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FORTNIGHTLY CASE LAW BULLETIN

(01-03-2024 to 15-03-2024)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Raja Amer Khan and another, etc. v. Federation of Pakistan through the Secretary, Law and Justice Division, Ministry of Law and Justice, Islamabad and others
Constitution Petitions No. 6 to 8, 10 to 12, 18 to 20 and 33 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Sardar Tariq Masood, Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/const.p._6_2023_07032024.pdf

Facts: A Full Court was constituted by the Chief Justice of the Supreme Court of Pakistan to decide the petitions filed in the original jurisdiction of the Supreme Court, challenging the vires of the Supreme Court (Practice and Procedure) Act, 2023.

Issues: i) Whether phrase "subject to law" used in Article 191 of Constitution means only statutory law?
ii) Whether the phrase "subject to law" as used in Article 191 means subject to "substantive law" only?
iii) Whether the rule-making power of the Supreme Court is subservient to the superior constituent power and ordinary legislative power of the Legislature?
iv) Whether High Court in the exercise of its rule-making power can provide for constitution of benches for hearing appeals etc.?
v) Whether there is any constraint in entry 55 of Federal Legislative list with respect to enlargement of the jurisdiction of the Supreme Court and Parliament can curtail the jurisdiction of the Supreme Court?
vi) Whether legislature has power to legislate retrospectively and can take away vested rights or affect past and closed transactions?
vii) What approach can be adopted in case of doubt or difficulty in ascribing proper meaning to a provision or a word in a provision of law?
viii) What is provided by section 3 Supreme Court (Practice and Procedure) Act 2023, regarding exercise of suo motu jurisdiction of Supreme Court under Article 184(3) of the Constitution?

Analysis: i) The term "law" has, no doubt, been used in its generic and wider sense in some of the Articles of the Constitution, where it includes the common law; but when used along with the term "Constitution", as in Article 191, it means as per my understanding the "statutory law" only. So, we can say that in Article 191 the phrase "subject to law" means subject to statutory law, i.e., the law made by the legislature. The term "law" wherever used in the Constitution does include the statutory law. So, one thing is clear and certain: the phrase "subject to law" in

Article 191 of the Constitution at least means that the court in making rules of its practice and procedure acts subject to statutory law.

ii) Once it is conceded that the word “law” as used in Article 191 of the Constitution means, or at least includes, "statutory law", the bars are down; because if it means statutory law in any sense it means statutory law in all senses, substantive and procedural. The Constitution, in this regard, makes no limitation either expressly or by necessary implication by adding some adjectival distinction. If our effort is to find the actual meaning which the words, as written in the Constitution, were intended to convey, and not any preconceived meaning, any implicit limitation with the word "law" in the phrase "subject to law" cannot be justified. I, therefore, do not subscribe to the view that the phrase "subject to law" as used in Article 191 means subject to "substantive law” only. The word “law” includes law in all senses - procedural and substantive; enacted directly on the matter of practice and procedure of the Supreme Court or containing only incidental or ancillary provisions.

iii) The power to deal with the subject of rules regulating its practice and procedure, no doubt, primarily vests in the Supreme Court but this is not exclusive to it. This rule-making power of the Supreme Court is subservient to the superior constituent power and ordinary legislative power of the Legislature. The rules made by the Supreme Court are to hold the field unless changed by the Legislature in the exercise of its constituent power under Article 238 or its legislative power under Article 142 of the Constitution.

iv) If a High Court, in the exercise of its rule-making power, provides that a petition filed under Article 199 of the Constitution shall be heard by a Bench of three Judges, no one can dispute that such power of the High Court relates to its practice and procedure; likewise if a High Court by its rules provides that such a petition shall be first heard by a Single Bench and then by a Division Bench in intra-court appeal, there can be no justifiable reason to deny that such exercise of its rule-making power also relates to the practice and procedure of the High Court. By the latter procedure, the High Court saves the time and labour of two of its Judges, to be utilized in dealing with other cases; for the Single Bench hears, discusses and decides the matter agitated in the petition and the work of the Division Bench lessens in intra-court appeal to only see whether there is any error in the judgment of the Single Bench and to correct the same, if any.

v) A bare reading of this entry shows that the matter of “enlargement of the jurisdiction of the Supreme Court” falls within the legislative competence of Parliament. By conferring intra-court appellate jurisdiction, Section 5 of the Act has exactly done this: it has enlarged the appellate jurisdiction of the Supreme Court. There is no constraint in the said entry as to the enlargement of the jurisdiction of the Supreme Court and the conferring thereon of supplemental powers. The only limitation is that Parliament cannot curtail the jurisdiction of the Supreme Court.

vi) A legislature that is competent to make a law also has the power to legislate it retrospectively and can by legislative fiat even take away vested rights or affect

past and closed transactions. When the legislature gives retrospective operation to the law enacted, the party affected thereby cannot plead infringement of his rights as a ground for declaring the law invalid. Our Constitution only bars retrospective legislation on criminal liabilities, not on civil rights and obligations.

vii) It is by now well-accepted that in case of doubt or difficulty in ascribing proper meaning to a provision or a word in a provision of law, the Statement of Objects and Reasons in the Bill introduced for the enactment of that law may also be looked into, to ascertain the intention of the Legislature.

viii) The ratio of the judgment passed by a five-member Bench of this Court in SMC No.4/2021 as partially modified by Section 3 of the Act is that now the Committee comprising the Chief Justice and two most senior Judges is the sole authority by and through which the jurisdiction of this Court under Article 184(3) of the Constitution can be invoked suo motu; no Judge or Bench of this Court can do so. This is the law of the land to date; it must be applied and complied with in letter and spirit. The Benches of this Court hearing the petitions filed under Article 184(3) of the Constitution should, therefore, as a first step in the proceedings ask the petitioner to show how he has an interest in the matter agitated in the petition. If he fails to do so, the petition should be referred to the Committee to decide upon the question of whether or not it finds appropriate to invoke the jurisdiction of the Court suo motu in the matter agitated in the petition.

Conclusion: i) Yes, phrase “subject to law” used in Article 191 of Constitution means only statutory law.

ii) No, the phrase "subject to law" as used in Article 191 does not mean subject to "substantive law” only. The word “law” includes law in all senses - procedural and substantive; enacted directly on the matter of practice and procedure of the Supreme Court or containing only incidental or ancillary provisions.

iii) The power to deal with the subject of rules regulating its practice and procedure, no doubt, primarily vests in the Supreme Court but this is not exclusive to it. This rule-making power of the Supreme Court is subservient to the superior constituent power and ordinary legislative power of the Legislature.

iv) Yes, High Court in the exercise of its rule-making power can provide for constitution of benches for hearing appeals etc.

v) There is no constraint in entry 55 of Federal Legislative list with respect to enlargement of the jurisdiction of the Supreme Court and Parliament cannot curtail the jurisdiction of the Supreme Court.

vi) A legislature that is competent to make a law also has the power to legislate it retrospectively and can by legislative fiat even take away vested rights or affect past and closed transactions.

vii) See above in analysis no. vii.

viii) See above in analysis no. viii.

2. **Supreme Court of Pakistan**
Reference by the President of Islamic Republic of Pakistan under Article 186 of the Constitution
Reference No. 1 of 2011
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Sardar Tariq Masood, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/reference_1_2011_06mar2024.pdf

Facts: In this reference, the question of law, in essence, is whether the requirements of due process and fair trial were complied with in the murder trial of Mr. Zulfiqar Ali Bhutto ("Mr. Bhutto"), the former Prime Minister of Pakistan, by the trial court (the Lahore High Court) and the appellate court (the Supreme Court).

Issues: i) What is advisory jurisdiction of Supreme Court under Article 186 of Constitution?
ii) Whether the decision of the Lahore High Court as well as the Supreme Court of Pakistan in the murder trial against Shaheed Zulfiqar Ali Bhutto meets the requirements of fundamental rights as guaranteed under Article 4, sub-Articles (1) and (2)(a), Article 8, Article 9, Article 10A/due process, Article 14, Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973? If it does not, its effect and consequences?
iii) Whether the conviction leading to execution of Shaheed Zulfiqar Ali Bhutto could be termed as a decision of the Supreme Court binding on all other courts being based upon or enunciating the principle of law in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973? If not, its effect and consequences?

Analysis: i) The advisory jurisdiction, under Article 186 of the Constitution, requires Supreme Court to render an opinion on any question of law of public importance referred to by the President.
ii) The proceedings of the trial by the Lahore High Court and of the appeal by the Supreme Court of Pakistan do not meet the requirements of the Fundamental Right to a fair trial and due process enshrined in Articles 4 and 9 of the Constitution and later guaranteed as a separate and independent Fundamental Right under Article 10A of the Constitution. The Constitution and the law do not provide a mechanism to set aside the judgment whereby Mr. Bhutto was convicted and sentenced; the said judgment attained finality after the dismissal of the review petition by this Court.
iii) Referenced questions do not specify the principle of law enunciated by this Court in the Zulfiqar Ali Bhutto case regarding which our opinion is sought. Therefore, it cannot be answered whether any principle of law enunciated in the Zulfiqar Ali Bhutto case has already been dissented to or overruled.

Conclusion: i) The advisory jurisdiction, under Article 186 of the Constitution, requires Supreme Court to render an opinion on any question of law of public importance referred to by the President.
ii) See above in analysis no. ii.
iii) See above in analysis no. iii.

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3. **Supreme Court of Pakistan**
Taufiq Asif v. General (Retd.) Pervez Musharraf and others. And three other petitions
Civil Petition No. 3797, 3798, 3799 and 3800 of 2020
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3797_2020.pdf

Facts: The Special Court (under Section 5 of the Criminal Law Amendment (Special Court) Act, 1976) proceeded with the trial and reserved its judgment. The said order was challenged by the respondent before the High Court through a writ petition under Article 199 of the Constitution. While the matter was being heard by the High Court, the Special Court announced its judgment convicting the respondent and sentencing him to death. However, the High Court ignored the judgment of the Special Court and decided the writ petition by allowing it. Hence, the instant petitions for leave to appeal have been filed.

Issues: i) Whether any High Court can assume and exercise writ jurisdiction on the pretext that one of the reliefs sought relates to an act of a federal body when ultimate relief sought relates to an act done or proceeding taken within the territorial jurisdiction of another High Court?
ii) Whether writ jurisdiction of High Court can be invoked while having an alternate equally efficacious and adequate remedy provided under the law?
iii) Whether High Court can give decision on merit in writ jurisdiction when it is exclusively vested in Supreme Court in appellate jurisdiction?
iv) Whether High Court can grant relief which is not sought in writ petition and determine the merit of the case?
v) Whether Special Court is mandated to proceed with the trial after taking the necessary steps to appoint an advocate to defend an accused person in his absence?
vi) Whether principle settled in Mustafa Impex case have retrospective application?
vii) Whether judgments of Supreme Court are binding on all judicial and executive authorities of the country?

Analysis: i) The Lahore High Court assumed territorial jurisdiction in the matter, stating the reason that since the respondent also challenged, along with the acts and proceedings of the Special Court, the Federal Government's acts, i.e., the acts of filing the complaint and constituting the Special Court, it had the jurisdiction to adjudicate upon the matter. The reason is flawed and is also against the law

declared by this Court in Sandalbar and Amin Textile as well as by the Lahore High Court in Sethi and Sethi. The ratio of these cases is that it is the dominant object of the petition, i.e., the main grievance agitated and the ultimate relief sought in the petition, which determines the territorial jurisdiction of the High Courts. If the ultimate relief sought relates to an act done or proceeding taken within the territorial jurisdiction of a particular High Court, no other High Court in the country can assume and exercise writ jurisdiction on the pretext that one of the reliefs sought relates to an act of a federal body. The splitting of claims and reliefs in several actions (suits or petitions) regarding one cause of action is also not legally permissible under Order II, Rule 2, CPC. No person can, therefore, seek relief regarding an act of a federal body from one High Court and relief regarding an act done in furtherance of or pursuance to that act from another High Court. Both reliefs must be sought in one petition and adjudicated by the High Court which has territorial jurisdiction over both acts.

ii) The next challenge, made before us, on the exercise of jurisdiction by the High Court is that the respondent had an alternate adequate remedy under the law; therefore, the High Court should have kept its hands off the matter and should not have proceeded to exercise the writ jurisdiction under Article 199 of the Constitution… Where an adequate remedy is available under the relevant law, this Court has strictly deprecated circumventing that remedy and invoking the writ jurisdiction of the High Court under Article 199 of the Constitution. The writ jurisdiction of the High Court cannot be exploited while having an alternate equally efficacious and adequate remedy provided under the law; such remedy cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies accentuates that a litigant must not circumvent or bypass the provisions of the relevant law that provide for an adequate remedy. If a party does not choose the remedy available under the law, the writ jurisdiction of the High Court cannot be invoked and exercised in his favour. Where a matter arises under a statute and is adjudicated by a forum provided therein, and the said statute also provides a remedy of appeal or revision either in the High Court itself or directly before this Court, the High Court should not in its writ jurisdiction interfere with such matter. We therefore hold that the remedy of appeal provided before this Court by Section 12(3) of the Special Court Act against the judgment of the Special Court was an alternate, adequate and efficacious remedy… Therefore, in view of the availability of an adequate remedy of appeal before this Court, the High Court could not have exercised its writ jurisdiction under Article 199 of the Constitution, arrogating to itself the appellate jurisdiction vested in this Court under Section 12(3) of the Special Court Act.

iii) Not only did the High Court assume jurisdiction not vested in it but it also dilated upon the merits of the matter, which it could not do as the High Court was not the appellate forum. The High Court, without enjoying any jurisdiction whatsoever, gave its own findings on the core subject matter of the trial, i.e., whether the respondent had committed the offence of high treason under Article 6 of the Constitution read with Section 2 of the High Treason Act. By doing this the

High Court unlawfully assumed the appellate jurisdiction exclusively vested in the Supreme Court under Section 12(3) of the Special Court Act.

iv) We have noted that the High Court had also granted relief which was not even sought in the writ petition. The relief sought in the prayer clause of the writ petition, as noted above, mainly challenged the order of the Special Court whereby it had reserved its judgment. No prayer was made to seek a determination as to whether the respondent had committed the offence of high treason. However, the High Court overstretched its jurisdiction by proceeding to determine the core question of whether the respondent had committed the offence of high treason, and then held that the actions of the respondent were not part of Article 6 at the time of the commission of the said actions. The High Court not only assumed the exclusive jurisdiction of the Special Court which was to determine whether the respondent had committed the offence of high treason but also usurped the appellate jurisdiction of the Supreme Court. The High Court should have remained within the confines of the dispute brought before it and decided the same in accordance with the law and the Constitution.

v) The High Court also declared the entire Section 9 of the Special Court Act as ultra vires the Constitution, even though the respondent had only challenged its 'offending portion' to the extent it provides that "no trial shall be adjourned by reason of the absence of any accused person due to illness". Section 9 of the Special Court Act expressly restricts granting adjournments during the proceedings of such trial, undoubtedly because of the seriousness of the offence of high treason… A plain reading of Section 9 shows that it deals with the absence of the accused person not only due to his illness but also where the absence of the accused person or his counsel has been brought about by the accused person himself, or where the behaviour of the accused person prior to such absence has been such as to impede the course of justice. In such cases, the Special Court is mandated to proceed with the trial after taking the necessary steps to appoint an advocate to defend such an accused person.

vi) It was observed in the impugned judgment that the Secretary Interior, in his capacity as the officer authorized by the Federal Government vide SRO 1234(I)/94 dated 29.12.1994 under Section 3 of the High Treason Act, can only file a complaint for high treason on the recommendations of the Federal Government, and under Section 3 of the Special Court Act it is the Federal Government that constitutes the Special Court. The whole exercise was then set aside by declaring it as illegal, unconstitutional and void ab initio on the ground that the said actions were taken by the Prime Minister, not by the Federal government, and therefore, were not conducted in accordance with the principle laid down in Mustafa Impex. The High Court, however, did not consider the decision of this Court rendered in PMDC, which had held that the principle settled in Mustafa Impex did not have retrospective application, and applies only from the date of its pronouncement, i.e., 18.06.2016.

vii) Failing to adhere to the judgments and orders of the Supreme Court undermines the credibility and effectiveness of the entire judicial system

established by the Constitution. Judgments of this Court being binding on all judicial and executive authorities of the country is a constitutional obligation under Articles 189 and 190 of the Constitution. This obligation reflects a fundamental commitment to preserving the integrity and sanctity of the Supreme Court. Disregard of the abovementioned judgments and orders by the Lahore High Court amounts to judicial effrontery and impropriety.

Conclusion: i) Any High Court cannot assume and exercise writ jurisdiction on the pretext that one of the reliefs sought relates to an act of a federal body when ultimate relief sought relates to an act done or proceeding taken within the territorial jurisdiction of another High Court.
ii) Writ jurisdiction of High Court cannot be invoked while having an alternate equally efficacious and adequate remedy provided under the law.
iii) High Court cannot give decision on merit in writ jurisdiction when it is exclusively vested in Supreme Court in appellate jurisdiction.
iv) High Court cannot grant relief which is not sought in writ petition and determine the merit of the case.
v) Special Court is mandated to proceed with the trial after taking the necessary steps to appoint an advocate to defend an accused person in his absence.
vi) The principle settled in Mustafa Impex does not have retrospective application, and applies only from the date of its pronouncement, i.e., 18.06.2016.
vii) Judgments of Supreme Court being binding on all judicial and executive authorities of the country is a constitutional obligation under Articles 189 and 190 of the Constitution.

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4. **Supreme Court of Pakistan**
Chief Commissioner/Commissioner IR Zone-II/Zone-III, RTO, Peshawar v. M/s Akbar Khan Filling Station
Appeals no. 1314 to 1337of 2014 & Civil Appeals no. 1611 to 1624 of 2013
Mr. Justice Sardar Tariq Masood, ACJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1314_2014.pdf

Facts: The respondents filed applications for refund of the amount deducted as tax u/s 156A of the Ordinance of 2001. The applications, filed u/s 170 of the Ordinance of 2001, were dismissed by the taxation officer. The appeals preferred by the respondents u/s 129 were allowed by the Commissioner Inland Revenue (Appeals). The department challenged the orders but the appeals were dismissed by the Appellate Tribunal Inland Revenue. The High Court answered the question of law against the department in response to the questions proposed in the references filed u/s 133 of Ordinance of 2001.

Issues: i) Whether provisions of Income Tax Ordinance 2011 are applicable on income arising in territorial jurisdiction of FATA?
ii) Whether the obligation of deduction of tax is on the person selling the petroleum products to the operator of the petrol pump while the said deduction is

relatable to the commission paid to or discount allowed by the latter?
iii) Whether immunity from payment of taxation under the Income Tax Ordinance 2001 can be claimed merely on the basis that business premises have been established in FATA?

Analysis: i) The enforcement of the Ordinance of 2001 was not extended to the territorial limits of FATA and, therefore, its provisions were not attracted to the income arising therein.
ii) Section 156A of the Ordinance of 2001 provides that every person selling petroleum products to a petrol pump operator shall deduct tax from the amount of commission or discount allowed to the operator at the rate specified in Division VIA of Part III of the first Schedule. The tax deductible under section 1 shall be a final tax on the income arising from the sale of petroleum products. It is to be noted that the obligation of deduction of tax is on the person selling the petroleum products to the operator of the petrol pump while the said deduction is relatable to the commission paid to or discount allowed by the latter.
iii) The factum of income having been accrued was on account of the commission paid to the respondents for the sale of petroleum and not the sale of the petroleum products to the consumer at the petrol pumps operated in FATA. As already noted, the deduction of tax fell under the final tax regime. Admittedly, the contractual arrangement for the sale of petroleum products, the actual sale and payment as well as deduction of the tax had taken effect in the areas of Pakistan outside the territorial limits of FATA and, therefore, the transactions and the income arising from such sale were not immune from the enforcement of Ordinance of 2001. The income derived by the respondents was on account of commission paid to them by seller companies outside FATA. Supreme Court has already held that immunity from the payment of taxation under the Ordinance of 2001 shall not be claimed merely on the basis that the business premises have been established in FATA, rather the onus was on tax payer to establish the fact that taxable income was not being derived from the area where the statute was enforced and applicable.

Conclusion: i) The enforcement of the Ordinance of 2001 was not extended to the territorial limits of FATA and, therefore, its provisions were not attracted to the income arising therein.
ii) Yes, the obligation of deduction of tax is on the person selling the petroleum products to the operator of the petrol pump while the said deduction is relatable to the commission paid to or discount allowed by the latter.
iii) The immunity from the payment of taxation under the Ordinance of 2001 shall not be claimed merely on the basis that the business premises have been established in FATA, rather the onus was on tax payer to establish the fact that taxable income was not being derived from the area where the statute was enforced and applicable.

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5. **Supreme Court of Pakistan**
Government of Balochistan through Secretary Mines and Minerals Department and another v. Attock Cement Pakistan Limited D.G Khan Cement Company Limited
Civil Petitions No.167-Q and 168-Q of 2023
Mr. Justice Munib Akhtar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._167_q_2023.pdf

Facts: Through these petitions filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan,1973,the petitioners have called in question the Judgment of the High Court of Balochistan partly allowing the Constitutional Petitions of the respondents filed for challenging the notification aimed at revising and enhancing the rates of application fee relating to mineral titles & mineral concessions, rates of annual rentals and the royalties mentioned in the Balochistan Mineral Rules, 2002.

Issue: Whether a notification having received ex-post facto approval by the cabinet can have a retrospective applicability?

Analysis: Section 2 read with Section 6 of the Regulations of Mines and Oil Fields and Mineral Development (Government Control) Act, 1948 authorizes the appropriate Government to frame rules regarding, *interalia*, determination of the rates at which royalties, rents and taxes shall be payable, among various other matters. Further, Rule 102(1) of the consequently framed Rules of 2002 provides that the royalties shall be charged at such rates as may be notified by the Government from time to time. The notification takes effect from the date of authentication/approval by the cabinet. This interpretation aligns with the principle that if the provincial cabinet provides ex-post facto approval, the validity of the notification is recognized from that date of approval and cannot be applied retrospectively. Hence, the legal validity of the ex-post facto approval of the notifications by the Cabinet cannot be considered valid under the law.

Conclusion: A notification having received ex-post facto approval of the provincial cabinet, cannot have a retrospective applicability.

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6. **Supreme Court of Pakistan**
Chairman, Board of Control, Canteen Stores, HQ, Rawalpindi & others v. Muhammad Azam Khan & others
Civil Appeal No.515 of 2015
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._515_2015.pdf

Facts: This is an appeal by leave from the judgment of the High Court, whereby the intra-court appeal filed by the appellants against the order passed by the Single Bench in favour of the respondents was dismissed.

Issues: i) What is the current status of CSD (*Canteen Stores Department*)?
ii) Whether CSD was declared a part of the Armed Forces and its employees were treated as Government servants or members of the Armed Forces?
iii) Whether the employees of CSD are in the service of the Armed Forces and, therefore, the High Court cannot make an order concerning them?
iv) Whether the CSD comes within the fold of "person" defined under clause (5) of Article 199 of the Constitution?
v) Whether CSD can be construed as an authority of or under the control of the Federal Government?

Analysis: i) Here ends an overview of CSD conveying that currently, CSD is a non-Governmental commercial organization, its services are connected with the defence, it has its own funds, its post holders are not in the service of Pakistan, and it is supervised by a Board of Control with the Quarter Master General as its Chairman.
ii) This aspect of the purposes of CSD clearly makes it out to be an organization connected with the Armed Forces'. It is important to clarify here that in this judgment, the CSD, was treated as an organisation providing services related to the Armed Forces. However, CSD was not declared a part of the Armed Forces, nor were its employees treated as Government servants or members of the Armed Forces.
iii) Here, we deem it expedient to clear the misconception often arising from Instruction No. 38 of the Army Regulations, Vol-II (Instructions), 2000, page 19. The impression that detracts is that since, in this instruction, the Quartermaster General's Branch is shown to be dealing with the CSD, it should be considered a part of the Armed Forces. This is not well founded, for all that this instruction means is that the Quartermaster General's Branch shall deal with matters about policy, control and administration of CSD. This does not imply that the CSD has become a part of the Quartermaster General's Branch and so, CSD can only be considered an organisation that provides services connected with the Armed Forces, and its employees cannot be treated as Government Servants or Armed Forces members. Consequently, in light of this analysis, it can be safely concluded that concerning the terms and conditions of its employees, the CSD cannot put forward the bar contained in clause (3) of Article 199 of the Constitution before the High Court.
iv) Now, we have reached the stage to examine whether the CSD comes within the fold of "person" defined under clause (5) of Article 199 of the Constitution. Before proceeding further, we take a pause and consider it pertinent to reiterate that under Article 199(5) person includes any body politic or corporate, and any authority of or under the control of Federal Government or of Provincial Government. In that vein, it is to be first ascertained whether CSD could be treated as a body politic or corporate. It may be observed that under the Anglo-Saxon Law, there are two main classes of corporations: Corporations sole and Corporations aggregate. A corporation sole is a body politic having perpetual succession constituted in a single person like a sovereign or some Ministers of the

Crown, Government officers or an archbishop, dean, a vicar, etc., who have been created as Corporation sole by name under the relevant statute but this is not a common type of corporation. The Corporation aggregate is more common contemporary. The method of their incorporation in Britain is either by a Royal Charter or by the authority of the Parliament, that is, by or by virtue of statute. In Pakistan, corporations are incorporated either by a statute or by registration of companies under the statute such as Companies Act, associations under the Societies Act, cooperative societies under the Cooperative Societies Act, or trusts under the Trust Act. It is also common for corporations to be created by an executive order under the authority delegated by an Act of Parliament.9 In light of this perspective, we cannot say that CSD is a body politic or corporate because the historical perspective and the precedents set out above tells us that it has not come into being by a statute or under a statute.

v) Could we then construe CSD as an authority of or under the control of the Federal Government? It is now well settled that to be such an authority, it must be entrusted with functions of the government involving some exercise of sovereign or public power, and it must also be legally entitled to, or entrusted by the Government with, the control or management of a local fund. In the case of CSD, we find that its entire capital belongs to it and does not form part of the government money or government funds. It has independent financial resources and is run by its own funds, receives no funds from any source of the Government and is completely autonomous in its internal administration. The Public Accounts Committee does not scrutinise its accounts to include the same in the Public Fund Account of the Federal Government. It is a private commercial organization and does not perform any function of the Government. All these features are also borne out from letter No. 5503/119/Q-Coord./646-Q/D-3 dated 21st of February, 1959 (reproduced hereinabove), in which it has categorically been stated that neither the transactions of CSD will pass through Government accounts nor will its trade results be exhibited in the Commercial Appendices of the Defence Services. That apart, the Ministry of Finance, Government of Pakistan, in its letter No.2611/EIII/ FAMF/67 dated 22nd of June, 1967, has also clarified that the revenue of the CSD is not administered by a body which, by law or rule, having the force of law come under the control of the Government nor the revenue are ever notified by Government as

such. For these reasons, the CSD also cannot be held as an authority of the Government.

Conclusion: i) See above in analysis clause no. i.

ii) CSD was not declared a part of the Armed Forces, nor were its employees treated as Government servants or members of the Armed Forces.

iii) CSD can only be considered an organisation that provides services connected with the Armed Forces, and its employees cannot be treated as Government Servants or Armed Forces members and CSD cannot put forward the bar contained in clause (3) of Article 199 of the Constitution before the High Court.

iv) CSD is not a body politic or corporate because the historical perspective and the precedents tells that it has not come into being by a statute or under a statute.
v) CSD cannot be held as an authority of the Government.

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7. **Supreme Court of Pakistan**
Rehm Dad v. Province of Punjab through its Chief Secretary, Lahore & others.
Civil Petition No. 1857 of 2022, C.M.A. No. 3899 OF 2022 & C.M.A. No. 1032 of 2023 in C.P. 1857 of 2022.
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1857_2022.pdf

Facts: This Civil Petition is directed against judgment passed by the Lahore High Court, whereby the Intra Court Appeal filed by the Petitioner was dismissed.

Issues: i) What is the interpretation of proviso to Section 3(2) of the Law Reforms Ordinance, 1972 and the term "original order" and "proceedings"?
ii) Whether the rules framed under the relevant statute are an integral part of the parent act?
iii) What is the scope of sections 18 and 54 of the Land Acquisition Act, 1894?

Analysis: i) Section 3(2) of the LRO has been subject to judicial scrutiny and interpretation. The essential requirement to invoke the proviso to Section 3(2) of the LRO is to see whether the right of at least one appeal, revision or review is available to the original order in a proceeding where the relevant law is applicable (2023 SCP 362). Terms original order and proceedings in the said proviso have been interpreted by Supreme Court in Karim Bibi (PLD 1984 SC 344), which declares the significance of the original order and the law applicable to the original order…In relation to the applicability of the law, the determining factor, as held in Karim Bibi, is the order with which the proceedings under the relevant statute commenced (PLD 1985 SC 107). Karim Bibi gives meaning to the phrase original order with respect to the concerned law under which the legal proceeding has been initiated or commenced. Hence, in terms of the proviso to Section 3(2) of the LRO and ruling in Karim Bibi, the settled principle is that the law applicable shall be the law by which the proceeding started or commenced, which forms the basis of the original order (…)
ii) It is established law that the rules framed under the relevant statute are an integral part of the parent act (2020 SCMR 631). If the very existence of rules is based on legislation, then it shall be the said statute, including its rules, which will be the law applicable to proceedings within the meaning of the proviso to Section 3(2) of the LRO (2021 SCMR 1617).
iii) Section 18 of the LAA is the reference to the court against the award of the collector. Essentially, an interested party, who has not accepted the award of the Collector, may request the matter to be referred for the determination of the Referee Court specifically in relation to objections as to the measurement of the

land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. The scope of Section 18 of the LAA is very limited and restricted towards the subject-matter of measurement and compensation of land…Moreover, the appeal under Section 54 of the LAA lies before the High Court from the award, or from any part of the award. Meaning thereby the appeal can only be filed before the High Court after the decision of the Referee Court (PLD 2007 SC 620). When the petitioner has not raised objections before the Referee Court under Section 18 of the LAA so he cannot seek the remedy of appeal under Section 54 of the LAA. Therefore, no right of appeal was available to the petitioner in terms of Section 54 of the LAA (…)

Conclusion: i) See above in analysis clause no. i.
ii) Yes, the rules framed under the relevant statute are an integral part of the parent act.
iii) See above in analysis clause no. iii.

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8. **Supreme Court of Pakistan**
Federation of Pakistan through the Secretary, Ministry of Law and Justice, Islamabad & Afiya Shehrbano Zia and others v. Supreme Judicial Council through its Secretary, Supreme Court Building, Islamabad and others
ICA No.1 and 2/2024 in Constitutional Petition No.19/2020
Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._1_2024_15032024.pdf

Facts: Appeals were filed under section 5 of the Supreme Court (Practice & Procedure) Act, 2023 read with Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution'), whereby appellants challenged the judgment passed by the learned two-member bench of this Court in Constitution Petition No. 19 of 2020 filed under Article 184(3) of the Constitution by the appellants of ICA No. 2 of 2024 which was dismissed *in limine*.

Issue: Whether Article 209 envisages that by resignation of a Judge or retirement on superannuation the proceedings which are pending before the SJC will automatically come to end or it is the prerogative of the SJC to proceed with the matter?

Analysis: At the time of hearing of petition filed by the appellants of ICA No. 2 of 2024, the Judge had already been retired against whom complaints filed by the said appellants were pressed, though the complaint was filed against the Judge when he was a Chief Justice but unfortunately the complaint could not be placed before the SJC and after the retirement of said Judge when it was placed before the SJC same was dismissed as having become infructuous. The main consideration before the learned two member Bench of this Court while

hearing the Constitution Petition was that the SJC has declared the complaint as having become infructuous, therefore, mainly the emphasis of the Court was upon the said point whereas it was not a case before the Court that after considering the complaint some steps were taken in the complaint i.e. issuance of notice to the Judge against whom complaint was filed or any reply or the response to the complaint, not it was the question before the Court that during the pendency of the complaint after issuance of notice by the SJC the effect of retirement of a Judge or resignation but the effect of the impugned judgment is that even if the complaint is pending after taking cognizance by the SJC, it abates on retirement of a Judge or resignation, therefore, Federal Government was aggrieved and filed the instant appeal, on which point we agree with the appellant…. it is the prerogative of the SJC to proceed with the matter and the proceedings pending before the SJC which are initiated after issuance of notice to a Judge do not automatically drop or become infructuous on superannuation or resignation of a Judge.

Conclusion: Article 209 envisages that by resignation of a Judge or retirement on superannuation the proceedings which are pending before the SJC will not automatically come to end and it is the prerogative of the SJC to proceed with the matter.

Additional Note

Issues: i) Whether limitation can be condoned where a question of public importance relating to interpretation of Constitution is involved specially when no notice was given to the Attorney General for Pakistan as required by Order XXVII-A Rule 1 CPC?

ii) Whether the Council can inquire into the capacity or conduct of a judge, who has retired or has resigned from his office?

iii) Whether the Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office?

Analysis: i) It is a fact that the petition under Article 184(3) of the Constitution was filed by the private appellants, but the Federal Government was not arrayed as party to the proceedings. Through the said petition, interpretation of Article 209 of the Constitution was required, therefore, it was mandatory for the Court to have had issued a notice to the Attorney General for Pakistan ("**AG**") as required by Order XXVII-A Rule 1 CPC….Since neither the Federal Government was arrayed as party to the proceedings nor mandatory notice required under Order XXVII-A Rule 1 CPC was issued to the AG, therefore, there is no reason to disbelieve his contention regarding his unawareness of the date of the pronouncement of the impugned judgment. Even otherwise, a Ten Member Bench of this Court through the referred judgment [Federal Govt. of Pakistan vs. M.D.Tahir Adovcate] has

condoned the delay of 257 days in filing of petition solely on the ground of public importance…

ii) A plain reading of the said provision [Article 209(5)] of the Constitution makes it clear that the Constitution has mandated the President that on information from any source, he shall direct the Council to inquire into the matter. The phrase, '*the President Shall direct the Council'* used in this provision of the Constitution makes it mandatory upon the Council that it has no option, but to initiate inquiry against the judge accordingly in a case the reference is received from the president. Similarly, if the Council deems it appropriate, may on its own motion inquire into the matter. After a preliminary inquiry, the Council may dismiss the complaint for lack of evidence or untrue information. In both circumstances, once the Council invokes its Constitutional jurisdiction by initiating inquiry into the matter against a judge, it has to take the proceedings to its logical conclusion…. In any case, it was necessary for the Council to have decided the fate of the complaint before retirement of the former HCJ, but the needful was not done, therefore, after his retirement, the Council cannot proceed.

iii) As a general rule, the Authority inquiring into the conduct of a judge loses its jurisdiction to initiate proceedings against a person who retires or resigns from his office, before initiation of inquiry proceedings. Whereas, when an inquiry about the conduct of a judge in office is initiated by the Council, it is the Constitutional obligation of the Council to conclude the proceedings, form its opinion and report to the President with recommendations. In this provision of the Constitution, the word 'inquiry' has been used. The primary purpose of inquiry is to gather information in order to address a specific issue of public interest and to make recommendations for improvement and prevention of future occurrences. It is not to focus on enforcing laws or prosecuting individuals as is mandated in investigation, rather to inquire into the ethical violations and misconduct of a judge. It promotes accountability and trust in the process by the public….When an inquiry into conduct of a judge initiated by the Council is terminated without an opinion, on account of retirement or resignation of a judge from his office, it would render Article 209 (5) & (6) of the Constitution redundant and would also give an authority to the judge to make the Constitutional body abandoned….Termination of inquiry proceedings upon retirement of a judge would otherwise give an impression that the Council is dependent on the will of the judge, who can overpower the control of the Constitutional body. It may create a perception that the judges are above the law. After his retirement or resignation, prior to inquiry initiated, a judge enjoys a status of a retired judge, with lucrative post-retirement benefits from public ex- chequer. He is also eligible for his re-appointment against some important Constitutional, quasi-judicial and administrative posts, for which evaluation of his conduct and reputation is essential. The jurisdiction of the Council to inquire into the matter pertaining to misconduct of a judge is a Constitutional mandate. In absence of express words or an enactment, preventing the Council from inquiring into the matter upon resignation or retirement of a judge, jurisdiction of the Council cannot be

abolished, ousted or terminated. Since there is no express provision in the Constitution, nor is there any enactment, preventing the Council from continuing its proceedings of inquiry in a situation where a judge is retired or resigns before conclusion of the inquiry, it is the Constitutional obligation of the Council to conclude the inquiry initiated against a judge and form an opinion regarding his conduct. If after inquiring into the matter, the Council is of the opinion that the judge has been guilty of misconduct, under such circumstances, he shall not be eligible for post-retirement benefits…If the proceedings are made dependent upon the will of the judge on accountof his resignation, at any stage before conclusion of inquiry, it would let the judge, who is guilty of misconduct, to go Scott free by defeating the processof accountability. This would damage rule of law norms and public trust in the role of judges and the judiciary…For these reasons, it is imperative that once the Council in exercise of its Constitutional authority, initiates inquiry into conduct of a judge, it cannot terminate or abate upon retirement or resignation of the judge from his office. The citizens have a right to know about the outcome of the complaints.

Conclusion: i) Limitation can be condoned where a question of public importance relating to interpretation of Constitution is involved specially when no notice was given to the Attorney General for Pakistan as required by Order XXVII-A Rule 1 CPC.
ii) The Council cannot inquire into the capacity or conduct of a judge, who has retiredor has resigned from his office.
iii) The Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office.

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9. **Supreme Court of Pakistan**
Zain Shahid v. The State and another
Crl. Petition No. 29-K of 2022
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._29_k_2022.pdf

Facts: The Trial Court convicted and sentenced the petitioner under section 11-F(i) and 11-H(i)(ii) of the ATA of 1997, to suffer imprisonment. The petitioner filed an appeal before the High Court, which was dismissed through the impugned judgment, hence, this petition for leave to appeal.

Issues: i) What is the basic purpose of framing of charge in a criminal case?
ii) Where any particular section of law with which a person is intended to be charged contains several parts, what is the procedure of framing of such charge?
iii) What is the effect of not mentioning necessary ingredients of the offences in the framing of charge?
iv) What is the duty of informer in terms of Section 11-H of ATA, 1997 regarding suspicion of a person that he is dealing in the money or property for terrorist activity?

v) In absence of relevant information and evidence to *prima facie* constitute an offence, what is primary duty of Trial Court?
vi) Whether a spy information against an accused should be reduced into writing?

Analysis: i) Framing of charge is the foundation of trial, with a purpose and object to enable accused to know the exact nature of allegations and the offences with which he is charged, so that he is given reasonable opportunity to prepare his case and defend himself. Similarly, it enables the prosecution to produce relevant evidence in support of its case against the accused in order to prove the charge. Framing of proper charge is, therefore, significant for the court concerned to be cautious regarding the real points in issue, so that evidence could be confined to such points and to reach a correct conclusion.

ii) Section 221 of the Cr.P.C. has provided an elaborate procedure for framing of charge. It requires that all material particulars as to time, place, as well as specific name of the alleged offence, if any; the relevant law, its applicable section(s), sub-section(s) and clause(s) in respect of which the offence is said to have been committed, shall be mentioned in the charge. Where any particular section of law with which a person is intended to be charged contains several parts, the relevant part of that section which depicts from the police report and the material available on record, should be mentioned therein. It is the responsibility of the Trial Judge to take all necessary and possible steps to ensure compliance of law with regard to framing of proper and unambiguous charge. Steps should also be taken to explain the charge to the accused to a possible extent, enabling him to fully understand the nature of allegations against him.

iii) If necessary ingredients of the offences with which the accused is charged, are not mentioned in the charge, or it is framed in an incomplete, defective or vague manner, it might mislead the accused, which would be a failure of justice. It is, however, to be noted that every omission in a charge cannot be regarded as material illegality or irregularity, unless the accused is in fact misled by such error or omission and it has occasioned a failure of justice, as provided by section 225 of the Cr.P.C.

iv) …The requirement that there exists objectively assessed cause for suspicion focuses attention on what information the person had, suspecting that the money might be used for terrorist activities. Under such circumstances, the informer is under legal compulsion to disclose to the police regarding the intent or suspicion of a person that he is dealing in the money or property for terrorist activity, enabling the I.O. to collect evidence in support of the accusations and submit report under section 173 of Cr.P.C.

v) The FIR, the police report and the other material available on the record were insufficient for the Trial Court to frame charge against the petitioner under any of the clauses of section 11-H of the ATA of 1997, yet defective and vague charge was framed under the stated offences, without mentioning in detail the purported act of the petitioner, which constitutes an offence. This is a classic example of defective charge, which had misled the petitioner. In absence of relevant

information and evidence to *prima facie* constitute an offence, it was incumbent upon the Trial Court to have refrained itself from framing of charge against the petitioner.

vi) The case against the petitioner was initiated upon a spy information, but such information was not reduced into writing. Fair play demands that spy information should be reduced into writing in order to safeguard innocent persons against false implication.

Conclusion: i) See above in analysis clause no. i.

ii) Where any particular section of law with which a person is intended to be charged contains several parts, the relevant part of that section which depicts from the police report and the material available on record, should be mentioned therein.

iii) See above in analysis clause no. iii.

iv) The informer is under legal compulsion to disclose to the police regarding the intent or suspicion of a person that he is dealing in the money or property for terrorist activity, enabling the I.O. to collect evidence in support of the accusations and submit report under section 173 of Cr.P.C.

v) In absence of relevant information and evidence to *prima facie* constitute an offence, it is incumbent upon the Trial Court to refrain itself from framing of charge against the accused.

vi) Fair play demands that spy information should be reduced into writing in order to safeguard innocent persons against false implication.

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10. **Supreme Court of Pakistan**
Mumtaz Ali v. The State thr. Chairman NAB and Others.
C.M.A.501-K/ 2023 in C.A.85-K/ 2018
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._501_k_2023.pdf

Facts: The father of applicant in the main case was indicted by Accountability Court, for committing the offence of misappropriation of government ghaf (a) (iii) (iv) & (xii) of the National Accountability Ordinance, 1999 and his post-arrest bail was granted subject to the deposit of Rs.61,79,238/- and applicant being son of the appellant, had deposited Saving Certificates amounting to Rs.61,79,238/- before the Officer In -charge at the Branch Registry of this Court in Karachi in compliance with the order. As, the Accountability Court convicted the appellant; therefore, the applicant has prayed for the discharge of the alleged surety and further contended that the amount of fine may be recovered by the NAB under the Land Revenue Act.

Issues: i) When bail is granted subject to the deposit of fine amount, whether on conviction with the same amount of fine, appellant/convict can claim back that amount?

ii) Whether provision of Section 33 -E of the NAO, 1999 is controlled by or subject to the provision of Section 70 of PPC?

iii) Whether by undergoing a sentence of imprisonment in default of payment of fine a convict is absolved of his liability to pay fine?

Analysis: i) It is evident from aforementioned bail order that the appellant's counsel, on instructions, conveyed that the appellant voluntarily proposed and was ready to deposit the entire amount of his liability and not as surety. On this offer, the DPG extended his no objection, following the dictum laid down in the case of Shamraiz Khan vs. The State (2000 SCMR 157). The post-arrest bail was granted subject to depositing the entire liability with the Assistant Registrar of this Court at the Branch Registry, Karachi. The learned counsel for the applicant argued that if the NAB wants to recover the fine money, it should invoke Section 33-E of the NAO, 1999, which provides that any fine or other sum due under this Ordinance, or as determined to be due by a Court, shall be recoverable as arrears of land revenue. In fact, it is a well-settled exposition of law that each case has to be decided on its own peculiar facts and circumstances. The appellant tendered the amount in lieu of availing the discretionary relief of bail and the same liability/fine was fixed against him in the NAB Court affirmed by the High Court. Had the appellant been acquitted by the High Court in appeal, he could have asked for the refund or release of the full amount deposited by him. However, the High Court maintained the conviction to the extent of the already undergone sentence without upsetting or affecting the quantum of the fine imposed upon the appellant by the NAB Court.

ii) The learned counsel for the applicant referred to the case State and others vs. Muhammad Kaleem Bhatti and others (PLJ 2020 SC (Cr.C.) 225), in which the point in issue before this Court was whether by virtue of the provisions of Section 70, Pakistan Penal Code, 1860 ("PPC") the amount of fine imposed upon a convict can be recovered after a period of six years after passage of the sentence or fine or not. This Court held that in Section 33-E of the National Accountability Ordinance, 1999 it has categorically been provided that a fine imposed upon a convict is to be recovered by way of arrears of land revenue and the said provision is not controlled by or subject to the provisions of Section 70, PPC. It was further held that the High Court had misdirected itself upon the law and had relied upon the provisions of Section 70, PPC without appreciating that the provisions of the National Accountability Ordinance, 1999 were to prevail in the matter as that was the special law catering for the situation at hand. Finally, this Court set aside the judgments passed by the High Court and clarified that by undergoing a sentence of imprisonment in default of payment of fine a convict is not absolved of his liability to pay fine and the amount of fine can still be recovered from him despite undergoing the sentence of imprisonment in default

of payment of fine because a sentence of imprisonment in default of payment of fine is only a punishment for non-payment of fine and is not a substitute for the sentence of fine.

iii) The sentence of imprisonment in default of payment of fine does not absolve the liability to pay fine and such amount of fine can be recovered despite undergoing the sentence in default of fine for the reason that imprisonment in default of payment of fine is only a punishment for non-payment of fine and is not a substitute for the sentence of fine.

Conclusions: i) When Post-arrest bail is granted by the Court on voluntary deposit of misappropriated amount as liability and not as a surety which is also imposed as fine on conviction by the NAB Court, the application for the withdrawal of surety would be misconceived and injudicious.

ii) Section 33-E of the National Accountability Ordinance, 1999 categorically provides that a fine imposed upon a convict is to be recovered by way of arrears of land revenue and the said provision is not controlled by or subject to the provisions of section 70, PPC.

iii) The sentence of imprisonment in default of payment of fine does not absolve the liability to pay fine and such amount of fine can be recovered despite undergoing the sentence in default of fine for the reason that imprisonment in default of payment of fine is only a punishment for non-payment of fine and is not a substitute for the sentence of fine.

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11. **Supreme Court of Pakistan**
Ikramuddin Rajput v. The Inspector General of Police, Sindh and others.
Civil Petition No.940 -K of 2022
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._940_k_2022.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by the Sindh Service Tribunal whereby the appeal filed by the petitioner was dismissed.

Issues: i) What is the role of the Investigating Officer in the administration of the criminal justice system?

ii) What is the meaning of the term "investigation" and what are the consequences of defective investigation?

iii) What is the duty and objective of an investigating officer?

iv) Whether an investigating officer can be penalized under any law for failure in carrying out the investigation properly?

v) What is the meaning of "misconduct" as defined in Sindh Police (Efficiency & Discipline) Rules, 1988 and illustrate its various instances?

vi) What are the duties of police officer as defined in Police Order 2002?

vii) What is the purpose and sagacity behind initiating disciplinary proceedings by

the employer and how the same is different from initiating criminal prosecution?
viii) What qualities a person should have to become part of the disciplined force?

Analysis: i) No doubt, an Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal case. However, at times, a botched-up investigation can become a top impediment and stumbling block in the administration of justice, either intentionally with the aim to favour the accused or unintentional due to inefficiency, incompetence, or unskillfulness of the Investigation Officer. The criminal justice system signifies the procedure for adjudicating criminal cases in order to award a sentence to the culprits for the offence committed by them; and the foremost objective is to penalize the offenders subject to the proof whether the offence has been committed or not, and this very important aspect is attached with the burden of proof on the prosecution which has direct nexus with the investigation report and the material and evidence collected by the Investigation Officer in discharge of his sacred duty to bring out the truth without engaging in any manipulation , favoritism, or exceeding the bounds of the law.

ii) According to Section 4 (l) Cr.P.C., the term "investigation" includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person. (…) A defective investigation gradually contaminates the judicial process and poses a hazard to human rights.

iii) The importance of this duty or task was also given much significance under Rule 25.2 of the Police Rules, 1934 which deals with the power of Investigating Officers, and under sub -rule 3, it is provided that it is the duty of an Investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.

iv) At this juncture, it would also be advantageous to point towards Section 166 (2) P.P.C., which lays down that whoever being a public servant entrusted with the investigation of a case fails to carry out the investigation properly or diligently or fails to pursue the case in any court of law properly and in breach of his duties shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both. Whereas Section 27 of the Anti-Terrorism Act, 1997, provides that if an Anti-Terrorism Court or a High Court comes to conclusion during the course of or at the conclusion of the trial that the investigating officer, or other concerned officers have failed to carry out investigation properly or diligently or have failed to pursue the case properly and in breach of their duties, it shall be lawful for such Court or, as the case may be, the High Court, to punish the delinquent officers with imprisonment which may extend to two years, or with fine or with both by resort to summary proceedings.

While a similar provision has been incorporated under Section 22 of the Anti - Rape (Investigation and Trial) Act, 2021, which explicates that whoever, being a

public servant, entrusted to investigate scheduled offences, fails to carry out the investigation properly or diligently or causes the conduct of false investigation or fails to pursue the case in any court of law properly and in breach of duties, shall be guilty of an offence punishable with imprisonment of either description which may extend to three years and with fine.

v) According to Section 2 (v) of the Sindh Police (Efficiency & Discipline) Rules, 1988, "misconduct" means conduct prejudicial to good order or discipline in the Police Force, or contrary to Government Servants (Conduct) Rules, or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any provision of any law or rules regulating the function and duty of Police Officer or to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer. (…) Further, Article 155 of the Police Order, 2002, underlines various instances of misconduct that impose penalty on the delinquent, which includes any willful breach or neglect of any provision of law or of any rule or regulation or any order which he is bound to observe or obey or any violation of duty.

vi) Even under Article 4 of the Police Order 2002, it is inter alia provided that the duty of every police officer is to protect life, property and liberty of citizens; preserve and promote public peace; ensure that the rights and privileges, under the law, of a person taken in custody, are protected; prevent the commission of offences and public nuisance; detect and bring offenders to justice; apprehend all persons whom he is legally authorized to apprehend and for whose apprehension, sufficient grounds exist; prevent harassment of women and children in public places; afford relief to people in distress situations, particularly in respect of women and children, etc.

vii) The purpose and sagacity behind initiating disciplinary proceedings by the employer is to ascertain whether the charges of misconduct leveled against the delinquent are proven or not and, if so, to determine the appropriate action against him under the applicable Service Laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the sound sense of judgment of the competent Authority. In contrast, the justification and raison d'être for initiating criminal prosecution is entirely different, where the prosecution has to prove the guilt of the accused beyond any reasonable doubt. Both processes have distinctive characteristics and attributes concerning the standard of proof. The object of a departmental inquiry is to investigate allegations of misconduct in order to maintain discipline, decorum, and efficiency within the institution, strengthening and preserving public confidence. In a departmental enquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not "proof beyond reasonable doubt", which is a strict standard required in a criminal trial, where the potential penalties are severe.

viii) The police force is a disciplined force with significant accountability and the responsibility of maintaining law and public order in the society. Therefore, any

person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with an unimpeachable, spotless character, and clean antecedents.

Conclusions: i) An Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal case.

ii) According to Section 4 (l) Cr.P.C. the term "investigation" includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person and defective investigation gradually contaminates the judicial process and poses a hazard to human rights.

iii) It is the duty of an Investigating officer to find out the truth of the matter under investigation and his object shall be to discover the actual facts of the case and to arrest the real offender or offenders.

iv) See above in analysis no. iv.

v) According to Section 2 (v) of the Sindh Police (Efficiency & Discipline) Rules, 1988, "misconduct" means conduct prejudicial to good order or discipline in the Police Force, or contrary to Government Servants (Conduct) Rules and Article 155 of the Police Order, 2002, underlines various instances of misconduct that impose penalty on the delinquent, which includes any willful breach or neglect of any provision of law or of any rule or regulation or any order which he is bound to observe or obey or any violation of duty.

vi) See above in analysis no. vi.

vii) See above in analysis no. vii.

viii) Any person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with an unimpeachable, spotless character, and clean antecedents.

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12. **Supreme Court of Pakistan**
Re: Justice Sayyed Mazahar All Akbar Naqvi, Judge, Supreme Court of Pakistan
Complaints No. 586, 589, 509 595, 596, 597,
600. 601 and 609 of 2023 /SJC
Mr. Justice Qazi Faez Isa, Justice Sardar Tariq Masood, Justice Syed Mansoor All Shah, Justice Muhammad Ameer Bhatti, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/complaint_586_2023_sjc_04032024.pdf

Facts: Ten complaints were filed against Justice Sayyed Mazahar Ali Akbar Naqvi before Supreme Judicial Council. The opinion has been reported under Article 209(6) of the Constitution of the Islamic Republic of Pakistan.

Issue: If the proceedings have already been initiated by the Supreme Judicial Council against a Judge, the same shall not abate on his resignation or retirement?

Analysis: We are constrained to conclude that Justice Naqvi violated his oath of office which required him to abide by the Code of Conduct by violating a number of the provisions of the Code of Conduct as follows: Justice Naqvi cannot be said to be *untouched by greed,* and so violated Article-II of the Code of Conduct. It also cannot be stated that he was *above reproach,* and so had violated Article-III of the Code of Conduct. Justice Naqvi's conduct was also not *free from impropriety expected of a Judge* in his *official and private* affairs, and to such extent he also violated Article-III of the Code of Conduct. It is clear that Justice Naqvi's actions were *swayed by consideration of personal advantage,* and so violated Article-IV of the Code of Conduct. He was involved to his personal advantage in the suit filed by Chaudhry Muhammad Shahbaz, and had knowingly deprived minors of their valuable property, and so violated Article-VI of the Code of Conduct. By receiving substantial unexplained gifts, Justice Naqvi violated Article-VI of the Code of Conduct; the gifts included receiving fifty million rupees, his sons receiving two commercial plots and two residential plots at a nominal price and his daughter receiving UK pounds £5,000.

Conclusion: If the proceedings have already been initiated by the Supreme Judicial Council against a Judge, the same shall not abate on his resignation or retirement. Justice Naqvi was found guilty of misconduct and should have been removed from the office of Judge. The number of instances of misconduct committed by Justice Naqvi has damaged the reputation of the judiciary. When the SJC commenced hearing of the complaints, and throughout, he was referred to Sayyed Mazahar Ali Akbar Naqvi as Justice Naqvi, however, as he should have been removed, for having committed serious misconduct, the honorific Justice or Judge should not henceforth be used with Sayyed Mazahar Ali Akbar Naqvi's name.

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13. **Lahore High Court**
Aamir Hayat v. The State etc.
Criminal Appeal No. 193965 of 2018
The State v. Aamir Hayat
Murder Reference No.137 of 2018
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC901.pdf

Facts: The appellant was convicted for offence u/s 302 (b) PPC by ADSJ who sought acquittal through criminal appeal whereas trial court has transmitted murder reference in terms of section 374 CrPC read with section 338-D PPC for confirmation of death sentence.

Issues: i) Who is chance witness and how testimony of chance witness is to be examined by courts?
ii) What is effect of material conflict in oral and medical evidence?
iii) What is effect if recovered crime empties do not match with weapon?

iv) Whether accused can be held guilty merely on account of his abscondence?

Analysis: i) A chance witness is a witness who claimed that he was present at the crime spot well in time though his presence in ordinary course of business was sheer chance. The testimony of chance witness is always to be examined by the courts with a hard look as in normal course the presumption would be that such witness was not present at the crime spot. Needless to observe that a chance witness has to undergo strict scrutiny so as to qualify as a reliable witness.
ii) The material conflict in the oral account and the medical evidence lends support to the conclusion that the occurrence was in fact not witnessed by prosecution witnesses…
iii) If the crime empties do not match with weapon then their recovery is completely inconsequential…
1iv) It is though argued before us on behalf of the prosecution that the appellant had remained fugitive from law for a considerable period but in absence of any cogent and confidence inspiring evidence qua his guilt, we cannot held him guilty of the offence merely on account of his abscondence which at the most can be termed as a corroborative piece of evidence.

Conclusion: i) See above in analysis no. i.
ii) The material conflict in the oral account and the medical evidence lends support to the conclusion that the occurrence was in fact not witnessed by prosecution witnesses.
iii) If the crime empties do not match with weapon then their recovery is completely inconsequential…
iv) Accused cannot be held guilty merely on account of his abscondence which at the most can be termed as a corroborative piece of evidence.

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14. **Lahore High Court**
Muhammad Wilayat Khan v. Ismail Khan etc.
Writ Petition No. 9346 of 2024.
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC909.pdf

Facts: The petitioner filed complaint before the Provincial Ombudsman, Punjab, Lahore, inter-alia with the allegations that land of graveyard and two ponds was illegally allotted by the Revenue Authorities to the private persons, who directed the Additional Deputy Commissioner (Revenue), to restore original position of Khasra No.1599 according to its status prior to the years 1984-85. Aggrieved of the said decision, respondents No.1 to 3 filed representation before the Governor, Punjab, Lahore (respondent No.5) in terms of section 32 of the Punjab Office of the Ombudsman Act, 1997 which was allowed. Aggrieved of order passed by respondent No.5, the petitioner has filed this petition.

Issues: i) When the consolidation scheme has been confirmed whether it can be

challenged under the garb of section 9 of the Punjab Office of the Ombudsman Act, 1997?

ii) Whether under section 13 of the Punjab Consolidation of Holdings Ordinance 1960, Board of Revenue has been empowered to call for record of any consolidation proceedings of its own or on the move of a party, irrespective if any limitation?

iii) When a forum has not been blessed with jurisdiction to hear a matter, whether same can be bestowed even with the consent of opponent side?

Analysis: i) While responding to Court's query that as to how respondent No.4 had jurisdiction to deal with any issue relating to consolidation proceedings, learned counsel for the petitioner has referred to section 37 of the Act, 1997 to establish that as the said Act has over-riding effect, the jurisdiction of respondent No.4 was fully attracted notwithstanding the decisions of the consolidation authorities. The over-riding effect is to the extent of any other law for the time being in force and it does not cover the orders passed by the authorities concerned, under the relevant law. Had the petitioner approached the consolidation authorities before confirmation of consolidation proceedings, the referred provision could come to his rescue but when the consolidation scheme was confirmed by the relevant authorities he was supposed to challenge the same in appropriate proceedings under the provisions of the Ordinance, 1960 and challenge to said proceedings under the garb of section 9 of the Act, 1997 was a misconception.

ii) While responding to Court's query as to why the petitioner is shy to approach the authorities established under the Ordinance, 1960, for redressal of his grievance, learned counsel for the petitioner states that since more than four decades have already passed, if any move is made by the petitioner, it would go abortive on the point of limitation. In this regard, I do not see eye-to-eye with learned counsel for the petitioner for the reason that section 13 of the Ordinance, 1960 deals with powers of the Board of Revenue to call for and examine record relating to consolidation proceedings and if any omission or commission is noted, same can be cured. According to the afore-quoted provision, Board of Revenue has been empowered to call for record of any consolidation proceedings of its own or on the move of a party, irrespective of any limitation, thus, the apprehension of the petitioner that if he approaches the consolidation authorities, under the provisions of the Ordinance, 1960, he would be knocked out on the basis of limitation, is misconceived.

iii) Now coming to plea of learned counsel for the petitioner that since the matter was referred to the revenue authorities in view of the consent of the Additional Deputy Commissioner (Revenue), Narowal, respondent No.5 could not reverse the findings of respondent No.4, I am of the view that when a forum has not been blessed with jurisdiction to hear a matter, same cannot be bestowed even with the consent of opponent side.

Conclusion: i) When the consolidation scheme has been confirmed it cannot be challenged

under the garb of section 9 of the Punjab Office of the Ombudsman Act, 1997.
ii) Under section 13 of the Punjab Consolidation of Holdings Ordinance 1960, Board of Revenue has been empowered to call for record of any consolidation proceedings of its own or on the move of a party, irrespective if any limitation.
iii) When a forum has not been blessed with jurisdiction to hear a matter, same cannot be bestowed even with the consent of opponent side.

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15. **Lahore High Court**
Irfan Mohsin v. Additional District and Sessions Judge & others
Writ Petition No.4265 of 2020.
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC920.pdf

Facts: The learned Judge Family Court, vide judgment and decree, while dismissing the claim of respondent No.1 for recovery of delivery charges as well as her maintenance, declared her entitled to recover dower amount in terms of condition mentioned against column No.19 of Nikah Nama and Rs.150,000/- as price of dowry articles. Further, the minor was held entitled to recover maintenance. Aggrieved of the judgment and decree of trial Court, the petitioner filed an appeal and the appellate Court vide judgment and decree while reversing the findings of learned trial Court reduced the quantum of maintenance of the minor and upheld rest of the findings of trial Court. Aggrieved of judgments and decrees of trial Court as well as appellate Court the petitioner has filed this petition whereas through the connected petition, respondent No.1 has assailed the vires of judgment & decree of learned appellate Court.

Issues: i) Whether Nikah Registrar is duty bound to accurately fill all the columns of the nikahnama form and what if he fails to perform his duty?
ii) What is the remedy available to the party if the Nikah Khawan/Registrar mentioned un-settled conditions in the Nikah Nama?
iii) Whether the oral assertion of witness can be relied while deciding lis between parties?

Analysis: i) According to section 6(2A) of the Muslim Family Laws Ordinance, 1961, the Nikah Registrar or the person who solemnizes a Nikah shall accurately fill all the columns of the nikahnama form with specific answers of the bride or the bridegroom. Moreover, according to section 5(5) of the said Ordinance, the form of nikahnama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriages shall be registered and copies of nikahnama shall be supplied to the parties, and the fees to be charged therefor, shall be such as may be prescribed. If Nikah Khawan/Registrar fails to perform his duties diligently instead of taking any action against any party, Nikah Khawan/Registrar should be held accountable…
ii) If the Nikah Khawan/Registrar mentioned un-settled conditions in the Nikah Nama, the party could conveniently approach the Deputy Commissioner or the

authorities of the Local Government concerned for rectification in addition to putting the criminal machinery in motion by filing a complaint before the relevant authority as a Nikah Khawan/Registrar falls within the definition of „public servant" in terms of section 21 of Pakistan Penal Code.
iii) It is well settled by now that if an oral assertion of a witness is not corroborated by relevant document, it is not safe to rely upon such oral assertion while deciding lis between the parties.

Conclusion: i) The Nikah Registrar shall accurately fill all the columns of the nikahnama form with specific answers of the bride or the bridegroom and if Nikah Khawan/Registrar fails to perform his duties diligently instead of taking any action against any party, Nikah Khawan/Registrar should be held accountable.
ii) If the Nikah Khawan/Registrar mentioned un-settled conditions in the Nikah Nama, the party could conveniently approach the Deputy Commissioner or the authorities of the Local Government concerned for rectification.
iii) If an oral assertion of a witness is not corroborated by relevant document, it is not safe to rely upon such oral assertion while deciding lis between the parties.

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16. **Lahore High Court**
Mian Raza Jillani and others v Province of Punjab through its Chief Secretary to Govt. of Punjab, Civil Secretariat, Lahore and others
Writ Petition No.7155 of 2024
Mr. Justice Shahid Bilal Hassan.
https://sys.lhc.gov.pk/appjudgments/2024LHC786.pdf

Facts: Through instant Constitutional petition, the petitioners assailed the notice of the respondents, wherein they were directed to vacate the possession of the property in dispute.

Issues: i) What is the principle of approbate and reprobate?
ii) Whether a party is entitled for alternate relief at subsequent stage, which he has not claimed it in the first petition?

Analysis: i) When a party in its earlier petition has availed the remedy and is satisfied with the proceedings and actions to be conducted in accordance with law by the respondent and impliedly did not press it, the subsequent petition on the same subject is not maintainable because the same is hit by the principle of approbate and reprobate.
ii) If a party never agitated for alternate relief which was available to him at the time of filing the first petition, at subsequent stage, he cannot claim as such because the Order II Rule 2, Code of Civil Procedure, 1908 comes in his way.

Conclusion: i) When a party in its earlier petition has availed the remedy and is satisfied with the proceedings, the subsequent petition on the same subject is not maintainable because the same is hit by the principle of approbate and reprobate.

ii) If a party never agitated for alternate relief which was available to him at the time of filing the first petition, at subsequent stage, he cannot claim it.

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17. **Lahore High Court**
Rasheed Ahmad v. Azra Parveen (deceased) through L.Rs. and others
Civil Revision No.11729 of 2019
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC894.pdf

Facts: The respondent No.1 instituted a suit for declaration and permanent injunction challenging the oral sale mutation which was duly contested by them while submitting written statements. The trial Court dismissed suit of the respondent No.1, who being aggrieved preferred an appeal there-against. The appellate Court accepted the appeal and decreed the suit in favour of the respondent No.1; hence, the instant revision petition.

Issues: i) Whether the original transaction is to be proved when mutation is under challenged?
ii) Whether old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law?
iii) Whether the preference will be given to the findings of appellate court in case of inconsistency between the findings of trial court and the appellate court?

Analysis: i) Mutation confers no title and once a mutation is challenged, the party relying thereon is bound to revert to the original transaction and to prove such original transaction, which resulted into the entry of attestation of such mutation.
ii) High Court has held that old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law.
iii) It is a settled principle, by now, that in case of inconsistency between the findings of the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

Conclusion: i) Mutation confers no title and once a mutation is challenged, the party relying thereon is bound to revert to the original transaction and to prove such original transaction.
ii) Old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law.
iii) In case of inconsistency between the findings of the Trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

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18. **Lahore High Court**
Abdul Ghaffar v. Muhammad Iqbal
RFA No.1181 of 2016
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC882.pdf

Facts: The respondent instituted a suit under Order XXXVII, Rules 1 and 2, of CPC for recovery on the basis cheque against the present appellant, wherein the appellant filed application for leave to appear and defend the suit, which was accepted and he contested the suit. Ultimately, the trial Court decreed the suit in favour of the respondent, against the present appellant; hence, the instant appeal.

Issue: Whether in a suit for recovery on the basis of a negotiable instrument, certain presumptions are attached to the negotiable instrument as to the passing of consideration, date, time etc., in terms of section 118 of the Negotiable Instruments Act 1881?

Analysis: There are certain presumptions attached to the same in terms of Section 118 of the Negotiable Instruments Act, in a suit for recovery on the basis of a negotiable instrument, as to the passing of consideration, date, time etc., which though is rebuttable by leading evidence by the defendant. The defendant, in the suit, by setting up a probable defence can counter the said legal presumption as regards the date and time of execution and also the consideration by leading unimpeachable and confidence inspiring evidence or circumstances of the case.

Conclusion: In a suit for recovery on the basis of a negotiable instrument, certain presumptions are attached to the negotiable instrument as to the passing of consideration, date, time etc., in terms of section 118 of the Negotiable Instruments Act 1881, which though are rebuttable by leading evidence by the defendant.

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19. **Lahore High Court**
M/s Saeed Buksh (Pvt.) Ltd v. Mst. Azra Bibi
F.A.O.No.637 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC889.pdf

Facts: Appeal has been filed impugning the order passed by the Rent Controller on application seeking setting aside of ex parte order alongwith an application under sections 5 & 14 of the Limitation Act, 1908 for condonation of delay.

Issues: (i) Import of Order V Rules 9,19 & 20 CPC
(ii) Effect of affidavit which is not controverted by counter affidavit?
(iii) Limitation for filing application for setting aside ex parte proceedings
(iv) Whether ex parte proceedings can be initiated on the date which was not fixed for hearing?

Analysis: (i) Admittedly service of notice upon was not affected through authorized agent of the present appellant. However, the learned Rent Tribunal without recording statement of process server as required by Rule 19 of Order V, Code of Civil Procedure, 1908, resorted to substituted service under Rule 20, which otherwise should have been recorded and after being satisfied that service upon the appellant

was not possible through ordinary means, might have proceeded to get procured service of the appellant through substituted means of publication of Court notice in the newspaper.
(ii) If an affidavit was not controverted by counter affidavit then the same would be considered to have been accepted and conceded.
(iii) The limitation for filing application for setting aside ex parte proceedings and order is governed by Article 181 of the Limitation Act, 1908 which provides three years limitation to approach the Court in this regard.
(iv) Ex parte proceedings were initiated on the date which was not fixed for hearing rather it was fixed for further proceedings, therefore, such penal order should not have been passed against the appellant.

Conclusion: (i) Appellant has been condemned unheard as no proper service was effected.
(ii) See above in analysis no. ii.
(iii) Limitation period for setting aside ex parte proceedings is three years.
(iv) See above in analysis no. iv.

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20. **Lahore High Court**
Nooruddin Feerasta & others v. Lahore Development Authority (LDA) & others
W.P No.17085 of 2022
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC812.pdf

Facts: The petitioners filed a Constitutional petition being aggrieved of the construction of an apartment building by respondent adjacent to the residential plot which fell foul of the provisions of the Lahore Development Authority Building and Zoning Regulations, 2019.

Issues: (i) Whether under Regulation 10.3.3 of Regulations of 2019, sina qua non for the sanctioning of any apartment building is obtaining of NOC from Environmental Protection Agency (EPA) and for an NOC to be had from EPA, the application must be accompanied by an EIA?
(ii) Import of Regulation 11.3 of 2019.
(iii) Requirement of 40 feet right of way in terms of Regulation 2.5 for the construction of apartment building?
(iv) Vires of Regulation 10.3.3(g) of 2019.

Analysis: (i) It is clear that for a project to require an EIA it must be categorized as a project likely to cause an adverse environmental effect and this must have been done by LDA or EPA in the present case. Since it has not been done in respect of the disputed project, it cannot be argued that the disputed project required an EIA as a pre-condition to the grant of an NOC by EPA. In the present case, IEE would suffice.
(ii) Regulation 11.3 is not engaged in this case and does not apply in the case of disputed building of the respondent. Regulation 11.3 comes into effect where

LDA intends to prescribe higher category of high rise to the already declared category of high rise zones defined at 11.1. Regulation 11.3 is the procedure and criteria which has been prescribed in case any zone is sought to be raised in to any higher height zone from time to time.

(iii) Right of way would mean the width of the street between to opposite property lines. It does not mean merely the road on which vehicles are intended to ply. It will also include footpaths for the passengers as also green areas which are required to be maintained outside the buildings by the owners. There is no rebuttal to the assertion that there is a 40 feet right of way between the property line of the disputed building and boundary wall of the opposite plot. Be that as it may, there is no contention that 40 feet right of way has to be maintained in the construction of Apartment buildings and since this requires a factual inquiry, LDA shall, at its own, ensure its compliance in letter and spirit.

(iv) Regulation 10.3.3(g) begins with the words "Subject to the provisions of Pakistan Environment Protection Act, 1997," (The Condition) and thereby engages the 1997 Act in its entirety. This part of Regulation 10.3.3.(g) travels beyond the primary enactment viz. The Lahore Development Authority Act, 1975. Such a condition could not be provided in the Regulations if the 1975 Act did not place such a clog. The decision to require an EIA or an IEE is for the LDA to make and Regulation 10.3.3(g) does in fact require an EIA, but for this condition. The policy regarding Apartment Buildings cannot be viewed in isolation and in the setting of one particular building only. The canvass has to be widened and the entire array of buildings being constructed and their impact on environment has to be at the heart of the policy. The Condition is a serious clog on such an effort and must be struck down. Henceforth any construction of an Apartment building would require an EIA and No Objection Certificate for EPA.

Conclusion: (i) Disputed project didn't require an EIA as a pre-condition to the grant of an NOC by EPA only IEE would suffice.

(ii) Regulation 11.3 is not engaged in this case and does not apply in the case of disputed building.

(iii) See above in analysis no. iii.

(iv) See above in analysis no. iv.

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21. **Lahore High Court**
Mst. Qamar Bibi (Late) through her Legal Heirs v. Shahab-ud-Din & another
Civil Revision No.233690 of 2018
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC802.pdf

Facts: The petitioners assailed judgment & decree passed by an Additional District Judge, whereby respondent No.1's appeal against Trial Court's judgment & decree dismissing respondent No.1's suit for possession through specific performance of agreement to sell, was allowed and aforesaid suit was decreed.

Issues: i) Whether the failure on part of a vendee to demonstrate his/her capacity, readiness and willingness to perform his/her part of obligation disentitles him/her to relief of specific performance?

ii) Whether a court can require the vendee to first deposit the balance sale consideration upon filing of a suit seeking specific performance of an agreement in respect of an immovable property?

iii) What should be the procedure in case a seller/vendor refused to receive the sale consideration?

iv) Whether a scribe can replace the requirement of producing other marginal witnesses?

v) Whether compliance of Order XLI Rule 31 C.P.C. is mandatory in its nature?

Analysis: i) It is now well-settled that even where the vendor refuses to accept the sale consideration amount, the vendee seeking a specific performance of the agreement to sell is essentially required to deposit the amount in the Court, which demonstrates his / her capability, readiness and willingness to perform the obligation…Section 24 of the Specific Relief Act, 1877 details the contracts which cannot be specifically enforced and section 24(b) provides that specific performance of a contract cannot be enforced in favour of a person who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed….Likewise, as per Section 54 of the Contract Act, 1908 when a contract consists of reciprocal promises, then second promise cannot be insisted to be done nor failure thereof can be claimed for damages or as a ground to fail the agreement unless it is established that the first promise was done.

ii) There is no provision in the Specific Relief Act, 1877, which casts any duty on the Court or requires the vendee to first deposit the balance sale consideration upon filing of the suit seeking specific performance of an agreement in respect of an immovable property. However, the relief of specific performance is discretionary and based on the principles of equity, thus, cannot be claimed as a matter of right. Therefore, the Court in order to ensure the *bona fide* of the vendee at any stage of the proceedings may put him to terms. Furthermore, such plaintiff is not only supposed to narrate in the plaint his readiness and willingness to fulfill his part of the agreement but also is bound to demonstrate through supporting evidence such as pay orders, Bank statement or other material, his ability to fulfill his part of the deal leaving no doubt in the mind of the Court that the proceedings seeking specific performances have been initiated to cover up his default or to gain time to generate resources or create ability to fulfill his part of the deal. It was, for this reason, mandatory for the plaintiff to prove that at the relevant time he had sufficient money to pay the remaining sale price.

iii) In a suit for specific performance of land, if the seller / vendor has refused to receive the sale consideration, or any part thereof, it should be deposited in Court and invested in some government protected security (such as Defence or National Savings Certificates); in case the suit is decreed the seller

would receive the value of money which prevailed at the time of the contract and in case the buyer loses he can similarly retrieve the deposited amount.

iv) It is settled law that an agreement to sell an immovable property squarely falls within the purview of the provisions of Article 17(2) of the Qanun-e-Shahadat Order, 1984 and has to be compulsorily attested by the two witnesses and this is sine qua non for the validity of the agreement. For the purposes of proof of such agreement involving financial obligation it is mandatory that two attesting witnesses must be examined by the party to the lis as per Article 79 of the Order ibid….This Article [Article 79] in clear and unambiguous words provides that a document required to be attested shall not be used as evidence unless two attesting witnesses at least have been called for the purpose of proving its execution. The words "shall not be used as evidence" unmistakably show that such document shall be proved in such and no other manner. The words "two attesting witnesses at least" further show that calling two attesting witnesses for the purpose of proving its execution is a bare minimum. Nothing short of two attesting witnesses if alive and capable of giving evidence can even be imagined for proving its execution. Construing the requirement of the Article as being procedural rather than substantive and equating the testimony of a Scribe with that of an attesting witness would not only defeat the letter and spirit of the Article but reduce the whole exercise of re-enacting it to a farce. Therefore, a scribe of a document can only be a competent witness if he has fixed his signature as an attesting witness of the document and not otherwise; his signing the document in the capacity of a writer does not fulfil and meet the mandatory requirement of attestation by him separately, however, he may be examined by the concerned party for the corroboration of the evidence of the marginal witnesses, or in the eventuality those are conceived by Article 79 itself not as a substitute.

v) A judgment should discuss and cover all substantial points involved in the case and also should reflect that Court has scanned and examined the material available on record minutely as well as evidence adduced by the parties supported with relevant documents pragmatically. Compliance of Order XLI Rule 31 C.P.C. is mandatory in its nature and the Appellate Court could not evade these provisions by taking divergent view on erroneous surmises and conjectural presumptions**.** Such a practice of the Appellate Court, if allowed, would frustrate the whole scheme of legislature by attributing redundancy to such mandatory provisions of law, which cannot be countenanced. Rationale behind said provision is that not only the party losing the case but the next higher forum may also understand what weighed with the Court in deciding the lis against it.

Conclusion: i) The failure on part of a vendee to demonstrate his/her capacity, readiness and willingness to perform his/her part of obligation disentitles him/her to relief of specific performance.

ii) A court can require the vendee to first deposit the balance sale consideration upon filing of a suit seeking specific performance of an agreement in respect of an immovable property.

iii) In case a seller/vendor refused to receive the sale consideration, it should be

deposited in Court and invested in some government protected security.
iv) A scribe cannot replace the requirement of producing other marginal witnesses.
v) The compliance of Order XLI Rule 31 C.P.C. is mandatory in its nature.

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22. **Lahore High Court**
Muhammad Ashraf v. The State etc.
Crl. Misc. No.17013/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC7721.pdf

Facts: By this application, the Petitioner seeks post-arrest bail in case for an offence under section 22(1) of the Punjab Food Authority Act, 2011.

Issues: i) What is the effect of saving clause?
ii) What the effect of Rules made under a statute and what are the principles of its interpretation?
iii) Whether failure to follow the prescribed procedure renders the entire action or proceedings invalid?
iv) Whether Rule 52 of the Food Rules of 2011 is mandatory?
v) Whether bail can be granted in offences not falling within the prohibitory clause as a rule, and refusal is an exception?

Analysis: i) When a statute repeals an earlier statute, and it is an unqualified repeal, then the effect of such repeal is that the earlier statute gets repealed in its entirety. However, where the Legislature intends to preserve any power or inchoate right in relation to the repealed statute, then a saving clause is incorporated in the repealing statute whereby certain provisions are preserved from getting repealed to the extent and with regard to the subject mentioned in the saving clause. The provisions of the repealed law that are so preserved are to be regarded as if the repealed statute was still in operation.
ii) It is by now well settled that the Rules validly made under a statute have the same effect as the statute itself and are enforced as such. (…) Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. (…) In view of the above, the same principles that are followed for the construction of statutes are used to interpret the Rules.
iii) In general, where the law specifies a mode of performing a duty, it must be performed in that particular manner or not at all. This canon stems from the maxim expressio unius est exclusio alterius. However, the question arises as to whether failure to follow the prescribed procedure renders the entire action or proceedings invalid. There is no principle of universal application to classify a provision as mandatory or directory. It depends upon the intent of the Legislature rather than the phraseology used.

iv) Rule 52 of the Food Rules of 2011 lists food items and prescribes the minimum quantity required for preparing a sample in each case. There is a statutory presumption that the specified amount is the minimum requirement for an authentic Public Analyst's report. Since the prosecution of several offences under Chapter IV of the PFA Act depends on that report, I hold that Rule 52 is mandatory. Any other conclusion will not only prejudice an accused at the trial but also defeat his right to a fair trial guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.
v) The offence under section 22(1) of the PFA Act with which the Petitioner has been charged does not fall within the prohibitory clause of section 497 Cr.P.C. In Tariq Bashir and others v. The State (PLD 1995 SC 34), the Supreme Court of Pakistan held that in such cases, the grant of bail is a rule, and refusal is an exception.

Conclusions: i) See above in analysis no. i.
ii) Rules validly made under a statute have the same effect as the statute itself and the same principles that are followed for the construction of statutes are used to interpret the Rules.
iii) In general, where the law specifies a mode of performing a duty, it must be performed in that particular manner or not at all. There is no principle of universal application to classify a provision as mandatory or directory. It depends upon the intent of the Legislature rather than the phraseology used.
iv) Rule 52 of the Food Rules of 2011 is mandatory.
v) Where an offence does not fall under the prohibitory clause, the grant of bail is a rule, and refusal is an exception.

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23. **Lahore High Court**
Muhammad Banaras v. Govt. of The Punjab etc.
W.P.No.862/2020
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2024LHC839.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner has challenged the *vires* of notification issued by Respondent No.2 with contention that the Petitioner cannot be stopped from cutting down trees on his privately owned land.

Issue: Whether the Deputy Commissioner has power to issue the notification under the Guzara Land Rules to restrict a person from cutting down trees on his privately owned land?

Analysis: The Deputy Commissioner does not come within definition of the Government. Rules 4 and 7 of the Rules for the Conservancy of Forests and Jungles in the Hill Districts of the Punjab Territories, 1855 empower the Civil Authorities to impose certain prohibitions or restrictions on felling of trees on any land in a hill district. Rule 76 of the Forest Act, 1927 empowers the Government to make rules. Under

Section 2(j) of the Forest Act, 1927, Government means the Government of the Punjab. As per Second Schedule to the Punjab Government Rules of Business, 2011, the Forestry, Wildlife and Fisheries Department is entrusted with the powers to administer of the Forest Act, 1927 and the rules made thereunder, whereas Rule 20 of the Punjab Government Rules of Business, 2011 provides that the Law and Parliamentary Affairs Department shall be consulted by other departments on matters concerning delegated legislation, such as, rules and regulations etc. Furthermore, under Rule 3(3) of the Punjab Government Rules of Business, 2011, the business of the Government is distributed amongst several Departments in the manner indicated in the Second Schedule and Secretary, Forestry, Wildlife and Fisheries Department, Punjab can take cognizance of the matter in terms of Rule 10 of the Punjab Government Rules of Business, 2011, which clearly states that the Secretary shall be the official head of the Department and be responsible for its efficient administration and discipline, for the conduct of business assigned to the Department and for the observance of laws and rules.

Conclusion: The Deputy Commissioner has no power to issue the notification under the Guzara Land Rules, to restrict a person from cutting down trees on his privately owned land, rather, it is the Government, which can only impose such kind of restrictions.

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24. **Lahore High Court**
Asif alias Asad & three others v. The State & another
Criminal Appeal No.245/2016
Jamshaid Ahmad v. The State & another
Criminal Appeal No.409/2016
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC830.pdf

Facts: This single judgment will dispose of both Criminal Appeals filed by appellants/convicts) against their conviction and sentence as these both have arisen out of one and the same impugned judgment dated passed by learned Additional Sessions Judge/trial court.

Issues: i) Whether common object is necessary ingredient for invoking section 148 of PPC?
ii) Whether report of Forensic Science Agency regarding mere working capability of a weapon can provide any corroboration to the prosecution case where as per report of Forensic Science Agency the weapon was though in working condition yet empties secured from the place of occurrence did not match with said weapon?
iii) Whether report of Forensic Science Agency regarding matching of empties with allegedly recovered weapon is inconsequential when empties were sent to Punjab Forensic Science Agency after arrest of accused?
iv) If same/identical role has been alleged against more than one accused and

anyone out of them has been acquitted, then in absence of the strong corroboration, other accused persons against whom also similar allegation was levelled by the prosecution, can be convicted and sentenced?

Analysis: i) Perusal of the aforementioned provisions of law makes it crystal clear that if "rioting" is committed by the accused persons while armed with deadly weapons then they are to be punished under Section of 148 PPC and as per Section of 146 PPC, "rioting" is use of force or violence by an unlawful assembly or by any member thereof in prosecution of the common object of said assembly and it is equally important to mention here that as per Section of 141 PPC, assembly is designated as "unlawful assembly" if same has been constituted for achieving "common object" mentioned in five clauses mentioned therein; Hence, "common object" is necessary ingredient for invoking Section of 148 PPC.

ii) Though learned Deputy Prosecutors General as well as learned counsel for the complainant emphasis that corroboration is available in the form of recoveries effected from appellants, however, it is worth mentioning here that weapons recovered from appellant were sent to Punjab Forensic Science Agency, Lahore and as per report of said agency, said both weapons were though in working condition yet empties secured from the place of occurrence and sent to Punjab Forensic Science Agency for comparison, did not match with said weapons. In such perspective, report of Punjab Forensic Science Agency regarding mere working capability of said weapons cannot provide any corroboration to the case of prosecution against both these appellants.

iii) Hence, when empties were sent to Punjab Forensic Science Agency after arrest of appellant, then report of said Agency regarding matching of empties with allegedly recovered shotgun from appellant is inconsequential.

iv) By now it is well settled that, if same/identical role has been alleged against more than one accused and anyone out of them has been acquitted, then in absence of the strong corroboration, other accused persons against whom also similar allegation was levelled by the prosecution, cannot be convicted and sentenced.

Conclusion: i) Common object is necessary ingredient for invoking section 148 of PPC.

ii) Report of Forensic Science Agency regarding mere working capability of a weapon cannot provide any corroboration to the prosecution case where as per report of Forensic Science Agency the weapon was though in working condition yet empties secured from the place of occurrence did not match with said weapon.

iii) Report of Forensic Science Agency regarding matching of empties with allegedly recovered weapon is inconsequential when empties were sent to Punjab Forensic Science Agency after arrest of accused.

iv) If same/identical role has been alleged against more than one accused and anyone out of them has been acquitted, then in absence of the strong corroboration, other accused persons against whom also similar allegation was levelled by the prosecution, cannot be convicted and sentenced.

25. **Lahore High Court**
Muhammad Rafie v. Ghaneem Aabir, etc.
Crl. Misc. No.73505-CB/2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC938.pdf

Facts: Through instant petition filed under Section: 497 (5) Cr.P.C., petitioner/complainant of case has challenged the *vires* of order passed by learned Addl. Sessions Judge whereby respondent No.1/accused was granted pre-arrest bail in case arising out of F.I.R. registered under Sections: 420, 468, 471 PPC read with Section 58 of the Legal Practitioners and Bars Councils Act, 1973.

Issues: i) Whether appearance of a person in courts posing himself/herself as an advocate is a serious offence?
ii) In what kind of cases extra-ordinary relief of pre-arrest bail is granted?
iii) When bail is to be recalled?

Analysis: i) …It goes without saying that Advocate is such a trusted statutory entity that person comes to him, shares most confident and valuable issues of his/her life with him, hands over documents including valuable instruments along with fee to him/her but if he/she is not advocate, then it is not mere cheating with the clients/public-at-large and actual advocates but also with the courts where he/ she appears while posing himself/herself as advocate. So, it is heinous/serious offence against the entire legal system of the country.
ii) Pre-arrest bail is an extra-ordinary concession, which is meant for protecting innocent people and same is granted only and if reasonable grounds are existing on the record to show that accused is not guilty of the alleged offence rather the case is of further inquiry and furthermore intended arrest of the accused is an outcome of *mala fide*, malice and ulterior motive for humiliating him.
iii) It is by now also well settled that if bail has been granted to accused while ignoring sufficient material available against him on the record, then it is to be recalled.

Conclusion: i) Yes, it is heinous/serious offence against the entire legal system of the country.
ii) See above in analysis clause no. ii.
iii) If bail has been granted to accused while ignoring sufficient material available against him on the record, then it is to be recalled.

26. **Lahore High Court**
Muhammad Akram v. Haji Ilam Din (deceased) through L.Rs and others
W.P. No.48863 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC850.pdf

Facts: Petitioner in this constitutional petition has challenged order of Addl. Session Judge whereby application to summon the Record Keeper of Treasury Office along with the record regarding stamp-paper issued by Stamp Vendor and for recording his statement as a court-witness, was allowed by setting aside the order Civil Judge while accepting the revision petition

Issues: i) Whether the court has power to condone the default in filing list of witnesses within seven days?
ii) Whether the court at any time if it considers it necessary to examine any person other than a party to the suit and who is not called as a witness by a party in the suit may examine such person as witness on its own motion?

Analysis: i) As regards the objection of Order XVI, Rule 1, C.P.C. to the effect that a party could not summon any person as a witness unless they are named in the list of witnesses which could be filed within seven days, there is no cavil with the proposition. It is also true that proviso to Rule 1 of Order XVI, C.P.C. empowers the court to condone the default in filing the list of witnesses within seven days if "sufficient cause" or "good reason" is shown to exist.
ii) Where the court at any time considers it necessary to examine any person other than a party to the suit and who is not called as a witness by a party in the suit, the court may of its own motion cause such person to be summoned as a witness to give evidence or to produce any document in his possession, on a day to be appointed; and may examine such person as a witness or require him to produce such document. Rule 14-A of Order XVI, C.P.C. was inserted by the Lahore High Court Amendment which is to the effect that when a witness is summoned by the Court of its own motion under Rule 14 of Order XVI, C.P.C. their diet money, etc. will be paid by such party or parties as the Court may in its discretion, direct… Rule 14 of Order XVI, C.P.C. empowers the Court to summon any witness for recording his statement or produce any document if need be for the just and fair decision of the case even if the parties to the suit had failed to produce them in the court.

Conclusion: i) Proviso to Rule 1 of Order XVI, C.P.C. empowers the court to condone the default in filing the list of witnesses within seven days if "sufficient cause" or "good reason" is shown to exist.
ii) The court at any time if it considers it necessary to examine any person other than a party to the suit and who is not called as a witness by a party in the suit may examine such person as witness on its own motion.

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27. **Lahore High Court**
Begum Tasneem Akhtar (deceased) through L.Rs v. The learned Addl. District Judge, Lahore and others
W.P. No.49163 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC956.pdf

Facts: Petitioners through this constitutional petition assail orders of the courts below by which an application under section 151 C.P.C. objecting to admissibility of documents was rejected and the revision petition filed there against was also dismissed.

Issue: Whether the admissibility of documents absolves party from proving contents as per legal requirements?

Analysis: There is a distinction between the admissibility and proof of documents. Where a document is tendered in evidence it cannot serve any purpose unless it is proved in accordance with law. The provisions of Articles 78 and 79 of Qanun-e-Shahadat Order, 1984 obligate the production of executant, marginal witnesses, scribe and other admissible evidence to prove any document, which cannot be dispensed with…Mere fact that the documents have been exhibited does not mean that the court is denuded of its obligation to consider the entire evidence so as to conclude whether or not the documents were proved in accordance with the provisions of Qanun-e-Shahadat Order, 1984 and their production alone will not, of course, mean that the documents are proved or are an evidence of the facts in controversy which were required to be proved by fulfilling the mandatory conditions of Article 79 of Qanun-e-Shahadat Order, 1984… The documents would only be used as piece of evidence if the litigants placing reliance thereon would be able to satisfy that they had produced the witnesses and followed the procedure as per Article 79 of Qanun-e-Shahadat Order, 1984.

Conclusion: The admissibility of documents does not absolve party from proving contents as per legal requirements.

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28. **Lahore High Court**
Shameem Omer and others v. Niaz Ahmad and others
W.P. No.38767 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC975.pdf

Facts: This petition stems from order of the learned Addl. District Judge in terms whereof the appeal of respondent No.1/ against order of his eviction was accepted; the order was set aside and the ejectment application brought by petitioner was dismissed.

Issues: i) What is purpose of exercise of right of cross-examination and what will be presumed if witness does not turn up for cross examination?
ii) Whether affidavit tendered in evidence as examination in chief can be worthy of consideration if opposite side is not given the opportunity to cross examine the witness?
iii) How a document ought to be proved which is required by law to be attested by two witnesses?

iv) Whether is there any restriction that tenancy agreement must be in writing?

Analysis: i) Under law the statement of a witness comprises examination-in-chief and cross-examination. The exercise of cross-examination is right of the opposite side as a device of due process to provide opportunity to show the statement to be false and unworthy of consideration. If the witness does not turn up for cross-examination nor the party produced such witness or show any interest to produce the witness, the presumption will be that the witness was not prepared to face the truth and that his statement is not worthy of consideration.

ii) In so far as the affidavits as statement in examination-in-chief of witnesses tendered, the same are also unworthy of consideration as in law the deponent unless appears for cross-examination and allow this opportunity to the opposite side, the affidavit of the witness would be deemed in law inadmissible and unworthy of credence.

iii) As per settled rule, a document which is required to be attested by two witnesses need to be proved by production of two marginal witnesses who shall make complete statement i.e. examination-in-chief and cross examination.

1iv) As regards the respondent's objection that the oral tenancy was claimed and that there was no document to support it, the same is ill founded. In law a tenant means a person who undertakes or is bound to pay the rent as consideration for the occupation of the premises by him and includes a person who continues to be in occupation of the premises after the termination of his tenancy as also legal heirs of the tenant after his demise. There is no restriction in law to the nature of tenancy which can be either oral or in writing. It is also a rule that if a person occupies the premises which is owned by other person then his status could be presumed to be as a tenant unless proved otherwise.

Conclusion: i) See above in analysis clause no. i.

ii) Affidavit tendered in evidence as examination in chief cannot be worthy of consideration if opposite side is not given the opportunity to cross examine the witness

iii) A document which is required to be attested by two witnesses need to be proved by production of two marginal witnesses who shall make complete statement i.e. examination-in-chief and cross examination.

iv) There is no restriction in law to the nature of tenancy which can be either oral or in writing.

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29. **Lahore High Court**
Riasat Ali Sahi v. Ijaz Ahmad and others
C.R. No.220345 of 2018
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC966.pdf

Facts: Petitioner filed a suit to preempt the sale of land reflected through sale deed on the plea of having superior right of preemption which was contested and

ultimately dismissed by the learned Civil Judge. Petitioner's appeal thereagainst also met the same fate vide judgment of the learned Addl. District Judge which judgments are now under challenge in this revision petition.

Issues: i) Whether mentioning of date, time and place in the plaint qua Talb-e-Muwathibat in a suit for preemption is a condition precedent and in the absence of such specification of date, time and place, the period for making Talbe-Ishhad cannot be calculated with required accuracy?
ii) Whether the statement of a witness who did not disclose the actual site where the alleged information was passed nor could prove his credibility by claiming direct knowledge of sale itself but instead recorded hearsay account of little probative value is worthy of consideration?

Analysis: i) It is settled rule that mentioning of date, time and place in the plaint qua Talb-e-Muwathibat in a suit for preemption is a condition precedent in the context of subsection 3 of section 13 of the of the Punjab Preemption Act, 1991 and that in the absence of such specification of date, time and place, the period for making Talbe-Ishhad cannot be calculated with required accuracy.
ii) Be that as it may, the petitioner did not disclose the actual site where the alleged information was passed nor could the informer prove his credibility by claiming direct knowledge of the sale itself but instead recorded a hearsay account of little probative value. In these circumstances the courts below correctly observed that the statement of Irshad Ullah, real son of petitioner, was not worthy of consideration. Both the courts below, therefore, justifiably disbelieved the evidence and declared that Talb-e-Muwathibat could not be proved.

Conclusion: i) Mentioning of date, time and place in the plaint qua Talb-e-Muwathibat in a suit for preemption is a condition precedent and in the absence of such specification of date, time and place, the period for making Talbe-Ishhad cannot be calculated with required accuracy.
ii) The statement of a witness who did not disclose the actual site where the alleged information was passed nor could prove his credibility by claiming direct knowledge of sale itself but instead recorded hearsay account of little probative value is not worthy of consideration.

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30. **Lahore High Court**
Dr. Aqsa Rehman v. Govt. of Punjab, etc.
I.C.A. No. 03/2024
Mr. Justice Asim Hafeez, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC781.pdf

Facts: Instant intra-court appeal is directed against decision, whereby learned Judge-in -Chambers dismissed appellant's Constitutional petition inter alia on the premise that factual controversy could not be decided and further observed that decision of offering retainership assignment was a transitory arrangement.

Issue: Whether it is mandatory that the appointment to permanent jobs should be advertised properly?

Analysis: In matters which involve public participation pertaining to pursuit of profession through permanent jobs or otherwise, the matter should be advertised properly inasmuch as Article 27 read with Articles 18, 25 and 2A of the Constitution of Islamic Republic of Pakistan, 1973, mandates that every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business.

Conclusion: In matters which involve public participation pertaining to pursuit of profession through permanent jobs or otherwise, the matter should be advertised properly.

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31. **Lahore High Court**
Falak Sher etc. v. Hashmat Bibi etc.
Writ Petition No.3631 of 2015/BWP
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC755.pdf

Facts: Through this Constitutional Petition, petitioners assailed the vires of judgments and memos of cost of the Courts below whereby their application under Section 12(2) C.P.C. was dismissed concurrently.

Issues: i) Whether an authorization given to a counsel by engaging him through Vakalatnama for doing certain acts with regard to the suit is unqualified and unrestricted?
ii) How the power of attorney is to be interpreted while deciding the case on the basis compromise on the statement of attorney?
iii) Whether the power of attorney (Vakalatnama) does confer impliedly the power of compromise on the counsel?
iv) What is the legal consequence of compromise or otherwise when power to do an act has not been specifically given to an attorney?
v) What is the duty of court while deciding a case on the statement of compromise given by the counsel?

Analysis: i) Both the Courts below dismissed the petitioners' application on the ground that it is settled principle of law that every lawyer engaged by a party has implied authority to enter into compromise even no specific power has been conferred upon him. No doubt, through engaging a counsel and by giving him Vakalatnama (power of attorney) a party gives him an authorization for doing certain acts with regard to the suit. But said authorization was not unqualified and unrestricted. The counsel has to work and to act within the scope of authority given to him. In this regard, the wording of the power of attorney should be strictly construed.
ii) Power of attorney must be construed strictly as giving only such authority as is conferred expressly or by necessary implication and it cannot empower beyond

what it really conveys and its contents must be taken into consideration as a whole. Power of attorney only gives that power which is specifically mentioned therein.

iii) The power of attorney (Vakalatnama) does not confer impliedly the power of compromise on the counsel or to make any statement to withdraw the suit or to get decree the suit, until and unless such powers have been specifically given to the attorney.

iv) There is hardly any doubt that if the power to do an act has not been specifically given to an attorney, such an act, whether compromise or otherwise, is of no legal consequence at the option of the concerned party.

v) Valuable rights of the parties are involved in the lis, therefore, while deciding the case on the basis of compromise, the Court should apply maximum care and caution to ascertain that whether the parties are agreed to the statement of compromise given by their counsel.

Conclusions: i) No, through engaging a counsel and by giving him Vakalatnama, a party gives him an authorization for doing certain acts with regard to the suit but said authorization is not unqualified and unrestricted.

ii) Power of attorney must be construed strictly as giving only such authority as is conferred expressly or by necessary implication and it cannot empower beyond what it really conveys and its contents must be taken into consideration as a whole.

iii) No, the power of attorney (Vakalatnama) does not confer impliedly the power of compromise on the counsel or to make any statement to withdraw the suit or to get decree the suit, until and unless such powers have been specifically given to the attorney.

iv) If the power to do an act has not been specifically given to an attorney, such an act, whether compromise or otherwise, is of no legal consequence at the option of the concerned party.

v) While deciding the case on the basis of compromise, the Court should apply maximum care and caution to ascertain that whether the parties are agreed to the statement of compromise given by their counsel.

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32. **Lahore High Court**
Mst. Haleema, etc. v. Executive Director, C & C Department Securities & Exchange Commission, etc.
Writ Petition No.8594 of 2016/BWP
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC823.pdf

Facts: Through this Constitution Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, petitioners have assailed the vires of order passed by respondent No.1 whereby while exercising the power under Section 265 of the Companies Ordinance, 1984, a Chartered Accountant was appointed as Inspector for carrying out investigation into the affairs of the Company and to

give findings.

Issues: i) Whether the Commission under Section 265 of the Companies Ordinance,1984 has suo-motu powers to appoint an Inspector to carry out investigation into the affairs of the Company and to give findings?
ii) What procedure is to be followed in proceedings under Section 265 of the Companies Ordinance, 1984?
iii) What is the meaning of the expression "Disposed of accordingly"?

Analysis: i) The Commission under Section 265 (a) of the Ordinance could appoint Inspector subject to fulfillment of pre-conditions mentioned therein but such pre-conditions are not applicable to its suo-motu powers under Section 265 (b) of the Ordinance, to appoint Inspector. The Commission has only to satisfy itself, prima-facie, on the basis of the material placed before it, that case for investigation through an Inspector is called for. The matter, in fact, vests in the discretion of the Commission, to be decided after following the summary procedure.(…) The Authority has to only satisfy itself prima-facie, of course, on the basis of the material placed before it that a case for investigation through an Inspector is called for and it is for the Inspector to ascertain and determine the truth or otherwise of the allegation during the investigation to be conducted by him whereafter he has to submit report to the concerned Authority.
ii) The matter, in fact, vests in the discretion of the Commission, to be decided after following the summary procedure. In proceedings under Section 265 of the Ordinance, full-fledged inquiry in the form of a trial is not required to be held nor any formal evidence is to be recorded before passing the order under Section 265 of the Ordinance.
iii) The expression used by this Court "Disposed of accordingly" has a significant meaning. It means that the petition was disposed of in terms of the submission made by the learned counsel for the petitioner as narrated in para-1 and direction given in para-2 of the order. This Court in a case titled "MUHAMMAD SAQLAIN V. THE STATE, ETC." (2023 LHC 6699), observed as under:"So, in other words, the order "learned counsel for the petitioner wishes to withdraw this petition after arguments. Disposed of accordingly" means that subject petition terminated, settled, ended, concluded or closed as desired by the learned counsel for the petitioner after arguments and consideration of the merits of the case."

Conclusions: i) The Commission under Section 265 (b) of the Companies Ordinance,1984 has suo-motu powers to appoint an Inspector to carry out investigation into the affairs of the Company and to give findings.
ii) In proceedings under Section 265 of the Ordinance, summary procedure is to be followed as neither full-fledged inquiry in the form of a trial is required to be held nor any formal evidence is to be recorded before passing the order under Section 265 of the Ordinance.
iii) The expression "Disposed of accordingly" means that the petition was disposed of in terms of the submission made by the learned counsel for the

petitioner and subject petition terminated, settled, ended, concluded, or closed as desired by the learned counsel for the petitioner after arguments and consideration of the merits of the case.

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33. **Lahore High Court**
Muhammad Asif v. The State, etc.
Criminal Revision No.12454 of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC866.pdf

Facts: Through this Criminal Revision under Sections 435 & 439 of Cr.P.C., petitioner being accused of case FIR registered under section 302 PPC has challenged the vires of order passed by Additional Sessions Judge whereby co-accused was tendered pardon under section 338 of Cr.P.C. to become approver against his co-accused (present petitioner).

Issues: i) Whether is it mandatory for the court or magistrate to record reasons or observe legal formalities while declaring the accused as an approver and what is procedure to tender pardon to an accused?
ii) Whether consent of the accused is mandatory before declaring him as an approver or tendering him pardon?
iii) Whether pardon can be tendered to an accused in cases involving in an offence relating to hurt or qatl without permission of the victim or, as the case may be, of the heirs of the victim?
iv) Whether is it mandatory to keep the accused in custody until the trial is concluded who has been tendered pardon?
v) Whether is it mandatory for the court to take the prosecution on board before tendering pardon to an accused?
vi) What are the pre-requisites to record confessions if more than one person turns approver in one case?

Analysis: i) The sections 337 & 338 Cr.P.C deal separately with the situations of tendering pardon by the Officer Incharge of the prosecution as well as the Court. Section 337 of Cr.P.C. deals with the situation when the case is in the investigation or inquiry or pending trial before a Magistrate, whereas section 338 of Cr.P.C. meets the situation when the trial is pending before the Court of Session or High Court. Section 337 Cr.P.C. talks about the condition and recording of reasons for tendering pardon to the accused. Sub-section (1) of section 337 Cr.P.C… And subsection (1-A) of such section makes it mandatory by using the word "shall" for the Magistrate to record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record. Primarily, an offer to tender pardon to the accused during the investigation is the function of police as mentioned in Rule 25.29 of the Police Rules, 1934 but they could not offer it except as mentioned in sub-rule (2) of above Rule…It was the practice that once it is decided to offer a pardon to the accused, he must had been taken to the Magistrate in order to tender the same and Magistrate under sub-rule 2(c) of

above Rule could make enquiries as to the circumstances leading up to the confession, and police officers shall invariably furnish, so far as is in their power, information required of them in this respect. Later by virtue of amendment in section 337 Cr.P.C. through Ordinance XXXVII of 2001, the power was switched over to officer incharge of the prosecution in the district. Thus, on the same analogy, as per section 337 of Cr.P.C. he is required to observe the condition and record the reasons for so doing. After promulgation of Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, a Code of conduct for prosecutors was issued under section 17 of the Act ibid; Para No. 14 of said Code of conduct refers the functions of District Public Prosecutor in this respect… During the course of investigation if the accused accepts the offer, his status from an accused is transposed to that of a witness and he shall be brought before the Magistrate for recording of his statement (not the confession) on oath u/s 164 of Cr.P.C., and copy of such statement shall be supplied to co-accused under section 241-A or 265-C Cr.P.C. as the case may be before the commencement of trial. If such a power is exercised at the stage when trial is pending, then after fulfilling the condition and recording of reasons, if the accused accepts the offer, Magistrate shall examine him as a witness during the trial but before that he shall be taken into custody till the conclusion of trial as required by sub-section (3) of Section 337 Cr.P.C.; sub-rule 2 (f) of Rule 25.29 of Police Rules, 1934 and Rule8 of Chapter 14 of High Court Rules & Orders, Volume-III.

ii) The proposition in this case relates to a stage as enumerated in section 338 of Cr.P.C., therefore, not only the officer incharge of the prosecution but the Court can tender pardon to the accused at any stage of the trial before the judgment is passed with a view to obtaining evidence… but before that it was essential that accused should have volunteered to become approver in response to a request made by the complainant or the Court. Though application of the complainant states that co-accused is ready to become approver but his consent in black and white is not available in the record. Similar is the situation when Court has also not taken his consent before tendering him pardon. In this view of the matter, order passed by learned Additional Sessions Judge one-sidedly considering that accused would be a useful witness as an approver is opposed to Constitutional protection as ordained under Article 13 of the Constitution of the Islamic republic of Pakistan, 1973… The most important of all considerations is the logic applied by the Court to use an accused as approver, at the altar of absolving him of his criminal liability against the sentiments of aggrieved party, for procuring conviction in order to dispense justice. Thus, reasons must be outlined by the Court before frame of mind to tender pardon to an accused…

iii) Likewise, section 338 of Cr.P.C requires that no person shall be tendered pardon who is involved in an offence relating to hurt or qatl without permission of the victim or, as the case may be, of the heirs of the victim.

iv) It is also the requirement of law that when an accused is tendered pardon, he must be kept in custody until the trial is concluded and Officer Incharge of prosecution certifies that accused has made full and true disclosure of the whole

of the circumstances so as to prevent his trial as an accused under section 339/339A of Cr.P.C., but in this case accused was not taken into custody which action is in violation of sub-section (3) of Section 337 Cr.P.C.; sub-rule 2 (f) of Rule 25.29 of Police Rules, 1934 and Rule-8 of Chapter 14 of High Court Rules & Orders, Volume-III...

v) In this case Court has not taken the prosecution on board before tendering the pardon to the accused which is an illegality because though Court has power to tender pardon to any person but the Court can have no interest whatsoever in the outcome nor to decide for prosecution whether particular evidence is required or not to ensure the conviction of the accused. That is the prosecution's job…

vi) While acting with due propriety in jurisdiction Court must bear in the mind that interests of accused are just as important as those of the prosecution. No procedure or action can be in the interest of justice if it is prejudicial to an accused. There are also matters of public policy to consider. Judge must know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and degree of his culpability in relation to the offence and in relation to co-accused. Case reported as "Jasbir Singh Verus Vipin Kumar Jaggi" (2001 AIR (SC) 2734) is referred in this respect. Even it is possible that in a case more than one person turns approver or the prosecution wants to use them, then according to sub-rule 2 (g) of Rule 25.29 of Police Rules, 1934, their confessions shall, if possible, be recorded by different magistrates and they shall not be allowed to meet one another till their evidence has been recorded in Court.

Conclusion: i) It is mandatory for the court or magistrate to record reasons or observe legal formalities while declaring the accused as an approver. See under analysis no. i.

ii) Consent of the accused is mandatory before declaring him as an approver or tendering him pardon.

iii) No person can be tendered pardon who is involved in an offence relating to hurt or qatl without permission of the victim or, as the case may be, of the heirs of the victim.

iv) It is mandatory to keep the accused in custody until the trial is concluded who has been tendered pardon.

v) It is mandatory for the court to take the prosecution on board before tendering pardon to an accused.

vi) See above in analysis clause no. vi.

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34. **Lahore High Court**
M/S NWEPDI-TEPC-UCC (JV) v. National Transmission & Dispatch Co. Ltd. & 04 others
W. P. No. 685 / 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC942.pdf

Facts: This constitutional petition brings a challenge to Orders passed by respondents No. 2 and 4 respectively and seeks a direction to the Respondents to the effect that

they are not entitled to forfeit bank guarantee tendered by the Petitioner as bid security.

Issues: i) Whether a Constitutional Petition under Article 199 of the Constitution is maintainable in view of Rule 48(7) of the Public Procurement Rules, 2004 which provides remedy of appeal and is subject to depositing the prescribed fee?
ii) Whether in the interpretation of documents, ambiguities are to be construed unfavorably to the drafter?
iii) Whether the bid of the bidder can be rejected and his bid security is liable to be forfeited only if he does not accept the correct amount of bid?

Analysis: i) Rule 48(7) of the Rules, 2004 provides the remedy of appeal before the Authority against the decision of GRC. However, the remedy of appeal under Rule 48(7) of the Rules, 2004 is subject to depositing the prescribed fee. In the instant case, requiring the Petitioner to deposit a heavy amount of fee, who is striving to release its bid security, would definitely be harsh and onerous when the procurement process had been scrapped and even the decision of GRC was completely non-speaking. Under these circumstances, the Petitioner cannot be compelled to seek redressal of its grievance within the regulatory framework by way of appeal….. It, therefore, follows that normal rule is that when an alternate remedy is available to a party, it is required to pursue that remedy and the right to invoke constitutional jurisdiction of this Court is not available. However, where it is established that the available alternate remedy is not efficacious, the existence of such remedy is not an absolute bar to invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

ii) It is importantly noted here that although Clause IB 26.2(e) reproduced above states that if the bidder does not accept the corrected amount of bid, his bid will be rejected and his bid security forfeited according to Clause IB 15.7 yet the latter Clause does not allow forfeiture of bid security under the former Clause. Hence, it is aptly evident that the bidding documents were hit by the doctrine of Contra Proferentem which, according to Black's Law Dictionary (Tenth Edition), means, "in the interpretation of documents, ambiguities are to be construed unfavorably to the drafter". It is also termed as „ambiguity doctrine'. Thus, it is apparent that the bidding documents were ambiguous and as per Clause IB 15.7, the bid security could not have been forfeited pursuant to Clause IB 26.2(e) for omission to mention the said Clause therein.

iii) Notwithstanding the fact that Clause IB 26.2(e) of Section 1- „Instructions to Bidders" could not have been invoked in terms of Clause IB 15.7 yet under the former Clause, bid of the Petitioner could have been rejected and his bid security was liable to be forfeited only if the bidder does not accept the corrected amount of bid. This necessitates to examine if the Petitioner had refused to accept the correct amount of bid or arithmetic corrections in his bid price as desired by NTDC. Letter dated 12.10.2022 depicts that the Petitioner with reference to price

post-bid clarification No. 3 was required to confirm certain queries which were duly responded to as depicted from communication dated 14.10.2022….. From bare perusal of the above reply, it is unequivocally clear that irrespective of the fact that the aforesaid post bid clarifications were arithmetic errors or typographical errors yet the clarifications sought by Respondent No. 3 on behalf of NTDC were accepted by the Petitioner and that the total bid price remained intact. Further, by no stretch of imagination, it could be concluded that the Petitioner had refused to accept the arithmetic corrections according to the criteria for such corrections laid down in Clause IB 26.2. Therefore, the impugned Order dated 30.11.2022 qua rejection of bid of the Petitioner and forfeiture of its bid security is based on erroneous assumption that the Petitioner had refused to accept the arithmetic errors, as such, the decision to forfeit bid security was unlawful.

Conclusion: i) A Constitutional Petition under Article 199 of the Constitution is maintainable in view of Rule 48(7) of the Public Procurement Rules, 2004 which provides remedy of appeal and is subject to depositing the prescribed fee.
ii) In the interpretation of documents, ambiguities are to be construed unfavorably to the drafter.
iii) The bid of the bidder can be rejected and his bid security is liable to be forfeited only if he does not accept the correct amount of bid.

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35. **Lahore High Court**
Muhammad Ali Khan v. Additional District Judge etc.
Writ Petition No. 15918/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC795.pdf

Facts: The present constitutional petition is directed against the impugned judgments and decrees of the Courts below passed in favour of the respondent, inter alia, in respect of dower recorded in column No.16 of her nikahnama with the petitioner.

Issues: i) Whether the presumption of truth is attached to a registered nikahnama and how the same can be rebutted?
ii) What is the meaning of legal maxim "Allegans Contraria Non Est Audiendus"?
iii) Whether the obligation of husband regarding payment of dower of immovable property gets discharged upon mere transfer of ownership of dower property in the name of his wife without delivering its possession?
iv) Whether the husband after fixation of dower in a marriage contract can resile from the same?

Analysis: i) Needless to mention that presumption of truth is attached to a registered nikahnama and the same can only be rebutted if a defendant (groom/petitioner in the instant case) puts forth some cogent evidence.
ii) As a matter of fact, the case of the petitioner squarely falls within clutches of the legal maxim "Allegans Contraria Non Est Audiendus" (A person who alleges things contradictory to each other is not to be heard) disentitling the petitioner to

any relief.

iii) Suffice to observe that a wife has a right to claim the dower and if such dower is in the form of immovable property, she is not only entitled to transfer of said immovable property in her name but also to utilize the same. Failure on part of the petitioner to handover possession of the property, transferred in the name of the respondent, pursuant to the impugned decree means that the said resource (property/dower of the respondent) would remain in the hands of the petitioner and the respondent has no control over how and when (and/or upon whom) it could be spent. Therefore, this Court is of the opinion that unless possession of the immovable property constituting dower of a wife is given to her, and/or the share of the produce thereof is paid, in essence, the obligation to pay the dower has not been discharged by the husband.

iv) Once the dower is fixed, the husband in a marriage contract cannot resile from the same while observing that our society is male dominating and the men in discharge of their matrimonial duties often forget the commands of the religion when it comes to their own obligations and are more concerned about their rights

Conclusions: i) Presumption of truth is attached to a registered nikahnama and the same can only be rebutted through some cogent evidence.

ii) The legal maxim "Allegans Contraria Non Est Audiendus" means a person who alleges things contradictory to each other is not to be heard.

iii) Unless possession of the immovable property constituting dower of a wife is given to her, and/or the share of the produce thereof is paid, in essence, the obligation to pay the dower has not been discharged by the husband.

iv) Once the dower is fixed, the husband in a marriage contract cannot resile from the same.

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36. **Lahore High Court**
Muhammad Shafique v Director General, Punjab Emergency Service, Lahore etc.
W.P No.6339/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC874.pdf

Facts: The petitioner assailed the order of the respondents, wherein he was removed from the service on account of absence from duty. Hence, this constitutional petition.

Issues: i) Whether absence without any application or prior permission may amount to unauthorized absence?

ii) What is meant by absence from duty?

iii) How the departmental authorities deal the cases of unauthorized absence from the duty?

iv) Whether the result of criminal proceedings have bearing on the departmental proceedings?

Analysis: i) Absence without any application or prior permission may amount to unauthorized absence, but it does not always mean that the same is willful. If the absence is the result of compelling circumstances under which it was not possible for an employee to report or perform duty, such absence cannot be held to be willful. Such compelling circumstances due to which an employee might have absented himself is a matter to be considered on case to case basis. In all such cases where absence is not willful, the employee cannot be held guilty of failure of devotion to the duty or behaviour unbecoming of a government servant.

ii) Absence from duty exhibits lack of devotion on part of an employee towards the duty leading to indiscipline in the work culture of an organization and such act cannot be countenanced. However, at the same time, court cannot lose sight of the fact that a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before drawing the conclusion that an employee is guilty of misconduct in general and imposing major punishment of removal from service in particular.

iii) Unauthorized absence from the duty entails two options before the departmental authorities. Firstly, that unauthorized absence may be condoned by treating it as ex-post facto leave if the explanation offered by the accused employee is found to be justified; and secondly, if the employee does not appear or the explanation offered is found not to be satisfactory, the disciplinary proceedings may be initiated against such employee that may result in imposition of penalty, which may range from a major penalty of dismissal or removal from service to a minor penalty of censure or withholding of increment for a specific period, mainly depending upon number of factors, which inter alia, include the nature of service, the position (duty) of the employee in that service, the period of absence and the cause for the absence. Thus, it becomes clear that where an absent employee comes back and seeks to join his duty, the departmental authorities are obligated to determine whether the unauthorized absence was willful or was the result of such compelling circumstances which were beyond the control of the employee.

iv) There is no cavil to the proposition of law that the result of criminal proceedings cannot have bearing on the departmental proceedings but this proposition of law is relevant where departmental proceedings and criminal proceedings are based upon same occurrence and mere exoneration in criminal proceedings do not absolve the delinquent official from the departmental proceedings as both involve different standards of proof.

Conclusion: i) Absence without any application or prior permission may amount to unauthorized absence, but it does not always mean that the same is willful.

ii) Absence from duty exhibits lack of devotion on part of an employee towards the duty leading to indiscipline in the work culture of an organization and such act cannot be countenanced.

iii) Unauthorized absence from the duty entails two options before the departmental authorities. Firstly, that unauthorized absence may be condoned by treating it as ex-post facto leave if the explanation offered by the accused employee is found to be justified; and secondly, if the employee does not appear or the explanation offered is found not to be satisfactory, the disciplinary proceedings may be initiated against such employee that may result in imposition of penalty.
iv) The result of criminal proceedings cannot have bearing on the departmental proceedings.

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37. **Lahore High Court**
Mujtaba Saleem Butt v. Incharge Investigation, etc.
Crl. Misc. No. 10162-H/2024
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC771.pdf

Facts: Through this Habeas Petition filed under Section 491 of the Code of Criminal Procedure, 1898, the petitioner seeks the recovery of his son (*'the Detenu'*). In pursuance of the order of this Court, the Detenu was produced before the Court by Respondent No. 2, Sub-Inspector of Anti Vehicle Lifting Squad. It has been stated by Respondent No.2 that the Detenu was arrested in connection with an FIR initially registered under Section 381-A of Pakistan Penal Code, 1860 with another Police Station.

Issues: i) What is the requirement of Rule 26.21(6) of The Punjab Police Rules, 1934?
ii) What is the effect of approach of allowing law enforcement agencies and prosecution to add new offences and doing prosecutorial maneuvers and arrest the accused by adding offences after he was bailed out?
iii) Whether addition of offences after the grant of bail can serve as a *carte blanche* for investigating agencies to circumvent the due process rights of the accused.
iv) Whether principle of not re-arresting the accused on addition of offences without first seeking cancellation of bail can be extended to pre-arrest bail as well?

Analysis: i) …The above-provided Rule explicitly requires that in cases where an accused has already been released on bail for certain charges, any intention to arrest the accused for additional charges must be accompanied by an application for the cancellation of bail, presented before the competent court as envisaged under Section 497(5) of the Code, which shall be decided after issuance of notice to the accused… The legal position that emerges from the above discussion is that once an accused person has been granted bail, he cannot be arrested by the investigating agency without seeking cancellation of bail granted by the court of competent jurisdiction by way of filing an application under Section 497(5) of the Code. Rule 26.21(6) of the Rules mandates that any such action must be taken

with explicit permission of the Court, ensuring judicial oversight, and safeguarding the rights of the accused.

ii) Moreover, this approach opens Pandora box of legal uncertainties, where the grant of bail could be rendered nugatory by the subsequent prosecutorial maneuvers. It establishes a precedent that could lead to rampant abuse of power, allowing for the detention of individuals ad infinitum, by the simple device of adding new offences against them. The prospect of such unbridled discretion vested in the investigating agency is antithetical to the rule of law and the principles of justice and equity. This practice would not only undermine the sanctity and finality of judicial decisions but also endanger the foundational principles of our legal system that aim to protect individual liberties against arbitrary detention. Such an approach would give law enforcement agencies a de facto license to frustrate judicial orders, enabling them to detain any bailed-out accused at will by the simple expedient of adding new charges.

iii) Therefore, it is incumbent upon this Court to staunchly oppose such practices that imperil the liberty of the citizenry and detract from the integrity of the judicial process. The arrest of an individual granted bail by a Court of competent jurisdiction, without first seeking the cancellation of said bail on legitimate grounds, is an affront to the procedural safeguards designed to protect against the misuse of state power. The addition of offences after the grant of bail cannot serve as a *carte blanche* for investigating agencies to circumvent the due process rights of the accused.

iv) The principle of not re-arresting a bailed-out accused without seeking cancellation of bail aligns with the broader legal principles of fairness, predictability, and respect for judicial decisions. Extending this principle to pre-arrest bail cases does not represent a radical departure from established legal norms but rather an affirmation of the law's inherent values. It acknowledges that the rationale preventing arbitrary re-arrest post-bail applies with equal force to those admitted to pre-arrest bail, as both scenarios involve individuals who, in the eyes of the law, should not be detained without compelling, judicially scrutinized reasons.

Conclusion: i) Requirement of Rule 26.21(6) of The Punjab Police Rules, 1934 is that where an accused has already been released on bail for certain charges, any intention to arrest the accused for additional charges must be accompanied by an application for the cancellation of bail and re-arrest should be with the permission of the court.

ii) It establishes a precedent that could lead to rampant abuse of power, allowing for the detention of individuals ad infinitum, by the simple device of adding new offences against them and also gives law enforcement agencies a de facto license to frustrate judicial orders.

iii) No, the addition of offences after the grant of bail cannot serve as a *carte blanche (complete freedom to act as one wishes)* for investigating agencies to circumvent the due process rights of the accused.

iv) The principle of not re-arresting a bailed-out accused without seeking cancellation of bail aligns and extending this principle to pre-arrest bail cases does not represent a radical departure from established legal norms but rather an affirmation of the law's inherent values.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in "The Lahore Development Authority Private Housing Schemes Rules,2014" in Rules 36, 10, 12, 13, 31, 39, 40, 46, 49, 51 and 54 vide Notification No.SO (H-II)3-11/2023 published in the official Punjab Gazette through Notification No.23 of 2024 dated 16.02.2024.
2. Amendment in "The Punjab Government Rules of Business, 2011" in the 2nd schedule, under the heading "INDUSTRIES, COMMERCE, INVESTMENT AND SKILLS DEVELOPMENT DEPARTMENT" vide Notification No.SO (Cab-I)2-53/1988 (ROB) published in the official Punjab Gazette through Notification No.26of 2024 dated 20.02.2024.
3. Vide Notification No.27 of 2024 dated 21.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has published Draft of Rules under the title of "the Punjab Drug Rules, 2007" following public notice seeking objections and suggestions.
4. Amendment in "The Price Control and Prevention of Profiteering and Hoarding Act, 1977" through insertion of section 6A vide Notification No. F. 9(53)/2023-Legis. published in the official Punjab Gazette through Act No. LXIV of 2023 dated 14.09.2023.
5. Vide Act No. LXV of 2023 dated 131.10.2023 published in the official Pakistan Gazette, The Majlis-e-Shoora (Parliament) after assent of the President passed "The Federal Prosecution Service Act, 2023".
6. Vide Ordinance No. VIII of 2023 dated 27.12.2023 published in the official Pakistan Gazette, the President has promulgated "The Establishment of Telecommunication Appellate Tribunal Ordinance, 2023".
7. Vide Ordinance No. I of 2024 dated 14.02.2024 published in the official Pakistan Gazette, the President has promulgated "The Apostille Ordinance,2023".
8. Vide Ordinance No. II of 2024 dated 15.02.2024 published in the official Pakistan Gazette, the President has promulgated "The Seed (Amendment) Ordinance,2024" in connection with amendments in the preamble, sections 2, 3, 4, 6, 10, 12, 16, 22, 23, 24, 25, 29 and 30 of Act XXIX of 1976, along with insertion of New sections 3A, 3B, 3C, 3D, 3E, 4A, 24A, 24B, 24c and 30 in the Act XXIX of 1976.
9. Vide Ordinance No. III of 2024 dated 16.02.2024 published in the official Pakistan Gazette, the President has promulgated "The Indus River System Authority (Amendment) Ordinance, 2024" in connection with amendments in section 2, 4, 5, 6, 7, 8, 10, 12, 14, 19, 22 of Act XXII of 1992, along with

insertion of New sections 8A, 10A,10B, 3C, 3D, 3E, 4A, 24A, 24B, 24c and 30 in the Act XXII of 1992.

10. Vide Ordinance No. IV of 2024 dated 16.02.2024 published in the official Pakistan Gazette, the President has promulgated "The Cannabis Control and Regulatory Authority Ordinance, 2024".

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/THE-CHANGING-FACE-OF-FREE-SPEECH-A-STUDY-OF-ARTICLE-19-IN-THE-DIGITAL-AGE-IN-INDIA

The Changing Face of Free Speech: A Study of Article 19 In the Digital Age in India by Tushar Sharma

In the digital age, India's narrative of free speech has encountered both evolution and turbulence. Rooted in the democratic ethos, Article 19 of the Indian Constitution safeguards this freedom, reflecting the country's commitment to upholding a citizen's right to express. With the proliferation of online platforms—ranging from social media to news portals—the citizens have found dynamic avenues to articulate their viewpoints. As Nelson Mandela once said, "To be free is not merely to cast off one's chains but to live in a way that respects and enhances the freedom of others." However, this freedom has its pitfalls in the digital realm: the rapid dissemination of misinformation and the perils of divisive rhetoric. This research delves into the protective umbrella of Article 19 of the Constitution, emphasizing its pivotal role in safeguarding expression. The current landscape necessitates a balance, a careful navigation between the unrestricted flow of opinions and the dangers of digital misinformation. Issues of censorship, both governmental and self-imposed, further complicate this balance. As the world envisages the future of India's digital discourse, it becomes paramount to ensure that the sanctity of free speech, as championed by Article 19, is preserved, yet responsibly exercised. Conclusively, the paper underscores the imperative of navigating the nuanced balance between unbridled digital expression and the responsibilities accompanying it, all through the lens of Article 19.

2. MANUPATRA
https://articles.manupatra.com/article-details/THE-ROLE-OF-ADR-IN-RESOLVING-DISPUTES-RELATED-TO-MEDICAL-NEGLIGENCE

The Role of Adr In Resolving Disputes Related to Medical Negligence by Divyansh Singh Sisodiya, Satyam Dwivedi

In today's fast-paced world, a rapid rise in instances of Medical Negligence has been observed since the last decade. Cases of Medical Negligence happen when healthcare practitioners like doctors, and nurses, or when any hospital deviates from its standard duty of care, the consequence of which results in harm and injury to a patient. Due to the failure of medical professionals to exercise due care, individuals and their families may pursue recompense for the injuries suffered as a result of the misconduct and negligence exhibited by doctors, nurses, or other healthcare practitioners. The disputes related to medical negligence are generally settled by the traditional justice system i.e., Litigation

which involves appearing before the Hon'ble Court and having a Judge decide on a particular dispute in question. In light of the protracted and costly nature of our nation's legal system, which often yields results that may not meet the parties' desired outcomes, alternative dispute resolution (ADR) mechanisms, including arbitration and mediation, have emerged as prominent approaches for resolving medical malpractice disputes involving healthcare practitioners. These ADR procedures are currently considered as feasible alternatives to the extended and expensive litigation procedure. ADR mechanism enables disputing parties to let them resolve their disagreements outside the court in a more cooperative as well as efficient manner. A mediator is a neutral third party that encourages conversation between opposing parties and eventually assists them in reaching an equitable settlement agreed upon by both disputing parties. In contrast, a neutral third person, knownas an arbitrator, participates in the arbitration court and listens to the evidence of the parties engaged in the dispute before making a binding judgment on the case's conclusion.

3. MANUPATRA

https://articles.manupatra.com/article-details/THE-IMPACT-OF-POLITICAL-INFLUENCE-AND-POWER-ON-THE-INDIAN-JUDICIARY

The Impact of Political Influence and Power on The Indian Judiciary by Aayush Kumar, Anirudh Singh

The growing influence and power of political entities have presented significant obstacles to the autonomy of India's judiciary. The Principles on the Independence of the Judiciary emphasize the significance of impartiality in rendering judgments, wherein decisions are made only on the basis of factual evidence and legal principles, without any undue limitations or inappropriate influences. The principle of separation of powers, which ensures the independence of the judiciary, is particularly highlighted in terms of the judiciary's role and its relationship with other branches of government. This research provides a critical analysis of the influence of political factors and power dynamics on the Indian Judiciary. It examines the complex connection between political forces and judicial rulings, investigating situations when the judiciary could be influenced by external pressures. Further, the research offers a comprehensive examination of how the legislative and executive branches of government utilize statutory provisions to reverse judicial rulings. It also explores the significance of the Separation of Powers concept within the Indian context. Moreover, it provides illustrations of cases in which such encroachment of authority has taken place inside the Judiciary, emphasizing the difficulties encountered by the Indian Judiciary in preserving its autonomy and probity. It emphasizes the need to protect the autonomy of the judiciary in a democratic society, while also highlighting the difficulties encountered while trying to act as a fair and unbiased judge. This research makes a valuable contribution to the wider academic discussion around the function of the Judiciary in democratic government and the vital responsibility of safeguarding its independence and integrity.

4. ACADEMIC.OUP

https://academic.oup.com/arbitration/advance-article-abstract/doi/10.1093/arbint/aiae010/7629016?redirectedFrom=fulltext

The Use of Technology in Case Management in International Investment Arbitration: A Realistic Approach by Ahmet Cemil Yildirim

Investment arbitration, with its unique demands for transparency due to the public interest, is an especially promising arena for AI technologies. This transparency push and the judicialization of processes make investment arbitration increasingly amenable to technological innovations. However, the full potential of artificial intelligence (AI) in streamlining international investment arbitration case management remains largely untapped. The key to unlocking this potential lies in digitalization of data and procedures, and inter-institutional collaboration to share data. The literature regarding the use of technology in international arbitration mainly focuses on AI and its potential use in international arbitration in the future. While much of this literature speculates about the future, a holistic understanding of the present state of technology in international investment arbitration is crucial. This article spotlights the advancements achievable in case management in international investment arbitration using today's available technologies. The current state of AI technology is primed for handling straightforward procedural tasks. Yet, these modest tasks occupy significant bandwidth in the agendas of arbitral institutions and tribunals. Once comprehensive digitalization is achieved, and AI technologies are integrated into international investment arbitration case management adeptly, that will be a significant step towards more expeditious and cost-effective arbitration procedures.

5. ACADEMIC.OUP

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The Resurgence of Standing in Judicial Review by Joanna Bell

It is now commonplace for courts to remark that standing to seek judicial review is 'context-sensitive'. The questions of how the courts adapt standing to context, and whether they do so appropriately, have, however, received remarkably little scholarly and judicial attention. This is perhaps because, until recently, there has been relatively little in the case law to spark scholarly interest. Standing, however, is in the midst of a resurgence. This article makes use of a distinction between three types of judicial review case—challenges to (i) favourable targeted, (ii) unfavourable targeted and (iii) non-targeted decisions—as a mode through which to explore the growing body of standing case law. In doing so, it both seeks to further understanding of how courts determine what constitutes a 'sufficient interest' and to highlight areas of the law in need of clarification or reconsideration.