Lahore High Court

BULLETIN

Fortnightly Case Law Update *Online Edition*

Volume - IV, Issue - XIII

01 - 07 - 2023 to 15 - 07 - 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

(01-07-2023 to 15-07-2023)

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

Sr. No.	Court	Subject	Area of Law	Page
1.	Supreme Court of Pakistan	Retroactive operation of tax statutes; Dominant rationale of interpretation of any legislative instrument; Connotation of expression Non-obstante; Meaning of ultra vires and intra vires; Understanding of word of a statute; Function of a proviso; Retrospective effect of beneficial, remedial or curative legislation	Tax Law	1
2.		Dignity, sanctity and safety of courts; Arrest of a person from High Court premises; Application of fundamental Rights to bail applications; Courts' obligation to protect fundamental rights	Constitutional Law	3
3.		Filling of fresh memo of appeal when the writ petition is directed to be transmitted to the Federal Service Tribunal by the High Court; Treating one type of proceedings into another type; Running of limitation when any petition has been filed in High Court within period of limitation as provided for departmental appeal; Power of every court to rectify ex debito justitiae its judgment and order; Review of a patent and obvious error on the part of court	Service Law	5
4.		Grant of specific performance when plaintiff failed to prove his willingness to perform agreement	Civil Law	7
5.		Standard of proof to prove insanity or unsoundness of mind of a person; Travelling beyond the scope of pleadings; Best evidence to prove the mental disorder of a person; Effect of denial of a particular fact for want of knowledge; Effect of the consent of either party given by a person of unsound mind; Sound mind person for the purpose of making contract; Evidentiary value of certificate endorsed on the conveyance deed by the registering officer; Standard of proof required in		8

		civil dispute		
6.	Lahore High Court	General allegation of malafide against investigation officer and police; Interference of courts into the investigation of a criminal case	Criminal Law	10
7.		Better class jail facility to prisoner involved in or convicted for offence under section 395 PPC; Claim of better class jail facility on the principle of parity	Constitutional Law	10
8.		Prerequisites for listing a person as a prescribed in the fourth schedule of Anti-terrorism Act, 1997; Term "reasonable grounds" used in section 11-EE of the Anti-terrorism Act, 1997	Criminal Law	11
9.		Sending of document exhibited by trial court to court of appeal; Book in bound set; Presumption falls under Article 129 of the Qanun-e-Shahadat Order 1984; Principles of evidence in criminal matter stand at variance to one applied in civil matters; Use of material extracted from the mobile phone of accused against him; Retrieval of data from mobile phone of accused by PFSA without the consent of accused; Precedence to right to privacy over other inconsistent provisions of domestic law; Data retrieval from mobile phone recovered from accused without the permission of concerned court; Process which regulates the use and disposal of any information which is required to be extracted from mobile phone recovered from accused		13
10.		Withdrawal of time subsidy granted through the decision of the Federal Government sent in Federal Cabinet before the expiry of its term	Constitutional Law	15
11.		Binding effect of subsection 7 of section 42 of the Land Revenue Act 1967; Nature of mutation entry; Structure built on illegal and defective foundation; Duty to prove the original transaction resulted in the entry or attestation of mutation in dispute; Computation of limitation where fraud is alleged	Civil Law	16
12.		Execution of agreement to sell by father of minor on behalf of minor without being appointed as guardian		18
13.		Scope of rectification of section 57 of the Sales Tax Act 1990; Essential condition for exercise of power of rectification of mistake; Rectification in case of failure to adjudicate upon a substantial plea taken or controversy raised; Rectification of mistake when relevant decision is assailed in appeal or Tax Reference	Tax Law	18

14.	Lahore High Court	Power of court to abridge the power of executive to frame a policy; Nature of right of freedom of trade, business or profession; Basic responsibility of state regarding the promotion of social and economic well-being of the people	Constitutional Law	20
15.		Evidentiary value of report of Chemical Examiner which does not give details of protocol and tests; Mandatory requirement to mention result of sample analyzed with full protocol; Application of interpretation of law by Supreme Court from the time when the law or provision in question was enacted; Case carrying stringent sentence must be proved through cogent evidence; Single circumstance is sufficient to extend benefit of doubt to the accused	Criminal Law	22
16.		Reckoning an action as offence of terrorism; Challenging a notice u/s 160 Cr.P.C. under Article 199 of the Constitution; Power of High Court to intervene in the investigation before it is completed; Judicial review of an order when an alternate remedy is available; Constitutionality of the joint investigation team; Section 19 of the Anti-Terrorism Act 1997; Difference among the roles of the attorney general of Pakistan advocate general Punjab and the prosecutor general; Application of threshold test in a case involving offence of terrorism;		23
17.		Tooth as bone or organ; Attraction of section 337-U PPC only where tooth breaks		25
18.		Dismissal of appeal due to incorrect law or provision referred to in the title of the appeal; Nature of right of appeal; Re-opening of entire case for consideration before the appellate forum; Formalities and technicalities cannot be allowed to defeat ends of justice	Service Law	27
19.		Act of intentional non-appearance of a witness before of a court in defiance of its order	Criminal Law	28
20.		Course of action available to ex-officio Justice of Peace if complaint of neglect, failure or excess committed by any police officer/official is received		29
21.		Ignorance of directory provision by Rent Tribunal	Rent Law	30
22.		Scope of section 11(1) of STA, 1990; Nature of section 11(6) of STA, 1990	Civil Law	31
23.		Definition of resignation; Determination of the fact whether resignation is voluntary or otherwise; Withdrawal of resignation; Limitation period to file appeal or	Service Law	32

	Punjab Subordinate Judiciary Service Tribunal	representation in respect of any order relating to terms and conditions of service; Appeal before service tribunal when departmental appeal or representation is barred by limitation; Pre-requisites for filling appeal before service tribunal		

LATEST LEGISLATION/AMENDMENTS

1.	The Day Care Centres Act, 2023	33
2.	The Trained Paramedical Staff Facility Act, 2023	33
3.	The Maternity and Paternity Leave Act, 2023	33
4.	The Transplantation of Human Organs and Tissues (Amendment) Act, 2023	33
5.	The Limitation (Amendment) Act, 2023	33
6.	The Specific relief (Amendment) Act, 2023	33
7.	Presidential Order No. 02 of 2023	34
8.	Presidential Order No. 03 of 2023	34
9.	Notification No. E&A(HEALTH)1-607/2021 dated 17th May, 2023	34
10.	Notification No. E&A(HEALTH)1-607/2021 dated 15th May, 2023	34
11.	Notification No. FD(W&M)9-138/ 2023 dated 12th July, 2023	34
12.	Notification No. SO(E&M)2-3/ 2018 (E-R) dated 7th July, 2023	34
13.	Notification No. SOTAX(E&T)3-3/ 2022 dated 7th July, 2023	34
14.	Notification No. SOTAX(E&T)3-38/ 2024(Vol-VII) dated 7th July, 2023	34
15.	Notification No. SO (E&M)1-101/2018 dated 7th July, 2023	34

16.	Notification No. FD(W&M)7-653/ 2023 dated 12th July, 2023	34

SELECTED ARTICLES

1.	Bias and Ethics in Ai-Enabled Legal Technology: Examining the Role and Impact of Human Inputs on Ai-Rendered Results in Legal Matters by Peter Gronvall , Nathaniel Huber-Fliflet, Jianping Zhang	34
2.	The Indivisibility of Human Rights: An Empirical Analysis by Jan Essink, Alberto Quintavalla, Jeroen Temperman	35
3.	Vicarious Liability and Negotiable Instruments: Unsettling the Settled Position by Sanya Singh and Dhruv Kohli	36
4.	Analysing the Types of Disputes in Corporate Governance and Role of ADR in Dispute Resolution by Rushank Kumar	36
5.	Beneath the Surface of Power Relations: Understanding the Dynamics of Abuse by Lokesh Patel and Kalash Jain	37

1. **Supreme Court of Pakistan**
M/s Rajby Industries Karachi etc. v. Federation of Pakistan and others
Civil Petitions No. 4700, 310-K to 314-K, 423-K To 426-K, 553-K & 493-K of 2021
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4700_2021.pdf

Facts: The claim of petitioners regarding input tax was prohibited on packing material with effect from 1.7.2016, vide SRO 491(I)/2016, whereby condition (x) of SRO 1125(I)/2011 was amended to disallow the adjustment of Sales Tax on packing material as Input Tax. Being aggrieved by this amendment, the petitioners had challenged the vires of said Notification in the Sindh High Court. However, during the pendency of the aforesaid constitution petitions, the impugned proviso of condition (x) was withdrawn vide amending notification, S.R.O. 777(I)/2018 dated 21.6.2018. Thereafter, the petitioners took an additional plea that the amendment was curative and beneficial in nature which should be given retrospective effect but their constitution petitions were dismissed by the learned High Court. Hence, these civil petitions.

Issues: i) How the tax statutes ought to be construed and whether it can be given retroactive operation?
ii) What is dominant rationale of interpretation of any legislative instrument?
iii) What does expression “Non-obstante” connotes?
iv) What is meant by ultra vires and intra vires?
v) How the words of a statute are primarily understood and phrases and sentences are construed?
vi) What is function of a proviso?
vii) How to find out whether any beneficial, remedial or curative legislation has a retrospective effect?

Analysis: i) According to Crawford’s Statutory Construction, Interpretation of Laws, Chapter XXVIII, page 738-739, para-359, the laws which impose a tax on sales, being tax laws, are subject to a strict construction in accordance with the tax statutes generally. In other words, a sales tax statute must be strictly construed in considering its coverage and no strained construction may be indulged in against the taxpayer simply because of the apparent purpose to raise needed revenue, nor will such statutes be given a retroactive operation, unless such an effect is clearly intended by the lawmakers.
ii) The dominant rationale of interpretation of any legislative instrument is to bring to light the intention of the legislature and the foremost sense of duty of the Courts is to catch on the same by reference to the language used.
iii) The expression “Non-obstante” is a Latin terminology which connotes ‘notwithstanding anything contained’. This turn of phrase, for all intents and purposes invests powers in the legislature to set down any provision which may

have an overriding effect on any other legal provision under the same law or any other laws, being a legislative apparatus and method of conferring overriding effect over the law or provisions that qualifies such clause or section of law. A non-obstante clause is commonly put into operation to signify that the provision should outweigh regardless of anything to the contrary. It is a well settled elucidation of law that a taxing statute should be construed strictly, even if the literal interpretation results in some hardship or inconvenience.

iv) The doctrine of ultra vires envisages that an authority can exercise only so much power as is conferred on it by law. An action of the authority is intra vires when it falls within the limits of the power conferred on it but ultra vires if it goes outside this limit. To a large extent the courts have developed the subject by extending and refining this principle. If an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it is carried out shorn of authority, it is ultra vires. The law can be struck down if it is found to be offending against the Constitution for absenteeism of lawmaking and jurisdictive competence or found in violation of fundamental rights.

v) The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary.

vi) The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein. If the enacting portion of a section is not clear a proviso appended to it may give an indication as to its true meaning.

vii) It is well settled that the curative statute is meant for lawmakers to recuperate the prior enactment for rectifying the defect or omission. In order to find out whether any beneficial, remedial or curative legislation has a retrospective effect, the litmus test is to explore whether it is intended to clear up an ambiguity or oversight in the prevailing or standing law and in its pith and substance, it corrects or modifies an existing law or an error that interferes with interpreting or applying the statute. For sure, its scope is clarificatory in nature but if it has no such character or essence, it cannot be deduced to be retroactive merely for the reason that it amounts to beneficial legislation. The retroactive application of curative legislation can be gauged and measured from the plain language and intention of legislature .A statute is not to be applied retrospectively in the absence of express enactment or necessary intendment, especially where the statute is to affect vested rights, past and closed transactions or facts or events that have already occurred. This principle(s) is attracted to fiscal statutes which have to be construed strictly, for they tend to impose liability and are therefore burdensome (as opposed to beneficial legislation). Furthermore, it is not only the wording/text of the statute which is to be considered in isolation; we are not to examine simpliciter whether such law has a retrospective effect or not, rather it has to be examined holistically by considering several factors such as, the dominant intention of the legislature which is to be gathered from the language used, the object indicated or the

mischief meant to be cured, the nature of rights affected, and the circumstances under which the statute is passed.

Conclusion: i) A sales tax statute must be strictly construed in considering its coverage and such statutes be given a retroactive operation, unless such an effect is clearly intended by the lawmakers.
ii) The dominant rationale of interpretation of any legislative instrument is to bring to light the intention of the legislature and the foremost sense of duty of the Courts is to catch on the same by reference to the language used.
iii) The expression "Non-obstante" is a Latin terminology which connotes 'notwithstanding anything contained'. The non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect.
iv) If an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it is carried out shorn of authority, it is ultra vires.
v) The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning.
vi) If the enacting portion of a section is not clear a proviso appended to it may give an indication as to its true meaning.
vii) The retroactive application of curative legislation can be gauged and measured from the plain language and intention of legislature. It has to be examined holistically by considering several factors such as, the dominant intention of the legislature which is to be gathered from the language used, the object indicated or the mischief meant to be cured, the nature of rights affected, and the circumstances under which the statute is passed

---

2. **Supreme Court of Pakistan**
Imran Ahmed Khan Niazi v. The State and others
Criminal M. A. No. 641 of 2023 in Criminal Petition No. 519 of 2023 and Criminal Petition No. 519 of 2023
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._519_2023_detailed_order.pdf

Facts: The present Crl. Petition has been filed before this Court by the petitioner, against the judgment of the Islamabad High Court wherein his arrest from the premises of the High Court was declared to be not per se illegal.

Issues: i) Whether the dignity, sanctity and safety of the courts for the benefit of all concerned stakeholders are violable and can be compromised?
ii) Whether the arrest of a person from a court office situated inside the High Court premises violates the dignity, sanctity and safety of the High Court in a

manner that undermined its decorum and also infringes the petitioner's Fundamental Right of access to justice?
iii) Whether the Fundamental Rights of access to justice and fair trial/due process apply equally to bail applications as the latter are directly connected to the liberty of persons?
iv) Whether protection of Fundamental Rights, in particular the right of access to justice, is a constitutional obligation of the courts that prevails over their duty to defend the dignity, sanctity and safety of their premises?

Analysis: i) It is a well-settled principle that the dignity, sanctity and safety of the courts for the benefit of all concerned stakeholders are inviolable and cannot be compromised. This is because courts of law are sanctuaries which the people approach to seek justice with the assurance that they will be able to pursue their relief freely in a safe, orderly and dignified environment. The breach of this assurance undermines the effective dispensation of justice by deterring people from seeking the resolution of their disputes from the courts.
ii) Having surrendered before the High Court to invoke its jurisdiction, the petitioner's arrest from the High Court premises preemptively blocked his recourse to the judicial relief of pre-arrest bail and thereby violated his Fundamental Right of access to justice. Indeed, such action also interfered with the working of the High Court, intervened in the exercise of its lawful jurisdiction and obstructed its process. The manner and mode in which the arrest was executed, namely, the breaking of the door, glass partitions and windows of the bio-metric verification room and the manhandling and injuring of a number of lawyers, High Court staff and police personnel undermined and lowered the authority of the High Court and disturbed its decorum.
iii) The Fundamental Rights of access to justice and fair trial/due process are ordinarily invoked to rectify the illegalities and defects committed during criminal trials and/or proceedings pertaining to the determination of civil rights/obligations. However, these rights apply equally to bail applications as the latter are directly connected to the liberty of persons. It may be noted that liberty is a Fundamental Right granted by Article 9 of the Constitution which is primarily enforced through bail applications. There can be no denial that the relief of pre-arrest bail is a judicial remedy availed by accused persons under Section 498 of the Cr.P.C. Therefore, the right of an accused person to seek this remedy must be construed in a manner that safeguards and advances his/her Fundamental Right of access to justice.
iv) Nonetheless, it may be observed with confidence that on a fair interpretation of Fundamental Rights, in particular the right of access to justice, it becomes clear that the protection of such rights of the people is a constitutional obligation of the courts that prevails over their duty to defend the dignity, sanctity and safety of their premises.

Conclusion: i) The dignity, sanctity and safety of the courts for the benefit of all concerned

stakeholders are inviolable and cannot be compromised.
ii) The arrest of a person from a court office situated inside the High Court premises violates the dignity, sanctity and safety of the High Court in a manner that undermined its decorum and also infringes the petitioner's Fundamental Right of access to justice.
iii) The Fundamental Rights of access to justice and fair trial/due process apply equally to bail applications as the latter are directly connected to the liberty of persons.
iv) Protection of Fundamental Rights, in particular the right of access to justice, is a constitutional obligation of the courts that prevails over their duty to defend the dignity, sanctity and safety of their premises.

---

3. **Supreme Court of Pakistan**
Abid Jan v. Ministry of Defence through its Secretary, Islamabad and others
Civil Petition No.2467 of 2020
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2467_2020.pdf

Facts: This Civil Petition for leave to appeal is directed against the order passed by the Federal Service Tribunal, Islamabad ("FST") in appeal whereby the appeal of the petitioner was dismissed in limine, being barred by time.

Issues: i) Whether petitioner is required to file fresh memo of appeal when the writ petition was directed to be transmitted to the Federal Service Tribunal by the High Court?
ii) Whether Supreme Court or High Court can convert and treat one type of proceedings into another type and proceed to decide the matter either itself or may remit the lis to the competent authority?
iii) Whether limitation run when any petition has been filed in High Court within period of limitation as provided for the departmental appeal and High Court transmit it to Service Tribunal for decision?
iv) Whether every court has the power to rectify ex debito justitiae its judgment and order to prevent abuse of process and severe patent oversights and mistakes?
v) Whether a patent and obvious error or oversight on the part of Court in any order or decision may be reviewed when it prejudice any one?

Analysis: i) When the original writ was directed to be transmitted to the FST by the High Court in the aforementioned order, then it was neither within the dominion of the petitioner to present the fresh memo of appeal by himself, nor was he obligated to submit a fresh memo of appeal which would otherwise have become time barred when, in order to save the lis from the rigors of limitation, the Writ Petition was converted into an appeal.
ii) In the case of Muhammad Akram v. DCO, Rahim Yar Khan and others (2017 SCMR 56), an identical controversy was dilated upon by this Court and it was held that no fetters or bar could be placed on the High Court and/or this Court to

convert and treat one type of proceedings into another type into another and proceed to decide the matter either itself, provided it has jurisdiction over the lis before it in exercise of another jurisdiction vested in the very Court or may remit the lis to the competent authority/forum or Court for decision on merits.

iii) It was further held that once the Writ Petition which was filed within the period of limitation as provided for the departmental appeal, was treated and remitted by the High Court as departmental appeal, that too where the limitation by then had not run out as noted above, therefore the learned Punjab Services Tribunal had fallen into error to dismiss the Appeal before it on the ground of limitation alone, without adverting to the merits of the case and as a consequence of these findings, this Court had set aside the Punjab Services Tribunal order and remanded the matter with the direction to decide the pending appeal on merits.

iv) Every Court has the power to rectify ex debito justitiae its judgment and order to prevent abuse of process and severe patent oversights and mistakes. This power is an inherent power of the Court to fix the procedural errors if arising from the Court's own omission or oversight which resulted in a violation of the principles of natural justice or due process…This Court in the case of Government of the Punjab, through Secretary, Schools Education Department, Lahore etc. vs. Abdur Rehman & others (2022 SCMR 25), held that the lexicons of law provide the definition of the legal maxim "Ex Debito Justitiae" (Latin) "as a matter of right or what a person is entitled to as of right". This maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act ex debito justitiae is an inherent power of courts to fix the procedural errors if arising from courts own omission or oversight which resulted violation of the principle of natural justice or due process.

v) It is the foremost duty of the Court and Tribunal to do complete justice. A patent and obvious error or oversight on the part of Court in any order or decision may be reviewed sanguine to the renowned legal maxim "actus curiae neminem gravabit", which is a well-settled enunciation and articulation of law expressing that no man should suffer because of the fault of the Court, or that an act of the Court shall prejudice no one, and this principle also denotes the extensive pathway for the safe administration of justice. It is interrelated and intertwined with the state of affairs where the Court is under an obligation to reverse the wrong done to a party by the act of Court which is an elementary doctrine and tenet to the system of administration of justice beyond doubt that no person should suffer because of a delay in procedure or the fault of the Court. This is a de rigueur sense of duty in the administration of justice that the Court and Tribunal should be conscious and cognizant that nobody should become a victim of injustice as a consequence of their mistake and, in the event of any injustice or harm suffered by mistake of the Court, it should be remedied by making the necessary correction forthwith. According to the principle of restitution, if the Court is satisfied that it has committed a mistake, then such person should be restored to the position which he would have acquired if the mistake did not

happen. This expression is established on the astuteness and clear-sightedness that a wrong order should not be perpetuated by preserving it full of life or stand in the way under the guiding principle of justice and good conscience. So in all fairness, it is an inescapable and inevitable duty that if any such patent error on the face of it committed as in this case, the same must be undone without shifting blame to the parties and without further ado being solemn duty of the Court to rectify the mistake.

Conclusion: i) A petitioner is not required to file fresh memo of appeal when a writ petition was directed to be transmitted to the Federal Service Tribunal by the High Court.
ii) Supreme Court or High Court can convert and treat one type of proceedings into another type and proceed to decide the matter either itself provided it has jurisdiction over the lis or may remit the lis to the competent authority.
iii) Limitation may not run when any petition has been filed in High Court within period of limitation as provided for the departmental appeal and High Court transmit it to Service Tribunal for decision.
iv) Every court has the power to rectify ex debito justitiae its judgment and order to prevent abuse of process and severe patent oversights and mistakes.
v) A patent and obvious error or oversight on the part of Court in any order or decision may be reviewed when it prejudice any one.

---

4. **Supreme Court of Pakistan**
Liaquat Ali Khan v. Muhammad Akram & another
Civil Appeal No.431 of 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._431_2021_07072023.pdf

Facts: The plaintiff filed a suit for specific performance of two agreements along with grant of possession which was decreed. On first appeal, the high Court set aside the decree of trial court and dismissed the suit of plaintiff. Hence, this appeal.

Issue: Whether suit for specific performance can be decreed for the breach of agreement committed by defendant despite of failure of plaintiff to prove his own willingness to perform the essential terms of agreement regarding payment of consideration?

Analysis: Even assuming that defendant has committed breach, if the plaintiff has failed to prove that he was always ready and willing to perform the essential terms of the agreements which were required to be performed by him, there was a bar to specific performance in his favour. The remedy by way of specific performance is equitable and it is not obligatory on the Court to grant such a relief merely because it is lawful to do so. Section 22 of the Specific Relief Act, 1877 expressly stipulates so…

Conclusion: Even assuming that defendant has committed breach, if the plaintiff has failed to prove that he was always ready and willing to perform the essential terms of the agreements which were required to be performed by him, there was a bar to specific performance in his favour.

---

5. **Supreme Court of Pakistan**
Muhammad Munir & others etc. v. Umar Hayat & others
Civil Appeal Nos.1731 & 1732 of 2021 & C.M.A.Nos.13433 & 13475 of 2021
Mr. Justice Ijaz ul Ahsan, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1731_2021.pdf

Facts: These two appeals are by the defendants and arise out of two declaratory suits and the relief claimed therein was first dismissed by the trial Court, and then on appeal by the first appellate Court, but on revision, this was accepted and the High Court issued decrees in favour of the plaintiffs. In this judgment both appeals have been decided together for not only the matter in issue in both of them are directly and substantially the same, but it is also between the same parties, who are litigating under the same title.

Issues: i) What standard of proof is required to prove the plea of insanity or unsoundness of mind of a person?
ii) Whether any party can be allowed to go beyond the scope of its pleadings?
iii) What is best evidence to prove the mental disorder of a person?
iv) Whether denial of a particular fact for want of its knowledge by a witness can be said to be an admission of fact?
v) Whether a contract of sale will be vitiated if the consent of either party is given by a person of unsound mind?
vi) Who can be said to be of sound mind person for the purpose of making the contract?
vii) Whether certificate endorsed on the conveyance deed by the Registering Officer is a relevant piece of evidence to presume that the deed is valid in law?
viii) What is standard of proof required in a civil dispute?

Analysis: i) Be it noted that plea of insanity or unsoundness of mind is an exception and the standard of proof for such a plea is somewhat higher than that of normal proof in civil cases.
ii) This was a material fact that ought to have been disclosed in the plaint, but was conspicuously omitted, and since the plaintiffs could not go beyond the scope of their pleadings, they could not even be allowed to put in any statement or material to rectify the omission during the course of evidence1, and as such, it would be fair to hold that the plaintiffs had failed to discharge their burden of pleadings, and tumbled at the first stage of the trial of their claim.
iii) It seems appropriate to point out that the best evidence of one's mental disorder could have been the medical attendant who treated him at the relevant

time. Evidence of layman especially relatives like son, daughter, wife etc, may be relevant, but being biased and exaggerated it cannot be conclusive.
iv) The denial of a particular fact for want of its knowledge by a witness cannot be said to be an admission of fact.
v) It is worth noting that a contract of sale, like any other contract, would be vitiated if the consent of either party is given by a person of unsound mind as provided in Section 11 of the Contract Act, 1872.
vi) Under Section 12 of that Act, a person is said to be of sound mind for the purpose of making the contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest. A person of unsound mind is thus not necessarily a lunatic or insane. It is sufficient if the person is incapable of judging the consequences of his acts…It is now well recognized that a permanent paralytic affection, though it somewhat saps the physical energy of the sufferer, does not necessarily impairs his mental power to such an extent to render him incapable of transacting business.
vii) It is important to stress here that registration of a document is a solemn act to be performed in the presence of a competent officer appointed to act as Registrar, whose duty it is to attend to the parties during the registration and see that the proper persons are present, are competent to act, and are identified to his satisfaction; and all things done before him in his official capacity and verified by his signature will be presumed to be done duly and in order. Therefore, the certificate endorsed on the conveyance deed by the Registering Officer under Section 60 of the Registration Act, 1908 is a relevant piece of evidence to presume that the deed is valid in law.
viii) It is settled that the standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt. In absence of any tangible evidence produced by the plaintiffs to support the plea of fraud, it does not take the matter further.

Conclusion: i) Plea of insanity or unsoundness of mind is an exception and the standard of proof for such a plea is somewhat higher than that of normal proof in civil cases.
ii) Any party cannot be allowed to go beyond the scope of its pleadings.
iii) The best evidence to prove the mental disorder of a person can be the evidence of a medical attendant who treated him at the relevant time.
iv) The denial of a particular fact for want of its knowledge by a witness cannot be said to be an admission of fact.
v) A contract of sale will be vitiated if the consent of either party is given by a person of unsound mind.
vi) A person is said to be of sound mind for the purpose of making the contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.
vii) The certificate endorsed on the conveyance deed by the Registering Officer under Section 60 of the Registration Act, 1908 is a relevant piece of evidence to presume that the deed is valid in law.

viii) The standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt.

---

6. **Lahore High Court**
Mian Arif Said v. Province of Punjab etc.
Writ Petition No. 37087/2023.
Mr. Justice Ali Baqar Najafi, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4015.pdf

Facts: Through this Constitutional petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner has challenged the continued illegal custody/detention of the detenue seeking further direction to produce before this Court and then set at liberty.

Issues: i) Whether a party can allege malafide against the Investigating Officer and the police in general terms?
ii) Why the courts do not interfere into the investigation of a criminal case?

Analysis: i) No one can allege malafide against the Investigating Officer and the police in general terms which will not be sufficient as it has to be specifically pleaded against the government officials. However, it is most difficult to prove and the onus is always upon the person alleging as there is a presumption of regularity in all official acts and until that is rebutted, the action cannot be challenged.
ii) Under the concept of separation of powers, the investigation of a criminal case falls in the domain of the police. If independence of judiciary is a hallmark of a democratic dispensation then on the other hand independence of the investigation agency is equally important to the concept of rule of law. Undue interference in each other's role destroyed the concept of separation of powers and will go towards the defeating of jurisdiction.

Conclusion: i) No one can allege malafide against the Investigating Officer and the police in general terms.
ii) The courts do not interfere into the investigation of a criminal case under the concept of separation of powers.

---

7. **Lahore High Court**
Rabia Sultan v. Province of Punjab and two others
Writ Petition No.43904/2023
Mr. Justice Ali Baqar Najafi, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4045.pdf

Facts: Through this writ petition, the petitioner assailed the order passed by Additional Chief Secretary (Home), whereby, petitioner's application for providing better class facility in the jail to her husband was dismissed.

Issues: i) Whether a prisoner who has not been involved in, or convicted for an offence under section 395 PPC shall be awarded better class jail facilities under rule 242

(2)(c)(v) of the Pakistan Prison Rules, 1978?
ii) Whether a prisoner can claim better class jail facility on the principle of parity?

Analysis: i) It has been observed that better class facility to the petitioner's husband was restricted by the authority by applying Rule 242 (2) (c) (v) supra, which though include section 395 PPC but not the section-7 of Anti-terrorism Act, 1997. We have minutely examined the language used in clause (c) above which is reproduced again for ready reference as under; "(c) has not been involved in, or convicted for, an offence:" In this clause, the words "has not been" are used; whereas Clause (a) of same subsection finds mentioned the word 'is' & 'has not been' and Clause (b) uses the words 'is' or 'has been'. Both the words, 'is' or 'has been' maintain different connotations and meanings; the use of word "is" obviously represents the present tense and would refer to something that is to be done or is being done in the present, therefore, by not using the word 'is', rather simply inserting the word "has been" in clause (c) makes it clear that it talks about something done in the past, thus the instant clause would apply on an offender who remained involved previously in such offences and this clause is not specified for first offender.
ii) The similarly placed prisoners were already extended this facility, therefore, it is the constitutional right of the petitioner's husband to enjoy the protection of law and to be treated in accordance with law which is an inalienable right of every citizen wherever he may be, as ordained under Article 4 of the Constitution of the Islamic Republic of Pakistan. 1973, therefore, he cannot be deprived of such right.

Conclusion: i) A prisoner who has not been involved in, or convicted for an offence under section 395 PPC shall be awarded better class jail facilities under rule 242 (2)(c)(v) of the Pakistan Prison Rules, 1978.
ii) A prisoner can claim better class jail facility on the principle of parity.

---

8. **Lahore High Court**
Ghulam Abbas v. GOP, etc.
Criminal Appeal No.67693/2022
Mr. Justice Ali Baqar Najafi, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4080.pdf

Facts: The Appellant challenged the order whereby his name was entered in the 4th schedule of Anti-terrorism Act, 1997 and the order by which his review petition against the above order was rejected.

Issues: (i) What are the criteria or prerequisites for listing a person as a proscribed in the fourth schedule of Anti-terrorism Act, 1997?
(ii) How the term "reasonable grounds" as used in section 11-EE of the Anti-terrorism Act, 1997 is to be adjudged?

Analysis: (i) The criteria or prerequisites for listing a person as a proscribed in the fourth schedule of ATA, 1997 are almost settled by the courts i.e. the State must

demonstrate that the person sought to be notified as such, was involved in cases under Sections 6 and 7 of the ATA,1997 or was an office-bearer, activist or associate with an organization notified in terms of Section 11-B for proscription of organization by Federal Government or was member of such organization which was under observation in terms of Section 11-D of ATA, 1997 or was involved in terrorism or sectarianism. Further, in order to arrive at a conclusion on above aspects, the information may be gathered from any credible source whether domestic or foreign including governmental and regulatory authorities, the law enforcement agencies, financial intelligence units, banks and non-banking companies and even international institutions.

(ii) Section 11-EE of ATA, 1997 though enumerates different situations attracting liability for the persons to be enlisted in 4th schedule but use of words "reasonable grounds" in the section requires to evaluate the material/information within that scope… The reasonable grounds flow from the information available or collected against the delinquents and such information is usually derived from the links propagated through many types of material including SMS/Voice Messages, messages on WhatsApp or other social media accounts, pamphlets/handouts, posters, photographs, painting, caricatures, books/Literature, newspapers, Audio/Video CDs, electronic and digital material, wall chalking, banners/Pena flex, demonstrations in Rallies, material on Facebook, twitter or any other social media account, communication on Telephone/Mobile (CDR), speeches in Public Meetings, Radio & T.V. shows, surveillance report in any form, reports from international agencies, suspicious transaction report from any financial institution… All the persons who are involved in acts advancing a religious, sectarian or ethnic cause or promoting political destabilization could well be judged for enlisting in 4th schedule if credible information in any of the forms cited above or evidence is available against them. The authority before enlisting any person in 4th schedule must ensure that information be available in more than one forms as highlighted above so as to make it credible and be more than a suspicion. It is expected that authority should maintain record periodically for addition or deletion of any activities of the suspect during the period he is taken on 4th schedule so as to place it before the courts for proper assistance and decisions. It must be ensured that the person, once involved in such activities, is still alive and in touch with same state of affairs in order to avoid any deprivation of an individual from his fundamental rights whose dignity is to be respected which is inviolable right of a citizen as contemplated under Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: (i) Above mentioned are the criteria or prerequisites for listing a person as a proscribed in the fourth schedule of Anti-terrorism Act, 1997.

(ii) The term "reasonable grounds" as used in section 11-EE of the Anti-terrorism Act, 1997 envisages that the information for enlisting any person in 4th schedule must be available in more than one forms as highlighted above so as to make it credible and be more than a suspicion.

9. **Lahore High Court**
Muhammad Rehmat Ullah v. The State etc.
Criminal Appeal No.73676 of 2022
Mr. Justice Ali Baqar Najafi, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4087.pdf

Facts: Through this criminal appeal, the appellate assailed his sentence and conviction awarded to him in case FIR registered under sections 11-F(2), 11-W and 8/9 of Anti-terrorism Act, 1997 by the learned judge, Anti-terrorism Court.

Issues: i) Whether the document exhibited by the trial court must be sent to the court of appeal with records?
ii) Whether book in bound set is a document?
iii) Whether the presumption falls under Article 129 of Qanun-e-Shahadat Order, 1984 is optional with the court to presume or not to presume?
iv) Whether principles of evidence in criminal matters stand at variance or at different premise to one applied in civil matters?
v) Whether material extracted from the mobile phone of accused can be used against him if it was not put to him in his statement u/s 342 Cr.P.C?
vi) Whether retrieval of data from mobile phone of accused by PFSA without the consent of accused amounts to self-incrimination prohibited under Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973?
vii) Whether the right to privacy is meant to take precedence over any other inconsistent provisions of domestic law?
viii) When any mobile phone is recovered from a suspect and any data retrieval whereof from said phone is essential for criminal investigation, whether it can be obtained without the permission of concerned Court?
ix) What is the process which regulates the use and disposal of any information which is required to be extracted from a mobile phone recovered from an accused at the time of his arrest?

Analysis: i) Chapter 24-B of High Court Rules & Orders Volume-III states that exhibited articles, which are not documents and are not referred to in paragraphs 41 and 42 of this Chapter, should not be sent to the High Court, unless the High Court calls for them, or unless the Sessions Judge considers that a particular exhibit will be required in the High Court, in which case he should record a note at the foot of his judgment that the exhibit should be forwarded to the High Court in the event of an appeal. The above dictates of law requires that the documents exhibited must be sent to the court of appeal with records.
ii) The definition of ‘document’ in our law is the “matter expressed or described upon any substance” and not the substance itself, therefore information in the form of writing, words painted, map or plan, inscription or caricature etc. when appear on a substance would qualify to be a document which means book in bound set is not the document but the information therein.

iii) So far as the contention that judicial function are protected as having presumption of truth, suffice it to say that such presumption falls under Article 129 of Qanun-e-Shahadat Order, 1984, it says that ‘Court may presume’ which means that it is optional with the court to presume or not to presume because it is not like rebuttable presumption as of some referred under Article 90 to 95 & 99. Such Articles use word “shall” for presumption of facts mentioned therein, therefore, if facts are not rebutted, shall be presumed as in existence. Presumption under Article 129 of the said Order is also not like irrebuttable presumptions (conclusive) as referred in Article 55 and 128 of the said Order.
iv) As a legal challenge we turn to the contention of learned APG that fact of alleged non-exhibition of documents has not been challenged during recording of evidence, therefore, any fact if not cross examined shall be presumed as admitted or proved. We know that principles of evidence in criminal matters stand at variance or at different premise to one applied in civil matters.
v) So much so prosecution has also attached with the record a USB allegedly containing images, audios, videos, chat, call log etc., retrieved from the phone. This evidence cannot be used against the accused due to the reason that images retrieved from mobile phone were not put to the accused in his statement u/s 342 Cr.P.C.
vi) Article 13 of the Constitution prohibits self-incrimination. Above expression in Article 13(b) clearly indicates that no one can be compelled to be witness against himself. Retrieval of data from mobile phone of accused/appellant by PFSA without the consent of accused amounts to self-incrimination prohibited under Article-13 of the Constitution of the Islamic Republic of Pakistan, 1973.
vii) As a fundamental constitutional right, the right to privacy is meant to take precedence over any other inconsistent provisions of domestic law. Article 8 of the Constitution provides that "any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred under the Constitution, shall, to the extent of such inconsistency, be void."
viii) The acquisition of data stored in an information system or seizure of any articles containing such data requires intervention of Court either by obtaining warrant in this respect or otherwise an intimation to the Court after such seizure within 24 hours. When any mobile phone is recovered from a suspect, and any data retrieval whereof from said phone is essential for criminal investigation, it could only be obtained with the permission of concerned Court with strict regard to privacy rights guaranteed under the Constitution.
ix) For any property recovered on search u/s 51 of Cr.P.C. an appropriate order can only be made by magistrate concerned. This situation requires that Police officer if wanted to use such mobile/cell phone can request the magistrate for its analysis in support of allegation in the FIR, and magistrate after hearing the accused can pass order for examination and extraction of such information which is relevant to the case only, keeping strict regard to Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: i) The document exhibited by the trial court must be sent to the court of appeal with records.
ii) Book in bound set is not a document but the information therein.
iii) The presumption falls under Article 129 of Qanun-e-Shahadat Order, 1984 is optional with the court to presume or not to presume.
iv) Principles of evidence in criminal matters stand at variance or at different premise to one applied in civil matters.
v) Material extracted from the mobile phone of accused cannot be used against him if it was not put to him in his statement u/s 342 Cr.P.C.
vi) Retrieval of data from mobile phone of accused by PFSA without the consent of accused amounts to self-incrimination prohibited under Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973.
vii) The right to privacy is meant to take precedence over any other inconsistent provisions of domestic law.
viii) When any mobile phone is recovered from a suspect and any data retrieval whereof from said phone is essential for criminal investigation, it cannot be obtained without the permission of concerned Court.
ix) For any property recovered on search u/s 51 of Cr.P.C. an appropriate order can only be made by magistrate concerned. This situation requires that Police officer if wanted to use such mobile/cell phone can request the magistrate for its analysis in support of allegation in the FIR, and magistrate after hearing the accused can pass order for examination and extraction of such information which is relevant to the case only, keeping strict regard to Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973.

---

10. **Lahore High Court**
Arzoo Textile Mills Ltd. etc. v. Federation of Pakistan etc.
W.P. No. 23960 of 2023
Mr. Justice Ali Baqar Najafi
https://sys.lhc.gov.pk/appjudgments/2023LHC4059.pdf

Facts: The petitioners prayed for setting-aside the notification of the Federal Government No.PF-5-(02-ZR) 2020, dated 28.02.2023 regarding withdrawal of subsidy on electricity, being unconstitutional, illegal, unlawful, coram non-judice and without lawful authority.

Issue: Whether a time subsidy granted through the decision of the Federal Government sent in Federal Cabinet can be withdrawn before the expiry of its term?

Analysis: The main emphasis of the arguments advanced by the learned counsels for the petitioners is that the Respondent/Federal Government works under a definite and permanent system of understanding and the decisions taken under the Constitutional mandate and on the basis of the command of the Parliament through the Cabinet which have to be followed. The principles of promissory estoppel and *locus poenitentiae* have been relied upon in support of the

contentions. It is also the case of the petitioners that based on this time-bound subsidy, the petitioner-companies engaged in many contracts and, therefore, any change of tariff is bound to affect their working. The stand of the Respondent/Federal Government, on the other hand, is that it is not in a position to continue with the time-bound subsidy due to the fluctuation in Dollar rates as well as other geo-strategic and geo-political situations. Also it is their case that executive subsidies are not supported and approved by international donors who have seriously objected to the said concessions granted to the petitioners. However, no Government can function if its policy is continuously reviewed without giving any permanence but no Government can earn a good reputation amongst its masses if it takes a decision without any economic viability. Similarly, no Government can survive unless it is in a position to give economic benefits to its subjects and it is equally important that no Government is acceptable unless it properly appropriate funds for the promotion of the export oriented industry to compete with the international commodities. But the policy decisions are to be taken on the basis of hard ground realities which cannot be interfered with by this Court. Besides, subsidy is to be merged into tariff before it is charged to the petitioner-companies, hence its challenge is to be made before the appropriate forum… there is no cavil to the proposition that the commitment if not based on thorough research input and, understanding reached between stakeholder made superficially and cosmetically but if it cannot be practically acted upon should not bind the Government… sovereign commitment must be given on a statutory basis and not merely in the decision of the cabinet, therefore, is not applicable to the present case. The legislative command is not supporting the case of the petitioners. The principles of *locus poenitentiae* or promissory estoppel are not attracted in this case for the reasons…Last but not least is that policy decision of Government cannot be interfered with.

Conclusion: A time subsidy granted through the decision of the Federal Government sent in Federal Cabinet can be withdrawn before the expiry of its term.

---

11. **Lahore High Court**
Muhammad Younis and others v. Mst. Dolat Bibi and others
Civil Revision No.620 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3883.pdf

Facts: The petitioners through a suit for declaration alongwith permanent injunction assailed the mutations on the ground that they are against law and facts, ineffective upon the rights of petitioners and are liable to be cancelled. The trial Court after giving issue-wise findings dismissed the suit. The petitioners being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree; hence, the instant revision petition.

Issues: i) Whether Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the

Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction and said provision of law also requires the identification of such person by two respectable persons?
ii) Whether mutation entry is a document of title?
iii) Whether the entire structure built on illegal and defective foundation would have any value in the eyes of law?
iv) Once a mutation is challenged whether the party relies on such mutation is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation in dispute?
v) Whether while seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge?

Analysis: i) Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction. The said provision of law also requires the identification of such person by two respectable persons.
ii) It is a settled principle of law that mutation entry is not a document of title, which by itself does not confer any right, title or interest.
iii) It is also a well settled law that if the foundation is illegal and defective then entire structure built on such foundation would have no value in the eyes of law.
iv) It is a settled principle of law that once a mutation is challenged the party that relies on such mutation(s) is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation(s) in dispute.
v) Article 95 of the Limitation Act, 1908 provides that while seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge.

Conclusion: i) Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction and said provision of law also requires the identification of such person by two respectable persons.
ii) The mutation entry is not a document of title.
iii) The entire structure built on illegal and defective foundation would have no value in the eyes of law.
iv) Once a mutation is challenged, the party relies on such mutation is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation in dispute.
v) While seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge.

---

12. **Lahore High Court**
Muhammad Nadir Khan (deceased) through L.Rs v. Muhammad Usama and others
Civil Revision No.42577 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3877.pdf

Facts: The petitioners instituted a suit for specific performance on the basis of agreements to sell against the respondents No.1 to 3/defendants with regards to the suit property. On the other hand, the respondents No.1 and 2 instituted suit for possession with permanent injunction and recovery of rent against the present petitioners and respondent No.4. The trial Court dismissed suit for specific performance of the petitioners and decreed suit for possession of the respondents No.1 and 2. The petitioners being aggrieved preferred two separate appeals which were dismissed, hence, the instant revision petition.

Issue: Whether father of minors can execute agreement to sell on behalf of minors without being appointed as guardian?

Analysis: There is no denial to the fact that disputed property is owned by the respondents No.1 and 2 who at the relevant time of purported agreements to sell were minors and respondent No.4 though was father but was not appointed as guardian of the said minors and no permission was accorded to him to sell out the property of the minors or enter into any kind of agreement on behalf of the minors by the Court of competent jurisdiction; therefore, he was not competent to enter into alleged agreements to sell on behalf of the minors. Under section 11 of the Contract Act, 1872 the minor disqualifies from entering into any contract, for disposal of his property, without appointment of a guardian by a Court of competent jurisdiction and if any such contract is entered the said transaction is void ab-initio and does not have any binding force.

Conclusion: Father of minors cannot execute agreement to sell on behalf of minors without being appointed as guardian.

---

13. **Lahore High Court**
Commissioner Inland Revenue. v M/s Mehran Business International (Pvt) Ltd.
Sales Tax Reference No.53 of 2017.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC3960.pdf

Facts: A show cause notice was issued to the respondent wherein it was charged with contravention of Sections 3, 6, 7, 8B, 22 and 26 of the Sales Tax Act, 1990 read with S.R.O. No.647(I)/2007, dated 27.06.2007 as amended. The respondent joined the adjudicating proceedings and the Deputy Commissioner passed the assessment order. The respondent preferred an appeal against the aforementioned

assessment order, which was dismissed by the Commissioner Inland Revenue (Appeals). The respondent preferred further appeal before the Tribunal, which was dismissed however, the respondent filed an application for rectification of order and the Tribunal reversed its order and accepted appeal of the respondent. Now, the petitioner has filed this reference application under Section 47 of the Sales Tax Act, 1990.

Issues: i)What is the scope of power of rectification under section 57 of the Sales Tax Act, 1990?
ii) What is essential condition for exercise of power of rectification of mistake?
iii) Whether failure to adjudicate upon a substantial plea taken or controversy raised, which materially affects outcome of the case, constitutes a mistake apparent from the record and is rectifiable under Section 57 of the STA, 1990?
iv) Whether a mistake can be rectified when the decision sought to be rectified has already been assailed in appeal or Tax Reference?

Analysis: i) A comparison of the text of provisions of Section 57 of the Act makes it abundantly clear that the scope of rectification, which was previously confined to correction of clerical or arithmetical errors in any assessment, adjudication, order or decision, has been enlarged to rectify any mistake in the order which is apparent from the record. Rectification of mistake in the order may be made by the officer of Inland Revenue, Commissioner, the Commissioner (Appeals) or the Tribunal on his or its own motion or when the same is brought to his or its notice by a taxpayer or, in the case of the Commissioner (Appeals) or the Appellate Tribunal, by the Commissioner.
ii) The essential condition for the exercise of such power is that the mistake should be apparent from the record i.e. the mistake which may be seen floating on the surface and does not require investigation or further evidence. Any mistake in the order which is not patent and obvious from the record cannot be termed to be rectifiable.
iii) The power of rectification visualized under Section 57 ibid may not cover a full-fledged review of an order on discovery of new evidence or fresh legal ground becoming available after the decision sought to be corrected. However, the failure to adjudicate upon a substantial plea taken or controversy raised, when materially affects outcome of the case, in our opinion, does constitute a mistake apparent from the record which is rectifiable under Section 57 of the Act subject to satisfaction of other conditions and limitations specified therein. It is evident from perusal of Paragraph No.4 of the order dated 02.06.2016 passed by the Tribunal that the respondent raised a categorical plea that 10% unadjusted input tax was available for adjustment in the very next tax period which, being a substantive right of the taxpayer, could not be denied. This being a substantial plea materially affecting outcome of the case i.e. determination of tax liability of the respondent, was required to be adjudicated upon and failure to do so by the Tribunal constituted a mistake obvious and apparent from the record that was

rectifiable.
iv) A mistake is not rectifiable when the decision sought to be rectified has already been assailed in appeal or Tax Reference which merged into the final decision of that higher forum…

Conclusion: i) After substitution of section 57, correction of clerical or arithmetical errors in any assessment, adjudication, order or decision, has been enlarged to rectify any mistake in the order which is apparent from the record.
ii) The essential condition for the exercise of such power is that the mistake should be apparent from the record i.e. the mistake which may be seen floating on the surface and does not require investigation or further evidence.
iii) The failure to adjudicate upon a substantial plea taken or controversy raised, when materially affects outcome of the case does constitute a mistake apparent from the record which is rectifiable under Section 57 of the Act subject to satisfaction of other conditions and limitations specified therein.
iv) A mistake is not rectifiable when the decision sought to be rectified was already assailed in appeal or Tax Reference which merged into the final decision of that higher forum.

---

14. **Lahore High Court**
Muhammad Ibrar, etc v. Govt. of Punjab, etc.
W.P.No.940 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC4007.pdf

Facts: The petitioners were owners of flour mills. They sought writ of mandamus for enhancement of wheat quota. The grievance of the petitioners was that the respondents were though bound to release the wheat for each district on the basis of need of the targeted population of that district but instead they decreased the supply of wheat quota to the flour mills without any lawful excuse.

Issues: i) Whether court can abridge the powers of executive to frame a policy or to settle its terms as per wishes and whims of a particular individual or a group of society while exercising of constitutional jurisdiction?
ii) Whether Right of freedom of trade, business or profession is an absolute and unbridled right or is subject to some qualifications?
iii) What is the basic responsibility of state regarding the promotion of social and economic well-being of the people guaranteed by the Constitution of Pakistan 1973?

Analysis: i) This Court in exercise of constitutional jurisdiction cannot abridge the powers of executive to frame a policy or to settle its terms as per wishes and whims of a particular individual or a group of society. While analyzing the vires of a policy, the Court is obliged to keep in mind the concept of trichotomy of powers between legislature, executive and judiciary. This well-known principle is inbuilt in the

"Constitution" which is founded on the ground that the legislature being representative of the people enacts the law and the law so enacted acquires legitimacy. Framing of a policy with regard to a particular subject is within the exclusive domain of the executive, which is in a better position to decide on account of its mandate, experience, wisdom and sagacity which are acquired through diverse skills. The last pillar of the trichotomy of powers is the judiciary, who is entrusted with the task to interpret the law and to play the role of an arbiter in cases of disputes between the individuals inter se and between individual and the State.

ii) Right of freedom of trade, business or profession is not an absolute and unbridled right, rather it is regulated by some restrictions. (…) From the bare perusal of Article 18 of the "Constitution", there remains no cavil that right of freedom, trade, business or profession is always subject to such qualifications, if any, as may be prescribed by law. These qualifications empower the Government to frame a policy, which is even provided under section 3 of the "Act, 1958". It is an oft repeated principle of law that in absence of any illegality, perversity, arbitrariness or an established malafide, it will not be open for the High Court to annul a policy framed by the executive.

iii) Article 38 of the "Constitution" guarantees the promotion of social and economic well-being of the people. Sub-article (d) though ordains that the State shall provide basic necessities of life e.g. food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment but its mandate cannot be extended for the benefit of petitioners being mill owners only to promote their business.

Conclusion: i) The Court in exercise of constitutional jurisdiction cannot abridge the powers of executive to frame a policy or to settle its terms as per wishes and whims of a particular individual or a group of society.

ii) Right of freedom of trade, business or profession is not an absolute and unbridled right, rather it is regulated by some restrictions. According to Article 18 of the Constitution of Pakistan 1973 there remains no cavil that right of freedom, trade, business or profession is always subject to such qualifications, if any, as may be prescribed by law.

iii) According to Article 38 of the Constitution of Pakistan 1973, the State shall provide basic necessities of life e.g. food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.

---

15. **Lahore High Court**
Shakil-ur-Rehman v. The State & another and
The State v. Shakil-ur-Rehman & another
CSR No.2-N/2018, Crl. Appeal No.182346/2018, 197051/2018
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC3942.pdf

Facts: Appellant filed an appeal under Section 48 of the Control of Narcotic Substances Act, 1997 against his conviction and sentence while the trial court forwarded Capital Sentence Reference under Section 374 Cr.P.C. for confirmation or otherwise of death sentence awarded to the convict. The prosecution also filed Crl. Appeal through which order qua handing over car to its real owner was questioned.

Issues: i) Whether the report of Chemical Examiner which does not give details of protocol and tests will meet the evidentiary presumption attached to a report of the Government Analyst under Section 36(2) of the CNSA, 1997?
ii) Whether Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 makes it mandatory on an analyst to mention result of sample analyzed with full protocols?
iii) If Supreme Court interprets or declares the law, whether the same interpretation must be applicable from the time when the law or provision in question was enacted?
iv) Whether the case carrying stringent sentence must be proved through cogent evidence?
v) Whether a single circumstance is sufficient to extend the benefit of doubt to an accused as of right?

Analysis: i) It is settled law by now that any report failing to describe in it, the details of the full protocols applied for the test will be inconclusive, defective, unreliable and will not meet the evidentiary presumption attached to a report of the Government Analyst under Section 36(2) of the CNSA, 1997.
ii) Rule 6 makes it imperative on an analyst to mention result of sample analyzed with full protocols applied thereon along with other details in the report issued for test/analysis by the Laboratory.
iii) It is settled law that when the Supreme Court interprets or declares the law, that interpretation only clarifies the meaning of the words already used by the legislature or the competent authority drafting the provisions. It stands to reason, therefore, that the same interpretation must be applicable not from the time when the judgment pronouncing such interpretation was rendered but from the time when the law or provision in question was enacted.
iv) It is cardinal principle of criminal justice system that the case carrying stringent sentence must be proved through cogent evidence in order to rule out the possibility of false implication.

v) It is golden principle of criminal law that a single circumstance creating reasonable doubt would be sufficient to smash the veracity of prosecution case and sufficient to extend the benefit of doubt in favour of the accused not as a matter of grace or concession but as of right.

Conclusion: i) Any report failing to describe in it, the details of the full protocols applied for the test will be inconclusive, defective, unreliable and will not meet the evidentiary presumption.

ii) Rule 6 makes it mandatory on an analyst to mention result of sample analyzed with full protocols.

iii) When the Supreme Court interprets or declares the law then the same interpretation must be applicable not from the time when the judgment pronouncing such interpretation was rendered but from the time when the law or provision in question was enacted.

iv) The case carrying stringent sentence must be proved through cogent evidence in order to rule out the possibility of false implication.

v) Only a single circumstance is sufficient to extend the benefit of the doubt to an accused as of right.

---

16. **Lahore High Court,**
Ch. Fawad Ahmad and others v. Government of the Punjab and others,
Writ Petition No. 24153/2023
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Farooq Haider,
Mr. Justice Muhammad Amjad Rafiq.
https://sys.lhc.gov.pk/appjudgments/2023LHC3967.pdf

Facts: Police tried to execute non-bailable warrants of arrest against an accused but the arrest was obstructed. The police registered several FIRs. In this background, on the request of the Inspector General of Police, Punjab, vide Order dated 22.3.2023, the Home Department constituted a Joint Investigation Team (JIT) to investigate ten FIRs. The JIT has issued notices under section 160 Cr.P.C., to the Petitioners. The Petitioners, through this petition under Article 199 of the Constitution, challenged the legality of the order dated 22.3.2023 and sought quashment of the JIT's proceedings.

Issues: i) When and how an action is reckoned as offence of "terrorism" in a particular case, according to the Anti-Terrorism Act, 1997?

ii) Whether a notice under section 160 Cr.P.C. can be challenged under Article 199 of the Constitution before the High Court?

iii) Whether the High Court should, while exercising jurisdiction under Article 199 of the Constitution, intervene in the investigation before it is completed?

iv) Whether judicial review of an order can be filed when an alternative remedy is available?

v) What is Constitutionality of the Joint Investigation Team, Who can form it, what procedure it follows and whether its formation can be judicially reviewed?

vi) Whether section 19 of the Anti-Terrorism Act, 1997, violates Article 10-A of the Constitution i.e., right to a fair trial because it does not provide right for a change of investigation from a Joint Investigation Team?

vii) What is the difference among the roles of the Attorney General of Pakistan, Advocate General Punjab and the Prosecutor General?
viii) At what stage the Threshold Test can be applied in a case involving offence of terrorism?

Analysis: i)An action can only be characterized as "terrorism" when the *actus reus* specified in section 6(2) of the Anti-Terrorism Act, 1997 is accompanied by the *mens rea* required by section 6(1)(b) or 6(1)(c) of the Act ibid. Rule 25.3(3) of the Police Rules, 1934, states that the Investigating Officer must find out the truth of the matter under investigation, discover the actual facts, and arrest the real culprits. Therefore, he cannot commit himself prematurely to any account of the incident, including the one set out in the FIR, to reckon an act as offence of terrorism.
ii) The "doctrine of ripeness" applies in the matter of challenging a notice issued under section 160 Cr.P.C. It postulates that the Courts may not decide cases that involve uncertain and contingent future events that may not occur as anticipated, or indeed may not occur at all.
iii) The High Court should not, while exercising jurisdiction under Article 199 of the Constitution, intervene or otherwise comment on the applicability of any section of the Anti-Terrorism Act, 1997 before the investigation is completed.
iv) The Supreme Court of Pakistan guided that: (i) If the relief available through the alternative remedy is not what is necessary to give the requisite relief, (ii) If the relief available through the alternative remedy, is not speedy, affordable and convenient with reference to a comparison of the speed, expense or convenience of obtaining that relief under Article 199 of the Constitution, then such alternative remedy is not considered as an 'other adequate remedy'.
v) According to Article 13 of the EU Mutual Legal Assistance Convention, a Joint Investigation Team (JIT) is an "operational investigation team consisting of representatives of law enforcement and other authorities for different Member States and possibly from other organizations like Europol and Eurojust". Pakistan adopted the concept of the JIT in section 19 of the Anti-Terrorism Act, 1997, Article 18-A of the Police Order, 2002, section 30 of the Prevention of Electronic Crimes Act, 2016, and section 9 of the Anti-Rape (Investigation and Trial Act) 2021. Section 19(1) of the Anti-Terrorism Act, 1997 grants the Federal and Provincial Governments concurrent powers to form a Joint Investigation Team. The JITs perform their functions in accordance with the Anti-Terrorism Act, 1997, the Code of Criminal Procedure, the Police Rules, 1934, and the Investigation for Fair Trial Act, 2013. The formation of JIT is a purely administrative act, hence, it is not subject to judicial review.
vi) There is neither any rule of law nor administrative practice which gives any person a vested right to have the investigation of a case transferred and Sections 19(1A) and 28(3) of the Anti-Terrorism Act, 1997 give this authority to the Federal Government. If a person has a genuine grievance, he may also make a representation before it.
vii) The office of the Advocate General of a province established by Article 140 of the Constitution owes an independent obligation towards the courts under Order XXVII-A CPC. He is charged with the duty to advise the Provincial Government upon such legal matters and to perform such other duties of a legal character as may be referred or assigned to him. The Attorney General has two capacities: (1) Where the Federal Government directs him to appear in a case, and carry out instructions, whatever may be, and (2) as advisor, under the Constitution or law to advise the courts as to the interpretation of Constitution or law. The

Prosecutor General is the head of the Punjab Criminal Prosecution Service, established under the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006. Section 5(1) of the Act ibid states that the Punjab Government shall exercise superintendence over the Prosecution Service to achieve the Act's objectives, while section 5(2) states that the Service's administration shall, in the prescribed manner, vest in the Prosecutor General.
viii) The evidential consideration of the Threshold Test has two parts: the first is that the prosecutor must be satisfied, after evaluating the available evidence, that the person to be charged committed the offence. In the second part, the prosecutor must be convinced that the ongoing investigation will yield more evidence within a reasonable time so that all the evidence combined can establish a realistic prospect of conviction under the Full Code Test.

Conclusion: i) As per section 6 of the Anti-Terrorism Act, 1997, an action is reckoned as terrorism if it "is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect" or if such action is intended to "create a sense of fear or insecurity in society". The evidence gathered during the investigation would determine that the act done is offence of terrorism.
ii) A notice under section 160 Cr.P.C., cannot be challenged under Article 199 of the Constitution before the High Court unless it is patently illegal, mala fide, without jurisdiction or *coram non judice.*
iii) The judiciary should not interfere with the police in matters which are exclusively within their domain e.g., investigation process.
iv) A litigant cannot seek judicial review of an order if an alternative, convenient and efficacious remedy is available to him.
v) The Federal and Provincial Governments have concurrent powers to form a Joint Investigation Team and its formation cannot be subject to judicial review.
vi) The section 19 of the Anti-Terrorism Act, 1997, does not violate Article 10-A of the Constitution by not providing for a right of change of investigation from a Joint Investigation Team.
vii) The Advocate General of a province owes an independent obligation towards the courts and charged with the duty to advise the Provincial Government upon such legal matters as may be referred or assigned to him whereas, the duties of the Attorney General is to represent the Federal Government and act as an advisor to the interpretation of Constitution or law. However, the duties of Prosecutor General have been described under the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006.
viii) Paragraph 6.4 of the Code of Conduct of Prosecutors states that the Threshold Test should be applied at a later stage of the case involving offence of terrorism, such as when filing an interim report under section 173 Cr.P.C.

---

17. **Lahore High Court**
Sharafat Ali v. The State etc.
Crl. Misc. No. 10982/B/2023
Mr Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4041.pdf

Facts: Petitioner sought pre-arrest bail in case FIR registered for offences under sections 337-U, 337-L(2) of the Pakistan Penal Code, 1860 ("PPC").

Issues: i) Whether the tooth is a bone or an organ?
ii) Whether breaking of tooth merely attracts section 337-U of PPC and the offence is punishable with Arsh only?

Analysis: i) Although teeth and bones share many similarities in composition and structure, there are significant distinctions. For example: (i) Teeth are not considered bones because they are unrelated to other body bones. Teeth are anchored in the gums and jawbone but do not form part of the skeletal system. (ii) Bones provide structural support for the body, protecting organs and facilitating movement. On the other hand, teeth are meant to break down food into little pieces that can be easily swallowed and digested. Teeth also play a vital role in communication because they aid in facial expressions and speech. (iii) Teeth are ectodermal organs like hair, skin, sweat glands, and salivary glands. Bones are living tissues. (iv) Bones undergo constant remodelling, whereas teeth do not. Bones can repair themselves, even after a significant injury, such as a fracture. In contrast, teeth are incapable of self-repair. If a tooth is damaged or decayed, it cannot recover on its own. Instead, it must be fixed with dental procedures, such as fillings, root canals, or crowns. (v) Bones also contain marrow, which produces blood cells. Teeth do not have marrow. It follows that teeth are not bones.
ii) Breaking of tooth constitutes Itlaf-i-salahiyyat-i-udw. This offence is punishable under section 336 PPC with Qisas, and if that is not executable under the principles of equality enunciated by Islam, the offender is liable to Arsh and may also be punished with imprisonment of either description for a term extending up to ten years as Ta'zir. Section 337-U PPC sets out the scale of Arsh for teeth. The Arsh for causing Itlaf of a tooth other than a milk tooth shall be equivalent to one-twentieth of Diyat. (The impairment of the portion of a tooth outside the gum amounts to causing Itlaf of a tooth). The Arsh for causing Itlaf of twenty or more teeth shall be equal to the value of Diyat. Where the Itlaf is of a milk tooth, the offender is liable to Daman and may also be punished with imprisonment of either description for a term extending to one year. Where, however, Itlaf of a milk tooth impedes the growth of a new tooth, the offender is liable to Arsh equal to one-twentieth of the Diyat. In cases of Itlaf-i-salahiyyat-i-udw, sections 332, 335, 336 and 337-U PPC are to be read conjointly. It does not merely attract section 337-U and the offence is not punishable with Arsh only.

Conclusion: i) Tooth is not a bone. Teeth are ectodermal organs like hair, skin, sweat glands, and salivary glands.
ii) In cases of Itlaf-i-salahiyyat-i-udw, merely section 337-U of PPC is not attracted and the offence is not punishable with Arsh only rather breaking of tooth constitutes Itlaf-i-salahiyyat-i-udw for which sections 332, 335, 336 and 337-U PPC are to be read conjointly.

---

18. **Lahore High Court**
Fareed-ud-Deen Ahmed v. Chancellor University of Education, etc.
W.P.No.18847 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC3889.pdf

Facts: The petitioner was working as junior Key Punch Operator in the University of Education and he was removed from service on the charges of corruption. He challenged his removal through appeal before syndicate which was dismissed. He there-after filed departmental appeal against afore referred orders before the Governor of the Punjab in his capacity as Chancellor of University of Education, which was also dismissed as not maintainable. He has challenged all the afore-mentioned orders through this Constitution petition.

Issues: i) Whether appeal can be dismissed for the reason that incorrect law or provision of law has been referred to in the title of the appeal?
ii) Whether right of appeal is a procedural in nature which can be taken away?
iii) Whether entire case is reopened for consideration before the appellate forum?
iv) Whether formalities or technicalities can be allowed to defeat the ends of justice?

Analysis: i) Where remedy of appeal is available before the same forum under any other law or provision of law instead of the law cited in the title of the appeal, the same could not be dismissed for the reason that incorrect law or provision of law had been referred to in the title of the appeal and any such reasoning given for dismissal of appeal as misconceived and not maintainable would not be based on correct interpretation of law for the reason that wrong mentioned of law or a provision of law would not be an illegality but a curable defect in view of principles laid down by the Honourable Supreme Court of Pakistan in cases titled "Olas Khan and others versus Chairman NAB through Chairman and others" (PLD 2018 SC 40) and "MARGRETE WILLIAM versus ABDUL HAMID MIAN" (1994 SCMR 1555), wherein it is settled that mere mentioning of wrong provision of law could not be treated as an impediment in the way of filing or maintainability of an appeal, especially where remedy was available before the same authority or forum under some other provision of law and one type of proceedings could be converted to another type of proceedings by correction of mis-description of title of proceedings.
ii) Besides the right of appeal although procedural in nature is not merely a matter of procedure but a substantive right which once it has accrued according to law cannot be taken away unless the exercise of such right is barred under some provision of law as settled by the principles laid down by the Honourable Supreme Court.
iii) There is another aspect of the matter that unless curtailed by law, an appeal is the continuation of original proceedings, wherein the entire case is reopen for consideration before the Appellate forum and the appellate forum while deciding

the appeal has the same powers available with it as were vested in the original forum in view of the principles laid down in the judgments of the Honourable Supreme Court.

iv) Moreover, it is a settled law that principal object behind all legal formalities was to safeguard paramount interest of justice and proceedings should be held in order to do substantial justice and to avoid technicalities unless the same are insurmountable in view of some impediment placed on exercise of jurisdiction by law or is necessary on grounds of public policy as all procedures are meant for advancement of justice and to avoid injustice to the parties and mere technicalities unless offering an insurmountable hurdle should not be allowed to defeat the ends of justice…It is settled law that purpose behind legal and codal formalities and technicalities of procedure was nothing but only to ensure the safe administration of justice and avoid the chances of injustice/miscarriage of justice.

Conclusion: i) An appeal cannot be dismissed for the reason that incorrect law or provision of law has been referred to in the title of the appeal.

ii) The right of appeal although procedural in nature is not merely a matter of procedure but a substantive right which once it has accrued according to law cannot be taken away unless the exercise of such right is barred under some provision of law as settled by the principles.

iii) Entire case is reopened for consideration before the appellate forum and the appellate forum while deciding the appeal has the same powers available with the original forum.

iv) Formalities or technicalities cannot be allowed to defeat the ends of justice unless the same are insurmountable in view of some impediment placed on exercise of jurisdiction by law.

---

19. **Lahore High Court**
Ahmad Muneel v. The State etc.
Criminal Appeal No.669 of 2023
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC3899.pdf

Facts: The appellant/convict assailed the order passed by trial court whereby the appellant was convicted under Section 228, P.P.C. and sentenced with imprisonment of 07 days.

Issue: Whether the act of intentional non-appearance of a witness before a court in defiance of its order amounts to intentional insult and/or interruption in a judicial proceeding?

Analysis: Admittedly, the trial Court has powers to punish for committing the contempt of the Court under section 228, P.P.C., but it was to be seen that the act of contempt by disobeying/violating the order was committed on the face of the Court…So far as the acts of "violation" and "disobedience" allegedly committed by the

appellant, punishments for the same have been provided in the Code of Criminal Procedure, as such the trial Court erred in law in holding the appellant guilty of contempt of Court for the said acts. Even otherwise, procedure has been provided in the Criminal Procedure Code in certain cases of contempt…Section 480 Cr.P.C. deals with what is known as direct Contempt of Court and in such an exigency, the Court has anoption to proceed either under section 480, Cr.P.C. or under section476, Cr.P.C. The alleged acts of "violation" or "disobedience" would not be taken as interference or interruption in the Court's work. Although the trial Court had jurisdiction to convict any person for committing contempt of the Court, but only in the circumstances mentioned in Section 228, P.P.C. The law has provided the procedure for proceeding against a contemnor who committed contempt of Court or insulted the Court on its face. In such-like cases, the Court is bound to follow the procedure provided in Sections 480 and 476, Cr.P.C. and where the Courts have not followed the procedure provided in section 480, Cr.P.C. the conviction and sentence are not maintainable.

Conclusion: The act of intentional non-appearance of a witness before a court in defiance of its order does not amount to intentional insult and/or interruption in a judicial proceeding.

---

20. **Lahore High Court**
Hafeez Ullah Shahid. v. ASJ/JOP, etc.
Writ Petition No. 10957/2023.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC3920.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, petitioner has challenged the vires of order passed by learned Additional Sessions Judge/Ex-officio Justice of the Peace under section 22-A (6) Code of Criminal Procedure, 1898 to register FIR against the present petitioner under Article 155(1) (c) of Police Order, 2002 on alleged misappropriation of case property.

Issue: What course of action is available to the ex-officio Justice of the Peace if a complaint of neglect, failure or excess committed by any police officer/official is received?

Analysis: The scheme of law indicates that if a complaint of neglect, failure or excess committed by any police officer/official is received by the ex-officio Justice of the Peace, he can simply pass it to District Police Officer concerned for placing it before the Police Complaints Authority who is authorized to channelize it as per Article 36 of the Police Order, 2002, or ex-officio justice of the peace can direct the aggrieved person to approach the Police Complaints Authority by filing an application and further course of action shall be taken care of by the said authority under the law. If both the directions are not met, ex-officio justice of the Peace

can proceed as per law suggested above.

Conclusion: If a complaint is received, the ex-officio Justice of the Peace can simply pass it to District Police Officer or can direct the aggrieved person to approach the Police Complaints Authority if a complaint is received. If both the directions are not met, then he can proceed as per law suggested above.

---

21. Lahore High Court
Nasira Bibi v. Special Judge Rent, Lahore and another
Writ Petition No. 80035 of 2022
Mr. Justice Sultan Tanvir Ahmed
https://sys.lhc.gov.pk/appjudgments/2023LHC3949.pdf

Facts: Through the present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed order passed by learned Special Judge (Rent), Lahore.

Issues: i) Whether directory provisions can be ignored altogether by the Rent Tribunal by construing section 19(3) of the Punjab Rented Premises Act, 2009 or its substantial compliance is obligatory?
ii) Whether the litigants should provide copies of all documents in their possession that they want to rely upon, at initial stage, by appending them with ejectment petition or leave petition?

Analysis: i) The real question is if by construing section 19(3) of the Act as directory, the rent tribunal can be permitted to altogether ignore giving the due weight or significance to the said provisions or if it is at all in the interest of justice or fair play to permit the litigants to introduce new evidence at belated stages and by doing the same the relevant provisions are being rendered useless or redundant. By now it is well settled law that mandatory enactments require strict compliance. An act or thing in non adherence of the mandatory enactments is invalid. It is also equally settled that a provision of law when is determined as directory, its substantial compliance is obligatory. When needed in the interest of justice the minor deviations from directory laws can be overlooked provided that there is substantial compliance. It is duty of the Courts to attend the scheme of Act and then to carefully examine the concerned provisions to reach the intent of legislature and to give effect to the same. (…) The Supreme Court of Pakistan has concluded that non-compliance of directory provisions might not invalidate an act but as it provides legislative process based on public interest, transparency and good governance, its substantial compliance is necessary.
ii) Keeping in view the object as well as the scheme of the Act, leads to irresistible conclusion that the legislature has intended that in order to resolve dispute of landlords and tenants in quick, expeditious and cost-effective manners the litigants should provide copies of all documents in their possession that they want to rely upon, at initial stage, by appending them with ejectment petition or

leave petition, as the case may be. The pleadings are required to be accompanied by affidavits of witnesses and if the leave is granted the affidavits can be treated as examination-in-chief.

Conclusion: i) The rent tribunal cannot altogether ignore the directory provision by construing section 19 (3) of the Punjab Rented Premises Act, 2009 and a provision of law when is determined as directory, its substantial compliance is obligatory.
ii) The litigants should provide copies of all documents in their possession that they want to rely upon, at initial stage, by appending them with ejectment petition or leave petition.

---

22. **Lahore High Court**
M/s Abdullah Sugar Mills Ltd. v Federation of Pakistan, etc.
Writ Petition No. 42272 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC3935.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, The petitioner has challenged the show cause notice along with notice issued by the Deputy Commissioner Inland Revenue, on the ground that case of the petitioner falls within the purview of sub-section (6) of section 11 and outside the scope of sub-section (1) of section 11 of the Sales Tax Act, 1990, therefore, the impugned show cause notice has been issued without lawful authority and the same is of no legal effect.

Issues: i) Whether the scope of sub-section (1) of section 11 of the Sales Tax Act, 1990, is confined to those persons who are liable to be registered but not actually registered?
ii) Whether the provision of sub-section (6) of Section 11 of the Sales Tax Act is non obstante in nature?

Analysis: i) It is abundantly clear that provision of subsection (1) of section 11 of the Sales Tax Act, 1990 can be invoked only against a person required to file a return under the Act i.e. registered person. However, upon registration under the Act of a person, sub-section (1) of section 11 of the Sales Tax Act, 1990 becomes invocable against even for such period of default during which the person was liable to be registered and furnish return under the Act.
ii) There is no apparent inconsistency within the provisions of sub-section (1) and (6) of Section 11 of the Sales Tax Act inasmuch as those have been enacted for different purposes. While sub-section (1) of the Act confers authority to determine final tax liability of a person who defaulted in filing a tax return for a tax period or paid an amount for some miscalculation less than the amount of tax actually payable, jurisdiction under sub-section (6) of Section 11 of the Sales Tax Act is confined to determination of minimum tax liability of such registered person in default so in the absence of any apparent inconsistency or patent conflict within

the provisions of sub-section (1) and (6) of Section 11 of the Sales Tax Act, the question qua non obstante clause does not arise.

Conclusion: i) The provision of subsection (1) of section 11 of the Sales Tax Act, 1990 can be invoked only against a person required to file a return under the Act i.e. registered person.
ii) There is no apparent inconsistency within the provisions of sub-section (1) and (6) of Section 11 of the Sales Tax Act and sub-section (6) of Section 11 of the Sales Tax Act, is not non obstante clause.

---

23. **Punjab Subordinate Judiciary Service Tribunal**
Ali Ashtar Naqvi v. Lahore High Court, Lahore Through its worthy Registrar and another
Service Appeal No.10 of 2018
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4073.pdf

Facts: The appellant was appointed as Civil Judge-cum-Judicial Magistrate and on successful completion of period of probation; the appellant was promoted to BS-18. The appellant tendered his resignation which was accepted. This followed a representation on behalf of the appellant but it was rejected, hence this appeal under Section 5 of the Punjab Subordinate Judiciary Service Tribunal Act, 1991.

Issues: i) How the term “resignation” can be defined?
ii) What should be taken into consideration to determine the fact whether resignation is voluntary or otherwise?
iii) Whether resignation can be withdrawn even after its acceptance by the competent authority?
iv) What is limitation period to file appeal or representation in respect of any order relating to terms and conditions of service?
v) Whether appeal before Service Tribunal would be hit by limitation when departmental appeal or representation is barred by time?
vi) What are the pre-requisites for filling appeal before Service Tribunal by the aggrieved person?

Analysis: i) Joint reading of the above referred definitions of “resignation” leads us to an irresistible conclusion that resignation means “formal renouncement or relinquishment of an office”. It must be intentional and voluntary.
ii) It is trite law that for drawing a conclusion as to whether the resignation was voluntary or otherwise facts and circumstances in toto have to be taken into consideration.
iii) It is also an oft repeated principle of law that once a resignation is accepted by the competent authority, the employee tendering the same is precluded to recall it.
iv) Adverting to the question of limitation it is noticed that in terms of Section 21 of the Punjab Civil Servants Act, 1974 (hereinafter referred to as “Act, 1974”)

right of appeal or representation is available to a Judicial Officer in respect of any order relating to terms and conditions of service, which is to be moved within sixty days of communication of such order to him.

v) Law is well settled that when departmental appeal or representation is barred by time even if the appeal before the Service Tribunal is filed within time it would be hit by limitation.

vi) In terms of Section 5(a) of the "Act, 1991" where an appeal, review or representation to a departmental authority is provided under the "Act, 1974", or any rules against any such orders, no appeal shall lie to the Tribunal unless the aggrieved person has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application, or representation was so preferred.

Conclusion: i) Resignation means "formal renouncement or relinquishment of an office".

ii) To determine the fact whether the resignation is voluntary or otherwise facts and circumstances in toto have to be taken into consideration.

iii) Resignation cannot be withdrawn after its acceptance by the competent authority.

iv) Limitation period to file appeal or representation in respect of any order relating to terms and conditions of service is sixty days from communication of such order.

v) When departmental appeal or representation is barred by time even if the appeal before the Service Tribunal is filed within time it would be hit by limitation.

vi) No appeal shall lie to the Tribunal unless the aggrieved person has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application, or representation was so preferred.

LATEST LEGISLATION/AMENDMENTS

1. The Day Care Centres Act, 2023 is promulgated to provide for the facility of day care centers in public and private establishments
2. The Trained Paramedical Staff Facility Act, 2023 is promulgated to provide for the facility of trained paramedical staff in public and private schools
3. The Maternity and Paternity Leave Act, 2023 is promulgated to provide for the facility of maternity and paternity leave to the employees of public and private establishments under administrative control of the Federal Government
4. Vide the Transplantation of Human Organs and Tissues (Amendment) Act, 2023, new section 4A is inserted
5. Vide the Limitation (Amendment) Act, 2023, the First Schedule is amended
6. Vide the Specific relief (Amendment) Act, 2023, amendment has been made in section 42

7. Presidential Order No. 02 of 2023 is made regarding the Salary of Judges of the Supreme Court of Pakistan.
8. Presidential Order No. 03 of 2023 is made regarding the Salary of Judges of the Supreme Court of Pakistan.
9. Vide Notification No. E&A(HEALTH)1-607/2021 dated 17th May, 2023, the order of SHC & ME Department dated 15.05.2023 regarding nomination of Focal Person in all court cases related to the Establishment Wing, SHC&ME Department of Allied Health Professionals is cancelled/ withdrawn.
10. Vide Notification No. E&A(HEALTH)1-607/2021 dated 15th May, 2023, Deputy Secretary (Establishment-II) SHC&ME Department is nominated as Focal Person in all court cases related to the Establishment Wing.
11. Vide Notification No. FD(W&M)9-138/ 2023 dated 12th July, 2023, amendments have been made in the Punjab Pension Fund Rules 2007.
12. Vide Notification No. SO(E&M)2-3/ 2018 (E-R) dated 7th July, 2023, amendment has been made in the Punjab Fiscal Order, 2017
13. Notification No. SOTAX(E&T)3-3/ 2022 dated 7th July, 2023 is issued to extend the valuation lists prepared on the basis of valuation tables notified vide Notification No. SO.Tax(E&T)3-38/2014 dated 26.06.2014
14. Notification No. SOTAX(E&T)3-38/ 2024(Vol-VII) dated 7th July, 2023 is issued to remit the Property Tax in respect of all property units where the property tax liability for the financial year exceeds 120% of the property tax payable for the financial year 2013-2014
15. Notification No. SO (E&M)1-101/2018 dated 7th July, 2023 is issued to grant an exemption of tax at the rate of ninety five percent in respect of all motor vehicles propelled on a road entirely by electrical power
16. Vide Notification No. FD(W&M)7-653/ 2023 dated 12th July, 2023, The Punjab Public Financial Management (Special Purpose Fund) Rules 2023 have been made.

SELECTED ARTICLES

1. YALE JOURNAL OF LAW AND TECHNOLOGY

https://yjolt.org/blog/bias-and-ethics-ai-enabled-legal-technology-examining-role-and-impact-human-inputs-ai-rendered

Bias and Ethics in Ai-Enabled Legal Technology: Examining the Role and Impact of Human Inputs on Ai-Rendered Results in Legal Matters by Peter Gronvall , Nathaniel Huber-Fliflet, Jianping Zhang

Advancements in the application of data analytics and artificial intelligence technologies are increasingly influencing the way legal service providers, including law firms, technology partners, and even in-house corporate legal teams, operate in the types of large-scale legal matters that prevail today. At unprecedented rates, corporations, law firms, and state and federal enforcement agencies are accepting and adopting the use of advanced technology solutions to help understand and engage with essentially infinite

data volumes – and vastly disparate data types – that fall within the scope of today's legal matters. Current innovative approaches, such as workflow automation, artificial intelligence, machine learning, and algorithm-driven data analytics are enabling the discovery of the most relevant facts in these high data volume legal matters. As the legal field embraces rapid technology innovation, a vigorous debate has emerged around what boundaries those technologies should abide by, especially as they relate to how humans and machines should interact in the 'fact discovery' process. This debate'sprevailing themes, include focusing on affirming the efficacy of machine training methodologies, employing defensible technology validation processes, and understanding where human intervention in an AI-enabled workflow should end, and where AI-rendered results can be trusted. These tenets generally frame the 'machines versus humans' debate that is now alive and well – and, some would suggest, far from being resolved – with interested and well-vested parties on both sides. This debate is driving a vigorous academic search for two principles which we seek to address in our research: (i) understanding the 'right' balance between machines and humans; and (ii) understanding how to evaluate the roles of human inputs in impacting the quality of AI-rendered results. The first phase of our research explored what a fair and 'right' balance between machines and humans could be, in machine-learning scenarios, and we highlight that research first within this article. Next, we describe our new study, which seeks to expand upon this debate to understand further the nuanced role of humans in guiding, testing, and applying results generated by machines, to outcomes, with particular focus on how those results impact legal case strategies.

2. 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.

3. **Manupatra**

https://articles.manupatra.com/article-details/Vicarious-Liability-and-Negotiable-Instruments-Unsettling-the-settled-position

Vicarious Liability and Negotiable Instruments: Unsettling the Settled Position by Sanya Singh and Dhruv Kohli

The Delhi HC in ***Fadi El Jaouni v. Gian Chand Garg****, while applying section 141 of the Negotiable Instruments Act, 1881 ("NI Act"), had held that the Chief Financial Officer of the company was not vicariously liable under section 141 of the NI Act. The reasoning however, given by the court while arriving at its decision appears to go against the basic tenants of liability established by the courts under section 141 of the NI Act. Section 138 of the NI Act deals with cheque bounce cases wherein the cheque bounces for want of insufficient funds. Section 141 of the act deals with cases wherein the accused, is a company or a firm and seeks to impose vicarious liability on the individuals who were in control of the company when the said offense was committed. The purpose of this article is to critically analyse the judgment by pointing out the flaws in the decision and how the decision may have a negative impact on the implementation of other laws.*

4. **Manupatra**

https://articles.manupatra.com/article-details/Analysing-the-types-of-disputes-in-Corporate-Governance-and-Role-of-ADR-in-Dispute-Resolution

Analysing the Types of Disputes in Corporate Governance and Role of ADR in Dispute Resolution by Rushank Kumar

Corporate Governance refers to a mechanism that helps in effective and efficient functioning of a company, while maintaining a harmonious relationship between all the stakeholders of a company and protecting the interest of all stakeholders. It laws down the roles and responsibilities of each and every member in the corporation bringing in place a mechanism that ensures the proper and smooth functioning, decision making and planning.
However, while taking decisions or forming strategies there could be disagreements between the stakeholders of the company which can have a negative impact on its growth and on other stakeholders associated with it. Here, ADR mechanisms could be used like mediation to resolve the conflict between various individuals or stakeholders in a company that could help easy, quick and efficient disposal of disputes, which in turn would help in avoiding litigation costs and time.
The aim of this paper is to understand the various types of disputes that arise in a company and how ADR mechanisms could be used to resolve the disputes in a much efficient manner. The paper would focus on gaps existing in the system of Corporate Governance where ADR could be used in the advantage of all stakeholders and the company itself.

5. Manupatra

https://articles.manupatra.com/article-details/BENEATH-THE-SURFACE-OF-POWER-RELATIONS-UNDERSTANDING-THE-DYNAMICS-OF-ABUSE

Beneath the Surface of Power Relations: Understanding the Dynamics of Abuse by Lokesh Patel and Kalash Jain

Liberty may be endangered by the abuse of liberty, but also by the abuse of power" ***- James Madison***

The theory of abuse of power stems back to Plato's Republic, which described it as unjust use of power or authority. It would also include definitions for key terms such as exploitation and manipulation.

Some people think that abuse is only physical; however, psychological abuse can be worse in some ways. There's more to it than that. Abuse of power is the dominance or control over another by the use of threats or violence. It can be physical, psychological, sexual, or financial. Abuse of power occurs when an organization puts the personal agenda of a leader over the needs of employees and customers. That can include internal corruption, political infighting, and self-dealing. Simply said, Abuse of power refers to the use of power unfairly to advance an individual, an organization, or a regime. There are several different ways to define "abuses of power", including "white-collar crime", "economic crime", "organized crime", "labor crime", "public corruption", as well as "governmental" and "corporate" deviation. The community element of the crime is trumped. Although such actions have been carried out since the earliest history, recent technological and social "followers" have created a climate more favorable to them.