LAHORE HIGH COURT

BULLETIN

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

Volume - III, Issue - XVIII

16 - 09 - 2022 to 30 - 09 - 2022

Published By: Research Centre, Lahore High Court, Lahore

Online Available at: https://lhc.gov.pk/news_letters

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FORTNIGHTLY CASE LAW BULLETIN

(16-09-2022 to 30-09-2022)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Lahore High Court**
The State v. Muhammad Imran
Murder Reference No. No.288/2019
Muhammad Shahzad, etc. v. The State etc.
Criminal Appeal No.54462/2019
Muhammad Imran v. The State etc.
Criminal Appeal No.54463/2019
Muhammad Naveed v. The State etc.
Criminal Appeal No.56789/2019
Muhammad Yaseen v. The State etc.
Criminal Appeal No.54461/2019
Muhammad Yaseen etc. v. The State etc
Criminal Revision No.56788/2019
Mr. Justice Muhammad Ameer Bhatti, CJ, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC6427.pdf

Facts: The learned Trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the convict in case FIR registered under sections 302, 148, 149, P.P.C. read with Sections 337-F(iii)/L(ii), P.P.C. and feeling aggrieved, the convicts / appellants lodged the Criminal appeals assailing their convictions and sentences whereas the complainant also filed Criminal appeal to challenge the acquittal of some of the accused and a Criminal revision seeking enhancement of sentences.

Issue: i) What are the pillars of evidence developed in jurisprudence on criminal side and out of them, which one is the most important type of evidence?
ii) Whether the testimony of closely related witnesses can be believed?
iii) Whether the corroborative evidence has any value if the ocular evidence is unreliable?

Analysis: i) The developed jurisprudence in criminal side demands construction of a case by the prosecution upon four pillars of evidence, which consist of: (i) ocular account; (ii) motive; (iii) medical; and (iv) recovery and to establish the guilt of the accused production of substantive piece of evidence in all its disciplines is necessary, and the lack thereof always damages the prosecution's case in securing conviction. The ocular evidence as we have inferred from reading of plethora of judgments of this Court as well as honourable Supreme Court is the most important/significant pillar of the prosecution's case, which shall be proved without any shadow of doubt because it's trustworthiness/accuracy/purity/credibility and it being confidence inspiring, is enough to award conviction.

ii) There is no hard and fast rule to throw out the testimony of the interested relative witnesses merely for the reason of relationship but at the same time to give weight to that testimony, its credibility must be examined on the touchstone of free from doubt, infirmity or exclusion of possibility of implication of wrong person(s). … The statements of such interested witnesses cannot be taken into consideration when they do not inspire confidence about their presence at the spot.

iii) It is well settled that when the ocular evidence is held to be unreliable, the

strongest corroborative evidence may not cure such deficiency/lacking inasmuch as when the direct evidence is unacceptable, the corroborative evidence becomes worthless. Reliance is placed on "Noor Muhammad v. The State and another" (2010 SCMR 97) and "Dr. Israr-ul-Haq v. Muhammad Fayyaz and another". In case titled as "Dr. Israr-Ul-Haq Versus •Muhammad Fayyaz and another" (2 0 0 7 S C M R 1 4 2 7), the august Supreme Court of Pakistan held that "4… It is also a settled law when ocular evidence is disbelieved in a criminal case then the recovery of an incriminating article in the nature of weapon of offence does not by itself prove the prosecution case…. It is also a settled law that the direct evidence having failed, the corroborative evidence is of no help".

Conclusion: i) There are four pillars of evidence i.e. ocular account, motive, medical, and recovery, and the ocular evidence is the most important/significant pillar of the prosecution's case.

ii) There is no hard and fast rule to throw out the testimony of the interested relative witnesses merely for the reason of relationship but at the same time to give weight to that testimony, its credibility must be examined on the touchstone of free from doubt, infirmity or exclusion of possibility of implication of wrong person.

iii) When the ocular evidence is held to be unreliable, the strongest corroborative evidence becomes worthless.

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2. **Lahore High Court**
Commissioner Inland Revenue, Zone-I, Regional Tax Office, Faisalabad v. M/s. Ahmad Straw Board Private Limited, Faisalabad etc.
STR No.155 of 2015 etc.
Mr. Justice Shahid Jamil Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC6656.pdf

Facts: Through four Reference Applications under section 47 of the Sales Tax Act, 1990, a common question of law, asserted to have arisen out of orders passed by learned Appellate Tribunal Inland Revenue Lahore Bench, Lahore has been proposed which is decided by this common judgment.

Issues: i) Whether Sub-section (1) of section 11 of Sales Tax Act, 1990 is attracted in dispute regarding the actual amount payable as tax by the registered person?

ii) In what situations Sub-section (2) of section 11 of Sales Tax Act, 1990 is attracted?

iii) What is point of difference in application of subsection 3 & 4 of section 11 of Sales Tax Act, 1990?

iv) What is difference between subsection 1 to 4 of section 11 and omitted section 36 of Sales Tax Act, 1990?

v) Whether omission to mention in the show cause notice the specific provision which is alleged to have been contravened is fatal?

Analysis: i) Sub-section (1) of section 11 of Sales Tax Act, 1990 is attracted when a person who is required to file a tax return, fails to file the return for a tax period by the due date, or pays an amount which, because of some miscalculation, is less than the amount of tax actually paid. It is obvious from the language of the said provision that it contemplates a situation which does not involve a dispute regarding the actual amount payable as tax by the registered person.

ii) Subsection (2) of section 11 of Sales Tax Act, 1990 envisages a situation where a person has not paid the tax due on supplies made by him, or has made short payment or has claimed input tax credit or a refund which is not admissible under the Act of 1990 for reasons other than those specified in sub-section (1). The language clearly shows that sub-section (2) also envisages eventualities which do not involve the short levy or non-levy of tax i.e. the tax due is not disputed.

iii) Sub-sections (3) and (4) of section 11 of Sales Tax Act, 1990 deal with situation relating to a tax or change not having been 'levied or made', or having been 'short levied' or erroneously refunded. However, sub-section (3) is attracted where lapse is allegedly due to some collusion or deliberate and sub-section (4) applies where default is due to inadvertence, error or misconception.

iv) Sub-sections 1 to 4 of Sales Tax Act, 1990 are actually section 36, since omitted, with the only difference in that where the recovery of sales tax relates to cases of inadvertent / non-willful default, the time limitation of three years has been enhanced to five years, thus, the time limitation for assessment and recovery of sales tax due is being generalized to five years irrespective of the nature of default. Limitation to initiate proceedings in matters involving allegations of inadvertence, error or misconstruction was three years as per Section 36(2) of the Act of 1990, which is now five years in substituted section 11 and the situation is covered under sub-section 11(4).

v) Omission to mention in the show cause notice the specific provision which is alleged to have been contravened is not fatal and does not ipso facto make it void. Instead of taking into consideration technicalities, the Court should look into the matter from different angles. It should also see whether substantial compliance has been made and the omission, if any, has caused any prejudice to the taxpayer.

Conclusion: i) Sub-section (1) of section 11 of Sales Tax Act, 1990 contemplates a situation which does not involve a dispute regarding the actual amount payable as tax by the registered person.

ii) Subsection (2) envisages a situation where a person has not paid the tax due on supplies made by him, or has made short payment or has claimed input tax credit or a refund which is not admissible under the Act of 1990 for reasons other than those specified in sub-section (1).

iii) Sub-section (3) is attracted where lapse is allegedly due to some collusion or deliberate and sub-section (4) applies where default is due to inadvertence, error or misconception.

iv) Under section 11 of Sales Tax Act, 1990 the time limitation for assessment and recovery of sales tax due is being generalized to five years irrespective of the nature of default. Limitation to initiate proceedings in matters involving allegations of inadvertence, error or misconstruction is now five years in substituted section 11 and the situation is covered under sub-section 11(4).
v) Omission to mention in the show cause notice the specific provision which is alleged to have been contravened is not fatal.

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3. **Lahore High Court**
Pepsi Cola International (Pvt.) Limited v. Federation of Pakistan, etc.
W. P. No. 81107 of 2021.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC6508.pdf

Facts: The petitioner has challenged through instant writ petition, the order of Commissioner passed under Section 161 of the Ordinance of 2001 in which he started proceedings against the petitioner and issued notice to the petitioner.

Issues: i) Whether subsection (1B) of the Section 161 of the Ordinance of 2001 imposed any obligation on Commissioner or Taxation Officer?
ii) Whether a tax liable to be adjusted against tax due, can be recovered when the tax due is already paid?
iii) Whether obligation under subsection (1B) of the Section 161 of the Ordinance of 2001 is mandatory?
iv) Whether reconciliation can be called in absence of any statement under rule 44 of Income Tax Rules 2002?

Analysis: i) The subsection, ibid, casts an obligation upon the Commissioner or Taxation Officer to satisfy itself that the tax due of the person, from who's payment advance tax was to be deducted or collected has been paid.
ii) The rational in the subsection (1B) is very simple that a tax liable to be adjusted against tax due, cannot be recovered when the tax due is already paid. Recovery of any amount, thereafter, not adjustable against tax due for the relevant period, shall have to be refunded and the whole exercise for recovery would be futile, as tax collected would not become part of National Exchequer rather would burden it with an expense which could have been expended for recovery of tax due. The pursuit of creating such demands by tax administrators, to meet budgetary targets, not only wastes resource and revenue but burdens the judicial hierarchy up till Supreme Court.
iii) If any proceeding is concluded without fulfilling this obligation, the final order so passed, even if appealable, is susceptible to judicial review in constitutional jurisdiction, in particular, when the High Court has already declared this obligation as mandatory.
iv) The practices of calling reconciliation, in absence of any statement, is against

the spirit of this Rule. The emphasized portions of the Rule 44 envisages, unequivocally, that reconciliation has to be of the biannual or annual statements with other material and declarations submitted in or with the return. If there is no statement filed by the taxpayer, as is recorded in the impugned order, no occasion of reconciliation arises. It is duty of the Commissioner, as tax administrator to ensure that biannual or annual statements are filed within the time stipulated by the Statute. Commissioner is equipped with power of imposing penalty, if statutory obligation is not fulfilled by any taxpayer.

Conclusion: i) The subsection casts an obligation upon the Commissioner or Taxation Officer to satisfy itself that the tax due of the person, from who's payment advance tax was to be deducted or collected has been paid.
ii) A tax liable to be adjusted against tax due, cannot be recovered when the tax due is already paid.
iii) Obligation under subsection (1B) of the Section 161 of the Ordinance of 2001 is mandatory.
iv) Reconciliation cannot be called in absence of any statement under rule 44 of Income Tax Rules 2002.

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4. **Lahore High Court**
Hadayat Ullah deceased through Legal Heirs etc v. Province of the Punjab etc.
Civil Revision No. 3587-2011
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2022LHC6571.pdf

Facts: Through the instant civil revision the petitioners have challenged the dismissal orders of their appeal before the learned Addl. District Judge against the decree of learned trial court whereby a suit for specific performance of an agreement to sell filed by the private respondents/plaintiffs was decreed.

Issue: i) Whether before granting proprietary rights to the allottee, the Province of the Punjab retains its powers to deny the proprietary rights?
ii) Whether Liberal treatment is accorded by the law to an agreement to sell, concluded by an allottee with a vendee in anticipation of securing proprietary rights of State land?
iii) Whether after rejection of plaint by keeping the right of the plaintiff alive a fresh plaint can be presented upon the same cause of action?

Analysis: i) Before granting proprietary rights to the private defendants/ petitioners, Province of the Punjab retains its powers to deny the proprietary rights to the private defendants/ petitioners, in case of any violation of allotment policy etc.
ii) An agreement or deed of sale of land leased by the State, being contractual is treated as valid inter parties but the same cannot be enforced until proprietary rights are conferred by the State. Liberal treatment is accorded by the law to an

agreement to sell, concluded by an allottee with a vendee in anticipation of securing proprietary rights of State land.

iii) Order VII, Rule 13, C.P.C clarifies the consequence of the rejection of the plaint by keeping the right of the plaintiff alive to present a fresh plaint even if based on "the same cause of action" notwithstanding the rejection of the plaint, this is a distinctly unusual provision which also marks a clear distinction from the provisions of Section 11 CPC as same not merely imposes a legal bar on an unsuccessful plaintiff but actually takes away the jurisdiction of the court to try any suit or issue in which the matter directly or substantially in issue has also been in issue in a former suit between the same parties litigating under the same title in a court of competent jurisdiction which has been "heard and finally decided", a well-known principle of res judicata which is one of the foundational principles of our procedural law.

Conclusion: i) Yes, before granting proprietary rights to the allottee, the Province of the Punjab retains its powers to deny the proprietary rights.

ii) Yes, liberal treatment is accorded by the law to an agreement to sell, concluded by an allottee with a vendee in anticipation of securing proprietary rights of State land.

iii) Yes, after rejection of plaint by keeping the right of the plaintiff alive a fresh plaint can be presented upon the same cause of action under the protection of Order VII, Rule 13, C.P.C.

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5. **Lahore High Court**
ICA No.50591/2021
Shahbaz Hussain v. Federation of Pakistan etc.
Mr. Justice Shahid Karim, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC6542.pdf

Facts: This Intra Court Appeal, under section 3(2) of Law Reforms Ordinance (XII of 1972) lays challenge to the order passed by the learned Single Judge in Constitutional Petition by virtue of which the said Petition filed by the appellant against order passed by the Inland Revenue Officer was dismissed.

Issues: i) Whether ICA is competent against the judgment/order passed by High Court in constitutional petition under Article 199 of Constitution?

ii) Whether Officer of In-Land Revenue could issue show cause- notice under section 33(25) and without recourse to section 11 of the Act?

Analysis i) Before proceeding on the merits of the case, it is imperative to determine the issue of maintainability of this appeal in the first instance. The jurisprudence in respect of proviso to sub-section (2) of section 3 of the Ordinance is well settled and an appeal is incompetent only if the petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter "the Constitution") arose out of "proceedings" in which the law applicable provides

for at least one appeal, revision or review before any forum against the Order-in-Original. The words "proceedings" as well as "Original Order", as used in the Ordinance, are two distinctive stages and, for purpose of the maintainability of the appeal under the Ordinance, it has to be seen whether the constitutional petition arises out of proceedings which would culminate into an Order-in-Original and from which an appeal, revision or review is available.

ii) It is clear that section 33 alone does not provide for issuance of any show cause notice under this section rather the show-cause notice and all the proceedings are to be carried out in terms of the provisions reproduced above and the penalty under section 33(25) is the logical conclusion of the procedure to be adopted. Section 33 in general and entry at S. No.25 in particular does not empower any Officer of In-Land Revenue to issue show cause notice or adjudication thereof under the said section. The mechanism and procedure laid down under section 11 has not been traversed through which renders the imposition of penalty under penal provision illegal and unlawful more importantly when learned counsel for respondent acknowledges that show cause-notice dated 19.03.2021 issued to the appellant was not in terms of section 11 of the Act. In the first-place proceedings have not been initiated in terms of section 11 of the Act and after initiating the proceedings, the Order- in-Original passed does not qualify to be an order referred in Rule 150ZEF as beside imposing the penalty as applicable, order of recovery of tax amount due has not been made.

Conclusion: i) An Intra Court Appeal is incompetent if the petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 arose out of "proceedings" in which the law applicable provides for at least one appeal, revision or review before any forum against the Order-in- Original.

ii) Section 33(25) of the Sales Tax Act, 1990 does not empower any Officer of In-Land Revenue to issue show cause notice or adjudication thereof under the said section and where the mechanism and procedure laid down under Section 11 of the Act ibid has not been traversed through, the imposition of penalty under penal provision is illegal.

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6. **Lahore High Court**

Muhammad Anwar Ali v. Lahore High Court, Lahore through its Registrar

Service Appeal No.27 of 2015

Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi

https://sys.lhc.gov.pk/appjudgments/2020LHC4384.pdf

Facts: Through instant appeal, appellant has assailed show cause notice regarding initiation of proceedings under Section 12 of the Punjab Civil Servants Act, 1974,notification dated 02.06.2015, whereby appellant was retired from service and order (all issued by respondent) dismissing his representation.

Issues: i) What are pre-requisites for invoking provisions of section 12 of the PCSA, 1974?

ii) What is object of section 12 of the PCSA, 1974?

iii) What is basic difference between retirement under section 12(i) of the Punjab Civil Servants Act, 1974, and Section 4 (b) (ii) of Government Servants (Efficiency and Discipline) Rules, 1973?

iv) Whether order under section 12 of the PCSA, 1974 can be interfered with by the Court or Tribunal?

v) Whether subsequent proceedings can stand when initiation of proceedings u/s 12 of the PCSA is illegal?

Analysis: i) It is evidently clear from provisions of Section 12 of the PCSA, 1974, that the prerequisites i.e. (i) civil servant must have completed twenty years of service at his credit for pension or other retirement benefits; (ii) existence of element of public interest; (iii) provision of grounds for taking such action; and (iv) reasonable opportunity of showing cause against the proposed action, must co-exist for invoking Section 12 of the PCSA, 1974.

ii) The object of Section 12 is to develop efficiency and discipline and achieve good governance in the civil service. A civil servant who has served a considerable length of 20 years with a minimum level of efficiency loses legitimate expectancy to perform better in future and only want to stay with the sort of performance, which may be in his / her interest, but certainly not in the interest of public.

iii) There is basic difference between retirement under section 12(i) of the Punjab Civil Servants Act, 1974, and Section 4(b)(ii) of Government Servants (Efficiency and Discipline) Rules, 1973, as retirement in terms of former provision is not a punishment and civil servant get all service benefits without any stigma whereas compulsory retirement under latter provision is a punishment.

iv) Ordinarily, an order under Section 12 is not interfered with as satisfaction of the competent authority regarding efficiency and performance of an employee is not to be substituted by the Court or Tribunal with its own opinion on the basis of analysis of the record. The justiciability of Section 12 is restricted to the fulfillment of necessary conditions contained therein. The proceedings under Section 12 without satisfying the requirement mentioned therein are not proper to deprive a person from his / her legitimate right of service as source of earning.

v) When initiation of proceedings under the provision of Section 12 of the Punjab Civil Servants Act, 1974 is illegal and without lawful authority, the whole series of subsequent orders falls to the ground.

Conclusion: i) Above mentioned conditions must co-exist for invoking Section 12 of the PCSA, 1974.

ii) The object of Section 12 is to develop efficiency and discipline and achieve good governance in the civil service.

iii) Retirement in terms of former provision is not a punishment and civil servant get all service benefits without any stigma whereas compulsory retirement under latter provision is a punishment.
iv) The justiciability of Section 12 of the PCSA, 1974 is restricted to the fulfillment of necessary conditions contained therein.
v) Subsequent proceedings cannot stand when initiation of proceedings u/s 12 of the PCSA is illegal.

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7. **Lahore High Court**
Dilshad Akbar v. Inspector General of Police, Punjab, Lahore & others
W.P. No. 18153 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC6475.pdf

Facts: The petitioner has challenged an order passed by Deputy Inspector General (Investigation), Punjab, Lahore, whereby investigation of case FIR registered for offences under Section 420/468/471 PPC was transferred.

Issues: i) Whether power to transfer investigation within the contemplation of Article 18A of the Police Order, 2002 has any limitations?
ii) Whether there is any bar to pass an order for transfer of investigation, re-investigation or further investigation?
(iii) Whether pendency of private complaint limits the scope of re-investigation or further investigation?

Analysis: i) The prevailing procedure regarding transfer of investigation has been set out in Section 18A of the Police Order, 2002….It is notable that transfer of investigation is not a matter of routine or simple compliance of afore-referred provision of law instead it is ordered if some further material relevant to the case is required and to find out the truth for advancement of the cause of justice, not to oblige one party to the detriment of the other for some ulterior motive….Such power is not unfettered rather qualified by certain contingencies and pre- requisites, inter-alia, discovery of some new event or evidence,previous investigation being unilateral, based on *mala fide*, excess of jurisdiction, having serious flaw(s) or unsatisfactory for some reasons etc.
ii**)** There is no direct provision in Criminal Law of Pakistan, which provides time limitation or places such embargo to pass an order fortransfer of investigation in terms of Article 18A of the Police Order,2002…. The door of investigation is not closed after submission of report under Section 173 Cr.P.C. and re-investigation can be conducted even if the Court has taken cognizance of the case, as all these events cannot be made basis for the stoppage of the investigation…The only impediment in this regard is that re-investigation or further investigation is not permissible after conclusion of trial of the criminal case.
iii) …when challan case and private complaint are pending before a Court, trial in private complaint shall be carried out and concluded in the first instance and

proceedings in challan case shall remain dormant, which may commence thereafter, if need be. Likewise, re-investigation or further investigation by police shall not be carried out during pendency of private complaint as it would not serve any useful purpose rather it would tantamount to deviate from the law settled by the august Supreme Court and increase agony and troubles of parties to produce evidence / witnesses time and again before different forums. However, re-investigation or further investigation within the contemplation of Article 18A of the Police Order, 2002 may be conducted after conclusion of proceedings in private complaint depending upon the fate of the trial.

Conclusion: i) The power to transfer investigation under Article 18A is not unfettered rather qualified by certain contingencies and pre-requisites, inter-alia, discovery of some new event or evidence, previous investigation being unilateral, based on *mala fide*, excess of jurisdiction, having serious flaw(s) or unsatisfactory for some reasons etc.

ii**)** There is no bar to pass an order for transfer of investigation, re-investigation or further investigation except that such an order cannot be passed after conclusion of trial of the criminal case.

iii) Pendency of private complaint limits the scope of re-investigation or further investigation in a way that re-investigation or further investigation by police shall not be carried out during pendency of private complaint.

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8. **Lahore High Court**
Writ Petition No. 63301/2021
Nasreen Bibi v. Station House Officer etc.
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC6597.pdf

Facts: Through this Constitutional Petition, the petitioner seeks recovery of her 13-year-old daughter alleging that respondent No.3 abducted her with the help of his cohorts and then forcibly married her. Petitioner claims that the marriage is void because it was not performed in accordance with the mandatory procedure prescribed by the Christian Marriage Act, 1872 (the "CMA").

Issues: Whether absence of the consent as required by the section 19 of the Christian Marriage Act, 1872 makes the marriage of a minor void?

Analysis According to section 4, only those marriages between the Christians (or where one person is from that faith) are void which are solemnized in contravention of section 5. Lack of consent in terms of section 19 is not among the enumerated grounds. Secondly, the CMA is silent regarding the mode, manner and procedure governing the proceedings in which a marriage may be declared void. Thirdly, section 77 says that when a marriage is solemnized in accordance with the provisions of sections 4 and 5, it is not void merely on account of irregularity in

any of the five matters listed therein, which includes the consent of any person whose consent to such marriage is required by law. Fourthly, even with regard to solemnization of marriages to which sections 19, 44 and 60 are applicable, there is no provision that such marriages would be null and void. The person who solemnizes a particular marriage in violation of law is only liable to be punished. Lastly, the Divorce Act, 1869, sets out the statutory grounds for instituting a petition in the Civil Court for a decree of nullity of Christian marriage. Absence of consent under section 19 of the CMA is not one of those statutory grounds.

Conclusion: Absence of the consent as required by the section 19 of the Christian Marriage Act, 1872 does not make the marriage of a minor void.

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9. **Lahore High Court, Lahore**
Imran Ahmed Khan Niazi v. Federation of Pakistanetc
W.P.No.2604/2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6501.pdf

Facts: Through main petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner has brought into question judicial review of earlier notice followed by subsequent show cause notice respectively issued by Secretary & Director General Law of Election Commission of Pakistan.

Issues: Whether interim relief may be granted in case pertaining question as to whether authorities i.e. the Secretary & Director General Law of Election Commission of Pakistan, may act for issuing contempt notice?

Analysis: It is recently held that ECP is the apex, independent and neutral constitutional authority to hold, organize and conduct elections in Pakistan. Now question is whether the authorities issuing the impugned notices have jurisdiction and are competent to exercise such powers, because under Rule 4(4) of the Election Rules, 2017 only the Commission is empowered to issue notice to the Petitioner and to call him personally. Moreover, Commission is defined under Section 2(ix) of the Act read with Article 218(2) of the Constitution, which means that the Commission consists of the Commissioner who shall be Chairman of the Commission and four members, each of whom shall be a Judge of a High Court from each Province, appointed by the President in the manner provided for appointment of the Commissioner in clause (2A) and (2B) of Article 213 of the Constitution, but impugned notices were respectively issued by Secretary & Director General Law, Election Commission of Pakistan. Hence, balance of convenience tilts in favour of the Petitioner for grant of interim relief.

Conclusion: Yes, interim relief may be granted in case impugned notices are respectively issued by Secretary & Director General Law of Election Commission of Pakistan.

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10. **Lahore High Court**
Danish Farooq v. Station House Officer, etc.
W.P. No. 49970 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC6452.pdf

Facts: Through this constitutional petition, petitioner seeks quashing of case F.I.R. registered against him under Section 365-B P.P.C. for abduction of respondent No.3.

Issues: i) What presumption is drawn by the court when in the matter of controversy, determination of age is the best available evidence and a person refuses for medical examination for it?
ii) Whether a minor girl can make a valid proposal or a valid acceptance for marriage?

Analysis: i) Verification of age of the abductee is the material factor to determine whether she is sui juris and could give valid consent for marriage. Generally, where a person refuses for medical examination for determination of age, it means that she withholds the best available evidence and court may draw presumption against the said person in terms of Illustration (g) of Article 129 of the Qanoon-e- Shahadat Order, 1984 that the same would be unfavorable to the said person and had been withheld with sinister motive. However, the said presumption is a rebuttable presumption.
ii) Marriage being a contract, it was to be seen whether parties thereto were adult, major and were fully aware of the consequences of the same to give consent. Although, a sui juris girl could enter into a marriage contract of her free will, choice and consent but the case of minor girl would be an exception to said general rule because a minor girl could neither make a valid proposal nor make a valid acceptance for marriage.

Conclusion: i) When determination of age is the best available evidence and a person refuses for medical examination for it, the court may draw presumption against the said person that the same would be unfavorable to the said person.
ii) A minor girl cannot make a valid proposal or a valid acceptance for marriage.

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11. **Lahore High Court**
Crl. Misc. No.2293/B/2022
Muhammad Aslam v. The State etc.
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC6592.pdf

Facts: Through the instant petitions, petitioners seek post-arrest bail in case registered u/s 324, 148, 149, 109 PPC later on added section 302, 337-F(i) PPC.

Issues: i) Whether the plea of alibi taken by the accused can be considered by the court at the bail stage?
ii) Whether opinion expressed by the investigating agency can be considered at the bail stage?
iii) Whether the benefit of the doubt could be extended to the accused at bail stage?

Analysis i) Superior Courts of this country had held in a number of cases that any plea taken by the petitioner during the investigation can be validly considered even at bail stage.
ii) that opinion expressed by the investigating agency is neither binding on Court nor could be taken as gospel truth but it depends on circumstances of each case to be considered. The Court could not get rid of or brush aside such opinion unless some other cogent reasons or extenuating circumstances are available to discard and dislodge such opinion to come to another judicious and sagacious conclusion.
iii) However, there is no cavil with the proposition that Courts are required to make tentative assessment with pure judicial approach of all the materials available on record, whether it goes in favour of the prosecution or in favour of the defence before making a decision. Even otherwise, it is cardinal principle of law that for the purpose of bail, law not to be stretched in favour of the prosecution, benefit of doubt, if any arising, must go to accused, even at bail stage.

Conclusion: i) Plea of alibi taken by the accused during the investigation can be validly considered even at the bail stage.
ii) Opinion expressed by the investigating agency is not binding on Court but Court could not brush aside such opinion unless some other cogent reasons or extenuating circumstances are available to discard and dislodge such opinion to come to another judicious and sagacious conclusion.
iii) Benefit of doubt, if any, could be extended to the accused, even at the bail stage.

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12. **Lahore High Court**
Muhammad Irfan Haider & 2 others and Ikram ul Haq v. The State & others
Criminal appeals No. 344 & 365/2019.
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2022LHC6485.pdf

Facts: By way of this single judgment above mentioned Criminal Appeals, are being decided together as arise out from judgment passed by the learned Additional Sessions Judge, on the basis whereof all the appellants were convicted and sentenced. The convictions of appellants are an outcome of prosecution they faced in case under Sections 367A/377/337F (iii)/337L (ii) PPC for the abduction and committing sodomy.

Issues: i) What is the evidentiary value of chance witness and when it can be relied upon?
ii) What are parameters to accept the testimony of solitary witness?
iii) Whether every delayed FIR amounts to defeat the prosecution case?
iv) What is the scope of "evidential burden"?

Analysis: i) Under the settled principles of law, statement of a Chance Witness requires scrutiny with great care and caution and can be accepted only if he gives satisfactory explanation of his presence at or near the place of the occurrence at the relevant time otherwise his testimony is liable to be rejected straightaway.
ii) No doubt that testimony of solitary witness can be accepted by following the principles of quality and not the quantity and can be a foundation for conviction alone but if found trustworthy, suffering from no infirmity and inherent defects. Fact remains that criteria for assigning the sole witness stamp of truth, certainly depends on facts and circumstances of each case.
iii) There is no universal principle that every delayed FIR shall defeat the prosecution and at the same time the prompt FIR has to be followed blindly. The reasons and explanations in case of delayed FIR always play an important role and cannot be taken lightly if the allegations are serious and heinous in nature. So the effect on prosecution's case because of delay in FIR has to be seen considering the special features of each case.
iv) The 'evidential burden' is the duty of prosecution to adduce sufficient, reliable, convincing and conclusive evidence against the accused so as to get favorable findings from the court. The discharge of evidential burden will not lead to discharge the legal burden as both have to hit the bull's eye simultaneously.

Conclusion: i) The statement of chance witness can be relied if he gives satisfactory explanation of his presence at or near the place of the occurrence at the relevant time.
ii) The testimony of solitary witness can be accepted by following the principles of quality and not the quantity and can be relied upon if the same is trustworthy.
iii) The reasons and explanations in case of delayed FIR always play an important role and cannot be taken lightly if the allegations are serious and heinous in nature.
iv) The 'evidential burden' is the duty of prosecution to adduce sufficient, reliable, convincing and conclusive evidence against the accused.
Prepared By Dr.Muhamad Mumtaz Research Officer.

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13. **Lahore High Court**
Ghulam Mustafa, etc v. Muhammad Musharaf Hussain, etc.
Regular First Appeal No.104 of 2015.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC6611.pdf

Facts: Through this Regular First Appeal, appellants have called into question the validity and propriety of judgment & decree whereby suit of respondent No.1 for recovery under Order XXXVII Rule 1 & 2 of the Code of Civil Procedure, 1908 was decreed.

Issues: i) Whether withdrawal slip amounts to be a negotiable instrument?
ii) Whether suit for recovery on the basis of withdrawal slip is maintainable?
iii) Whether suit is competent under summary chapter against only the person who was drawer of instrument mentioned in Order XXXVII, Rule 2 (1) CPC and not against his legal heirs?

Analysis: i) Whenever a question arises as to whether or not a document in an original language is negotiable instrument, the point will have to be decided not by looking to the definition of negotiable instrument, but independently of its provisions. The Court will find out how such instrument has been treated in the past and if it appears that according to usage or custom such instruments have been treated as negotiable instruments then they will be treated as such. From perusal of the Rules of Negotiable Instruments Act, 1881 and withdrawal slip in juxtaposition it appears that the withdrawal slip does not amount to be a negotiable instrument.

ii) Under Order XXXVII, Rule 2 C.P.C. all suits upon bill of exchange, Hundis, or promisor notes, may, in case the plaintiff desires to proceed be instituted by presenting a plaint in the forum prescribed. If the contents of the deed fall in the definition of section 13 of the Act, 1881, then the plaintiff has option to file the suit in the ordinary Court of civil jurisdiction or in the special Court exercising the powers vested in them under Order XXXVII C.P.C. The withdrawal slip does not fall within the definition of negotiable instruments Act, 1881 therefore, suit is not maintainable.

iii) It is a settled principle of law that where the claim in the suit was based on bill of exchange, hundi, promissory note or instrument drawn by the bank as required under Order XXXVII Rule 2 (1) CPC, the same was condition precedent for bringing a suit under summary chapter against a person who was drawer of instrument mentioned in Order XXXVII, Rule 2 (1) CPC. Suit under the summary chapter could only be filed against the drawer of an instrument and not against legal heirs or any other person.

Conclusion: i) Withdrawal slip does not amount to be a negotiable instrument.
ii) Suit for recovery on the basis of withdrawal slip is not maintainable.
iii) Suit is competent under summary chapter against a person who was drawer of instrument mentioned in Order XXXVII, Rule 2 (1) CPC and not against his legal heirs

14. **Lahore High Court**
Ghulam Rasool, etc. v. Province of Punjab, etc.
Civil Revision No.135-D of 2011
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC6637.pdf

Facts: The petitioners being legal heirs of original mortgagers instituted a suit for redemption against the suit land in which the trial Court declared the petitioners to be the owners of equity of redemption and passed a preliminary decree for redemption of the mortgaged property. Feeling aggrieved, respondent No.1 i.e., Province of Punjab preferred an appeal which was allowed via impugned judgment and decree, resultantly the preliminary judgment and decree of the learned trial Court was set aside and the petitioners suit was dismissed. Being dissatisfied, the petitioners approached this Court through instant Civil Revision.

Issues: i) Whether the time during which a person remains absent from Pakistan shall be excluded from the period of limitation for non-evacuees in land in which evacuee had any right under mortgage?
ii) Whether the mortgaged property of non-evacuee whose original owners were local Muslims could be treated as evacuee property under Section 4 of the Displaced Persons (Land Settlement), Act 1958?
iii) Whether the Civil Court has the jurisdiction to entertain the suit in which the suit property is evacuee property?

Analysis: i) The dictum of computation of period of limitation against the legal heirs of original mortgagers was laid down by august Supreme Court of Pakistan in the case reported as "BANI BEGUM AND OTHERS V. MUHAMMAD AZAM KHAN AND OTHERS" (PLD 2003 SC 235), held that sixty years limitation period as prescribed under Article 148 of Limitation Act, 1908 has to be counted from the date of latest mutation. Section 13, which is based on the English Law, provides that in computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from Pakistan and from the territories beyond the Pakistan under the administration of the Central Government shall be excluded, and the rights of non-evacuees in land in which evacuee had any right under mortgage will continue to have a right to the equity of redemption in the suit property.
ii) Under Section 4 of the Displaced Persons (Land Settlement), Act 1958, evacuee lands acquired, vested in the Central Government or the Provincial Government and by virtue of Section 5 of the said Act form part of the compensation pool for the purpose of granting compensation to displaced persons whose claims have been verified. These lands forming part of the compensation pool were to be administered by the Chief Settlement Commissioner and other Officers in the Settlement Organization. However, the lands in which the original owners were local Muslims; their mortgaged property could not be treated as

evacuee property as and there was no law to divest these local Muslims of their right of ownership of such property. The only circumstances which could deprive them from the rights was the expiry of limitation for redemption of the land or under some order of any competent authority or the legal proceedings for recovery of mortgage money and in case of inability of the land owners to pay that amount, then the rights of the ownership could be snatched from them.
iii) Section 25 of the Displaced Persons (Land Settlement) Act, 1958 (hereinafter referred to as the Act "1958") and Section 41 of the Administration of Evacuee Property Act, 1957 (hereinafter referred to as the Act "1957") barred the jurisdiction of Civil Court. But it is also a matter of fact that both the acts have been repealed through the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 (XIV of 1975). 18. In case titled as "Mst. Kubra Begum and others vs. Shamas Din and another" (2014 YLR 1456) it was held that "after the repeal of settlement laws the ultimate jurisdiction only vests with Civil Court".

Conclusion: i) Under Section 13 of the Limitation Act, 1908 the time during which a person remains absent from Pakistan shall be excluded from the period of limitation for non-evacuees in land in which evacuee had any right under mortgage.
ii) Under Section 4 of the Displaced Persons (Land Settlement), Act 1958, the mortgaged property of non-evacuee whose original owners were local Muslims could not be treated as evacuee property.
iii) After repeal of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 the Civil Court has the ultimate jurisdiction to entertain the suit in which the suit property is evacuee property.

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15. **Lahore High Court**
Muhammad Yousaf v. Mst. Bashiran Bibi (deceased) through her legal heirs, etc.
C.M. No.22-C of 2022 in C.R. No.73-D of 2011.
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC6552.pdf

Facts: The applicant, through this application, has assailed consolidated order passed in the Civil Revisions on the basis of a compromise arrived at between the parties while asserting that neither compromise was ever struck between the parties nor the applicant himself got recorded any statement with regard to alleged compromise nor did he authorize his counsel to do so and even otherwise the compromise has not been recorded in terms of Order XXIII, CPC and hence, impugned order is not sustainable.

Issues: i) Whether the absence of thumb mark of the party or the signatures of his counsel can make compromise invalid?

ii) What degree of sanctity and strong presumption of correctness have been attached to the judicial proceedings under Article 129 of the Qanune-Shahadat Order?

Analysis: i) The absence of thumb mark of the party or the signatures of his counsel are not a mandatory requirement of the law in a situation where the party is duly represented by his legal counsel who filed the petition and has been pursuing the same since the filing. Further, compromise in terms of Order XXIII, CPC is valid despite such lapse.
ii) The sanctity of high order and strong presumption of correctness have been attached to the judicial proceedings under Article 129 of the Qanune-Shahadat Order 1984, Mere application not supported by any strong material cannot warrant any inquiry or investigation.

Conclusion: i) The absence of thumb mark of the party or the signatures of his counsel cannot make compromise invalid in a situation where the party is duly represented by his legal counsel who has been pursuing the petition.
ii) The sanctity of high order and strong presumption of correctness have been attached to the judicial proceedings under Article 129 of the Qanune-Shahadat Order 1984.

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16. **Lahore High Court**
Rao Ghulam Mustafa v. The State and another
Crl. Misc. No. 41311-B/2022
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC6497.pdf

Facts: Through this petition, petitioner seeks his post-arrest bail in case FIR registered under Section 489-F of the PPC.

Issues: Whether under Section 489-F PPC, the punishment of imprisonment is mandatory, or only sentence of fine can also be imposed?

Analysis: Admittedly, the punishment provided for the offence under Section 489-F PPC is imprisonment for three years or fine or both. The word "or" is normally disjunctive and "and" is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. The aforesaid three types of punishments provided under Section 489-F PPC are in alternative to each other as the expression "or" has been used therein. The insertion of word "or" by the legislature in Section 489-F PPC, reflects its intention that a sentence of imprisonment is not mandatory, and it has been left to the discretion of the court, as only a sentence of fine can also be imposed. The use of word "or" clearly reflects that a disjunctive punishment of fine has also been provided in the Section ibid. The use of word "OR" legally speaks about choosing one out of two or more options which (act of choosing)

shall be "legal".

Conclusion: Under Section 489-F PPC, sentence of imprisonment is not mandatory, and it has been left to the discretion of the court, as only sentence of fine can also be imposed.

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17. **Lahore High Court**
Civil Revision No.681 -D of 2015
Liaqat Hussain v. Mohammad Ashiq
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC6560.pdf

Facts: Through Civil Revision, filed under section 115 of the Code of Civil Procedure, 1908, revision-petitioner assailed the judgment whereby, the learned appellate Court upheld order passed by the learned trial Court, refusing to set-aside the ex-parte judgment and decree passed against the revision-petitioner.

Issues: i) What is the limitation for filing application for setting aside an ex- parte decree?
ii) What is the scope of Article 181 of the Limitation Act?

Analysis i) Article 164 (above) clearly provides thirty (30) days limitation for a defendant to apply for setting aside an ex- parte decree from the date of the decree or if the summons were not duly served, from the date of knowledge of the decree. The wording of the third column of Article 164 makes it amply clear that the legislature has envisaged two independent situations; (i) Where the applicant or his counsel has entered appearance in response to the summons prior to ex-parte proceedings is ordered against him or where service of first summons are not disputed, and (ii) where summons were not served and the ex- parte decree is passed. In the first eventuality period of limitation starts from the date of decree and in the second situation, the thirty days starts from the date of knowledge of the decree. Word "summons" used in Article 164 of the Limitation Act clearly refers to first summon issued when the suit was instituted. One can be benefited from the second part in column 3, if he can show that the first summon was not served and he remained ignorant of the proceedings and the ex-parte decree.
ii) Reading of Article 181 of the Limitation Act reflects that its application is restricted to the situations where period of limitation is not provided elsewhere in the first schedule of the Limitation Act or section 48 of the Code, however, when limitation is provided in other articles of the first schedule of the Limitation Act, this residuary provision cannot be applied.

Conclusion: i) Article 164 of the Limitation Act provides thirty (30) days limitation for a defendant to apply for setting aside an ex- parte decree from the date of the decree or if the summons were not duly served, from the date of knowledge of the decree.
ii) Application of Article 181 of the Limitation Act is restricted to the situations

where period of limitation is not provided elsewhere in the Limitation Act.

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18. **Lahore High Court**
Civil Revision No.150/2022
Muhammad Sidique v. Syed Riaz Shah, etc.
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2022LHC6622.pdf

Facts: Through this Civil Revision, the petitioner being Plaintiff/Decree Holder has called into question the legality and propriety of order passed by the learned Trial Court dismissing an application for seeking enlargement of time to deposit balance sale consideration. Being disgruntled with the order, the Petitioner instituted an Appeal which was also dismissed by the learned Appellate Court below.

Issues: i) Whether a judgment and decree passed in a suit for specific performance of an agreement to sell is preliminary or final in its nature, scope, and ambit?
ii) If the decree gives a definite time to fulfill a condition and the party does not fulfill it in the specified time, in such a scenario whether the decree be considered as final and the court would become *functus officio*?
iii) What will be effect on suit and subject matter agreement to sell of non-fulfillment of condition, to deposit the remaining sale consideration within stipulated time, contained in the decree in a suit for specific performance?

Analysis i) By now it is a settled position of law that generally a decree in a suit for specific performance of an agreement to sell is preliminary in its nature and scope as any such decree has an effect and character of a contract where vendee has to deposit the purchase price, cost of purchase of necessary stamps for the execution of conveyance deed and so on and so forth, while the seller remains under an obligation to appear before Court to sign the conveyance deed and receive the purchase price. In such a situation it clearly follows that a decree passed in an action of specific performance of an agreement to sell is not final but preliminary in nature and the Court passing the decree retains seisin over the lis and obviously also retains power to enlarge or extend the time for payment of purchase price fixed therein.
ii) If the expression of adjudication of a decree is such that failure of a party would lead to a legal consequence that the suit would be deemed to have been dismissed, it will only be construed as a preliminary decree till the time of fulfillment of the condition imposed by the Court within a time stipulated in the decree. The moment the time stipulated by the Court in a decree expires the penal consequence will become self-operative and the decree in such a situation would be considered as final in its ambit and scope. Obviously, in such a case the Court passing a decree would become functus officio forthwith having no power to extend or enlarge the time.

iii) In the Tasneem Jamil's case (2007 SCMR 1464), it has been declared that if a consequence of non-fulfilment of the condition contained in the decree in a suit for specific performance has been provided as automatic dismissal than nothing is left to be performed by the Court. The Hon'ble Supreme Court in the facts and circumstances of that case held that "the decree in the case in hand did not provide for dismissal of suit forthwith in the event of default. It had to precede an order of the Court in terms of section 35 of the Specific Relief Act and the Court still had the discretion to extend time". … therefore, upon failure of the party to deposit the remaining sale consideration within stipulated time from the Judgement as envisaged by the Decree resulted in the dismissal of the Suit and consequently, the subject matter agreement to sell automatically stood rescinded in terms of Section 35(c) of the Act,1877.

Conclusion: i) Generally a decree in a suit for specific performance of an agreement to sell is preliminary in its nature and scope.
ii) If the decree gives a definite time to fulfill a condition and the party does not fulfill it in the specified time, in such a scenario the decree becomes final, and the court becomes *functus officio.*
iii) Upon failure of the party to deposit the remaining sale consideration within stipulated time from the Judgement as envisaged by the Decree resulted in the dismissal of the Suit and consequently, the subject matter agreement to sell automatically stands rescinded in terms of Section 35(c) of the Act,1877.

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19. **Lahore High Court**
Tariq Mehmood Sultan v. Mumtaz Ahmed etc.
Civil Revision No. 55425 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC6455.pdf

Facts: Through the instant civil revision the petitioner has challenged findings recorded by the learned appellate court below whereby after setting aside the order rejecting the plaint remanded the matter back to the trial court to proceed with the suit as filed.

Issue: i) Whether a remand order is generally interfered with?
ii) Whether in the presence of defective title the vendor is liable to refund the earnest money to the vendee?
iii) Whether a court can grant damages in lieu of specific performance even if the plaintiff has not prayed for the award of damages?
iv) What is meant by "Unjust Enrichment"?

Analysis: i) An order of remand can only be interfered with if the same is perverse, fanciful, whimsical or arbitrary and that short of such perversity a remand order is generally not interfered with. In matters where a case is remanded, the facility of

civil revision is only (and repeat only) available when the order directing remand is either absolutely perfunctory, manifestly perverse or evidently illegal.

ii) It is well settled that on breach of a contract for sale of immovable property owing to the defect in the vendor's title, the vendor is bound to refund the amount of earnest money to the vendee. Additionally, a vendor who breaks the contract by failing to convey the land to the purchaser is liable to damages for the purchaser's loss of bargain by paying the market value of the property less the contract price.

iii) There is nothing in the law to prevent a Court from granting damages in lieu of specific performance even if the plaintiff has not prayed for the award of damages in his suit. Additionally, in a suit for specific performance, the Court has ample power under section 19 of the Specific Relief Act 1877, to award damages even though the plaintiff had not prayed for such relief. First part of section 19 only enables the person suing for specific performance to ask for compensation for its breach. He may do so either in addition or in substitution for such performance and the second part of section 19 imposes a mandatory duty upon the Court to award compensation, whether it is asked for or not.

iv) An illustration of unjust enrichment is receiving payment for something not completed and involving one party benefiting at the expense of the other party in an unfair circumstance. The elements of enrichment include a payment or transfer of property between the two parties. Those deemed unjustly enriched must reverse the position and pay the monetary value of the received benefit.

Conclusion: i) A remand order is generally cannot be interfered with subject to certain exceptions.

ii) Yes, in the presence of defective title the vendor is liable to refund the earnest money to the vendee.

iii) Yes, a court can grant damages in lieu of specific performance even if the plaintiff has not prayed for the award of damages.

iv) Unjust enrichment is the retaining of a benefit conferred by another when principles of equity call for restitution to the other party.

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20. **Lahore High Court**
Khalid Mehmood v. Dilawar Khan
Civil Revision No.318 of 2015
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC6528.pdf

Facts: Through the instant civil revision the petitioner has challenged the concurrent findings recorded through judgments passed by a learned Civil Judge and in appeal by a learned Addl. District Judge whereby a suit for specific performance of an agreement to sell filed by the petitioner was dismissed.

Issue: i) Whether an agreement to secure amount of loan containing a penal clause, which triggers upon default, operates as an agreement to sell?

ii) How the beneficiary of a document has to prove the same which is executed by the illiterate person?

iii) Whether the contents of a document determine its nature and not its title or the label appearing at its head?

iv) Whether Court can decline discretionary relief where it is convinced that plaintiff was exercising unfair advantage?

v) Whether an agreement is a binding contract if it lacks certainty due to vagueness?

Analysis: i) An agreement meant to secure an amount of loan so advanced and which agreement also contains a penal clause which comes into operation upon default does not operate as an agreement to sell because there is no meeting of minds of the parties. That a document purporting to be an agreement to sell can be construed as a mortgage, charge or security for a loan if such intent is spelt out from the contents thereof. If the agreement is primarily meant to secure price of a particular commodity which was delivered then it does not operate as an agreement to sell.

ii) It is now well settled principle that where the document is allegedly executed by the illiterate person, the beneficiary of the document is bound to establish by highly satisfactory and strong evidence that not only the document has been executed by such illiterate person but also that such person had fully understood the contents of the document. When a document is executed by an illiterate person the beneficiary thereof is bound to establish by strong evidence that such illiterate person had fully understood the contents of the document. Nay the threshold or the benchmark required for the purpose of proof is that much higher.

iii) It has long been settled in our jurisprudence that the contents of a document determine its nature and not its title or the label appearing at its head. It is the substance, content and context of a document which determines the nature of such document and not the label or heading alone. The nature of the document so determined represents the true intention of the parties and it is this which the courts are obliged to give effect to, not the mere form of the document.

iv) Court was not expected to decree suit of specific performance where circumstances in which contract was made were such as to give plaintiff unfair advantage over vendor or legal heirs of the property. Relief of specific performance was discretionary in nature and despite proof of an agreement to sell, exercise of discretion could be withheld if the Court considered that grant of such relief would be unfair or inequitable. Court can decline discretionary relief where it is convinced that plaintiff was exercising unfair advantage or there was fraud or misrepresentation on his part or contract involved some hardship on defendant.

v) Necessarily, an agreement comes into being with the consent of the parties. It must be certain, unambiguous or be made certain. This rule of common law was embodied in section 29 of the Contract Act (IX of 1872). It clearly postulates that agreement, the meaning of which is not certain or capable of being made certain, is void. It is settled that an agreement is not a binding contract if it lacks certainty due to vagueness or because its terms cannot be ascertained. Unconscionable and

anomalous contents of an agreement cannot be sought to be enforced specifically.

Conclusion: i) An agreement meant to secure an amount of loan containing a penal clause, which triggers upon default, does not operate as an agreement to sell.
ii) When a document is executed by illiterate person, the beneficiary of document has to establish the same by highly satisfactory and strong evidence that not only the document has been executed by such illiterate person but also that such person had fully understood the contents of the document.
iii) Yes, only contents of a document determine its nature and not its title or the label appearing at its head.
iv) Yes, a court can decline discretionary relief where it is convinced that plaintiff was exercising unfair advantage.
v) An agreement is not a binding contract if it lacks certainty due to vagueness.

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21. **Lahore High Court**
Saba Sarwar v. Govt. of Punjab, etc
W.P. No.9234 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC6521.pdf

Facts: Through this writ petition, the petitioner has challenged the order passed by respondent No.1 to the extent of reconsidering appointment of the petitioner.

Issues: Whether the appointments on the basis of erroneous advertisement or merit list can be disturbed?

Analysis: Appointment, even if made on the basis of an erroneous merit list prepared pursuant to an erroneous advertisement in violation of the Government Policy, cannot be disturbed when the mistake is attributable to someone else, is untenable. The principle of law enunciated by the Hon'ble Supreme Court of Pakistan in the case of Punjab Public Service Commission v. Husnain Abbas and other (2021 SCMR 1017) is to the effect that no vested right would have accrued in favour of the person by virtue of an erroneous merit list prepared on the basis of an erroneous advertisement which had been published in violation of the Government Policy in vogue.

Conclusion: No vested right accrues in favour of a person by virtue of an erroneous merit list prepared on the basis of an erroneous advertisement published in violation of the Government Policy in vogue.

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22. **Lahore High Court**
Muhammad Ramzan, etc. v. Addl. District Judge, etc.
W.P. No.9406 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC6525.pdf

Facts: Through this writ petition, the petitioners have challenged the order whereby right of the petitioners to file written statement in the suit for declaration has been closed as well as judgment whereby civil revision was dismissed.

Issues: How many opportunities are available to the defendant as per law for the submission of written statement?

Analysis: Period of thirty days and not more than two opportunities have been provided by the law to defendant to file written statement. Rules 1 & 10 of Order VIII of the Code of Civil Procedure, 1908 are relevant.

Conclusion: Period of thirty days and not more than two opportunities have been provided by the law to defendant to file written statement.

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23. **Lahore High Court**
Muhammad Zubair v. Addl. District Judge, etc.
Writ Petition No.5318 of 2014
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC6517.pdf

Facts: Through this writ petition, the petitioner has challenged the orders of the courts below whereby his application filed u/s Section 12(2) CPC was set aside.

Issue: Whether an application filed u/s 12(2) CPC may be decided without framing of issues and recording of evidence?

Analysis: It has been held in various judgments of the apex Court that it is not mandatory to frame issues and record evidence for the disposal of an application under Section 12(2) of the Code as the court had to regulate its proceedings keeping in view nature of the allegations made in the application and adopt such mode as was in consonance with justice in the facts and circumstances of the case. Framing of issues in every case to examine merits of such application would frustrate the object of Section 12(2) of the Code which is to avoid protracted and time-consuming litigation and to save the genuine decree holders from grave hardships, ordeal of further litigation, extra burden on their exchequer and simultaneously to reduce unnecessary burden on the courts.

Conclusion: An application filed u/s 12(2) CPC may be disposed of without framing issues and recording of evidence.

LATEST LEGISLATION/AMENDMENTS

1. The preamble and section 2 of Control of Narcotics Substances Act, 1997 (XXV of 1997) are amended vide Control of Narcotics Substances (Amendment) Act, 2022.

2. The preamble, long title and short title of Lahore Central Business District Development Authority Act, 2021(VI of 2021) are amended vide The Lahore Central Business Development Authority (Amendment) Act, 2022.
3. Section 2 of Ravi Urban Development Authority Act 2020 (XVII of 2020) is amended vide Ravi Urban Development Authority (Amendment) Act, 2022.

LIST OF ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Land-Acquisition-Act-History-The-Need-to-Strike-Down-Right-to-Property

LAND ACQUISITION ACT: HISTORY & THE NEED TO STRIKE DOWN RIGHT TO PROPERTY By Nakshatra Gujrati

Humans need both material and immaterial properties to survive and an in depth philosophical inquiry of these two concepts will lead to the conclusion that both these concepts are inter related. Material properties can be many things but our point of interest is land. In modern times land is something which is used to build shelter upon, cultivate crops, a way of gaining status and position in the society. It is not the case that property had a static definition it got changed over time which is evident from the excerpt of Pt. Nehru's speech[1] which runs as follows:-[2]
"There was a period when there was property in human beings. The king owned everything - the land, the cattle, the human beings. Property used to be measured in terms of the cows and bullocks you possessed in old days. Property in land then became more important"
The concept of property and acquisition of property in India is a very vast topic, we will trace the origins of land acquisition act, some provisions regarding compensation and introduction of right to property. Once again, I would like to remind the readers that acquisition is a very vast topic and there are plethora of legislations from the outset governing this so I will limit myself (to) and the purpose of this article is to examine: -

1. *How the regime of compensation and right to property got developed over time.*
2. *Land acquisition act of 1894 vis a vis Land acquisition act of 2013.*
3. *Whether land acquisition and right to property are contradictory concepts.*
4. *Why there was a need to strike down right to property as fundamental right.*

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Judicial-Activism-and-Governance

JUDICIAL ACTIVISM AND GOVERNANCE By Kumar Satyam

A few days earlier, Justice N.V. Ramana, at an event, asserted that there is a need to "Indianize our legal system", with the justification that the colonial system which is being followed currently may not be best suited to the complexities of India. That means the law which is applicable and the society to which it is applicable are drifting apart & this is creating hurdles for the ends of justice, since complex Indian cases have to be dealt alongside the old colonial laws. Now,

the bigger question is where should the judiciary go? If it goes with the law then there is a possibility that injustice may happen & if it goes with the idea of setting a new ruling or precedent then people might call it "judicial overreach." But these two possibilities are totally for extreme scenarios & not for general cases. However, the latter one if done in good faith and within the given jurisdiction of the courts, then in a wider sense it can be understood as Judicial Activism.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Dynamism-of-Judiciary-in-Protecting-the-Environment

DYNAMISM OF JUDICIARY IN PROTECTING THE ENVIRONMENT By Yash Agarwal

The theory of separation of powers lays down that the government responsibilities have been divided amongst different branches. The three branches are the legislature that is responsible for making the laws; the executive that enforces the law and the judiciary whose job is to interpret the laws and administer justice. Judiciary has also taken the role of an administrator in case of protecting the environment and broadened their role. This interdependence and performing of incidental functions can be highlighted through the Ratlam case.[2] The decision highlights the strong position that the Court hold when it comes to matter of protecting environment, social justice and legal aid and recognizing the duty to protect the environment.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Application-of-Social-Engineering-Jurisprudence-to-the-concept-of-Arrest-Individual-Autonomy-v-Societal-Interest

APPLICATION OF SOCIAL ENGINEERING JURISPRUDENCE TO THE CONCEPT OF ARREST: INDIVIDUAL AUTONOMY V. SOCIETAL INTEREST By Anamika Mishra

Roscoe Pound, an American Legal Scholar belonged to the Sociological School of Jurisprudence. The Cornerstone on which the jurist resonated with the sociological school is the establishment of a relationship between the Law and Society. The Society that is devoid of law, is a cataclysm and at the same time, the application of the law where there is no society is a squander. Law is a social phenomenon and has consequential or inconsequential effects on Society. And the theory, remarkably propounded by Nathan Roscoe Pound, was that Law should balance the interest in society. Pound gave a listing of various kinds of interest, Id est., private interest such as conjugal disputes between spouses, public interest for instance national interest or law and order, and social interest, namely, environment, education, the standard of morality so on and so forth. The Intention of the Law should be to engineer conflicts between these interests. This process of Integration is what call as Social Engineering.

5. **MANUPATRA**
https://articles.manupatra.com/article-details/A-Review-on-the-contrast-of-approaches-in-the-realm-of-negotiation

A REVIEW ON THE CONTRAST OF APPROACHES IN THE REALM OF NEGOTIATION By Taneesha Ahuja

Roger Fisher, a dogmatic law professor combined his own challenging negotiation and conflict resolution insights with theories from several disciplines to produce a valuable capital that bequeath admirable core contributions to the field of negotiation. To provide an analysis of my own intellectual trajectory on Fisher's approach addressing interactable international conflict resolution has been shaped by his remarkable work in Getting to Yes: Negotiating Agreement without Giving In (1981)[1] and International Conflict for Beginners (1969)[2].

6. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/what-s-important-about-federal-registration-bank-trademarks

WHAT'S IMPORTANT ABOUT FEDERAL REGISTRATION OF BANK TRADEMARKS By W. Whitaker Rayne

Why is it important to seek federal registration of a bank's name and related trademarks? In the past century, by regulation, banks were for the most part creatures of one locality, with perhaps branches stationed a few miles away. Trademark law, the primary concern of which is avoiding consumer confusion, was not concerned with identical or very similar bank names so long as they were in different geographic markets. Thus, almost every town had a "First National Bank" without causing consumer confusion or running afoul of trademark law. With the whittling away of such regulations, nationwide and regionally, and with banking becoming so widespread, consumer confusion is increasing.
The difficulty with these two concepts — trademark law and bank footprint expansion — is best explained by the following example:
Bank A begins operation in the Seattle, Washington, area in 1950 under the name ANYBANK. It chooses not to register its trademark with the United States Patent and Trademark Office (USPTO). Bank B begins operation under the name ANYBANK in 1980 in the Miami, Florida, area and promptly files and receives a federally registered mark from the USPTO.