. 9139/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC3274.pdf

Facts: Through this petition, the petitioners claim that they were not involved in the incidents of 9th May and seek the indulgence of the Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 for an early holding the Test Identification Parade (TIP) so that they can begin the procedures for their release. The petitioners further allege that the Government is deliberately delaying the TIP to keep them imprisoned.

Issues: What directives are essentially to be followed by the Magistrate and the Police for conducting Test Identification Parade (TIP) of an accused?

Analysis: The current practice for the TIPs is inefficient. The delay in conducting the test following the accused's arrest also compromises the credibility of the procedure. Therefore, the courts insist that it should be conducted as early as possible after the arrest of the accused. Besides causing unnecessary hardship to the accused, such delays impact his fundamental rights to liberty, dignity, due process, and a fair trial. The constitutional courts are the guardian of the Constitution. They are required to review the executive actions and the conduct of the public authorities on the touchstone of fairness, reasonableness, and proportionality. It is necessary to issue the following directives to actualize the rights guaranteed to the accused under Articles 4, 9, 10, 10A and 14 of the Constitution:

1. In all cases where the Area Magistrate commits an accused to jail for the TIP, he shall immediately forward a copy of his order to the Sessions Judge. He shall fix it as a "TIP Case" in his cause list to ensure the accused is produced before him after the TIP.

2. If, for any reason, the Magistrate who sends an accused to jail for the TIP is not the Area Magistrate, he shall also forward a copy of his order to him.

3. Immediately on receipt of a copy of the Magistrate's order as aforesaid, the Sessions Judge shall depute a JM/SJM for holding the TIP, who shall direct the Investigating Officer to take the requisite steps and conclude the exercise within 48 hours.

4. If the Sessions Judge has designated a JM/SJM in any area for the TIPs, he shall direct him, or if he is not available for any reason, depute another JM/SJM for holding the TIP. Such JM/SJM shall also conclude the exercise within 48 hours.

5. If the TIP is not done within 48 hours as aforesaid, the JM/SJM shall bring the matter to the notice of the Sessions Judge and the Police Head concerned. If he finds any delinquency or dereliction of duty by the Investigating Officer, he shall also recommend action against him. In any case, the JM/SJM shall ensure the TIP is held the next day.

6. The JM/SJM concerned shall promptly forward his report to the Sessions Judge after the TIP is done.

7. The Sessions Judge's office shall prepare a separate file for all TIP requests and place them on the court's cause list until the matter is disposed of.

8. Where the matter relates to a Special Court/Anti-Terrorism Court and the Investigating Officer requests it for the TIP of an accused, it shall also ensure that it is done within 48 hours.

Conclusion: The Court's directives No. 1 to 8 as mentioned above, shall be followed by the Magistrate and the Police for conducting the Test Identification Parade (TIP) of an accused.

---

31. **Lahore High Court**
MCB Bank Limited v. Adeel Shahbaz Steel Mills and others
Civil Original Suit No.01 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2922.pdf

Facts: Plaintiff Bank filed a suit under Section 9 of the Financial Institution (Recovery of Finances) Ordinance, 2001 against the defendant, its partners and guarantors.

Issues: (i) What is the important of a preamble in interpretation of a statute?
(ii) Where the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, then whether Plaintiff can institute a suit anywhere else?
(iii) Whether a court can establish its jurisdiction solely on the basis of the registered office of a defendant firm?

Analysis: (i) Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.

(ii) A plain reading of section 20 CPC arguably allows the Plaintiff a multitude of choices in regard to where it may institute its lis, suit or action. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If sub-sections (a) and (b) of said Section are to be interpreted disjunctively from sub-section (c), as the use of the word 'or' appears to permit the Plaintiff to file the suit at any of the places where the cause of action may have arisen regardless of whether the Defendant has even a subordinate office at that place. However, if the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, then the Plaintiff is precluded from instituting the suit anywhere else. Obviously, this is also because every other place would constitute a forum non conveniens.

(iii) No doubt, the registered office of a defendant/firm serves as official address for legal and administrative purpose and determines the jurisdiction to which the firm is subject to but at the same time it is important to note that the registered office does not necessarily determines the sole basis for establishing jurisdiction, especially when the cause of action arises in a different location/city and in cases where the cause of action accrues in a different city, such as the location of the contract execution, the place where the cause of action arose, or the defendant's reside may also be considered in determining the appropriate jurisdiction for legal proceedings.

Conclusion: (i) The preamble of a statute holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.

(ii) Where the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, then Plaintiff is precluded from instituting the suit anywhere else.

(iii) A court cannot establish its jurisdiction solely on the basis of the registered office of a defendant firm, especially when the cause of action arises in a different location.

---

32. **Lahore High Court**
Shabana Kousar v. Addl. District Judge and others
W.P. No.9656 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC3325.pdf

Facts: Through this constitutional petition, the petitioner assailed the orders of the trial court and the appellate court, whereby, her application under Order XXXIX,

Rules 1 and 2, C.P.C. for grant of temporary injunction to restrain alternation and change to the nature and condition of property pending decision of suit, was dismissed.

Issue: Whether at the instance of preemptor who is yet to succeed after proving talbs and qualifying of superior rights, a bona fide purchaser/owner of the property can be restrained from constructing thereupon or be prevented from using the property for own purpose as he choose?

Analysis: The petitioner's claim is based on pre-emptory right which was dependent on the proof of requisite talbs and other facts to establish superior right of preemption. At present the plea regarding the alleged talbs is just an assertion which is yet to be proved by evidence. As against the petitioner, the respondents are bona fide transferee for consideration who possibly could not be deprived of their rights of uninterrupted use of their property. It is clear from the above that the consistent view of the court has been that at the instance of pre-emptor who is yet to succeed after proving talbs and qualifying of superior rights, a bona fide purchaser/owner of the property could not be restrained from constructing thereupon or be prevented from using the property for own purpose as they choose and that any restraint would be violative of the fundamental rights that have been guaranteed by the Constitution Of Islamic Republic Of Pakistan, 1973.

Conclusion: At the instance of pre-emptor who is yet to succeed after proving talbs and qualifying of superior rights, a bona fide purchaser/owner of the property cannot be restrained from constructing thereupon or be prevented from using the property for own purpose as he choose and that any restraint would be violative of the fundamental rights that have been guaranteed by the Constitution Of Islamic Republic Of Pakistan, 1973.

---

33. **Lahore High Court**
Subtain Abbas Nizami v.
Board of Intermediate & Secondary Education, etc.
Civil Revision No.3966 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2963.pdf

Facts: This revision petition has been directed against the judgment, whereby the learned District Judge, accepted the appeal filed by the respondents and remanded the case to the trial Court for decision afresh.

Issues: i) Whether appellate court is justified in remanding the case to the trial court when sufficient evidence is already available on record?
ii) What are the powers of appellate court in remanding the case to trial court?
iii) Whether appellate court can decide the matter itself by resettling the issues?
iv) What procedure should the appellate court follow when the trial court has omitted to frame or try any issue?

Analysis:

i) The learned appellate Court, despite there being sufficient material on record did not consider the same and illegally remanded the case to the learned trial Court throwing the parties in another round of litigation. Since the appellate jurisdiction is in continuation of the original lis, the first appellate Court having similar powers as provided in Section 107 of the CPC, should have itself decided the matter instead of remanding the same back to the trial Court. (…) Furthermore, it is well settled by now that where the evidence on record is sufficient for the appellate Court to decide the matter itself, remand should not be ordered.

ii) Although the learned appellate Court is empowered to remand the case to the learned trial Court afresh, but with certain restrictions. (…) In view of Rule 23 and 23-A of Order XLI of the C.P.C., the appellate Court is empowered to remand the case and direct as to what issues shall be tried in the case so remanded, if the decree appealed against is on a preliminary point and is reversed in appeal. However, in the instant case, the trial Court had finally decided the matter and not on a preliminary point, therefore, the appellate Court should not have remanded the case but it should have considered all the points itself and decided the same in accordance with law.

iii) Under the provisions of Rule 24 of Order XLI of the C.P.C. when evidence on record was sufficient to enable the appellate Court to pronounce judgment, it may, after resettling the issues, if necessary, finally determine the suit.

iv) As per Rule 25 of Order XLI of the C.P.C. even in case where the trial Court has omitted to frame or try any issue or to determine any question of fact, which appears to be essential, the appellate Court may frame issues and refer the same for trial and direct to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor. (…) In view of the above provisions of law, remand should not be lightly ordered if the evidence on the record is sufficient for the appellate Court to decide the question itself. Learned counsel for the respondents could not dispute the settled legal position regulating remand conceding that impugned judgment was not covered by the afore-referred Rules 23, 23-A and 25 of Order XLI of the C.P.C.

Conclusions:

i) Where the evidence on record is sufficient for the appellate Court to decide the matter itself, remand should not be ordered.

ii) Under Rule 23 and 23-A of Order XLI of the C.P.C., the appellate Court is empowered to remand the case and direct as to what issues shall be tried in the case so remanded, if the decree appealed against is on a preliminary point and was reversed in appeal. But when the trial Court has finally decided the matter and not on a preliminary point, the appellate Court should not remand the case but should itself decide the same.

iii) Under the provisions of Rule 24 of Order XLI of the C.P.C. when evidence on record is sufficient to enable the appellate Court to pronounce judgment, it may,

after resettling the issues, if necessary, finally determine the suit.
iv) As per Rule 25 of Order XLI of the C.P.C. in case trial Court has omitted to frame or try any issue, the appellate Court may frame issues and refer the same for trial and direct to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings.

---

34. **Lahore High Court**
Abdul Ghaffar, etc. v. The State, etc.
Criminal Appeal No. 245 of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC3190.pdf

Facts: Appellants with the allegation of committing murder of their brother and sister-in-law faced trial in case FIR, registered under sections 302, 34 PPC and at the conclusion of trial in the aforesaid case, vide judgment, the learned trial court convicted and sentenced them. Aggrieved by the said judgment, the appellants have filed the titled appeal against their conviction and sentences before this Court.

Issues: i) What characteristics of evidence are required from prosecution keeping in view the demand of principle of natural justice?
ii) Whether medical evidence is sufficient to connect the accused with the commission of offence?
iii) What is the evidentiary value of improved statement by witness at trial?
iv) If motive is alleged but not proved by the prosecution then what would be effect of this failure?
v) What is the standard of proof required in criminal case?

Analysis: i) Principle of natural justice demands that prosecution should led evidence of such characteristic which needs to no other conclusion except the guilt of the accused without any hint of doubt and benefit of a single doubt in the prosecution case must be extended in their favour.
ii) It is settled law that medical evidence may confirm the ocular evidence with regard to the seat of injury, nature of the injury, kind of weapon used in the occurrence but it would not connect the accused with the commission of offence.
iii) It has been held that the statement of any witness improved at trial is not worth relying rather such improvement creates serious doubt about his veracity and credibility.
iv) It is also a well settled principle of criminal jurisprudence that if the prosecution sets up a motive and fails to prove it, then it is the prosecution who has to suffer and not the accused.
v) It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The findings as

regard their guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught. The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused person, the benefit of that doubt is to be given to the accused person as of right, not as of concession.

Conclusion: i) The principle of natural justice demands that prosecution should lead vidence of such characteristic which needs to no other conclusion except the guilt of the accused without any hint of doubt.
ii) The medical evidence may confirm the ocular evidence with regard to the seat of injury but it would not connect the accused with the commission of offence.
iii) The statement of any witness improved at trial is not worth relying rather such improvement creates serious doubt about his veracity.
iv) If prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.
v) The finding as regards guilt of accused should rest surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot substitute the proof.

---

35. **Lahore High Court**
Iftikhar Ahmad v. The State, etc.
Criminal Revision No.340 of 2013
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2911.pdf

Facts: The trial court after trial for offences under Sections 324, 337-F(v), 334, 34 PPC, convicted the appellant under Section 324 PPC and sentenced.

Issues: i)Whether admission or confession made by the accused should have been considered as a whole?
ii) What is the definition of Mistake(Khata)?
iii) Whether infliction of punishment of dismissal can only be awarded if the police officer is sentenced to rigorous imprisonment exceeding one month or to any other punishment not less severe?

iv) Whether PEEDA Act, 2006 is applicable on employees in police service?
v) Whether under PEEDA Act,2006, dismissal from service is mandatory on conviction in all types of offence?

Analysis:

i) Admission or confession made by the accused should be considered as a whole… Reliance in this respect is placed on the case reported as "ALI AHMAD and another versus The STATE and others" (PLD 2020 Supreme Court 201) wherein the Hon'ble Supreme Court has held that "When prosecution fails to prove its case the statement of the accused, under section 342 Cr.P.C. is to be considered in its entirety and accepted as a fact".

ii) Though there is no definition of mistake (khata) in PPC but import of section 318 PPC makes it clear that causing harm either by mistake of act or mistake of fact amounts to khata and section 319 PPC labels a rash and negligent act as khata.

iii) Awarding of punishment even on judicial sentence is not an automatic phenomenon rather a departmental inquiry is must and procedure is explained in Rule 16.24 of of Police Rules, 1934; conclusion of departmental inquiry is subject to decision on review under Rule 16.28 or on appeal under Rule 16.29. Even otherwise Rule 16.2 (2) above does not require to impose punishment if the civil servant is convicted rather it is the sentence that decides taking of departmental action and there is difference between conviction and sentence. Such rule authorizes infliction of punishment of dismissal only if the police officer is sentenced to rigorous imprisonment exceeding one month or to any other punishment not less severe…

iv) It is observed that PEEDA Act, 2006 is not applicable now on employees in police service. According to Section 1 (4) of PEEDA Act, 2006, it is applicable on followings;it shall apply to--(i)employees in government service;(ii)employees in corporation service; and (iii)retired employees of government and corporation service; provided that proceedings under this Act are initiated against them during their service or within one year of their retirement. And "employee in government service" is defined in the said Act in Section 2(h) but later its clause (ii)was substituted by the Punjab Employees Efficiency, Discipline and Accountability (Amendment) Act 2012 (XLVI of 2012) as under; (ii) in Government service or who is a member of a civil service of the province or who holds a civil post in connection with the affairs of the province or any employee serving in any court or tribunal set up or established by the Government but does not include- (aa) a Judge of the Lahore High Court or any court subordinate to that Court or an employee of such courts; and (bb) an employee of Police.

v) As per clause (a) of section 8 of PEEDA Act, 2006, dismissal on conviction is only for offence of corruption etc. whereas for all other offences action under sections 7 or 9 of the Act is mandatory. Section-9 regulates the process of imposition of penalty after regular inquiry whereas section 7 though authorizes the authority to dispense with conduct of an inquiry and pass sentence after giving a show cause notice, yet it says that it must be in the presence of accused civil

servant and in said eventuality authority can impose any one or more penalties mentioned in section 4; which makes it clear that penalty of dismissal from service is not mandatory in every situation.

Conclusion: i) Yes, admission or confession made by the accused should be considered as a whole.
ii) Import of section 318 PPC makes it clear that causing harm either by mistake of act or mistake of fact amounts to Khata.
iii) Yes, infliction of punishment of dismissal can only be awarded if the police officer is sentenced to rigorous imprisonment exceeding one month or to any other punishment not less severe.
iv) PEEDA Act, 2006 is not applicable on employees in police service.
v) Under PEEDA Act, 2006, dismissal from service is not mandatory on conviction in all types of offence.

---

36. **Lahore High Court**
Ali Nawaz v. The State etc.
Crl. Misc. No.8329-B of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2950.pdf

Facts: Through this petition, the petitioner seeks post arrest bail in case FIR registered under Sections 324,109,148,149 PPC read with Section 13(2a) Pakistan Arms Ordinance, 1965.

Issues: i) Whether the court of ordinary jurisdiction can transfer cases to Anti-terrorism Court?
ii) What if any case is pending trial before a Court of ordinary jurisdiction or any other Special Court for an offence and by virtue of an amendment such offence is included in the third schedule of Anti-terrorism Act, 1997?
iii) What course should be adopted for sending the case to Anti-terrorism court?
iv) If the case is pending before the Court of a Magistrate whether he can send the case directly to the Anti-terrorism Court when the case has crossed the stage of cognizance?
v) Whether High Court is empowered to transfer the case from Court of ordinary jurisdiction to Anti-terrorism Court?

Analysis: i) There are two situations when the case routs from court of ordinary jurisdiction to Anti-terrorism Court and both have different regimes. If the challan is put before any Court of ordinary jurisdiction and said Court on receiving challan considers that scheduled offence of Anti-terrorism Act is attracted from the facts of the case, it shall return the challan to prosecution for its presentation before Anti-terrorism Court because under section 190 of Cr.P.C. However, when the case is pending trial and a question of jurisdiction arises then of course challan cannot be returned to the prosecution because by the time certain court processes

are on the record including the evidence that become part of judicial record which cannot be handed over to the prosecution nor can be kept in isolation in court record while detaching the challan only because evidence recorded by one Court can be acted upon by the Successor Court. In such situation the right course would be sending the challan directly by the Court of ordinary jurisdiction to the Anti-terrorism Court.

ii) If any case is pending trial before a Court of ordinary jurisdiction or any other Special Court for an offence and by virtue of an amendment such offence is included in the third schedule of Anti-terrorism Act, 1997 the case shall immediately be sent by the Court of ordinary jurisdiction to the Anti-terrorism Court as held by Division Bench of this Court in case reported as "Rana ABDUL GHAFFAR Versus ABDUL SHAKOOR and 3 others" (P L D 2006 Lahore 64).

iii) A case reported as "Rana ABDUL GHAFFAR Versus ABDUL SHAKOOR and 3 others" (P L D 2006 Lahore 64) is referred in this respect. In the cited case on an application when Antiterrorism Court declined to call for record of case from the Court of Sessions, the Hon'ble Division Bench of this Court has deprecated such practice and allowed the case to be transferred to the Anti-terrorism Court. On the same analogy when any Court of ordinary jurisdiction suspects commission of an offence under Anti-terrorism Act, 1997, it can send the case directly to the Antiterrorism Court and Court on determination of its jurisdiction shall proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to recall and re-hear any witness who has given evidence and may act on the evidence already recorded because section 350 of Cr.P.C. has been made applicable for trial by Anti-terrorism Courts by virtue of section 32 of Anti-terrorism Act, 1997.

iv) If the case is pending before the Court of a Magistrate then a slight shift in the procedure is the requirement of law. Magistrates though assume jurisdiction on a report submitted u/s 173 Cr.P.C. however, they are subordinate to the Session Judge and work is distributed among them as per section 17 of the said Code, therefore, though they are authorized to return the challan before the cognizance is taken, yet they cannot send the case directly to the Anti-terrorism Court when the case has crossed the stage of cognizance.

v) High Court u/s 526 (3) Cr. P.C. is empowered to transfer the case from Court of ordinary jurisdiction to Anti-terrorism Court.

Conclusion:

i) Yes the court of ordinary jurisdiction can transfer cases to Anti-terrorism Court.

ii) If any case is pending trial before a Court of ordinary jurisdiction or any other Special Court for an offence and by virtue of an amendment such offence is included in the third schedule of Anti-terrorism Act, 1997 the case shall immediately be sent by the Court of ordinary jurisdiction to the Anti-terrorism Court.

iii) When any Court of ordinary jurisdiction suspects commission of an offence under Anti-terrorism Act, 1997, it can send the case directly to the Antiterrorism Court.

iv) If the case is pending before the Court of a Magistrate then he cannot send the case directly to the Anti-terrorism Court if the case has crossed the stage of cognizance.

v) High Court u/s 526 (3) Cr. P.C. is empowered to transfer the case from Court of ordinary jurisdiction to Anti-terrorism Court.

---

37. **Lahore High Court**
Zahid Saleem v Mst. Gulshan Shaukat etc.
Writ Petition No. 14105/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC3004.pdf

Facts: Briefly stated facts of the case are that respondent No.1/plaintiff/decree holder instituted a suit for recovery of the dowry articles or its alternate value against the petitioner/defendant/judgment debtor which was decreed by learned Family Judge and alternate value was adjudicated whereas when the appeal was preferred by the respondent/decree holder, the same was partially allowed without mentioning any amount as regards the alternate value of dowry articles in the decree sheet drawn by the learned Appellate Court below. Now, through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the said order.

Issue: Whether in the absence of any explicit amount mentioned in the decree sheet drawn by the court, in a family matter, can the learned executing court seek guidance from the judgment of the court which passed the decree, while executing the said decree?

Analysis: Executing Court cannot travel beyond the decree while implementing the same, however that does not mean that it has no duty to find out true effect of the decree. For construing a decree, the learned executing court can in appropriate cases, opt to take into consideration the pleadings as well as proceedings leading upto the judgment that forms the foundation of the decree. In order to find out meaning and scope of the words employed in the decree, the executing court often has to ascertain the circumstances under which those words have been or can be used.

Conclusion: The learned executing court can seek guidance from the judgment in the absence of any explicit amount mentioned in the decree sheet drawn by the court.

---

38. **Lahore High Court**
Mst. Nadara Parveen etc. v. Additional District Judge etc.
Writ Petition No. 3264 of 2020
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC2994.pdf

Facts: Through this constitutional petition, the petitioners have challenged the concurrent findings of the learned Courts below whereby their application under Section 12(2) of the Code of Civil Procedure, 1908 ("the CPC"), challenging the ex-parte judgment and decree passed in suit for specific performance of contract instituted by respondent No.3 against respondent No.2, was dismissed.

Issues: i) Whether the estate of deceased immediately vests in the legal heirs on the death of the deceased especially when the status of the legal heir is disputed?

ii) What is required by law to establish the claim of *bonafide* purchaser for value?
iii) Whether a vendee can obtain the possession of his undivided share from a joint un-partitioned immovable property?

Analysis: i) The legal position that the estate of deceased immediately vests in the legal heirs on the death of the deceased is an ineluctable position, but the fact as to whether a particular person is a legal heir or not is required to be determined and declared by a Court of competent jurisdiction, particularly when the status of the legal heir as such is disputed. Once the Court makes such declaration in favour of the legal heirs, their names can be added as the title holder in the relevant record maintained by the regulatory authorities such as the Revenue, Excise or Settlement Departments, etc. In order to obtain such a declaratory decree, the legal heirs have to prove before the Court that they are the only legal heirs of the propositus.

ii) To seek protection of *bonafide* purchaser for value, suffice to observe that one of the essential components of defense of *bonafide* purchaser is to establish that there was no dishonesty of purpose or tainted intention to enter into the transaction. In addition, it is also required to be established that due diligence as to the title was carried out prior to purchase of the property in question. Case reported as "Hafiz Tassaduq Hussain v. Lal Khatoon and others" (PLD 2011 SC 296) is referred in this regard.
iii) The law in this regard is settled to the effect that an undivided share of a co-sharer can be a subject matter of sale/transfer, but the possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either by the decree of a Court in a partition suit, or by settlement among the co-sharers.

Conclusion: i) The estate of deceased immediately vests in the legal heirs on the death of the deceased is an ineluctable position, but the fact as to whether a particular person is a legal heir or not is required to be determined and declared by a Court of competent jurisdiction, particularly when the status of the legal heir as such is disputed.

ii) To seek protection of *bonafide* purchaser for value, it is required to establish that there was no dishonesty of purpose or tainted intention to enter the transaction and that due diligence as to the title was carried out prior to purchase of the property in question.

iii) A vendee cannot obtain the possession of his undivided share from a joint un-

partitioned immovable property unless it is partitioned by metes and bounds, either by Court in a partition suit, or by settlement among the co-sharers.

---

39. **Lahore High Court,**
Ali Hassan, etc v. Major (Retired) Masood Saeed Khan, etc.,
Writ Petition No.81565/2022,
Mr. Justice Anwaar Hussain.
https://sys.lhc.gov.pk/appjudgments/2023LHC2985.pdf

Facts: Through this writ petition, the judgment of learned Additional District Judge is challenged, by virtue of which the order of learned Rent Tribunal has been set aside and the application of respondent No.2, under Order I Rule 10 of the Code of Civil Procedure, 1908 for impleading him as a respondent in the eviction petition filed by the petitioners, has been accepted.

Issue: Whether an order dismissing the application filed under Order I Rule 10 of the CPC, passed by the Rent Tribunal is final order for the purposes of Section 28 of the Punjab Rented Premises Act, 2009 and the appeal there against is maintainable or not?

Analysis: Section 2(b) of the Punjab Rented Premises Act, 2009 provides definition of the term "final order" whereas Section 28 of the Act ibid confers the right of appeal on the aggrieved party against the final order only. Under Section 2(b) of the Act ibid, the first part defining the term "final order" uses the words "means" followed by the expression "culminating the proceedings" and provides the principle and test to determine what is "final order" i.e., any order which culminates and concludes the proceedings. Whereas, the second part uses the word "including" and lists down some of the matters such as adjustment of *pagri*, advance rent, security, arrears of rent, compensation or costs which, when dealt with by the learned Rent Tribunal, also are in the nature of the final order(s) or part thereof. In the definition or interpretation clause in a Statute, the word "means" is employed to restrict the meaning, whereas the word "includes" is used to widen the meanings of the term so defined. So, Section 2(b) of the Act ibid, indicates that the legislature intended to widen the scope of the term "final order" by use of the word "including". It is imperative to analyze the meaning of the term "culminating the proceedings" used in Section 2(b) of the Act ibid. According to "*Webster's Encyclopaedic Unabridged Dictionary of the English Language*", the term "culminate" means *to "terminate at the highest point meaning thereby to have result or be the final result of a process".* The term "proceeding" has not been explicitly defined under the Act ibid. However, the term proceeding(s) has been also used in Section 24 of the CPC and defined in a non-exhaustive manner to include not only the suit but the execution proceedings as well so as to include within its ambit all matters coming up for adjudication. When a third person approaches the Rent Tribunal with an application under Order I Rule 10 of the CPC, a set of proceeding other than the main proceeding

commence as between the said applicant and the ejectment petitioner as well as the tenant. Therefore, the term "*final order culminating proceedings",* under Section 2(b) of the Act ibid *viz.* the ejectment petitioner and the applicant of the application under Order I Rule 10 of the CPC, means the order by virtue of which the said application is decided and when such application is dismissed and the applicant is not allowed to be part of the main proceedings, hence, proceedings against him have certainly been culminated before the learned Rent Tribunal.

Conclusion: The order dismissing the application of third party under Order I, Rule 10 of the CPC, is a final order in terms of Section 2(b) of the Punjab Rented Premises Act, 2009 as such third party is non-suited and his application is dismissed, proceedings against him have certainly been culminated before the Rent Tribunal and the appeal thereof is maintainable in terms of Section 28 of the Act ibid.

---

40. **Lahore High Court**
Nargis Bibi (deceased) through her legal heirs, etc. v.
Muhammad Amin, etc.
Civil Revision No.2534 of 2014
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC3231.pdf

Facts: Respondent No.1 instituted a suit for declaration along with recovery of possession etc. Trial Court decreed the suit after framing of issues and recording of evidence of the parties. The appeal preferred by the predecessor-in-interest of the petitioners against the judgment and decree was dismissed by the Additional District Judge. Hence, the present Civil Revision.

Issues: i) When the High Court exercises its revisional jurisdiction to interfere in the concurrent findings of the Courts below?
ii) Whether mutation creates or extinguishes the title to the property and who is under the obligation to prove the correctness of mutation if it is disputed in absence of original PTD/registered deed?
iii) Who is to establish his ownership while seeking possession of the property?

Analysis: i) High Court in exercise of its revisional jurisdiction is usually reluctant to interfere in the concurrent findings of the Courts below, however, it is not a rule of thumb and this Court cannot close its eyes where the Courts below misinterpreted the material available on record or erred in appreciating the same, in its proper perspective, or overlooked to comprehend the same. On the material misreading of evidence alone, the concurrent findings of the Courts below are liable to be set aside as it is trite law that the Courts are expected to deliver justice, which is not only to be done but also seen to be done, and cannot shut their eyes or turn a deaf ear to perverse conclusion based on patent errors on account of misreading and non-reading of evidence.

ii) Mutation of a property in the revenue record neither creates nor extinguishes the title to the property or has any presumptive value qua title as such entries are relevant only for the purpose of collecting land revenue. If the mutation, on the basis of which right in the property is claimed, is disputed on account of absence of the original PTD/registered deed, etc., the onus of proving the correctness of the mutation and genuineness of the transaction contained therein would be on the party claiming the right.

iii) While seeking possession of the property, a plaintiff is under a bounden duty to establish his ownership without any shadow of doubt, by producing title document and while doing so the burden of proof on a party is to be discharged unclinchingly and not with shaky evidence, it is held in "Manzoor Ahmad and 9 others v. Ghulam Nabi and 5 others" (2010 CLC 350).

Conclusion: i) High Court exercises its revisional jurisdiction to interfere in the concurrent findings of the Courts below where the Courts below misinterpreted the material available on record or erred in appreciating the same.

ii) Mutation of a property in the revenue record neither creates nor extinguishes the title to the property whereas the onus of proving the correctness of the mutation would be on the party claiming the right.

iii) A plaintiff is under a bounden duty to establish his ownership without any shadow of doubt while seeking possession of the property.

---

41. **Lahore High Court**
Falak Sher and 2 others v. Abdul Aziz (deceased) through L.Rs etc.
Civil Revision No. 36424 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC3213.pdf

Facts: The petitioner through this Civil Revision has assailed the order passed by the learned Additional District Judge (the "appellate court") whereby the appellant was given an adjournment at the request of the learned counsel and his appeal was fixed for final arguments along with arguments on the application for permission to produce additional evidence.

Issues: i) What does the term any case which has been decided or "case decided" means?

ii) Whether the revision petition before High Court is maintainable against interlocutory orders of the subordinate Courts fixing the case for arguments etc.?

Analysis: i) Reading of section 115 of the Civil Procedure Code, 1908 reflects that the revisional jurisdiction can be exercised when defects contemplated by the above provision are arising out of any case which has been decided. In the case titled "Messrs National Security Insurance Company Limited and others versus Messrs Hoechst Pakistan Limited and others" (1992 SCMR 718) the Honourable Supreme Court of Pakistan has already decided that the term any case which has been decided or "case decided" can be construed as decision in respect of any state of

facts after judicially considering the same, though it is not required that this decision has disposed of the whole matter in the cause pending.
ii) Examination of the relevant provision and the case law on the subject reveals that High Court should not too readily interfere with the interlocutory orders of the subordinate Court, unless express or implied conditions of clause "a", "b" and "c" of section 115(1) of the Code are involved and only those interlocutory orders do attract revisional jurisdiction that deals with some question in controversy before the Court or it has effect on rights of the parties to the lis. Baseless apprehensions or assumptions as to wrong exercise of jurisdiction or orders of adjournment or orders fixing the case for arguments, certainly do not fall within the scope of "case decided" to maintain revision-petition under section 115 of the Code.

Conclusion: i) The term any case which has been decided or "case decided" means a decision in respect of any state of facts after judicially considering the same, though it is not required that this decision has disposed of the whole matter in the cause pending.

ii) The revision petition before High Court is not maintainable against interlocutory orders of adjournments or fixing the case for arguments etc. by the subordinate Courts.

---

42. **Lahore High Court**
Rukhsana Bibi v. Federation of Pakistan, etc.
Case No. W. P. No.33181 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC2862.pdf

Facts: The petitioner has invoked the constitutional jurisdiction of this Court for issuance of a direction to respondents to remove her husband's name from the blacklist so that he may be able to renew his passport and return to Pakistan to face trial in the criminal case registered against him.

Issues: i) Whether the accused loses some of his rights being fugitive from law?
ii) When the accused gets back his rights which he has lost being fugitive from law?
iii) Whether a citizen can be deprived of his right to return to the home land and surrender before court of law?

Analysis: i) There is no cavil with the proposition that being a fugitive from law, the accused loses some of his rights such as right to audience as well as right to have an Advocate to defend him, as held in the case of Hayat Bakhsh and others vs. The State(PLD 1981 Supreme Court 265).
ii) However, loss of such rights is till such time the accused surrenders himself before the Court, as held in the case of "Lahore High Court Bar Association and others vs. General (Retd.) Pervez Musharraf and others (2019 SCMR 1029).

iii) The right to return to the homeland to surrender before the Court or the concerned law enforcement agency to face proceedings in accordance with law is something a citizen is not deprived of owing to his abscondance.

Conclusion: i) Yes, the accused loses some of his rights being fugitive from law.
ii) The accused who has lost his rights being fugitive from law gets back his rights when he surrenders himself before the Court.
iii) The right to return to the homeland to surrender before the Court is something a citizen is not deprived of owing to his abscondance.

---

43. **Lahore High Court**
Sajid Iqbal Sheikh v. ADJ, Lahore, etc.
Writ Petition No.38170 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC3270.pdf

Facts: The petitioner has invoked the constitutional jurisdiction of this Court to challenge the judgment passed by the Additional District Judge, whereby on appeal filed by respondent No.3, order of the Special Judge (Rent), was set aside and eviction petition was accepted.

Issues: i) Whether it is necessary that the tenancy agreement should be in writing?
ii) Whether any other agreement between the landlord and tenant will affect their relationship inter se?
iii) Who is presumed to be the owner of the premises in the absence of contrary evidence with regard to title of the disputed premises?

Analysis: i) The tenancy agreement is not necessarily required to be in writing rather it may be oral and implied.
ii) Any other agreement between the landlord and tenant does not affect their relationship inter se unless the tenancy agreement is revoked.
iii) In the absence of contrary evidence with regard to title of the disputed premises the owner of the premises is to be presumed as landlord and the person in its possession is supposed to be tenant.

Conclusion: i) The tenancy agreement is not necessarily required to be in writing.
ii) Any other agreement between the landlord and tenant does not affect their relationship inter se.
iii) In the absence of contrary evidence with regard to title of the disputed premises the owner of the premises is to be presumed as landlord.

LATEST LEGISLATION/AMENDMENTS

1. Clause 8 (1), 10(1) and Schedule AA of Punjab Private Sector Agricultural Marketing Regulations 2021has been substituted.
2. Declaration regarding certain minerals for the grant as prospecting license and mining lease through competitive bidding or sealed tenders, instead of doling out on application basis vide Notification No. 81 of 2023.
3. Denotification/withdrawal of "Rock Salt Policy" and "Amended Rock Salt Policy" issued vide notifications dated 18.08.2022 & 06.01.2023 vide Notification No. 82 of 2023.
4. Declaration of the United Arab Emirates to be a reciprocating territory vide Notification No. S.R.O. 208(I)/2007.
5. Rule 17 of the Revised Leave Rules, 1981is amended vide Notification No. FD.SR.II/2-97/2019.
6. Sections 13 and 15A of the Federal Employees Benevolent Fund and Group Insurance Act, 1969 have been amended.
7. The Pakistan Institute of Research and Registration of Quality Assurance Act, 2023 is enacted to provide for the establishment of the Pakistan Institute of Research and Registration of quality Assurance.
8. The Supreme Court (Review of Judgments and Orders) Act, 2023 is enacted to facilitate and strengthen the Supreme Court of Pakistan in the exercise of its powers to review its judgments and orders.
9. Sections 4 to 8, 15, 16, 16A, 19, 21, 28, 30, 31D, 31DD, 32 & 33 of The National Accountability Ordinance, 1999 are amended.
10. Section 6 of The Punjab Procurement Regulatory Authority Act, 2009 has been amended.
11. Vide Notification No. SO(MP)21-1/2023 Rules 17 and 18 of the Pakistan Prison Rules, 1978 are amended.
12. Vide Notification No. SO(MP)21-2/2023 Rules 215 and 216 of the Pakistan Prison Rules, 1978 are amended.

SELECTED ARTICLES

1. **CAMBRIDGE LAW JOURNAL**
https://www.cambridge.org/core/journals/cambridge-law-journal/article/abs/illegality-defence-and-sanctionshifting-in-defence-of-gray-v-thames-train-ltd/F8865C25AC718E138BBBFA26F8A6FD9A

The Illegality Defence and Sanction-Shifting: In Defence of *Gray v. Thames Train Ltd* by Ivan Sin

This article considers the rule that a claimant who has been wronged will be denied recovery where the damage flowed from a sanction imposed as a result of their own illegal acts such that compensating the claimant would divert a sanction intended to be imposed on the claimant to the defendant. The article has two purposes. The first aim is to provide a counterweight to the overwhelming body of academic literature critical of Gray v Thames Trains Ltd. in which the House of Lords, in applying the illegality bar found it unnecessary to examine the purpose of the criminal sanction against the claimant, preferring to treat its existence as sufficient to lead to a denial of recovery. The article argues that academic support for adoption of an alternative test of "significant personal responsibility" rests on precarious grounds, depending, as it does, on the "unsatisfactory state of law" and "different policies" arguments. This article reconceptualises the rule in Gray and systematically examines the role played by the theme of consistency between the civil law and criminal law in judicial decision-making. The second aim is to evaluate Gray in light of Patel v Mirza. The article critiques the Supreme Court's inconsistent treatment of deterrence in Henderson v Dorset University NHS Foundation Trust and Stoffel v Grondona, and argues that the way the court in Henderson conceptualised the relationship between Gray and Patel discloses an approach which is more closely aligned with that adopted by the minority in Patel.

2. ACADEMIA

https://www.academia.edu/262766/ADR_In_England_and_Wales_12_Am

ADR in England and Wales: A Successful Case of Public Private Partnership by Professor Dr Loukas A Mistelis

More recently, in the late twentieth century, systems of alternative dispute resolution (ADR) were introduced and were often entrenched in the legal system overnight. Some ADR systems are significantly older but there are no sufficient records and rarely a regulatory regime. Modern ADR is a voluntary system, according to which the parties enter a structured negotiation or refer their disputes to a third party for evaluation and/or facilitation of resolution. Especially in that the justice system was flooded by disputes of variable importance and complexity, and that the parties are almost invariably intimidated by the atmosphere in the court room and the litigation proc-ess itself, ADR has now become an acceptable and often preferred alternative to judicial settlement or settlement of disputes by arbitration.

3. HUMAN RIGHTS LAW REVIEW
https://academic.oup.com/hrlr/article/23/3/ngad013/7187934?searchresult=1

The Indivisibility of Human Rights: An Empirical Analysis by Jan Essink, Alberto Quintavalla, Jeroen Temperman

This article aims to test whether human rights have an indivisible nature. To do that, we perform correlation analysis and Granger causality tests to test 1) the relationship within socio-economic rights and 2) between socio-economic rights and civil-political rights. The results show that certain socio-economic rights have mutual reinforcing relationships, lending support to the existence of widespread indivisibility. This finding yields relevant policy implications. Given their financial constraints, states could make use of the existence of widespread indivisibility, in combination with the progressive implementation clause, to foster the efficient allocation of resources for human rights implementation. Furthermore, this article shows that the intensity of indivisibility varies depending on the income category of states: the indivisible nature of socio-economic rights is more intense in low-income countries while seems to achieve a saturation point at the highest levels of human rights compliance. We, thus, propose to define this phenomenon as 'indivisibility saturation'. Lastly, our findings detect a more complex picture for the indivisibility principle between the two classes of human rights. While widespread indivisibility does not follow from the tests, important unidirectional relationships between different human rights exist and are equally important for human rights policy-making purposes.

4. STATUTE LAW REVIEW
https://academic.oup.com/slr/article-abstract/42/1/101/5252089?redirectedFrom=fulltext

Minors' Contracts: A Major Problem with the Indian Contract Act, 1872 by Shivprasad Swaminathan, Ragini Surana

Section 10 of the Indian Contract Act, 1872 stipulates that all agreements made with the 'free consent' of parties who are 'competent' to contract are enforceable as contracts. Section 11 declares that minors are not competent to contract. While the Act goes on to specifically set out the consequences of vitiated 'consent' in sections 19, 19A, and 20, it omits spelling out the consequences of contracting with a minor. Nevertheless, a decision of the Privy Council, Mohori Bibee v. Dharmodas Ghose (1903) read the Act as having given a definitive answer to this question and took the view that minors' contracts were void ab initio (not voidable or void) which meant that neither party could enforce it, nor could they seek to be restituted to their original positions under provisions stipulating restitution in the case of either voidable (section 64) or void (section 65) contracts. Indian courts have since invoked Mohori Bibee in bloodless

abstraction, as if it were an unquestionable axiom of Indian contract law. This article argues that the Privy Council's reading of the Act in Mohori Bibee is problematic, and its invention of the category of contracts void ab initio is unsupported by the Act.

5. YALE JOURNAL OF LAW AND TECHNOLOGY
https://yjolt.org/defining-reasonable-cybersecurity-lessons-states

Defining "Reasonable" Cybersecurity: Lessons from the States by Scott J. Shackelford Anne Boustead & Christos Makridis

Questions over what constitutes "reasonable" cybersecurity reporting and operating practices have long vexed businesses and policymakers. Given a lack of clear guidance from Congress, states have filled the vacuum by passing a series of laws requiring "reasonable" cybersecurity such as for manufacturers of Internet-connected devices. Other states have elected instead to provide safe harbors, like Ohio, which rewards companies for investing in a pre- determined list of recognized cybersecurity standards and frameworks—such as the National Institute for Standards and Technology (NIST) Cybersecurity Framework—by minimizing liability in the aftermath of a data breach. This Article: (1) summarizes the current state of state-level cybersecurity policymaking with a special emphasis on how states are defining "reasonable" cybersecurity; (2) discloses the results of a statewide survey on cybersecurity perceptions and practices among organizations in Indiana done in partnership with the Indiana Attorney General's Office; and (3) makes a series of suggestions based on these findings about how to better educate and incentivize firms about instituting reasonable cybersecurity best practices.
