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FORTNIGHTLY CASE LAW BULLETIN

(01-06-2024 to 15-06-2024)

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**
The Monal Group of Companies, Islamabad v. Capital Development Authority through its Chairman and others.
Civil Petition No. 305 of 2022 and CMA No. 892 of 2022.
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Naeem Akhtar Afghan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._304_2022_11062024.pdf

Facts: Through this Constitutional Petition, the petitioner has challenged the order of High Court which was passed in Writ Petition, wherein the lease agreement of the petitioner was declared void and without any legal effect.

Issue: Whether any lease, license, allotment or permission to operate restaurants in the National Park is contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979?

Analysis: Any lease, license, allotment or permission to operate restaurants in the National Park is contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979.

Conclusion: Yes, any lease, license, allotment or permission to operate restaurants in the National Park is contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979?

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2. **Supreme Court of Pakistan**
Capital Development Authority, Islamabad thr. its Chairman & others v. M. Sajid Pirzada
Civil Petition No.993/2014 and Civil Petition No. 1117/2014
Justice Qazi Faez Isa, CJ, Justice Irfan Saadat Khan, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._993_2014.pdf

Facts: Eight petitioners filed a Writ Petition before the High Court against Capital Development Authority, the Pakistan Environmental Protection Agency and petitioner No. 02. They alleged that 'CDA illegally, unlawfully changed the Master Plan and created new plots in the closed end Street and had sought a declaration that CDA could not do so and that it be restrained from approving the building plans in respect of the said plots and be directed to adhere to the Master Plan. The learned Single Judge allowed the petitions, cancelled the said plots, and further directed CDA to initiate departmental action against those who had violated the Master Plan. Petitioner no. 02 had also filed a separate Writ Petition seeking a restrain CDA from interfering in the peaceful possession and construction of a house on the Plot, which he had earlier purchased from a purchaser to whom it had been allotted. His Petition was dismissed. He assailed the said judgments in Intra Court, but they were dismissed, and the said decisions assailed.

Issues: i) Can an easement right be adjudicated under the constitutional jurisdiction of the High Court?
ii) What is the correct interpretation of the term 'Future Use' in the context of land designation, and does it imply that the land must be left open or used exclusively for amenity purposes, thereby affecting its allotment?

Analysis: i) In any case an easement right, if any, could not have been agitated in the constitutional jurisdiction of the High Court, nor in fact was this done.
ii) The learned counsel could not show what particular rights of the private respondents had been violated in allotting the said plots but he could not do so nor did he refer to any law which prevented CDA from utilizing, for the benefit of earlier allottees, land designated for 'Future Use'. The term 'Future Use' does not mean that the land is to be left open nor does it mean that it is to be used for amenity purposes, which may, have prohibited their allotment. Regretfully, these points were not considered by the learned Judges of the High Court.

Conclusions: i) An easement right could not be adjudicated within constitutional jurisdiction of the High Court.
ii) The term 'Future Use' does not mean that the land is to be left open nor does it mean that it is to be used for amenity purposes, which may, have prohibited their allotment.

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3. **Supreme Court of Pakistan**
Muhammad Aslam (decd.) thr. His LRs etc. v. Molvi Muhammad Ishaq (decd.) thr. L.Rs. etc.
Civil Appeals No.1429 to 1433/2014
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1429_2014.pdf

Facts: The Appellants assailed the order of High Court whereby it allowed petitions filed u/s 12(2) CPC and set aside decree passed in favour of the predecessor-in-interest of the appellants in preemption suits along with the execution proceedings and dismissed the preemption suits.

Issues: i) Is there always a presumption of correctness and sanctity attached with regard to judicial proceedings?
ii) If an Order of the lower Court merges in the order of the higher Court, whether the order of the lower Court is to be deemed as an order of the higher hierarchy?
iii) What is the period of limitation to file application u/s 12(2) of CPC?
iv) Whether anyone should suffer on account of a lapse on the part of a Court?
v) Are the concurrent findings of lower court liable to be struck down if based on misreading or non-reading of the material available on the record or the evidence and are a result of miscarriage of justice?

Analysis: i) Insofar as the veracity of the compromise is concerned, we find ourselves in agreement with the Learned Counsel for the Appellants that sanctity and assumption of truth is always attached to Court proceedings…..This Court in Muhammad Ramzan, Fayyaz Hussain, Waqar Jala Ansari, and recently in Abdul Aziz has held that there is always a presumption of correctness and sanctity attached with regard to judicial proceeding.

ii) It would also not be amiss to mention that the order of the High Court which was subsequently challenged in CPLA stood decided by this Court in the case of Abdul Qayyum, and in our view stood merged in the aforenoted Order of this Court. It is a settled proposition of law that if an Order of the lower Court merges in the order of the higher Court the order of the lower Court is to be deemed as an order of the higher hierarchy.

iii) It is also pertinent to mention that Applications under section 12(2) CPC were filed in the year 1990, i.e. after almost 11 years of the compromise, though it was averred that these applications were filed, after the entries of jamadbandi made in 1987 and hence were in time but equally true is the fact that in those Applications the main question agitated on behalf of the Respondents was with regard to the entering into compromise in a defective manner and thereafter, obtaining the decree by way of fraud or misrepresentation by the present Appellants. This Court in Sarfraz has held that:

"…Although under the provisions of the Limitation Act no specific time has been prescribed for filing of application under section 12(2), C.P.C., therefore, Article 181 of Limitation Act being residuary will govern such proceedings according to which maximum period of three years has been prescribed for filing the application under section 12(2), C.P.C."

Therefore, even in a hypothetical sense, if one were to count the period of limitation from 1987, the Applications under section 12(2) CPC were time barred.

iv) The legal maxim actus curie neminem gravabit is quite clear: 'an act of court shall prejudice no man.' It is also a settled proposition of law by this Court that no one should suffer on account of a lapse on the part of a Court.

v) We are mindful of the fact that usually concurrent findings of the lower Courts are not to be is disturbed and interfered with but in cases where such findings are found to be erroneous and perverse, they are liable to be struck down if based on misreading or non-reading of the material available on the record or the evidence and are a result of miscarriage of justice.

Conclusion: i) There is always a presumption of correctness and sanctity attached with regard to judicial proceedings.

ii) If an Order of the lower Court merges in the order of the higher Court the order of the lower Court is to be deemed as an order of the higher hierarchy.

iii) The period of limitation to file application u/s 12(2) of CPC is three years.

iv) No one should suffer on account of a lapse on the part of a Court.

v) The concurrent findings of lower court are liable to be struck down if based on misreading or non-reading of the material available on the record or the evidence

and are a result of miscarriage of justice.

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4. **Supreme Court of Pakistan**
Amir Sultan etc., v. Adjudicating Authority-III EOBI, Islamabad and another etc.
C.P.L.A No.3531/2021 etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3531_2021_13062024.pdf

Facts: Two sets of judgments from different High Courts are impugned here, whereby the relevant matters were decided in favour of the Employees' Old-Age Benefits Institution and persons/respondents respectively. Hence there have been conflicting opinions of the respective High Courts on the interpretation of Section 22(2) of the Employees' Old-Age Benefits Act, 1976.

Issue: What are the requirements to be fulfilled in order to avail the exception under Section 22(2) of the Employees' Old-Age Benefits Act, 1976?

Analysis: Under Section 22(1) of the Employees' Old-Age Benefits Act, 1976, an insured person is entitled to monthly old-age pension at the rate specified in the Schedule to the Act ibid; (i) if he is sixty years of age or fifty five years in case of a woman and (ii) contribution in respect of him were paid for not less than fifteen years. Section 22(2) of the Act ibid provides an exception to the above to the effect that an insured person will also be entitled to an old-age pension if he, on 1st July 1976 or on any day thereafter on which Act ibid becomes applicable to the industry or establishment was; (i) over forty years of age or thirty five years in case of a woman, and contribution in respect of him was paid for not less than seven years or (ii) over forty five years of age or forty years in case of a woman, and contribution in respect of him was paid for not less than five years.The first cut-off date i.e., first day of July 1976 is the date when the Act ibid was implemented. The second cut-off date is when the Act ibid becomes applicable to an industry or establishment. Section 1(4) of the Act ibid provides three different modes through which the Act ibid becomes applicable to an industry or establishment. It is at these two points in time when the age of the insured person in terms of Section 22(2)(i) and (ii) becomes relevant for invoking the exception of reduced years of contribution under the said provision. The age of the insured person alone is not the determining factor for the case to fall within the exception under Section 22(2) but it is also that the age must be so at the relevant cut-off dates mentioned above.

Conclusion: To avail the exception under Section 22(2) of the Employees' Old-Age Benefits Act, 1976, the insured person must satisfy that he was in employment in the industry or establishment on the first day of July 1976 or on the day the Act ibid

became applicable to such an industry or establishment and was of the age mentioned in Section 22(2)(i) and (ii) of the Act ibid.

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5. **Supreme Court of Pakistan**
Muhammad Ashraf v. The Chief Engineer (Administration), WAPDA, and others
Civil Review Petition No.1077/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._1077_2023.pdf

Facts: Through the present Review Petition, the petitioner sought a review of the order passed Hon'ble Judge in Chamber whereby his appeal filed against an order of the Registrar was dismissed and the said order was maintained. The Registrar had returned a CMA being not entertainable of the petitioner filed for restoration of his CMA.

Issue: Whether the Registrar's original order returning a petition and the Judge-in-Chambers's appellate order maintaining it are both administrative in nature and whether a review petition against these orders is entertainable?

Analysis: Both the Registrar's original order returning the petitioner's CMA and the appellate order maintaining that order were administrative in nature. Therefore, we asked the petitioner to specify under which provision of the Constitution or the Rules he has filed the present review petition. He, however, could not cite any such provision. It hardly needs clarification that Article 188 of the Constitution and Order 26 of the Rules pertain to the review of judicial orders, not administrative orders (…) As held by this Court in Fazal Muhammad on the judicial side and reiterated in Ahsan Abid on the administrative side, a petition that does not fall within the scope of any provision of the Constitution, the law or the Rules is "frivolous" and should not be received/entertained by the Registrar, as per Rule 5 of Order 17 of the Rules. The office must be vigilant about this legal position and perform its administrative duty in this regard with due diligence.

Conclusion: The Registrar's original order returning a petition and the Judge-in-Chambers's appellate order maintaining it are both administrative in nature and a review petition against these orders is not entertainable.

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6. **Supreme Court of Pakistan**
Muhammad Safeer and others v. Muhammad Azam and others
Civil Petitions No. 888 of 2024
Mr. Justice Munib Akhtar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._888_2024.pdf

Facts: The petitioners have invoked the jurisdiction of Supreme Court conferred under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 and they have sought leave against the judgment, passed by the High Court whereby the petition filed under Article 199 was dismissed solely on the ground of

maintainability.

Issues: i) Whether there is any exception to the general rule that the High Court will not ordinarily entertain a petition under Article 199 when an adequate remedy is available?
ii) Is the scope of a review distinct from that of an appeal?
iii) What are grounds for exercising the power of review under sub-section (1) of section 8 of the Punjab Board of Revenue Act 1957?
iv) Can remedies provided under sub-section (1) of Section 8 of the Punjab Board of Revenue Act 1957 be considered adequate for the purposes of exercising jurisdiction under Article 199 of the Constitution?

Analysis: i) It is settled law that the rule that the High Court will not ordinarily entertain a petition under Article 199 when an adequate remedy is available and such remedy only regulates the exercise of constitutional jurisdiction and does not affect its existence. When the law provides an adequate remedy, constitutional jurisdiction under Article 199 will ordinarily only be exercised in exceptional circumstances. The exceptional circumstances which may justify exercising jurisdiction when an adequate remedy is available are when the order or action assailed before the High Court is palpably without jurisdiction, manifestly malafide, void or corum non judice. The tendency to bypass a statutory remedy is ordinarily discouraged so that the legislative intent is not defeated. The High Court, while exercising its discretion, must take into consideration the facts and circumstances in each case in order to determine whether the remedy provided under the statute is illusory or not. These principles have been consistently highlighted by this Court.
ii) The power of review stems from the statute and, therefore, it is to be exercised by a court or an authority having regard to the conditions and limitations expressly prescribed by the legislature. The scope of review is distinct from that of an appeal. In case of an appeal all questions of fact and law are to be considered but the scope of a review is limited to the conditions and limitations expressly provided under the relevant statue which confers the power.
iii) Sub-section (1) of section 8 of the Act of 1957 sets out the scope and the grounds for exercising the power of review. The three grounds expressly stated in section 8(1) of the Act of 1957 are:(i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the person seeking review at the time when the decree was passed or the order was made, (ii) some mistake or error apparent on the face of the record and lastly, ‘for any other sufficient reason’. The review jurisdiction conferred under section 8 of the Act of 1957 is, therefore, confined and limited to the said three grounds. This Court has held in the case of Muhammad Din that the expression ‘for any other sufficient reason’ does not extend to every cause which would make the remedy by way of review available but such cause must be relatable to the circumstances as discovery of new and important matter or some mistake or error apparent on the face of the record. The expression, therefore, is to be read ejusdem generis with the preceding

expressions or grounds. Any other interpretation would change the nature of the review contrary to the legislative intent, because the legislature had indeed not intended to provide the remedy of an appeal. The scope of the review jurisdiction under section 8 of the Act of 1957 is, therefore, restricted to the grounds expressly prescribed by the legislature.

iv) Any ground taken and not covered within the scope of the jurisdiction of review provided under section 8 of the Act of 1957 would have rendered the remedy illusory and definitely not adequate for the purposes of exercising jurisdiction under Article 199 of the Constitution. This Court, in the case of Syed Asad Hussain has observed that the expression adequate remedy represents an efficacious, reachable, accessible, advantageous and expeditious remedy.

Conclusion: i) There are exceptional circumstances which may justify exercising jurisdiction when an adequate remedy is available are when the order or action assailed before the High Court is palpably without jurisdiction, manifestly malafide, void or corum non judice.

ii) The scope of review is distinct from that of an appeal.

iii) There are three grounds expressly stated in section 8(1) of the Act of 1957 are: (a) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the person seeking review at the time when the decree was passed or the order was made, (b) some mistake or error apparent on the face of the record and lastly, 'for any other sufficient reason'.

iv) Remedies provided under sub-section (1) of Section 8 of the Punjab Board of Revenue Act 1957 cannot be considered adequate for the purpose of exercising jurisdiction under Article 199 of the Constitution.

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7. **Supreme Court of Pakistan**
Rashid Baig etc. v. Muhammad Mansha etc.
Civil Petition No.925-L of 2018
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._925_l_2018.pdf

Facts: The petitioners through this Petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, challenged the orders of High Court, revisional court and trial court, wherein their application for summoning of revenue officers as witnesses was dismissed.

Issues: i) Whether every interim order needs to be challenged during pendency of the suit?

ii) Whether a party is bound to show that the order challenged through the constitutional jurisdiction is without jurisdiction?

iii) Whether trial court can stay the proceedings of trial or execution or sine die adjourn the same without any injunctive order during its pendency before High Court or Supreme Court?

iv)Whether execution proceedings and trial court proceedings are automatically stayed when a petition is filed with the Supreme Court?

Analysis: i) When a party challenges any interim order during the pendency of a suit under revisional jurisdiction or constitutional jurisdiction vested in the revisional court or the High Court, that court has to exercise the jurisdiction keeping in view that it is an interim order, as every interim order need not to be challenged at that stage because it is now settled that when a suit is finally decided by the trial court, all the interim orders become open in appeal, if there is a defect in the interim order that is open to scrutiny at the stage of final appeal, as the first appeal is continuation of a trial and first appellate court is a court of fact and law. But, if a party to the suit opts to challenge an interim order when it is passed through appellate jurisdiction, revisional jurisdiction or constitutional jurisdiction, while exercising such jurisdiction the scope of jurisdiction vested in the court must be in the view of the party challenging the same and the court while dealing with the interim order must also keep in view the scope of jurisdiction to scrutinize the interim orders.

ii) When a party comes to the High Court in constitutional jurisdiction, he is bound to show that the order challenged through the constitutional jurisdiction is without jurisdiction then the High Court can exercise the constitutional jurisdiction to declare the order as such. When an order has been passed while exercising discretion, the same cannot be declared by any stretch of imagination to be without jurisdiction.

iii) When the matter is pending before the High Court or Supreme Court, the learned trial court on the move of any of the parties or even without reference of any of the parties stays the proceedings of the trial court or the proceedings of the execution or sine die adjourn the same in order to wait for the final determination or decision of the court. if said practice is carried on by the parties or even learned trial court while ignoring all these factors i.e. sine die adjourning the proceedings or stays the proceedings of the suit without any injunctive order, will face the consequences of said illegal order.

iv) The execution proceedings as well as the proceedings before the learned trial court do not automatically stay when the petition is filed before Supreme Court unless an injunctive order is granted by it. When the injunctive order is not granted, the parties to the proceedings applying for stay of the proceedings or execution without any injunctive order and in some eventualities after refusal of injunctive order from it the parties to the proceedings before the learned trial court apply for stay of execution or proceedings in the suit which is not only a clear cut abuse of process of law but it is contempt of court.

Conclusion: i) Every interim order needs not to be challenged.

ii) A party is bound to show that the order challenged through the constitutional jurisdiction is without jurisdiction.

iii) The trial court cannot stay the proceedings of trial or execution or sine die

adjourn the same without any injunctive order during its pendency before High Court or Supreme Court.

iv)The execution proceedings, as well as the proceedings before the trial court, do not automatically stay when the petition is filed with the Supreme Court, unless an injunctive order is issued.

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8. **Supreme Court of Pakistan**
Muhammad Arshad (deceased) through LRs. v. Bashir Ahmad (deceased) through LRs and others
Civil Appeals No. l38-L & 139-L/2010
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._138_l_2010.pdf

Facts: Leave has been granted in this matter to decide the question as to whether the period of 30 days for deposit of "Zare Soim" shall start from the date of institution of suit or from the order made by the learned trial court before expiring of 30 days as provided in Section 24 of Punjab Pre-emption Act, 1991.

Issue: Whether in the light of section 24 of the Punjab Preemption Act, 1991 "Zare Soim" is to be deposited within 30 days from the date of filing of the suit or from the date of order passed by the court?

Analysis: It is settled that plaintiff is required to deposit "Zare Soim" within 30 days from the date of filing of suit for pre-emption because the power/discretion of the Court to extend time as envisaged by section 148 of the C.P.C is only available to the Court, where the time has been fixed, by the Court itself or under the Code of Civil Procedure, but where the time for the performance of an act has been fixed by some other statute, the Court in terms of section 148, C.P.C. has no jurisdiction at all to enlarge and extend that time.

Conclusion: It is settled that plaintiff is required to deposit "Zare Soim" within 30 days from the date of filing of suit for pre-emption.

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9. **Supreme Court of Pakistan**
Shah Madar Khan v. Tariq Daud and others
Civil Petition No.3877/2023
Mr. Justice Yahya Afridi, Mr. Justice Amin-Ud-Din Khan, Mrs. Justice Ayesha A. Malik.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3877_2023.pdf

Facts: A suit was filed by respondent /plaintiff for declaration that he be declared owner of the suit plot. Trial court was pleased to dismiss the suit. The appeal was preferred. The first appellate court was pleased to accept the appeal and decreed the suit. The High Court also agreed with the findings recorded by the first appellate court and dismissed the civil revision. Hence, this Petition.

Issues: i) What nature of pleadings is required for challenging a document?

ii) What legal implications arise when a party fails to challenge the execution and registration of a document in his pleadings, does not initiate a comparison of signatures and thumb impressions to prove the document's authenticity and fails to discharge the initial onus of proof?

iii) What is the appropriate legal remedy for a plaintiff who seeks to challenge a registered power of attorney?

Analysis: i) Despite the fact that as per pleadings of the plaintiff himself after examining the documents in the office of City Development and Municipal Department, he came to know about the power of attorney and the transfer documents. He did not implead defendant No. 3 as the series of the facts suggest that defendant No. 2 was attorney of the plaintiff-respondent and he transferred the suit plot in favour of defendant No. 3 through registered Sale Deed and thereafter, defendant No. 1 purchased the said plot from defendant No. 3. Plaintiff has not specifically challenged any of the above said documents. He has generally denied the appointment of the attorney and further execution of sale deeds by his attorney. For challenging a document we are clear in our mind that there must be specific pleadings.

ii) In the instant case we are clear in our mind that plaintiff-respondent who has not specifically challenged the execution and registration of power of attorney in his pleadings when his case is that he has seen said document in the office of City Development and Municipal Department, further he himself produced the copy of said document as Exh.PW-1/1 and failed to discharge initial onus of negation of the registration of the document, it was very easy and simple for the plaintiff to get his signatures and thumb impression upon the impugned document compared with his sample signatures and thumb impressions but he has not opted to initiate this legal process. In these circumstances, when plaintiff failed to discharge initial onus, no question of shifting of onus upon the vendee/defendant or Attorney who has fully supported that he being validly constituted attorney of the plaintiff, sold the plot to defendant No. 3 who was initially not made party to the suit and was subsequently made party and further defendant No. 3 sold the plot to defendant No. 1 the petitioner before this Court.

iii) We are further of the view that when registered power of attorney by plaintiff in favour of defendant No. 2 proved, plaintiff was if at all having the right to challenge the suit document through filing a suit for cancellation of document under section 39 of the Specific Relief Act, 1877 and not a suit for declaration filed under section 42 of the Act.

Conclusions: i) For challenging a document, there must be specific pleadings.

ii) When a party fails to challenge the execution and registration of a document in his pleadings and does not initiate a comparison of signatures and thumb impressions to prove the document's authenticity means that he fails to discharge initial onus, then no question of shifting of onus upon the other party.

iii) The appropriate legal remedy for a plaintiff seeking to challenge a registered

power of attorney is to file a suit for cancellation of the document under Section 39 of the Specific Relief Act, 1877, rather than filing a suit for declaration under Section 42 of the same Act.

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10. **Supreme Court of Pakistan**
Ahmad Nawaz etc. v. The State & another
Crl. PLA No.458/2024 & 459/2024
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._458_2024.pdf

Facts: The petitioners sought leave to appeal against the orders of Lahore High Court, Lahore, whereby the pre-arrest bail was declined to them in case arising from FIR lodged under sections 420/468/471 PPC.

Issue: Whether it is better to err in granting bail than to err in refusal?

Analysis: Liberty of a person is a precious right which has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. By now it is also well settled that it is better to err in granting bail than to err in refusal because ultimate conviction and sentence can repair the wrong resulted by a mistaken relief of bail.

Conclusion: It is better to err in granting bail than to err in refusal.

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11. **Supreme Court of Pakistan**
Adnan Shafai v. The State & another
Crl.P.L.A No.238/2024
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._238_2024.pdf

Facts: The petitioner sought leave to appeal against the order of Lahore High Court whereby the post-arrest bail was declined to him under sections 109 and 409 PPC read with section 5(2) of the Prevention of Corruption Act, 1947 and Section 3/4 of Anti-Money Laundering Act, 2010.

Issues: Principles for grant of post-arrest bail on statutory ground.

Analysis: Under the third proviso to Section 497(1) of the Cr.P.C, a statutory ground exists for granting post-arrest bail to an accused due to delays in conclusion of the trial. A person accused of an offence not punishable by death has the right to be released on bail if they have been detained for over a year, provided the delay in the trial's conclusion was not caused by their actions or the actions of someone on their behalf, and situation does not fall under the fourth proviso to Section 497(1) of the Cr.P.C. This Court in the case of Shakeel Shah (2022 SCMR 1) elaborately explained the concept of bail on statutory grounds and ruled that it is subject to two exceptions: a) Delay in conclusion of the trial if occasioned by an act or omission of the accused or by any other person acting on his behalf; b) The

accused, a hardened, desperate or dangerous criminal, in the opinion of the Court.

Conclusion: See analysis part above.

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12. **Supreme Court of Pakistan**
Muhammad Anwar v. The State & another
Crl.PLA No.340/2024
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._340_2024.pdf

Facts: Through the present Petition, the petitioner sought leave to appeal against the order of Lahore High Court, Lahore whereby the pre-arrest bail has been declined to him in an FIR registered under Section 489-F PPC.

Issues: i) Whether a cheque given as security, prima facie attracts the elements of section 489-F PPC?
ii) Whether every transaction where a cheque is dishonoured may constitute an offense?

Analysis: i) Primarily, the agreement in question is executed between Petitioner and Muhammad Attique regarding the plot. The perusal of said agreement indicates that the cheque in question was issued as "Guarantee" from the petitioner to Muhammad Attique. The complainant has failed to produce any receipt issued by the petitioner while receiving cash amount of 2,00,000/-. The tentative assessment of the record shows that it is not toward the fulfillment of any obligation but rather it was given as security. Prima facie, it does not attract the elements of section 489-F PPC.
ii) This Court has held in the case titled Mian Allah Ditta, 1 that every transaction where a cheque is dishonoured may not constitute an offense. The foundational elements to constitute an offense under this provision are the issuance of the cheque with dishonest intent, the cheque should be towards repayment of loan or fulfillment of an obligation, and lastly that the cheque is dishonoured.

Conclusion: i) A cheque given as security, prima facie does not attract the elements of section 489-F PPC.
ii) Every transaction where a cheque is dishonoured may not constitute an offense.

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13. **Supreme Court of Pakistan**
Muhammad Hassan v. The State
J.P.No.120 of 2017
Muhammad Ibrahim v. The State
Cr.P.No.305-L of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali.
https://www.supremecourt.gov.pk/downloads_judgements/j.p._120_2017.pdf

Facts: In a Private Complaint arising out of an F.I.R., pertaining the offences under sections 302/ 324/211/148/149 of the Pakistan Penal Code,1860, the petitioner was convicted under section 302(b) P.P.C., and was awarded sentence of death as tazir alongwith compensation for the legal heirs of the deceased. The petitioner filed the Criminal Appeal before the learned High Court and the trial court transmitted the Murder Reference for confirmation or otherwise of the sentence of death awarded to the petitioner. Vide impugned judgment, appeal of the petitioner was dismissed whilst maintaining his conviction, but his sentence was altered from death to imprisonment for life and the Murder Reference was answered in negative, hence, this Jail Petition for Leave to Appeal seeking his acquittal. The complainant has filed the Criminal Petition for Leave to Appeal seeking to set aside the impugned judgment and uphold the judgment of the trial court imposing the death sentence on the petitioner.

Issues: i) What is the impact of unexplained delay in reporting the occurrence?
ii) What will be evidentiary value of the statements of such eye-witnesses who can not justify their presence at place of occurrence?
iii) Whether medical evidence may convert an unreliable witness into a reliable one?

Analysis: i) The failure of Prosecution to explain in evidence the reasons for delay in reporting the occurrence to the Police would show dishonesty on the part of the complainant.
ii) If the presence of the eye-witnesses at the scene at the relevant time of occurrence was not natural, then it was mandatory for them to justify their presence at the place of occurrence at the relevant time with some cogent reasons.
iii) The value and status of medical evidence is always corroborative in its nature. Corroboration means support or confirmation and corroborative evidence is some evidence other than the one it confirms. Corroboration minimizes errors in judicial proceedings and is dictated by prudence. The object of corroboration is to ensure the conviction of the guilty and to prevent that of innocents.

Conclusion: i) If reasons for delay in reporting the occurrence to the Police are not explained in prosecution evidence, then it would show that FIR was lodged with deliberation and consultation.
ii) If the eye-witnesses cannot justify the reasons for their presence at the place of occurrence at the relevant time, then they would be chance witnesses and their evidence would not be free from doubt.
iii) The medical evidence is mere a corroboratory evidence, which does not convert an unreliable witness into a reliable one.

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14. **Supreme Court of Pakistan**
Iftikhar Hussain alias Kharoo v. The State
Jail Petition No.195 of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/j.p._195_2017.pdf

Facts: Petitioner faced trial before the Additional Sessions Judge in case FIR registered under Section 302, PPC. After a regular trial, he was convicted under Section 302(b) PPC and sentenced to death along with compensation under Section 544-A Cr.P.C. to be paid to the legal heirs of the deceased. In default thereof, to further undergo six months simple imprisonment. Aggrieved of his conviction and sentence, the petitioner filed a criminal appeal, whereas the Trial Court transmitted the murder reference. Both these matters were taken up together by the High Court and through the impugned judgment, the sentence of the petitioner was altered into rigorous imprisonment for life while keeping the amount of compensation and imprisonment in default intact. Murder Reference was answered in the negative. Benefit of Section 382-B Cr.P.C. was also extended to him, hence this jail petition.

Issues: i) What effect does it have when the father and brother of the deceased do not shift or accompany the body to the hospital and also when their names are not mentioned in the inquest report?
ii) How can the fact of an accused absconding be used in relation to other evidence?
iii) Whether conviction of accused can be sustained on abscondence alone?
iv) What is the significance of the presumption of innocence in the criminal justice system, and how does it affect the burden of proof in a trial?

Analysis: i) It has been time and again ruled by this Court that delay in sending body for the post mortem is reflective of the absence of witnesses at the place of occurrence. Had they been present at the place of occurrence, they would have strived to save the life of deceased and immediately shifted him to the hospital. However, contrary to normal reaction, father and brother of deceased, here neither shifted the deceased to hospital nor accompanied him when the same was sent to hospital by the police. This behaviour alone creates a sufficient doubt in their presence at the place of occurrence… In view of the material contradictions in the statements of eye-witnesses and the fact that they did not accompany the deceased in the hospital and that their names were neither mentioned in Inquest report nor in post-mortem report as the identifiers of the dead body speaks volumes about the absence of the eye-witnesses at the place of occurrence. Hence, their testimonies are unreliable.
ii) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with substantive piece of evidence.

iii) …it was observed that conviction on abscondence alone cannot be sustained. In the present case, substantive piece of evidence in the shape of ocular account is untrustworthy as mentioned above, therefore, no conviction can be based on abscondence alone.

iv) This Court has maintained a consistent approach that presumption of innocence remains with the accused till such time the prosecution on the evidence satisfies the Court beyond a reasonable doubt that the accused is guilty. Therefore, the expression is of fundamental importance to our criminal justice system. It is one of the principles, which seeks to ensure that no innocent person is convicted. Thus, it is the primary responsibility of the prosecution to substantiate its case against the accused, and the burden of proof never shifts, except in cases falling under Article 121 of the Qanun-e-Shahadat Order, 1984.

Conclusion: i) It creates sufficient doubt regarding their presence at the place of occurrence when the father and brother of the deceased do not shift or accompany the body to the hospital.

ii) See above analysis No. ii.

iii) Conviction of accused on abscondence alone cannot be sustained.

iv) See above analysis No. iv.

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15. **Supreme Court of Pakistan**
Haider Mehar v. The State
Criminal Petition No.474-L of 2024
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._474_l_2024.pdf

Facts: The petitioner being aggrieved of his conviction and sentence recorded by Additional Sessions Judge in a case FIR under Sections 9(1)3-C and 9(1)6-C of the Control of Narcotic Substances Act, 1997 approached the High Court, by filing a criminal appeal, which was dismissed; hence this Petition.

Issue: What factors are to be considered for recording the conviction and sentence in Narcotic case?

Analysis: It reflects from the record that all the prosecution witnesses in their statements have unanimously given details qua raid, arrest of the petitioner, search, recovery of the contraband, preparation of samples, its safe transmission to the police station, safe custody and the delivery thereof to the Punjab Forensic Science Agency (PFSA). During cross-examination, the prosecution witnesses remained consistent. The report of the PFSA confirms the nature of the contraband recovered from the possession of the petitioner.

Conclusion: See above analysis.

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16. **Supreme Court of Pakistan**
Chanzeb Akhtar v. The State and another
Cr. P. No.548 of 2020
Haji Mirza Zafar v. Chanzeb Akhtar and another
Cr. P. No.602 of 2020
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed HasanAzhar Rizvi, Mr. Justice Naeem Akhtar Afghan.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._548_2020.pdf

Facts: The petitioner was convicted under Section 302(b) PPC and sentenced to death along with payment of compensation to the legal heirs of the deceased and fine. The petitioner approached the High Court by filing criminal/jail appeals, whereas the Trial Court transmitted the murder reference. All these matters were taken up together by the High Court and through the impugned judgment the appeals filed by the petitioner were dismissed, however, death sentence awarded to the petitioner was converted into life imprisonment and murder reference was answered in the negative; hence this Petition for leave to appeal.

Issue: Can a non-establishing motive be considered a mitigating circumstance to convert a death sentence to a sentence of imprisonment for life?

Analysis: In the absence of premeditation to commit murder where motive is not proved by the prosecution, the same may be considered as the mitigating factor in order to reduce the quantum of sentence in cases involving capital punishment.

Conclusion: Non-establishing motive can be considered a mitigating circumstance to convert a death sentence to a sentence of imprisonment for life.

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17. **Supreme Court of Pakistan**
Asif Ali & another v. The State through Prosecutor General Punjab
Criminal Petition No. 1602 of 2023
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1602_2023.pdf

Facts: Petitioners were convicted and sentenced under Section 9 (c) r/w Section 15 of the Control of Narcotic Substances Act, 1997, by the Trial Court. An appeal was preferred; however, it was dismissed by the Appellate Court; hence, this Petition for leave to appeal.

Issues: i) What is the duty of prosecution in the cases under CNSA 1997?
ii) What would be the effect if any link in the chain, starting from the recovery of narcotics until transmission to the laboratory, is missing?
iii) How to prove the transmission of the samples to the chemical examiner?
iv) What would be the effect of non-production of the persons tasked with the responsibility of transmitting the sample to the chemical examiner as witnesses?
v) What is the time limitation for dispatching the sample to the laboratory?

vi) What is the mandate of the Police Rules, 1934, regarding entry and removal of any article into/from the store room (Malkhana)?

Analysis: i) In the cases under CNSA 1997 it is the duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory.
ii) This chain has to be established by the prosecution and if any link is missing, the benefit of the same has to be extended to the accused.
iii) In the cases under CNSA 1997, the prosecution is under a bounded responsibility to drive home the charge against an accused by proving each limb of its case that essentially includes production of the witness tasked with the responsibility of transmitting the samples to the office of Chemical Examiner.
iv) The failure is devastatingly appalling with unredeemable consequences that cast away the entire case.
v) Under rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules 2001 ('Rules of 2001'), the sample for analysis has to be dispatched to the testing laboratory at the earliest but not later than seventy two hours of the seizure.
vi) Rule 22.70 of the Police Rules, 1934 mandates that Register No.XIX shall be maintained in Form 22.70 of the Police Rules in the police station wherein, with the exception of articles already included in Register No.XVI, every article placed in the store room (Malkhana) shall be entered and the removal of any such article shall also be noted in the appropriate column.

Conclusion: i) See above analysis No. i.
ii) If any link in the aforementioned chain is missing, the accused shall be given the benefit.
iii) The transmission of the sample shall be proved by producing witnesses who were assigned the task of transmitting the samples to the chemical examiner.
iv) See above analysis No. iv.
v) The sample shall be dispatched for analysis at the earliest but not later than seventy-two hours of the seizure.
vi) See above analysis No. vi.

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18. **Supreme Court of Pakistan**
Noman Mansoor alias Nomi v. The State
Crl.P.894/21 & Crl.A.207/21
Mst. Zainab Khattak v. Noman Mansoor alias Nomi, etc.
Crl.A.215/21
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._894_2021.pdf

Facts: Petitioner-convict was convicted and sentenced u/s 302(c) PPC to undergo Rigorous Imprisonment for a period of 14 years by the Additional Sessions Judge.

He challenged the judgment by filing an appeal before the High Court. In the meanwhile, the complainant/wife of the deceased also filed an appeal u/s 417(2A) Cr.P.C. alleging therein that on the basis of the facts and circumstances of the case, the sentence u/s 302(b) PPC should have been awarded to the convict/petitioner, instead of u/s 302(c) PPC. The High Court converted the Criminal Appeal into a Criminal Revision Petition and consequently the conviction and sentence awarded to the petitioner/convict by the Trial Court was converted from section 302(c) PPC to that of section 302(b) PPC and the sentence awarded to him was enhanced to imprisonment for life. The convict filed Petition and the complainant filed Criminal Appeal for further enhancement of the sentence from life to death.

Issues: i) Whether the High Court can convert an appeal against acquittal into a Criminal Revision?

ii) Whether upon filing of a direct Criminal Revision or after conversion of a Criminal Appeal into a Criminal Revision, a notice as provided by sub-section (2) of section 439 Cr.P.C. is to be issued to the other side? If not what would be its effect?

iii) Whether the presence of the convict before the Court in his own appeal is deemed to serve the purpose of notice under section 439 (2) Cr.P.C and no fresh notice is required?

Analysis: i) Under section 439 Cr.P.C., the High Court may in its discretion, exercise any of the powers conferred on a court of appeal, whenever, facts calling its exercise either brought to its notice or otherwise comes to its knowledge. Since the complainant/respondent filed an appeal against acquittal of the petitioner, raising some substantial question of law, therefore, the High Court can consider it as Criminal Revision Petition and convert it accordingly, for the purpose of satisfying itself to the correctness, legality or proprietary of any findings, sentence or orders. There is no impediment in doing so, therefore, the order of the conversion of the Criminal Appeal into a Criminal Revision suffers from no illegality or irregularity.

ii) It is apparent, rather admitted fact that no notice of the proceedings upon the Criminal Revision was issued to the petitioner/convict. In its revisional jurisdiction, the High Court can enhance the sentence passed by fora below, but before it does so, it must comply with the provisions of subsection (2) of section 439 Cr.P.C., which make it mandatory that no Order under this section shall be made to the prejudice of the accused, unless he has had an opportunity of being heard either personally or through a legal practitioner of his choice, so as to defend himself. The purpose of issuing notice is to give an opportunity to the accused/convict either to pursue his matter personally or through a legal practitioner of his own choice so as to defend himself. Without issuing the mandatory notice the impugned judgment is contrary to the provisions of section 439 (2) Cr.P.C. This has deprived the petitioner from his legal as well as constitutional right of consulting a legal practitioner of his own choice and fair

trial as provided by Article 10 and 10-A of the Constitution of the Islamic Republic of Pakistan, respectively.

iii) As far as the contention of the learned counsel for the complainant that the convict was already before the Court in his own appeal and both the matters were heard together, therefore, he was deemed to be served and no fresh notice was required. We are not in agreement with the learned counsel for the reason that the appeal filed by the convict and the revision filed by the complainant are altogether different in their nature and outcome. Once the law prescribes a thing to be done in a particular manner, it must be done as such, therefore, a separate notice as required by sub-section (2) of section 439 Cr.P.C. was mandatory, without which no order should have been passed, hence, the impugned judgment is not sustainable.

Conclusion: i) The High Court can convert an appeal against acquittal into a Criminal Revision.

ii) Upon filing of a direct Criminal Revision or after conversion of a Criminal Appeal into a Criminal Revision, a notice as provided by sub-section (2) of section 439 Cr.P.C. is to be issued to the other side and without issuing the mandatory notice the judgment would be contrary to the provisions of section 439 (2) Cr.P.C.

iii) The presence of the convict before the Court in his own appeal is not deemed to serve the purpose of notice under section 439 (2) Cr.P.C and fresh separate notice as required is mandatory

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19. **Supreme Court of Pakistan**
Muhammad Saeed v. The State and another
Criminal Petition No.968 of 2017
Waqar Ali v. M. Saeed Khan and others
Criminal Petition No.891 of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._968_2017.pdf

Facts: Petitioner was convicted under section 302(b) PPC and sentenced to death by learned Additional Sessions Judge and was also made liable to pay compensation of Rs.1,00,000/- under section 544-A Cr.P.C. and in default thereof to further undergo imprisonment for six months. The conviction and sentence awarded by the Trial Court was challenged by the convict initially by filing Jail Appeal and subsequently Criminal Appeal before the High Court whereas Trial Court forwarded Murder Reference to the Appellate Court for confirmation or otherwise of the death sentence. The complainant also filed Criminal Revision for enhancement of the compensation amount. The Appellate Court while maintaining the conviction of the convict under section 302(b) PPC converted the death sentence of the convict into imprisonment for life with benefit of section 382-B Cr.P.C and enhanced the amount of compensation from Rs.1,00,000/-

(rupees one hundred thousand) to Rs.10,00,000/- (rupees one million) in default whereof the convict was held to undergo simple imprisonment for six months; hence these Petitions.

Issues: i) Whether a dying declaration is a question of fact and can be made before a private person?
ii) Whether non proving of the motive introduced by the prosecution witnesses at the trial is a mitigating circumstance?

Analysis: i) Under Article 46 of the Qanun-e-Shahadat Order, 1984 the sanctity of a dying declaration has to be evaluated with great care and caution and the evidence consisting of dying declaration has to be appreciated with due diligence. A dying declaration is a question of fact which has to be determined on the facts of each case. To find out truth or falsity of a dying declaration, a case is generally to be considered in all its physical environment and circumstances. A dying declaration can be made before a private person but it should be free from any influence and the person before whom it is made has to be examined. It is necessary to ascertain that the dying declaration was made honestly, its maker was in a fit state of mind to make the statement, its maker was free from outside influence, its maker was fearing death and had made truthful statement.
ii) … as well as absence of motive in the FIR, non proving of the motive introduced by the prosecution witnesses at the trial about the desire of the convict to marry the deceased prior to her marriage with PW-9 Sabir Ullah and single stab wound on the abdomen of deceased have rightly been considered as mitigating circumstances by the Appellate Court to award lessor sentence of imprisonment for life to the convict.

Conclusion: i) A dying declaration is a question of fact and can be made before a private person.
ii) Non proving of the motive introduced by the prosecution witnesses at the trial is a mitigating circumstance.

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20. **Supreme Court of Pakistan**
Khalid v. The State through PG Sindh
Criminal Petition No.668 of 2019
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._668_2019.pdf

Facts: The petitioner and co-accused were convicted under section 302(b) of the Pakistan Penal Code by the Trial Court. The petitioner and co-convict preferred Jail Appeals before the High Court. The Jail Appeal filed by the petitioner was dismissed while the Jail Appeal filed by the co-convict was accepted by the Appellate Court. Feeling aggrieved of the conviction and sentence awarded by the Trial Court and maintained by the Appellate Court, the petitioner has filed instant Criminal Petition for Leave to Appeal.

Issues: i) Under what circumstances, testimony of an eye witness cannot be discarded merely due to his relationship with the deceased?
ii) Whether non-proving of the motive alleged by the prosecution can be considered as a mitigating circumstance?
iii) Under what circumstances, the principle of 'expectancy of life' may be considered as a relevant factor alongwith other circumstances for reducing his sentence of death to imprisonment for life?

Analysis: i) In absence of any ulterior motive/animus for false implication of an accused, the confidence inspiring testimony of an eye witness, whose presence with the deceased at the time and place of occurrence is established, cannot be discarded merely due to his relationship with the deceased.
ii) According to the settled principles, non-proving of the motive alleged by the prosecution can be considered as a mitigating circumstance for reducing the quantum of sentence awarded to an accused.
iii) Where a convict sentenced to death undergoes period of custody equal to or more than a full term of imprisonment for life during the pendency of his judicial remedy against his conviction and sentence of death, the principle of 'expectancy of life' may be considered as a relevant factor alongwith other circumstances for reducing his sentence of death to imprisonment for life.

Conclusion: i) Testimony of an eye witness cannot be discarded merely due to his relationship with the deceased when his presence with the deceased at the time and place of occurrence is established.
ii) Non-proving of the motive alleged by the prosecution can be considered as a mitigating circumstance.
iii) The principle of 'expectancy of life' may be considered as a relevant factor alongwith other circumstances for reducing his sentence of death to imprisonment for life where a convict sentenced to death undergoes period of custody equal to or more than a full term of imprisonment for life.

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21. **Supreme Court of Pakistan**
Khial Muhammad v. The State
Cr. A. No.36 of 2023 and Cr.P. No.5-Q of 2021
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._36_2023.pdf

Facts: The appellant being aggrieved of his conviction and sentence approached the High Court by filing a Criminal Appeal, whereas the Trial Court transmitted the Murder Reference. These matters were taken up together by the High Court and through the impugned judgment, the appeal filed by the appellant was dismissed while maintaining his death sentence and murder reference was answered in the

affirmative. Thereafter, the appellant approached Supreme Court by filing a Criminal Petition for leave to appeal which was granted.

Issues: i) What if the F.I.R. is delayed on the part of the complainant?
ii) Whether recording the statement of witnesses under section 161 Cr.P.C at a belated stage casts doubts on the version of prosecution?
iii) Whether the benefit of single doubt can be extended in favour of the accused?

Analysis: i) Such delayed F.I.R. on the part of the complainant shows dishonesty and that it was lodged with deliberation and consultation. Reference in this regard may be made to the case reported as Amir Muhammad Khan versus The State (2023 SCMR 566) wherein a delay of only five hours and ten minutes in reporting the matter to and lodging the FIR by the police was considered indicative of dishonesty on the part of the complainant.
ii) Supreme Court has time and again ruled that recording the statement of witnesses under section 161 Cr.P.C at a belated stage casts serious doubts on the version of prosecution.
iii) It is a well settled principle of law that for the accused to be afforded this right of benefit of doubt, it is necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused… …The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused…

Conclusion: i) If the F.I.R. is delayed on the part of the complainant, it shows dishonesty that it was lodged with deliberation and consultation.
ii) Recording the statement of witnesses under section 161 Cr.P.C at a belated stage casts serious doubts on the version of prosecution.
iii) If there is only one doubt, the benefit of the same must go to the accused.

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22. **Supreme Court of Pakistan**
The General Manager, Punjab Provincial Cooperative Bank, Ltd, etc. v. Ghulam Mustafa
CA No. 795-L/12
The Punjab Provincial Cooperative Bank, Ltd, etc. v. Iftikhar Ahmed, etc.
CA No. 123-L/13
Barkat Ali v. Secretary Cooperative, Government of the Punjab, Lahore, etc.
CA No. 2508-L/17
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._795_l_2012.pdf

Facts: According the compendium of facts, the Civil Appeals are directed against the judgments rendered by the High Court whereby the High Court in its Writ Jurisdiction issued directions to the Punjab Provincial Cooperative Bank, Limited to decide the pending departmental appeals of the respondent employees. The

Civil Petition for leave to appeal is directed against the impugned judgment rendered by the High Court whereby, the Writ Petition was dismissed by the same High Court on the ground that the Punjab Provincial Cooperative Bank, Ltd has no statutory rules of service, therefore, the Writ Petition could not be maintained against the Bank.

Issue:

i) Definition of the term 'Jurisdiction'.
ii) What does doctrine of Stare Decisis connote?
iii) What is the "Doctrine of Indoor Management"?
iv) Whether the service rules of the Punjab Provincial Cooperative Bank, Ltd are non-statutory and what is the nature of relationship between the Bank and its employees?
v) Whether in absence of statutory rules of service, the employees of the Bank can approach the High Court for redress of the grievance?
vi) How the relationship of the Master and Servant to be construed?
vii) What is the remedy available to the employees of corporations and institutions with no statutory rules of service?
viii) What are the forms of remedies available to the different class or classes of employees to challenge adversarial or departmental actions including dismissal and termination of service in the different laws of our country?

Analysis:

i) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by the law and the Constitution to adjudicate matters between the parties.

ii) The doctrine of Stare Decisis, which is a Latin term, connotes "let the decision stand" or "to stand by things decided". Similarly, the Latin maxim Stare decisis et non quieta movere means "to stand by things decided and not to disturb settled points". This represents an elementary canon of law that Courts and judges should honor the decisions of prior cases on the subject matter which maintains harmony, uniformity and renders the task of interpretation more practicable and reasonable while adhering to it for resolving a lis based on analogous facts. The doctrine of stare decisis is to be adhered to as long as an authoritative pronouncement holds the field, until and unless the dictates of compelling circumstances fortified by rationale justify the exigency of a fresh look for judicial review. The doctrine of binding precedent has the excellence of fostering firmness, uniformity, and also supports the development of law.

iii) it is an essential principle of the "Doctrine of Indoor Management" that the management and the Board of Directors, corporate bodies, and/or corporations, in any event, should adhere to and implement their own service rules, no matter if the service rules are non-statutory and framed for internal use only; but for all practical purposes, the appeals must have been decided within a reasonable period of time. Once a right of appeal is provided in the staff rules to an employee to challenge any adverse action against him, then noncompliance of a provision of appeal makes it unserviceable and redundant and amounts to the denial of authority under which mandate the staff rules were framed for the benefit and

convenience of the employees.

iv) The Punjab Cooperative Bank Limited Staff Service Rules (2010) were framed in exercise of the powers conferred upon the Board of Directors by means of Bye-Law 37(2) (zm) of the Punjab Provincial Cooperative Bank Limited Bye-Laws, 2010. The Administrator of the Bank framed the said Service Rules in supersession of the Punjab Provincial Cooperative Bank Limited (Staff) Service Rules, 1986, to define, govern, administer, and regulate the services of the employees of the Bank. Though these rules are meant for internal consumption, but it is lucidly specified in Rule 2, that the relationship between the Bank and its employees shall be that of a master and servant. The survey of its corporate structure or substratum of the Bank unambiguously connotes that the terms and conditions of the employees are not governed by any statutory rules of service but they are governed and regulated under the relationship of a "master and servant".

v) Time and again, this Court laid down in various dictums that in absence of statutory rules of service, the aggrieved employee cannot invoke the writ jurisdiction of the High Court… No writ petition lies in the High Court in the matters where the terms and conditions of service are not governed by statutory rules. In view of the well-settled exposition of law, we feel no hesitation in our mind to hold that Writ Petitions in the Lahore High Court filed by the employees were not maintainable owing to the relationship of master and servant and the absenteeism of the statutory rules of service.

vi) The relationship of master and servant cannot be construed as so sagacious that the master i.e. the management of a statutory corporation or the corporation and/or company under the control of government having no statutory rules of service or the private sector may exercise the powers at their own aspiration and discretion in contravention or infringement of fundamental rights envisioned under the Constitution. Under Article 3 of our Constitution, it is the responsibility of the State to ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work; and under Article 11, there is no concept of slavery, and the same is considered non-existent and forbidden and no law permits or facilitates its introduction into Pakistan in any form; while under Article 38 (Principles of Policy) it is the responsibility of the State to ensure equitable and just rights between employer and employees and provide for all citizens, within the available resources of the country, facilities of work and adequate livelihood with reasonable rest and leisure. Therefore, in all fairness, even under the relationship of master and servant, fundamental rights should be respected and followed, as the same are an integral part of due process.

vii) In case they are found aggrieved, they may avail an appropriate remedy in accordance with the law which is, of course, a civil suit and not the writ petition… Despite such settled exposition of law, every now and then, employees file writ petitions against any adverse actions against them beyond the backing of statutory rules of service and the employer, i.e. the statutory corporations or institutions which have no statutory rules of service, vigorously come up with the

same plea every time and, ultimately, the writ petitions are dismissed and the employees are directed to seek appropriate remedy. At every such occasion, much effort and time of the Court is consumed to recapitulate the settled exposition of law. Obviously, under the relationship of master and servant, the only available or applicable remedy is the filing of a civil suit in the civil court against actions detrimental to the interest of any such employee.

viii) A civil servant, if found aggrieved of any adverse action, obviously, can approach the Service Tribunal after filing departmental appeal/representation according to the relevant Civil Servant and Service Tribunal Acts. In tandem, if the employee is not a civil servant but is covered and regulated under the statutory rules of service, then of course, he may file a constitution petition in the High Court under Article 199 of the Constitution and challenge the violation of service rules or any other departmental action adverse to his interest. In juxtaposition, an employee of industrial and commercial establishment, if he is a worker/workman, he may approach the concerned labour courts and/or the National Industrial Relations Commission (NIRC) under the relevant Industrial Relation Laws, but the category of employees who are excluded from the purview and definition of worker or workman cannot approach the labour courts or the NIRC, and in case of any injustice, inequality, discrimination or any adverse action against any such employee who is neither covered under the definition of civil servants, nor is regarded as worker or workman, and nor his employment is covered or regulated by statutory rules of service, has the only remedy to approach the civil court and file a civil suit in terms of Section 9 of the Code of Civil Procedure, 1908.

Conclusion: i) See above analysis No. i.

ii) See above analysis No. ii.

iii) See above analysis No. iii.

iv) See above analysis No. iv.

v) In absence of statutory rules of service, the aggrieved employee cannot invoke the writ jurisdiction of the High Court.

vi) See above analysis No. vi.

vii) The only available or applicable remedy is the filing of a civil suit in the civil court against actions detrimental to the interest of any employee of the institutions with no statutory rules of service.

viii) See above analysis No. viii.

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23. **Supreme Court of Pakistan**

Naseem Khan, etc. v. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar, and others

Civil PetitionsNo.2074to2082 of 2023

Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan.

https://www.supremecourt.gov.pk/downloads_judgements/c.p._2074_2023.pdf

Facts: The impugned Notification was issued to the effect that the100% promotion quota reserved for the petitioners was reduced to75% and the remaining 25% quota was

allocated to the cadre of "Field Assistants" which allegedly affected seniority and promotion of the petitioners. The petitioners filed a Departmental Appeal but no response was received, hence they filed Appeals before the Tribunal which were dismissed by means of the impugned judgment, hence these Civil Petitions.

Issues: i) Whether a Court may interfere in policy decision regarding conditions of eligibility or fitness for appointment or promotion of a civil servant?
ii) When the judicial review can be sought against the legislative and executive actions of the decision maker?
iii)Whether there is any vested right in promotion or rules determining the eligibility for promotion of a civil servant?

Analysis: i) The required qualifications for appointment to any post is the sole discretion and decision of the employer and it is in its realm to prescribe criteria and the preference for appointment of a candidate, in which matter the court has no sphere of influence to arbitrate or set down the course of action or put forward the conditions of eligibility or fitness for appointment or promotion until and unless the relevant laws and rules seems to have been violated but in the absence of any such defilement, the relevant rules of the Federal Government and Provincial Governments separately under their Civil Servants Acts and Appointment, Promotion and Transfer Rules will undoubtedly prevail.
ii) It is within the dominion of the Court to exercise its power of judicial review to evaluate and weigh upon the legislative and executive actions in order to maintain and sustain the rule of law, check and balance and render null and void an unlawful action or decision and the Court may also invalidate and strike down the laws, acts and governmental actions if found unlawful and beyond the scope of power and jurisdiction.
iii) The question of eligibility correlates to the terms and conditions of service whereas fitness for promotion is a subjective evaluation based on an objective criteria. Though consideration for promotion is a right, yet the promotion itself cannot be claimed as of right.

Conclusion: i) The court cannot interfere in policy decision regarding conditions of eligibility or fitness for appointment or promotion of a civil servant until and unless the relevant laws and rules prescribing the benchmark thereof are violated.
ii) The judicial review can be sought if the decision maker was misdirected in terms of the law and the power is wrongly and improperly exercised as acting *ultra vires*.
iii) There is no vested right in promotion or rules determining the eligibility for promotion of a civil servant.

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24. **Supreme Court of Pakistan**
Mst. Ishrat Bibi v The State through Prosecutor General, Punjab and another
Criminal Petition No.243 of 2024
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._243_2024.pdf

Facts: Through this Petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, the petitioner assailed the order of High Court, wherein her post arrest bail in FIR u/s 302, 34, 118, 120-B, 109 & 506 PPC was declined.

Issues: i) Whether the first proviso of section 497 of Cr.PC, accentuates an additional consideration for the grant of bail of persons categorized in the proviso as a rider?
ii) Whether the first proviso of section 497 of Cr.PC, has made equal the power of the court to grant bail in the offences listed under the prohibitory clause alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused?
iii) Whether the principle of vicarious liability can be looked into at the bail stage?
iv) Whether the purpose of bail is to ensure the attendance of the accused at the trial court?
v) What is meant by further inquiry and reasonable grounds for the purpose of bail under section 497 Cr.PC?
vi) What is meant by the rule of consistency?

Analysis: i) The first proviso of section 497 Cr.PC, accentuates an additional consideration for the grant of bail while dealing with applications for bail of persons categorized in the proviso as a rider. This is encapsulated as beneficial legislation, in addition to considering whether there are reasonable grounds for believing that the accused is guilty of an offence punishable with death, imprisonment for life, or imprisonment for ten years. Undoubtedly, the court has to first satisfy whether the bail petitioner is covered under the proviso or not. It is often seen that many women implicated in cognizable offenses are found poverty-stricken and illiterate and in some cases, they have to take care of children, including suckling children, as argued in this case. There are also many examples where the children are to live in prisons with the mothers. This ground reality is also ought to be considered which would not only involve the interest of such accused women, but also the children who are not supposed to be exposed to prisons, where there shall always be a severe risk and peril of inheriting not only poverty but also criminality, during the incarceration of their mother. The first proviso facilitates the court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm under the doctrine of welfare legislation, reinforced by way of the proviso which requires a purposive interpretation for extending the benefit of bail to the taxonomy of persons mentioned in it, and the same is to be taken into consideration constructively and auspiciously depending upon the set of circumstances in each case, among other factors, including the satisfaction of

the court that the bail petitioner does not have any criminal record or is not a habitual offender.

ii) The first proviso to section 497(1) Cr.PC, has thus made equal the power of the court to grant bail in the offences listed under the prohibitory clause alleged against an accused under the age of sixteen years, a woman accused, and a sick or infirm accused, to its power under the first part of Section 497(1), Cr.PC. This means that in cases of women, etc., as mentioned in the first proviso to section 497(1), irrespective of the category of the offence, bail is to be granted as a rule and refused as an exception.

iii) The principle of vicarious liability can be looked into even at the bail stage if from the FIR, the accused appears to have acted in preconcert or shared a common intention with his co-accused.

iv) The purpose of bail is to ensure the attendance of the accused at the trial court, but neither is it punitive nor preventative. Likewise, there is no inevitable or unalterable principle for extending the facility of bail, but the facts and circumstances of each case dominate and command the exercise of judicial discretion. It is also a well-settled exposition of law that there is no hard and fast rule to regulate the exercise of the discretion for grant of bail except that the discretion should be exercised judiciously.

v) The turn of phrase further inquiry reckons the tentative assessment which may create doubt with respect to the involvement of the accused in the crime. The doctrine of further inquiry denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. Whereas, the expression reasonable grounds refers to grounds which may be legally tenable, admissible in evidence, and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary, or presumptuous. The prosecution is duty bound to demonstrate that it is in possession of sufficient material or evidence, constituting reasonable grounds that the accused had committed an offence falling within the prohibitory limb of Section 497, Cr.PC, while for achieving bail, the accused has to show that the evidence or material collected by the prosecution and/or the plea taken by the defence visibly created a reasonable doubt or suspicion in the prosecution case.

vi) The rule of consistency, or in other words, the doctrine of parity in criminal cases, including bail matters, recapitulates that where the incriminated and ascribed role to the accused is one and the same as that of the co-accused then the benefit extended to one accused should be extended to the co-accused also, on the principle that like cases should be treated alike, but after accurate evaluation and assessment of the co-offenders' role in the commission of the alleged offence. While applying the doctrine of parity in bail matters, the court is obligated to concentrate on the constituents of the role assigned to the accused and then decide whether a case for the grant of bail on the standard of parity or rule of consistency is made out or not.

Conclusion: i) Yes, the first proviso of section 497 Cr.PC, accentuates an additional

consideration for the grant of bail while dealing with applications for bail of persons categorized in the proviso as a rider.
ii) The first proviso has thus made equal the power of the court to grant bail in the offences listed under the prohibitory clause alleged against an accused under the age of sixteen years, a woman accused, and a sick or infirm accused.
iii) The principle of vicarious liability can be looked into even at the bail stage
iv) The purpose of bail is to ensure the attendance of the accused at the trial court.
v) The doctrine of further inquiry denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. Whereas, the expression reasonable grounds refers to grounds which may be legally tenable, admissible in evidence, and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary, or presumptuous.
vi) The rule of consistency, or in other words, the doctrine of parity in criminal cases, including bail matters, recapitulates that where the incriminated and ascribed role to the accused is one and the same as that of the co-accused then the benefit extended to one accused should be extended to the co-accused also.

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25. **Supreme Court of Pakistan**
Ashfaq Hussain and another v. Ghulam Nabi and another
Civil Petition No.917-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._917_k_2022.pdf

Facts: Through this petition, the petitioners challenged the judgment passed by the High Court of Sindh, Karachi, whereby Constitutional Petition filed by the Respondent No. 1 against the order of Appellate Court was allowed.

Issue: Whether a landlord under section 15 of the Sindh Rented Premises Ordinance, 1979 may seek eviction of a tenant on the ground of default in payment of rent and subletting of rented premises without consent of the landlord?

Analysis: Section 15 of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) envisages the various grounds on the basis of which the landlord may seek eviction of the tenant including the ground of default in payment of rent and subletting of any rented premises without the written consent of the landlord. The case of the petitioner is that the respondent without the consent and knowledge of the petitioners/landlords started the business of running of a clinic and entered into a partnership with the doctors named above in respect of the subject premises/shop.

Conclusion: A landlord under section 15 of the Sindh Rented Premises Ordinance, 1979 may seek eviction of a tenant on the ground of default in payment of rent and subletting of rented premises without consent of the landlord.

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26. **Supreme Court of Pakistan**
Muhammad Yousuf Bhindi, etc. v. M/s. A.G.E. & Sons (Pvt) Ltd. & others, etc.
Civil Petitions No.1032-K to 1053-K & 1062-K/2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1032_k_2023.pdf

Facts: According to the petitioners, the respondent No.1 mentioned incorrect address for service and without service of notice or summons, they were declared ex parte and subsequently, ex parte judgments and decrees were passed against them. Then petitioners filed their respective applications for setting aside such orders, judgments and decrees but their applications were dismissed by the Trial Court. The petitioners filed appeals before the District & Sessions Judge which were allowed. Being aggrieved, the respondent No.1 filed Civil Revisions in the High Court which were allowed vide consolidated judgment and the orders passed by the Additional District & Sessions Judge were set aside.

Issues: i) When the court proceeds ex-parte and pass decree without recording of evidence?
ii) What if the summons was not duly served or there was no sufficient time to enable defendant to appear and answer on the day fixed in the summons?
iii) What is the procedure where the Court has adjourned the hearing of the suit ex parte, and the defendant appears at or before such hearing?
iv) What if the defendant appears and the plaintiff does not appear when the suit is called on for hearing?
v) Whether the plaintiff can file fresh suit in respect of same cause of action in case of dismissal?
vi) What remedy is available for the defendant if the decree is passed ex-parte against him?
vii) What is imperative for the Court before ordering the substituted service?
viii) Whether citing of wrong nomenclature of section change the complexion of the application or the relief claimed in such application?
ix) What is the limitation period for applying against the dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs?
x) Which article will apply where there is no specific Article or limitation is provided in the Limitation Act meant for making any application for setting aside an ex parte order under Order IX Rule 7, CPC?
xi) Whether the defendant can join proceedings at any subsequent stage even if the proceedings are ordered ex parte?
xii) What is the nature of revisional jurisdiction under section 115 of C.P.C?

Analysis: i) Order IX Rule 6, CPC, which relates to the procedure when only the plaintiff appears and the defendant does not appear when the suit is called on for hearing,

and if it is proved that the summons was duly served, the Court may proceed ex parte and pass decree without recording evidence.

ii) When, if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant, and when if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future date to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

iii) While Order IX Rule 7, CPC, is germane to the procedure where the Court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous nonappearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

iv) While Order IX Rule 8, CPC, encapsulates that where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed.

v) …Order IX Rule 8, CPC, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action but he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit.

vi) Order IX Rule 13, CPC, is concomitant and systematized to the case in which a decree is passed ex parte against a defendant; he may apply to the Court and if the Court is satisfied that the summons was not duly served, or that the defendant was prevented by any sufficient cause, the Court shall make an order setting aside the decree upon such terms as to costs, payment into Court or otherwise as it thinks fit.

vii) Much emphasis was made on the substituted service envisaged under Order V Rule 20, CPC, but for all practical purposes, this provision does not come into effect automatically, but before ordering the substituted service, it is imperative for the Court to first be satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order for service of summons by affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain or any electronic device of communication which may include telegram, telephone, phonogram, telex, fax, radio and television or urgent mail service or public courier services or beat of drum in the locality where the defendant resides or publication in press or any other manner or mode as it may think fit.

viii) … Though the citing of wrong nomenclature of section was not noted, but in our view, it does not change the complexion of the application or the relief claimed in such application if it is clear otherwise from the contents of the application what the applicant actually claimed and prayed for. The Court has to

see the pith and substance rather than the nomenclature, and if the court perceives any such irregularity, it may in the interest of justice, call upon the applicant to correct and rectify such error of nomenclature, which may be a typing error or may have been caused due to some misunderstanding, but on the notion or mention of a wrong section, an adverse order cannot be passed without adverting to the substance of such application.

ix) In fact, according to Article 163 of the Limitation Act, the plaintiff may apply within 30 days from the date of dismissal for setting aside dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs. It is clear that this Article does not relate to any right to apply by the defendant, but the plaintiff alone, so under the guise of this provision, the petitioners who were the defendants in the Trial Court, and not the plaintiff, could not be penalized.

x) However, for the defendants, Article 164 of the Limitation Act is applicable, in which the defendant may apply within 30 days from the date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree, for setting aside a decree passed ex parte; but there is no specific Article or limitation is provided in the Limitation Act meant for making any application for setting aside an ex parte order under Order IX Rule 7, CPC, therefore, for all intents and purposes, Article 181 of the Limitation Act would apply wherein to meet such eventualities, three years' limitation period is provided when the right to apply accrues.

xi) It is also well settled that even if the proceedings are ordered ex parte the defendant may join proceedings at any subsequent stage and file an appropriate application for setting aside ex-parte order with good cause. A person nevertheless declared ex parte, continues as party to the proceedings and even can cross examine the witnesses. If good cause is shown to the satisfaction of the Court to justify his previous absenteeism, the ex parte proceedings may be set aside by the Court and the defendant may then be restored to the position he held on the date when he was proceeded against ex parte. This rule invests the court with the wide-ranging potential discretion to allow the application if the defendant who was declared ex parte assigns good cause for previous absence.

xii) It is well settled that under Section 115, C.P.C, the revisional court has to ruminate the jurisdictional error of the Court below; if it acted in exercise of its jurisdiction illegally or with material irregularity or committed some error of procedure which affected the ultimate decision. In fact, this jurisdiction is corrective and supervisory in nature to ensure safe administration of justice and in a fit case, the Court in the same provision can exercise suo motu jurisdiction to advance the cause of justice to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision.

Conclusion: i) If it is proved that summons was duly served but the defendant did not appear then the Court may proceed ex parte and pass decree without recording evidence.
ii) See above in analysis No. ii.
iii) See above in analysis No. iii.
iv) See above in analysis No. iv.
v) The plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action but he may apply for an order to set the dismissal aside.
vi) See above in analysis No. vi.
vii) Before ordering the substituted service, it is imperative for the Court to first be satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way.
viii) The citing of wrong nomenclature of section was not noted, but in our view, it does not change the complexion of the application or the relief claimed in such application if it is clear otherwise from the contents of the application what the applicant actually claimed and prayed for.
ix) The plaintiff may apply within 30 days from the date of dismissal for setting aside dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.
x) Article 181 of the Limitation Act would apply where there is no specific article or limitation is provided in the Limitation Act meant for making any application for setting aside an ex parte order under Order IX Rule 7, CPC.
xi) It is well settled that even if the proceedings are ordered ex parte the defendant may join proceedings at any subsequent stage and file an appropriate application for setting aside ex-parte order with good cause.
xii) Revisional jurisdiction is corrective and supervisory in nature to ensure safe administration of justice.

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27. **Supreme Court of Pakistan**
Karachi Properties Investment Company (Pvt) Ltd v. Habib Carpets (Pvt) Limited
Civil Appeal No.90-K of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._90_k_2023.pdf

Facts: Through this Civil Appeal, appellant has assailed the judgment passed by the High Court, whereby the orders passed by the Rent Controller and Appellate Court were set aside and ejectment application filed by the appellant under Section 15 of the Sindh Rented Premises Ordinance, 1979 was dismissed.

Issues: i) What does "rent" mean and include as per section 2(i) of the Sindh Rented Premises Ordinance, 1979?
ii) What are the niceties of section 5 of the Ordinance in terms of rent agreement and amount of rent?

iii) What does expression *consensus ad idem* connotes?
iv) What would be the effect of absence of *consensus ad idem*?
v) Which terms and conditions ought to be incorporated in rent agreement through express clause?
vi) Whether "maintenance charges" claimed by the landlord, which were admittedly not mentioned in the Lease Deed, come within the definition of "rent" and, in particular, fall within the following words that appear in the said definition: "and such other charges which are payable by the tenant but are unpaid"?
vii) What are the principles regarding upsetting the concurrent findings by the High Court in exercise of writ jurisdiction?

Analysis: i) According to the definition provided under Section 2 (i) of the Ordinance, the expression "rent" includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid.
ii) The niceties of Section 5 of the Ordinance are somewhat significant wherein it is distinctly provided that the agreement by which a landlord lets out any premises to a tenant should be in writing to accept as proof of the relationship of the landlord and tenant and no landlord shall charge or receive rent in respect of any premises at the rate higher than that mutually agreed upon by the parties, and, if the fair rent has been fixed by the Controller in respect of such premises, at the rate higher than the fair rent.
iii) The expression consensus ad idem is a Latin term that means "agreement to the same thing" or "meeting of the minds". In reality, it connotes the notion that for a contract to be legally binding the parties should have well-defined and flawless insight of the bargain the stipulated terms and conditions of the agreement… The precept of consensus ad idem is rudimentary in the law of contract being an elementary constituent for the execution of a valid contract.
iv) Without consensus ad idem, a contract may not be legally binding and enforceable and in order to substantiate the canons of consensus ad idem, the terms and conditions of agreement should be unequivocal and incontrovertible because any omission, oversight or misrepresentation may result in adverse consequence and repercussions.
v) No doubt in addition to some express terms and conditions of tenancy, certain rights and obligations deem to be implied which if created by fiction of law. However, it is also necessary to incorporate the express clause for the quantum of rent and its due date of payment, utility/amenities charges, and all other charges if agreed to be paid by the tenant under the arrangement of tenancy over and above the monthly rent and payment of utilities bills/charges regularly and it is important to visibly distinguish and identify who is responsible for what charges or dues so there should be no ambiguity or vagueness.
vi) At the outset, before invoking any default in the aforesaid residuary segment, there must be something agreed in writing between the landlord and tenant. Had the condition of making payment for any monthly maintenance charges been

jotted down and agreed between the parties, then of course, that could be considered a binding agreement and the tenant/respondent could not get rid of it without payment and obviously, in the event of default, that cause of action would have been available to the appellant to seek ejectment on the ground of default including the nonpayment of maintenance charges… The expression "such other charges which are payable by the tenant" will not come into field automatically or mechanically to rescue the landlord unless and until the condition of making payment for such charges is itemized in the agreement with proper details. The purpose of this rider is to provide a fair opportunity to the landlord that if, beyond the basic amenities/utilities mentioned in the definition of rent, any facility is made available in the rented premises including the liability to pay maintenance charges, then it should be properly mentioned in the agreement to avoid any doubts or disputes in the future.

vii) The object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is to foster justice, preserve rights and to right the wrong. While exercising writ jurisdiction, if the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere; when the finding is based on misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, excess or abuse of jurisdiction, and arbitrary exercise of power. Each case is based on its own facts and circumstances. The concurrent findings, if any, recorded by the forum below erroneously may not be considered so revered or untouchable or as gospel truth which cannot be upset, come what may, by the High Court in its constitutional jurisdiction. If some blatant illegalities or violation of law is unearthed or surfaced, the High Court cannot shut its eyes to cover, protect or patronize such defective orders or judgments where interference is really required to advance the cause of justice; and in its fine sense of judgment, may intervene, with the strength of mind that to turn a blind eye to injustice.

Conclusion: i) See above analysis No. i.

ii) See above analysis No. ii.

iii) The expression consensus ad idem is a Latin term that means "agreement to the same thing" or "meeting of the minds".

iv) A contract may not be legally binding and enforceable without consensus ad idem.

v) See above analysis No. v.

vi) See above analysis No. vi.

vii) See above analysis No. vii.

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28. **Lahore High Court**
M/s Future Vision Advertising (Private) Limited v. Federation of Pakistan etc.
W.P. No.77742/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2869.pdf

Facts: Through this Constitutional Petition, the petitioner has challenged the show cause notice issued under Section 257 of the Companies Act, 2017 by the Securities and Exchange Commission of Pakistan and order for the appointment of Inspectors to investigate the affairs of the petitioner-company.

Issues: i) Whether the Securities and Exchange Commission of Pakistan can issue show cause notice and initiate proceedings under Section 257 of the Companies Act, 2017 on the basis of a complaint and record available on the website of any company?
ii) Whether the Securities and Exchange Commission of Pakistan has independent power to appoint Inspectors to investigate the affairs of any Company?

Analysis: i) Plain reading of Section 256 and 257 of the Act shows that under aforesaid provisions the investigation into the affairs of the Company can be ordered by the Commission in five different situations. Firstly under Section 256(1)(a) & (b) of the Act, on the application of the members holding not less than one tenth of the total voting power in a Company having share capital or on the application of members not less than one tenth of the total members of a Company not having share capital, where the Commission is of the opinion, that it is necessary to investigate into the affairs of a Company, it may order to investigate and appoint one or more persons as Inspectors to investigate and report thereon in such manner as the Commission may direct. Secondly, under Section 256(1)(c) of the Act, on the receipt of a report under Section 221(5) of the Act by the authorized Officer while inspecting books of accounts and books of papers of the Company or under Section 254(6) of the Act by the Registrar while exercising his power to call for information. However, the word "may" indicates that the aforesaid appointments of Inspectors under Section 256(1) of the Act are discretionary with the Commission and subject to its opinion that investigation is necessary. The provision of Section 257 of the Act relates to investigation of Company's affairs in other cases and the said provision is without prejudice to the power of the Commission under Section 256 of the Act. The third and fourth situation is where under Section 257(1)(a)(i) of the Act, the Company by special resolution or under Section 257(1)(a)(ii) of the Act, the Court by order declares that the affairs of the Company ought to be investigated, the Commission shall appoint one or more competent persons as Inspectors to investigate the affairs of the Company and to report thereon in such manner as the Commission may direct. The word "shall" used for Section 257(1)(a)(i) & (ii) of the Act means that here the Commission has no discretion to form an opinion, rather it is bound to appoint the Inspectors if there is a special resolution by the Company or order of the Court. However, it may prescribe the manner in which the affairs of the Company will be investigated. Fifth situation is under Section 257(1)(b) of the Act, where again by use of word "may", the discretion made available with the Commission to appoint one or more persons as Inspectors to investigate the affairs of the Company and to report thereon if in the opinion of the Commission, there are circumstances suggesting that, the business of the Company is being or has been conducted with

intent to defraud its creditors, members or any other person for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose from the persons who found the Company or its management guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its members from carrying on unauthorized business or the affairs of the company have been conducted to deprive the members of reasonable return or members are not given information or shares of the company have been allotted for inadequate consideration or the Company's affairs are not managed in sound business principles or prudent commercial practices or the financial position of the company is such as to endanger its solvency. From the above, it is manifest that besides upon application or report under section 256(1) of the Act, there is independent power available with the Commission under Section 257(1)(b) of the Act to form its opinion on the basis of circumstances suggesting therein for appointment of Inspectors. However, before making any order under Section 257(1)(b) or 256(1) of the Act, the Commission is required to give Company an opportunity of being heard but no such opportunity of statutory show cause is required, while appointing Inspectors under Section 257(1)(b) of the Act on the declaration of Court order or by special resolution of a Company.

ii) The next argument of the learned counsel for the petitioner that the Commission has no independent power to appoint Inspectors but it can only make appointments on the application of the members, receipt of report under Section 221(5) and 254(6) of the Act or on Court order or Company special resolution, is also misconceived. The provision of Section 257(1) of the Act commences with the expression "without prejudice to its power under Section 256, the Commission". It is well settled law that when such expression is used, it means that anything contain in the provision following this expression is not intended to cut down generality of the meaning of the preceding provision. (Refer "P Ramanatha Aiyar's Advance Law Lexicon, Volume 4"). This means that power of the Commission under Section 257 of the Act will not curtail the power of Commission under Section 256 of the Act for the appointment of Inspectors. This legal position is further supported by the fact (as already discussed above) that section 256 of the Act deals with the situations where Inspectors are appointed on the application of the members or report of the authorized Officer or Registrar under Section 221(5) or Section 254 of the Act, whereas under section 257 of the Act, investigation of Company's affairs is in other cases i.e. on special resolution by Company or the Court order or independent power of the Commission when in its opinion the circumstances suggests appointment of Inspectors. It is pertinent to note that both in Section 256(1) and Section 257(1)(b) of the Act, the Commission is to form an opinion before appointment of Inspectors. However, the said opinion under Section 257(1)(b) of the Act must be based upon circumstances suggesting various situations mentioned in Clauses (i) to (vii) of Section 257(1)(b) of the Act, whereas the formation of opinion under Section 256(1) of the Act is not confined only to circumstances suggested in Clauses (i) to (vii) of Section 257(1)(b) of the

Act ibid but Commission has much wide powers to appoint Inspectors if it is necessary to investigate into the affairs of the Company. By using the words "without prejudice to its power under Section 256, the Commission", in Section 257(1) of the Act, the legislation has intentionally not restricted the formation of opinion of Commission under Section 256(1) of the Act only to the circumstances of Clauses (i) to (iv) of Section 257(1)(b) of the Act. Further the use of ";" (Semicolon) before the word "and", in between Sub-Section (1)(a) and sub-Section(1)(b) of Section 257 of the Act, prove that sub-section (1)(a) and (1)(b) of Section 257 of the Act are two independent clauses that are not joined by conjunction. As per "Words and Phrases" Volume 38B" "semicolon" is used to separate consecutive phrases or clauses independent of each other grammatically but dependent alike on some word preceding or following. From the above, it is manifest that Section 257(1)(b) of the Act is a separate clause under which a Commission has independent power to appoint the Inspectors to investigate the affairs of the Company if in its opinion there are circumstances suggesting the situation mentioned in Sub-Section (i) to (vii) of Section 257(1)(b) of the Act.

Conclusion: i) The Securities and Exchange Commission of Pakistan can issue show cause notice and initiate proceedings under Section 257 of the Companies Act, 2017 on the basis of a complaint and record available on the website of any company.
ii) The Securities and Exchange Commission of Pakistan has independent power to appoint Inspectors to investigate the affairs of any Company if in its opinion there are circumstances suggesting the situation mentioned in Sub-Section (i) to (vii) of Section 257(1)(b) of the Act.

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29. **Lahore High Court**
Sher Afzal v. The State etc.
Crl.Misc.No.729-M of 2024
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2024LHC2860.pdf

Facts: The petitioner, on the same date, was convicted and awarded death sentences in two murder cases. Death sentence of the petitioner in one case was converted into imprisonment for life by the Division Bench of this Court and death sentence of the petitioner in the other case was converted into life imprisonment by the Supreme Court of Pakistan. Thereafter, the other said criminal appeal was disposed of being not pressed by the Supreme Court of Pakistan in order to avail remedy before the High Court by filing of writ petition in view of provisions of Section 397 Cr.P.C. seeking order for both above referred sentences of life imprisonment to run concurrently, hence this petition. Now, the petitioner being convict seeks an order to run concurrently his sentences of imprisonment awarded to him in two different trials of distinct cases.

Issue: What remedy may be availed under the Criminal Procedure Code 1898 in cases where sentences of convict in different trials have not been ordered to run concurrently, rather trials, appellate and revisional courts are silent on this point?

Analysis: It has been clarified in section 397 of the Criminal Procedure Code, 1898, that the Court while analysing the facts and circumstances of every case is competent to direct that the sentences of a convict in two different trials would run concurrently. The provisions of section 397 ibid confer wide discretion on the Court to extend such benefit to the convict in a case of peculiar nature. Thus, construing the beneficial provisions in favour of the convict would clearly meet the ends of justice and interpreting the same to the contrary would certainly defeat the same. The legislation under the provision of section 397 of Code ibid is quite compassionate having tender feelings and has empowered the courts to order the subsequent sentence to run concurrently to the previous sentence of a convict. When the universal principle of law is to be given effect in case of punishment, it is for the Courts to struggle and favour in order to interpret the law where liberty of convict is to be given preference instead of curtailing it without animated reasons and justness.

Conclusion: In cases where sentences of convict in different trials have not been ordered to run concurrently, rather trials, appellate and revisional courts are silent on this point, then in appropriate cases inherit jurisdiction of this Court in terms of section 561-A of the Criminal Procedure Code 1898 read with section 397 of the Code ibid can be invoked, provided where the superior Court of Appeal specifically and consciously has not denied the benefit of provisions of section 397 Cr.P.C.

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30. **Lahore High Court**
Faysal Bank Limited. v. M/s Dynasel Limited and others
COS No.28 of 2014
Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2024LHC2628.pdf

Facts: The suit was brought by the plaintiff bank under the provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001 seeking recovery from the defendants due under two finance facilities namely Finance Against Trust Receipt (FATR) facility and Running Finance (RF) facility.

Issues: i) Whether an evasive denial of the facts asserted in the plaint amounts to an admission of facts?
ii) What is FATR?
iii) Whether statement of account per se is considered sufficient to charge any person with liability?
iv) Whether the title appearing on the statement of account can determine its nature?
v) What are the parameters under which an agreement between parties to hold trial in a specific court, among multiple courts with jurisdiction, remains valid

under the Code of Civil Procedure?
vi) What is contract of guarantee?
vii) Whether the existence of the debt is fundamental to the surety's liability?
viii) Whether the liability of a surety is co-extensive with that of the principal debtor?
ix) What is "joint and several" contract?
x) How does the principle of joint and several liability, as outlined in the Contract Act, impact the rights and options available to the creditor in case of default by the promisors?
xi) Whether the execution of decree against surety can be postponed till after exhaustion of remedies against principal debtor?
xii) Whether the court while granting leave and framing issues with respect to the disputed amounts, pass an interim decree in respect of any part of claim?

Analysis: i) The plaintiff bank in paragraph 48 of the plaint mentioned the details of the finance documents executed by the defendants. In reply to this paragraph, the defendants in their application for leave to defend gave an evasive reply by stating that "The contents of the previous paragraphs are reiterated here." The defendants, however, nowhere in their application for leave to defend specifically denied execution of the finance documents under the FATR facility. In the case of Saudi Pak Industrial Limited v. B.A Rajput Steel etc 2016 CLD 465, this Court in relation to the requirements of the pleadings held as follows: Notwithstanding the special requirements the Ordinance stipulates the plaintiff and the defendant need to fulfill in their pleadings, the general law on the subject is also not materially different. Order 8 Rules 3, 4 and 5 CPC deal with the manner in which allegations of fact in the plaint should be traversed in the written statement and also the legal consequences that flow from its non-compliance (see Badat & Co. v. East India Trading Co. 1964 AIR 1964 SC 538). It is clearly stipulated in the said Rules that it shall not be sufficient for a defendant to deny generally the grounds alleged by the plaintiff but he must be specific with each allegation of fact. When the defendant denies any fact stated in the plaint, Rule 4 stipulates that he must not evasively answer the point of substance. Similarly, if it is alleged in the plaint that the defendant has received a certain sum of money, it shall not be sufficient for the defendant to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received, and that if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances. It can thus be seen that Rule 4 lays down requirements that are not very different from those that are stipulated in section 10 (4) of the Ordinance. Rule 5 deals with specific denial and clearly lay down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted against him. In view of the evasive reply of the defendants, they shall be taken to have admitted to having executed the finance documents under the FATR facility.

ii) FATR is a well understood term in the banking context which stands for a facility granted for payment of amounts due, amongst others, under a letter of credit after execution of the trust receipt.

iii) Although section 4 of Banker's Book Evidence Act, 1891 grants presumption of truth to the entries of the statement of account, the said presumption is rebuttable. In the event leave is granted, the entries of the statement of account are required to be proved in accordance with law. In this regard, it may be stated that by virtue of Article 48 of the Qanun-e-Shahadat, 1984 entries in books of account regularly kept in the course of business have been made relevant whenever such entries refer to a matter into which the Court has to enquire but such a statement of account per se is not considered sufficient to charge any person with liability. Under the said provision, such entries though relevant are only corroborative evidence and it is to be proved by further independent evidence. The person on whom the onus lies in required producing relevant evidence in support of the entries in the statement of account.

iv) At this juncture, learned counsel for the defendants points out that the title of the statement of account is "Current Account" and it cannot be construed as statement of RF account. The submission so made by learned counsel for the defendants is not tenable. The title appearing on the statement of account cannot determine its nature.

v) Where two or more courts have jurisdiction to try a suit, the agreement between the parties for holding trial by any such court will not violate the public policy or contravene the provisions of the Code of Civil Procedure provided that court would otherwise also have jurisdiction under the law over the parties and subject matter of the contract.

vi) In the present case, what is in issue is the contract of guarantee that necessarily envisages a pre-existing principal debtor and as such it involves three parties namely the creditor, the principal debtor and the surety in terms of section 126 of the Contract Act. This provision states that a contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. A contract of guarantee, therefore, requires concurrence of three persons namely the principal debtor, the surety and the creditor. Where a guarantor furnishes its guarantee at the request of the principal debtor, there is an implied agreement between principal debtor and guarantor that the latter should be indemnified in respect of its liability toward the creditor.

vii) The existence of a debt is a sine qua non for an action against the surety even if it is separately and independently brought against it. In other words, the foundation or basis of the claim even in the suit against the surety is the liability of the principal debtor. Supposing in an action for enforcement of debt against the surety the defence put up is that there is no default on the part of principal debtor then how would the court adjudicate upon the matter in the absence of latter.

viii) the liability of a surety is co- extensive with that of the principal debtor (…) Section 128 of the Contract Act stipulates that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the

contract. The word "coextensive" in section 128 refers to the extent to which the surety is liable towards the creditor and simply means that surety shall not be liable for more than what is due from the principal debtor. This provision, however, recognizes that surety may impose limits on restricting its liability by entering into a special contract.

ix) A "joint and several" contract is a contract with each promisor and a joint contract with all, so that parties having a joint and several obligations are bound jointly as one party, and also severally as separate parties at the same time.

x) The principle of joint and several liability, which has its genesis in section 43 of the Contract Act, dictates that in the event of default the creditor may opt for an action joining the promisors together or to pursue either of them individually at its choice. A plaintiff who has obtained judgment against several co-defendants who are jointly and severally liable can take execution proceedings against any one of the co- defendants, or any combination of them or all of them. The legal characterization of the relationship between the parties under a joint and several arrangements is important but perhaps more significant is the nature of the remedy available for breach of obligation. The key difference between joint and several liability relates to the remedy and by extension the mechanics of suing for liability. Put another way, the distinction between 'joint' and 'several' obligations is primarily remedial and procedural in nature [Restatement (Second) of Contracts § 288]. If liability is joint, the plaintiff shall have to bring a single action against all who share liability in the same proceeding. If liability is joint and several, the plaintiff has the option to bring actions against the defendants separately. The Court can of course order to join other persons who share liability if their participation is necessary in the proceedings, which aspect of the matter regarding the principal debtor has already been discussed above.

xi) The explanation to Order II Rule 2 CPC stipulates that an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action. "Collateral" is a term of art and its meaning is well understood generally and in the context of banking. A collateral simply means "….a valuable asset that a borrower pledges as security for a loan" (see https://www.investopedia.com/terms/c/collateral.asp). In Bank of Bihar Ltd. v. Damodar Prasad and another [1969] 1 SCR 620, the Indian Supreme Court was dealing with the question whether the execution of decree against surety can be postponed till after exhaustion of remedies against principal debtor. The following observations notably held the guarantee to be a collateral security. It is the duty of the surety to pay the decretal amount. On such payment he will be subrogated to the rights of the creditor under Section 140 of the Indian Contract Act, and he may then recover the amount from the principal. The very object of the guarantee is defeated if the creditor is asked to postpone his remedies against the surety. In the present case the creditor is banking company. A guarantee is a collateral security usually taken by a banker. The security will become useless if his rights against the surety can be so easily cut down. (Emphasis added) Going by the

Explanation to Order II Rule 2 CPC, the corporate guarantee executed by defendant No.9 is included in, and constitutes part of, the single cause of action to the extent the plaintiff bank seeks to enforce its claim under FATR and RF facilities against all the defendants.

xii) In terms of section 11 of the Ordinance, if the Court is of the opinion at the leave stage that the dispute between the parties does not extend to the whole of the claim or that part of the claim is either undisputed or is clearly due or that the dispute is mainly limited to a part of the principal amount of the finance or to any other amounts relating to the finance, it shall, while granting leave and framing issues with respect to the disputed amounts, pass an interim decree in respect of that part of the claim which relates to the principal amount and which appears to be payable by the defendant to the plaintiff. This provision implies that the dispute on which leave shall be granted must be specified in the leave granting order and that evidence shall only be adduced by the parties on the disputed question of fact.

Conclusions: i) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted against him.

ii) FATR is a well understood term in the banking context which stands for a facility granted for payment of amounts due, amongst others, under a letter of credit after execution of the trust receipt.

iii) The statement of account per se is not considered sufficient to charge any person with liability and such entries, though relevant are only corroborative evidence and it is to be proved by further independent evidence.

iv) The title appearing on the statement of account cannot determine its nature.

v) Where two or more courts have jurisdiction to try a suit, the agreement between the parties for holding trial by any such court will not violate the public policy or contravene the provisions of the Code of Civil Procedure provided that court would otherwise also have jurisdiction under the law over the parties and subject matter of the contract.

vi) A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

vii) The existence of a debt is a sine qua non for an action against surety even if it is separately and independently brought against it.

viii) Section 128 of the Contract Act stipulates that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

ix) A "joint and several" contract is a contract with each promisor and a joint contract with all, so that parties having a joint and several obligations are bound jointly as one party, and also severally as separate parties at the same time.

x) See above analysis No. (x).

xi) It is the duty of the surety being a collateral security to pay the decretal amount. The very object of the guarantee is defeated if the creditor is asked to

postpone his remedies against the surety till after exhaustion of remedies against principal debtor.

xii) Yes, if the Court is of the opinion at the leave stage that the dispute between the parties does not extend to the whole of the claim or that part of the claim is either undisputed or is clearly due or that the dispute is mainly limited to a part of the principal amount of the finance or to any other amounts relating to the finance, it shall, while granting leave and framing issues with respect to the disputed amounts, pass an interim decree in respect of that part of the claim.

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31. **Lahore High Court**
Service Global Footwear Limited and another v. Federation of Pakistan through Secretary Revenue Division and others
ICA No.48745 of 2023
Mr. Justice Shahid Karim, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC2738.pdf

Facts: This appeal and a cluster of appeals have assailed the judgment by a learned Single Judge of this Court dismissing a set of constitutional petitions, whereby the section 4C of the Income Tax Ordinance, 2001, in its retrospective application to tax year 2022, was challenged. The impugned judgment upheld the challenge with regard to inherent discrimination which lies in the proviso of Division IIB of Part I of First Schedule of Ordinance ibid and struck down the said proviso. Consequently, the taxpayers who were petitioners before the learned single bench and Federal Board of Revenue have come in separate set of appeals.

Issues: i) Which theory of taxation is basis of section 4C of the Income Tax Ordinance, 2001?

ii) Whether general provisions of a legislation can have retrospective effect?

iii) Whether section 4C of the Income Tax Ordinance, 2001 can be applied to disturb and upend already fixed liabilities and rights consequently created by operation of law?

iv) What is a vested right and right under past and closed transaction?

v) Whether the proviso to Division IIB of Part I of the First Schedule to the Income Tax Ordinance, 2001 is discriminatory and offends Article 25 of the Constitution of Islamic Republic of Pakistan, 1973?

vi) What connotes a Super Tax?

vii) What is the reason for providing the concept of a special tax year in section 74 of the Income Tax Ordinance, 2001?

viii) When the liability to pay income tax accrues?

Analysis: i) Section 4C of the Income Tax Ordinance, 2001, imposed a super tax on high-earning persons for the tax year 2022 and onwards at the rates specified under Division IIB of Part I of the First Schedule to the Ordinance ibid, on income of every person. In fact, the Proviso of Division IIB of Part I of First Schedule to the Ordinance ibid, which was substituted by the Finance Act, 2023 created a separate

class within the class of taxpayers earning income exceeding Rs.300 Million from businesses prescribed therein, irrespective of whether their income exceeded Rs.300 Million.

ii) The principle of legal policy is that "except in relation to procedural matters, the changes in the law should not take effect retrospectively". On the subject of retrospective taxation, the general rule of law requires the courts to always construe statutes as prospective and not retrospective unless constrained to the contrary by the phraseology used. Despite the general principle, the Parliament does have the power to produce a retrospective effect; however, it cannot do so to upset past and closed transactions.

iii) Section 4C of Income Tax Ordinance, 2001 was inserted in the Ordinance ibid through Finance Act, 2022. In the Section 4C of the Ordinance ibid, the words "a super tax shall be imposed for tax year 2022 and onwards" manifest a general provision which gives retrospective effect and ensnares tax year 2022 in the imposition as well.

iv) The term 'vested right' is basically a right that completely and definitely belongs to a person and cannot be impaired or taken away without the persons' consent. The notion of right under past and closed transaction would have proximity to the term 'accrued right'. It would be a right that is ripe for enforcement, against all, including the legislature, and founded on a set of rules having provenance in the Constitution and settled legal principles. It is also a legal right asserting a legally recognized claim against one with a correlative duty to act.

v) Different rates of taxation have been provided in Division IIB of Part I of the First Schedule to the Income Tax Ordinance, 2001. The Proviso to Division IIB of Ordinance ibid identifies and narrows down certain sectors of businesses which allegedly generate windfall profits and to be taxed at a different rate.

vi) This policy statement has ostensibly been prepared to pitch for the imposition of tax under Section 4C of Income Tax Ordinance, 2001 in order to generate additional amount to bridge fiscal gap. For the purpose, super tax on high-earning persons was deemed as the solution being a tax on windfall profits of high-earning persons/taxpayers.

vii) All liabilities that accrue in a tax year are past and closed transactions. Section 20 of the Income Tax Ordinance, 2001 provides deductions in computing income chargeable under the head "income from business" for a tax year. As these considerations shall vary from one business to another depending on its peculiarities, so, that is precisely the reason for providing the concept of a special tax year in section 74 of the Ordinance ibid in contrast with the normal tax year.

viii) Section 137(1) of Income Tax Ordinance, 2001 clearly shows that the tax payable by a taxpayer for a tax year shall be due on the due date for furnishing the taxpayer's return of income for that year. Section 137 of the Ordinance ibid is based on three stages and relates to the assessment of tax while the declaration of liability to pay tax has already been concluded on 30th June of the tax year.

Therefore, the taxable income for the purposes of the Ordinance ibid would stand determined on that date.

Conclusion: i) The section 4C of the Income Tax Ordinance, 2001, embodies the theory of taxation based on ability to pay.
ii) The general provisions of a legislation cannot retrospectively affect the past and closed transactions, unless the law clearly states that it is intended to affect such past and closed transactions.
iii) In the absence of a clear intention on the part of the legislature, Section 4C of the Income Tax Ordinance, 2001 cannot be applied to disturb and upend already fixed liabilities and rights consequently created by operation of law.
iv) The vested right' is basically a right that completely and definitely belongs to a person while right under past and closed transaction implies a right to inhere in a person on a transaction becoming past and closed.
v) The proviso to Division IIB of Part I of the First Schedule to the Income Tax Ordinance, 2001 is discriminatory and offended Article 25 of the Constitution 1973.
vi) Super Tax is a higher rate of tax to be imposed on windfall profits of high-earning persons/taxpayers whose income exceeded Rs.300 Million in respect of prescribed sectors.
vii) The reason for providing the concept of a special tax year in section 74 of the Income Tax Ordinance, 2001 is to create ease in computing income chargeable under the head "income from business", which vary from one another.
viii) The liability to pay income tax accrues on the last day of the income year.

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32. **Lahore High Court**
Syed Asif Hussain Shah v. Federation of Pakistan and others
W.P. No. 167 Of 2024
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC2988.pdf

Facts: The respondent no. 04 filed suit for dissolution of marriage and trial court decreed the suit on failure of reconciliation proceedings. The petitioner has challenged the vires of this order and also called in question the vires of proviso to sub-sections 4 & 5 of section 10 of the Family Courts Act, 1964 being contrary to Articles 4, 8, 9 & 10-A of Constitution.

Issues: i) How many ways are permitted by Islamic injunctions for dissolution of marriage between spouses?
ii) What is khula?
iii) Whether khula and dissolution of marriage under Dissolution of Marriage Act, 1939 are different?
iv) Whether a woman can seek khula if she has fixed aversions to her husband?
v) What is scope and import of word "reconciliation" used in Section 10(5) of the Family Courts Act, 1964?
vi) Whether Family Court can compel a party for reconciliation against his/her

will?

vii) Whether any shatter can be placed upon the power of the Family Court to dissolve the marriage on the basis of "khula", when reconciliation is not possible?

Analysis: i) After going through the Islamic injunctions it can be observed with all clarity that Islam permits dissolution of marriage between Muslim spouses in three ways i.e. Talaq, Mubarat and khula. Needless to reiterate that Talaq is an arbitrary and unilateral act of the husband, whereby, he may divorce his wife. Mubarat on the other hand is one of the forms of dissolution of marriage whereunder spouses may agree to part their ways through mutual consent. Contrary to both, a Muslim woman is also vested a right to obtain divorce through the court of law by instituting a suit, which is termed as "khula".

ii) "Khula" denotes the right of a Muslim woman to seek dissolution of her marriage in which she gives or consents to give a consideration to the husband for her release from marriage as determined by the court. In addition, Section 2 of The Dissolution of Muslim Marriages Act, 1939 (hereinafter referred to as "Act, 1939) lays down the grounds on which a Muslim woman can seek a decree for dissolution of marriage.

iii) There is, however, a mark distinction between dissolution of marriage through "khula" under the "Act, 1964" and "Act, 1939"… In addition, Section 2 of The Dissolution of Muslim Marriages Act, 1939 (hereinafter referred to as "Act, 1939) lays down the grounds on which a Muslim woman can seek a decree for dissolution of marriage. "Khula" and dissolution of marriage under the "Act, 1939" operate under entirely different legal systems, leading to distinct outcomes as well.

iv) A woman can seek "khula" from the court as of right if she has fixed aversions to her husband.

v) From the collective analysis of dictionary meaning of "Reconciliation", we can infer that its true import is to bring an end to the differences through meaningful and concrete effort. In other words, word "reconciliation" postulates adoption of such measures as can be proved as a factor for harmonious union between the spouses after redress of grievances which had led them to have recourse to litigation.

vi) Subsection (3) of Section 10 of the "Act, 1964" though postulates that the Family Court may, at the pre-trial stage, ascertain the points of controversy between the parties and attempt to effect compromise between them but neither the "Act, 1964" nor the rules framed thereunder provides any procedure for the said purpose. It has been thus left to the discretion of the Family Court to do so, keeping in view the peculiar facts and circumstances of each case. Even otherwise, no hard and fast rules can be laid to bound down the Family Court to strictly follow the same for the purpose of effecting compromise or bringing reconciliation between the parties. A Family Court cannot compel a party for reconciliation against his/her will. It may not be difficult for someone to take the horse to the water but at the same time he cannot make him drink. Law only

requires from a Family Court to make a genuine and concrete attempt for reconciliation between the parties.
vii) Sub-Sections (3) and (5) are interlinked and none can be read in isolation to the other. Section (5) of Section 10 of the "Act, 1964" commands the Family Court to immediately pass a decree for dissolution of marriage on failure of reconciliation proceedings. No shatters thus can be placed upon the power of the Family Court to dissolve the marriage on the basis of "khula", when reconciliation is not possible.

Conclusion: i) Islam permits dissolution of marriage between Muslim spouses in three ways i.e. Talaq, Mubarat and khula.
ii) See analysis no. ii.
iii) "Khula" and dissolution of marriage under the "Act, 1939" operate under entirely different legal systems, leading to distinct outcomes as well.
iv) See analysis no. iv.
v) Word "reconciliation" postulates adoption of such measures as can be proved as a factor for harmonious union between the spouses after redress of grievances which had led them to have recourse to litigation.
vi) Family Court cannot compel a party for reconciliation against his/her will.
vii) No shatters can be placed upon the power of the Family Court to dissolve the marriage on the basis of "khula", when reconciliation is not possible.

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33. **Lahore High Court**
Lahore Development Authority through its Director General and another v. Chaudhary Hamayun Mahmood and another
W.P.No.8177/2023
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC2971.pdf

Facts: Through this constitutional petition, the petitioners/Lahore Development Authority has challenged the validity of order passed by the Commissioner, Lahore Division, Lahore who accepted the application of the respondent No.1 and de-notified the acquired land.

Issues: i) Whether under section 48 of the Land Acquisition Act 1894, the Commissioner has any jurisdiction to issue declaration regarding de-acquisition of an acquired land of whose possession has not been taken?
ii) Can any transaction of sale made by ex-owner after issuance of notification and award thereof under Land Acquisition Act 1894 convey any right or title in favour of the subsequent purchaser?

Analysis: i) The main controversy in this petition is that as to whether under the land acquisition enactment, the Commissioner has any jurisdiction to issue declaration regarding de-acquisition of an acquired land, suffice it to say that as per Section 48(1) of the Land Acquisition Act 1894, the government has the power to

withdraw from acquisition of any land of whose possession has not been taken….. As expounded from the above provision, the Commissioner has no jurisdiction to exclude the acquired land under the Land Acquisition Act, 1894 rather it is only the Government who is shown competent to de-acquire the land.

ii) Even otherwise, notification under Section 4 of the Act ibid of land in question was issued on 28.04.2003, notification 17(4) and 6 of the Act ibid was issued on 04.07.2003 whereas award was issued on 24.10.2003 but the respondent No.1 purchased the land falling in Khasra Nos.635 & 636 through registered sale deed No.50915 dated 03.10.2011 in Moza Bhobatian and mutation No.664 was incorporated in the revenue record, whereas at the time of entering into sale transaction exowner/ vendor was not holding any title of the land as after acquisition, title of the land vested free from all encumbrances in favour of the petitioner/ LDA whereafter no sale transaction of the said land could be made by ex-owner and even if any transaction of sale was made by ex-owner after issuance of notifications and award whereof, that transaction could not convey any right or title in favour of the subsequent purchaser. The issuance of notifications under Land Acquisition Act, 1894 was a caution for public to stay away from entering into any sale/purchase transaction subsequent to the issuance of the notification and if any alienation is made then it would be at the risk and cost of the said vendee.

Conclusion: i) Under section 48 of the Land Acquisition Act 1894, the Commissioner has no jurisdiction to issue declaration regarding de-acquisition of an acquired land of whose possession has not been taken.

ii) Any transaction of sale made by ex-owner after issuance of notification and award thereof under Land Acquisition Act 1894 cannot convey any right or title in favour of the subsequent purchaser.

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34. **Lahore High Court**
Tahir Mehdi Imtiaz Ahmad Warraich v. Government of Punjab through Secretary, Home Department etc.
Press Appeal No.225/2012
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC2615.pdf

Facts: Through this appeal under Section 20 of the Press, Newspapers, News Agencies, and Books Registration Ordinance 2002, the appellant has challenged the validity of the order passed by the District Coordination Officer, who, while invoking jurisdiction under Section 19 of the Ordinance ibid, cancelled the declaration in respect of Monthly monthly magazine "Misbah" and the appellant/ printer was directed to stop the circulation of the said magazine.

Issues: i) Can conditions be imposed on the right to freedom of speech and expression as well as freedom of the press?

ii) What are the parameters for cancellation of declaration of a newspaper?

iii) Whether Government is competent to forfeit any publication?

Analysis: i) Under Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as "Constitution"], every citizen has a right of freedom of speech and expression as well as freedom of the press but said rights can only be enjoyed subject to the conditions imposed in the said Article as well as the law…As the matter in issue relates to the publication of a magazine which publication falls within the domain of "press" and the Article ibid while guaranteeing the freedom of press gives authority to impose restriction in accordance with law. For press entities, an Ethical Code of Practice has been given in the Schedule of the Press Council of Pakistan Ordinance, 2002…The crux of the aforesaid Ethical Code of Practice is that no one including "press" is allowed to violate the honor of any individual and the state of Pakistan as well as the religion of Islam. Further, Section 5 of the Press, Newspapers, News Agencies and Books Registration Ordinance 2002 deals with the directions regarding publishing material in the publication whereas Section 6 of the Ordinance ibid directs the printer to submit declaration with the undertaking to abide by the aforementioned Ethical Code of Practice…

ii) Under Section 19 of the Press, Newspapers, News Agencies and Books Registration Ordinance 2002, the parameters for cancellation of declaration of a newspaper are given…The appellant while obtaining the declaration of magazine, submitted his affidavit-cum-undertaking to abide by the provisions of the Ordinance ibid as well as the Rules and Regulations made thereunder but subsequently he has committed blatant grave violations to the aforesaid declaration. However, as an abandoned caution, the Chief Minister, Punjab constituted Muthida Ulma Board Punjab to ascertain regarding preaching of objectionable material. The said Board in its meeting after perusing the contents of the magazine, recommended for cancellation of its declaration on the ground of publishing objectionable material…In this regard, Home Department, Government of the Punjab issued a notification by holding that the magazine contains a deliberate mischief of malicious and objectionable material…The Home Department, Government of the Punjab issued direction to the District Coordination Officer and recommended for cancellation of declaration of magazine for publishing objectionable material…In view of the aforesaid facts, a show cause notice under Section 19 of the Press, Newspapers, News Agencies and Books Registration Ordinance 2002 was issued to the appellant with the allegation that the magazine is being used to preach the teachings of Qadiani group which practice is prohibited under Section 298-C PPC…The aforesaid reply given by the appellant shows that he neither controverted the allegations levelled against him nor explained about his stance rather made an evasive denial by stating that nothing objectionable is being printed in the magazine. The District Coordination Officer on the basis of aforesaid facts of the case and after providing opportunity of hearing to the appellant, passed a well-reasoned order and the reasons mentioned in the said order could not be rebutted by the learned counsel for the appellant…

iii) Furthermore, under Section 99-A of Criminal Procedure Code (Cr.P.C.), 1898, the Government is competent to forfeit any publication if it is satisfied that such publication contains objectionable material as prescribed in law.

Conclusion: i) Conditions can be imposed on the right to freedom of speech and expression as well as freedom of the press under Article 19 of the Constitution as well as the law.
ii) See above analysis No. ii.
iii) Under Section 99-A of Criminal Procedure Code, 1898 the Government is competent to forfeit any publication if it is satisfied that such publication contains objectionable material as prescribed in law.

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35. **Lahore High Court**
M/s Team Packages and others v. MCB Bank Limited
Execution First Appeal No.13 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC2677.pdf

Facts: This appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 whereby the appellants assailed the order passed by the Judge Banking dismissing objection petition of the appellants with regard to the determination of the cost of funds.

Issue: Is the explanation contained in Section 10(4) of the Ordinance applicable for the purpose of appropriation of cost of funds decreed under Section 3 of the Financial Institutions (Recovery of Finances) Ordinance, 2001?

Analysis: A suit for the recovery of finances instituted by the financial institutions can be defended only with leave of the Court as required under Section 10 of the Ordinance, which prescribes limitation, procedure and the form in which such leave is to be sought… The explanation in Section 10(4) of the Ordinance is expressly and exclusively for application thereof to clause (b) of the said sub-section to seek leave to defend a suit for recovery instituted by a financial institution. The requirement under Section 10(4)(b) of the Ordinance to specifically state the amount of finance and other amounts relating to finance payable by the defendant to the financial institution is for the period upto the date of institution of the suit, which is essentially for the purpose of determining liability for passing a decree. …Once a decree is passed, the financial institution has no discretion to appropriate the amount paid against other amounts including cost of funds. All repayments made by a judgment-debtor after passing of the decree have to be first adjusted towards decretal amount and surplus towards cost of funds. Conversely, if the option to adjust cost of funds is extended to the decree holder/Bank, it would always prefer to appropriate amounts paid for the adjustment of decretal amount towards cost of funds first to maintain outstanding claim of decree as a source of generating income perpetually, which would defeat the scheme and spirit of the Ordinance, including Section 3 thereof. …Indeed,

Section 10(4) of the Ordinance does not have any connection whatsoever with cost of funds, which obligation accrues once liability towards the financial institution is determined when the decree is passed. …Furthermore, execution of decree passed by a Banking Court is governed by Section 19 of the Ordinance which contains no provision for applicability of the explanation contained in Section 10(4) ibid. Likewise, Section 3 of the Ordinance which prescribes duty of a customer to pay cost of funds of the financial institution makes no reference to the application of above explanation either.

Conclusion: Execution of decree passed by a Banking Court is governed by Section 19 of the Financial Institutions (Recovery of Finances) Ordinance,2001 which contains no provision for applicability of the explanation contained in Section 10(4) ibid. Likewise, Section 3 of the Ordinance which prescribes duty of a customer to pay cost of funds of the financial institution makes no reference to the application of above explanation either.

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36. **Lahore High Court**
Iftikhar Ahmad v. Muhammad Anwar, etc.
C.R. No.20763 of 2024
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC2864.pdf

Facts: Through instant Petition, petitioner assailed vires of order passed by appellate Court, whereby application of respondent for amendment of the pleadings was allowed and consequently, Trial Court's consolidated judgment and decree was set aside and matter was remanded.

Issues: i) Whether a court may grant consequential relief if the same is not prayed for in a suit for declaration?
ii) Where may pleading amendments be allowed?
iii) When may amendments to the pleadings be allowed?
iv) What is the rule regarding permitting amendments in the pleadings at the stage of appeal or revision?
v) Would an amendment in the relief change the nature of the suit?

Analysis: i) The natural result of declaration if succeed, would be that consequential relief has to be given by the Court even same was not claimed and the Court in such circumstances is bound to call upon the party to amend the plaint to the extent of possession and direct him to pay the Court-fee.
ii) Amendment in pleadings may be allowed where it avoids multiplicity of suits, does not alter the subject matter or cause of action, does not take away any accrued right, entitles the plaintiff to further relief due to subsequent events, amplifies the cause of action, serves the interests of justice, triggers a new statutory line of defense due to the plaintiff's evidence, causes no injustice, or addresses an inadvertently omitted relief. However, this list is not exhaustive.
iii) Order VI, Rule 17, C.P.C. contemplates that the Court may at any stage of the

proceedings allow the parties to alter or amend the pleadings in such manner as may be just and all amendments which may be necessary for the purpose of determining the real question in controversy between them. It is settled rule that the application under Order VI, Rule 17, C.P.C. can be entertained and allowed at any stage of the proceedings if the same is necessary for effective decision thereof.

iv) Amendment can be allowed while ignoring delay whatsoever, even at any stage of proceedings in the trial, and in certain cases amendments can be permitted at the stage of appeal or even in the revisional jurisdiction, however, keeping in view the beneficial rule, that proposed amendment is expedient for the purpose of determining the real questions in controversy between the parties and it is not changing the nature of pleadings.

v) An alteration in the relief does not ordinarily change the character or substance of the suit if it is based on the same averments, and if such an amendment is allowed, no injustice could be done to the other party. It is also well-established tenet that pursuant to Order VI, Rule 17 CPC, amendments to pleadings are permissible at any juncture of the legal proceedings, provided they serve to crystallize the substantive issues at hand without transmuting the fundamental character of the original pleadings.

Conclusion: i) If suit for declaration is successfully proved, the outcome would entail the Court granting consequential relief, even if it was not specifically requested.

ii) See above analysis No. ii.

iii) The Court may, at any stage of the proceedings, allow the parties to alter or amend the pleadings in such manner as may be just.

iv) Amendment can be permitted at the stage of appeal or even in the revisional jurisdiction, however, keeping in view the beneficial rule.

v) See above analysis No. v.

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37. **Lahore High Court**
National Highway Authority, Islamabad through its Project Director Zafar Mehmood v. Muhammad Afzal Bhatti & another
RFA No.20881 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC2886.pdf

Facts: Through instant appeal, appellant challenged judgment dated passed by learned Senior Civil Judge, whereby Reference Application under Section 18 of the Land Acquisition Act, 1894, filed by respondent No.1, was accepted and he was held entitled to get compensation of acquired land @ Rs.20,00,000/- per Acre along with 15% compulsory acquisition charges, compound interest @ 8% from the date of possession i.e. date of issuance of Notification u/s 4 of the Act of 1894 till payment of compensation with interest and costs of the suit.

Issues: i) Can documentary evidence be exhibited in the statement of counsel?

ii) Would the document exhibited solely through the statement of counsel without the opportunity for cross-examination meet the legal standards for admissibility of evidence?

Analysis: i) The Referee Court has taken into consideration the market value, potentiality and value of the adjacent lands on the basis of documentary evidence tendered by respondent No.1, which clearly shows value / price of adjacent lands on higher side. However, the Apex Court of the country has laid down in a number of judgments that documentary evidence cannot be exhibited in the statement of counsel…… The verdict given by the Supreme Court is binding on all Courts of the country within the contemplation of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973.

ii) Needless to say that the concept that documents cannot be admitted into evidence solely through the statement of counsel during evidence is rooted in the fundamental right to cross-examination, which is an essential aspect of the adversarial legal system. The right to cross-examination allows the opposing party to challenge the veracity, authenticity, and relevance of the evidence presented, including documents. If documents were to be admitted solely on the statements of counsel, it would indeed compromise the right of the other party to cross-examine, which is not warranted by law. Therefore, the trial Courts must ensure that all documentary evidence is subject to the scrutiny of cross-examination to uphold the principles of fairness and due process. Documents exhibited solely through the statements of counsel without the opportunity for cross-examination would not meet the legal standards for admissibility of evidence. This ensures the integrity of the judicial process and the rights of the parties involved. The superior Courts of the country have also enriched the law through their judgments, setting precedents for the proper admission of documents and evaluation. The Courts must ensure so far as it is possible that these legal standards are met to maintain the integrity of the judicial process and uphold the rights of the parties involved.

Conclusion: i) Documentary evidence cannot be exhibited in the statement of counsel.

ii) The document exhibited solely through the statement of counsel without the opportunity for cross-examination would not meet the legal standards for admissibility of evidence.

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38. **Lahore High Court**
Ghazanfar Amin v. Province of Punjab and others
Writ Petition No. 7027/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2905.pdf

Facts: Respondent No.4 owned a piece of land. He appointed Respondent No.5 as his General Attorney in respect of the said land through General Power of Attorney. However, the Respondent No.4 personally executed an Exchange Deed rather than through his General Attorney (Respondent No.5). Consequent upon this

exchange, the Petitioner became the owner certain land. The land was duly mutated in his favour in the revenue record. However, when he applied to the Halqa Patwari for *Fard Malkiat*, he refused to issue the same on the grounds that the Audit Officer had pointed out that Respondent No.4 had not paid the Capital Value Tax (CVT), payable on General Power of Attorney executed by him in favour of Respondent No.5.

Issues: i) Whether the two expressions: "aggrieved party" and "aggrieved person" as used in Article 199 of the Constitution conveys distinct meanings?
ii) Whether CVT is chargeable on every power of attorney in terms of section 6(3) of the Punjab Finance Act, 2012?

Analysis: i) The High Court's power of judicial review under Article 199 of the Constitution is an original jurisdiction conferred by the Constitution. However, this power is *inter alia* subject to the condition that no other adequate remedy is provided by law. Further, in respect of the matters mentioned in clauses (i) and (ii) of Article 199(1)(a), the High Court must be moved by an aggrieved party while any person may approach it for an order under clauses (i) and (ii) of Article 199(1)(b). As for the matters falling within the ambit of Article 199(1)(c), it can exercise jurisdiction only on the application of an aggrieved person. It is important to note that Article 199 has used two expressions: "aggrieved party" and "aggrieved person". The rule of interpretation is that when the legislature uses two different terms, the intention is to convey distinct meanings.
ii) In section 6(3) of the 2012 Act, the legislature talks about the acquisition of immovable property and has used the term "power of attorney" alongside other methods such as purchase, gift, exchange, surrender, relinquishment, and lease. This suggests a shared context among these terms. By applying the *noscitur a sociis* principle, it can be inferred that the legislature intended to impose CVT specifically on a general power of attorney when an individual acquires immovable property through it and not otherwise. Traditionally, the transfer of ownership for immovable property involves a registered instrument, as mandated by the Registration Act of 1908. This instrument needs registration with the Registrar of Documents, requiring payment of stamp duty under the Stamp Act and a registration fee. While this process is generally straightforward, an alternative method has emerged in recent years, moving away from the Registrar of Documents. This alternative facilitates private property transfers using documents like transfer letters, agreements to sell, and power of attorneys. In this alternative approach, the buyer obtains possession of the property and uses it like an owner. This deviation aims to lower transactional costs and taxes, promoting a higher turnover of properties for investment. Despite lacking formal legal recognition, this practice has been adopted by entities such as cooperative housing societies, statutory authorities, limited liability companies, and even private individuals, capitalizing on significant financial benefits and convenience…. CVT may not always be chargeable under section 6(3) of the 2012 Act on every power of attorney. Consequently, an individual is entitled to show that he is not liable to

pay the tax in a particular case.

Conclusion: i) The two expressions: "aggrieved party" and "aggrieved person" as used in Article 199 of the Constitution convey distinct meanings.
ii) CVT is not chargeable on every power of attorney in terms of section 6(3) of the Punjab Finance Act, 2012.

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39. **Lahore High Court**
M/s AG Signs (Pvt.) Ltd. v. Gashoo Advertiser
Civil Revision No.449-D of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2894.pdf

Facts: The Petitioner has filed this Civil Revision under Section 115 of the Code of Civil Procedure, 1908 challenging judgment and decree of the Appellate Court dismissing relevant appeal and upholding the judgment and decree passed by the learned trial Court. Besides, the Petitioner has also challenged order, whereby his right to produce evidence was closed by the learned trial court.

Issues: i) Whether a party may seek favour of law after not producing evidence despite being provided with numerous opportunities through repeated orders of the Court in this regard?
ii) What is the scope of the Civil Revision under Section 115 of the Civil Procedure Code, 1908 preferred against concurrent findings of facts recorded by courts below?

Analysis: i) Under Order XVII, Rule 1(1) of the Code of Civil Procedure, 1908, the trial Court is vested with powers to adjourn the hearing of a case on showing sufficient cause by either of the party and Rule 1(2) of the said Order empowers the Court seized of the matter to fix a day for further hearing of the suit subject to costs occasioned by the adjournment. Order XVII, Rule 3 of the Code ibid empowers the Court to proceed to decide the suit forthwith if a party, to whom time has been granted, fails to produce evidence, secure the attendance of witnesses, or perform any other act necessary for the further progress of the suit.
ii) If the Revision Petition does not point out any illegality, material irregularity, mis-reading or non-reading in the concurrent findings of facts recorded by the both the Courts below, then the revisional jurisdiction cannot be exercised to re-appraise the evidence in order to devise an inference other than the Courts below.

Conclusion: i) If a party does not produce evidence despite being provided with numerous opportunities through repeated orders of the Court, then such like indolent party cannot seek favour of law, because law favours the vigilant and not the indolent.
ii) The revisional powers are limited and can only be exercised when the Revision Petitioner succeeds in establishing that the impugned judgment suffers from legal infirmities hedged in Section 115 of the Civil Procedure Code, 1908.

40. **Lahore High Court**
Golden Jubilee Cooperation Society v. Secretary Cooperative etc.
Writ Petition No.74 of 2024
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2024LHC2699.pdf

Facts: The Petition filed by one of the Respondents under Section 54 of the Cooperative Societies Act, 1925 was allowed by the concerned Circle Registrar, Cooperative Society, directing the Petitioner Housing Society to transfer the subject plot in favour of said Respondent. The Petitioner filed appeal before the concerned Secretary to the Government of Punjab, Cooperative Department, which was dismissed vide impugned order, hence this petition.

Issue: Whether a housing society may decline transfer of a plot in favour of subsequent purchaser from original member, whilst applying Section 17 of the Cooperative Societies Act, 1925, on account of his violation of sale agreement in connection with some other plot of the said society?

Analysis: If a plot is purchased by subsequent purchaser from original member of housing society after payment of full consideration and he has taken possession thereof as well as subject plot is not under any litigation, then the provisions of the Section 17 of the Cooperative Societies Act, 1925 are not attracted. In addition, Article 23 of the Constitution of Islamic Republic of Pakistan, 1973 guarantees that every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest. Further, Article 24 of the Constitution ibid guaranteed protection of property rights.

Conclusion: A housing society cannot decline transfer of a plot in favour of subsequent purchaser from original member in case where he has taken possession of subject plot after payment of full consideration and same is not under any litigation.

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41. **Lahore High Court**
Government of the Punjab, etc. v. Muhammad Ahmad
ICA No. 37 of 2022
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Muhammad Waheed Khan, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC2683.pdf

Facts: Respondent applied and competed for initial appointment, against the post of Sub-Inspector, advertised by the PPSC vide public advertisement. Respondent was got medically tested and found suffering from partial color blindness, who was declared unfit and held disqualified for the post in question. The respondent filed writ petition which was allowed and Police department was directed to consider respondent for appointment as Sub-Inspector, hence this intra court appeal. Instant

appeal was placed before larger Bench, in wake of the observations recorded by learned Division Bench.

Issues: i) Whether the Sub-Inspectors and Inspectors (Appointment and Conditions of Service) Rules, 2013, and conditions prescribed therein, have to be treated and read as exhaustive or all-inclusive conditions, admitting of no other qualifications/conditions?

ii) Whether absolute exclusivity can be extended to the minimum qualifications in the schedule to the Rules 2013 by virtue of Rule 14 of the Rules 2013, in the context of other requisite qualifications?

iii) Whether recruit can claim absolute entitlement to the appointment against post simply claiming fulfillment of minimum qualifications in the Schedule to the Rules 2013?

iv) Whether restrictive or exclusionary interpretation can be attributed to the Rules 2013 and any inconsistency can be claimed in the context of vision standards prescribed under Notification of 1965?

v) Whether requirement(s) of "good muscle-balance, visual fields and colour vision, night vision and binocular vision" per se stood excluded for being not appearing in the schedule to the Rules 2013?

vi) Whether notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore is extremely essential if the cut date for removal of objection falls in the midst of Court's winter vacation?

vii) Whether government can be deprived of entitlement to notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore?

Analysis: i) At first blush and upon threadbare analysis, textual reading of Rule 14 of the Sub-Inspectors and Inspectors (Appointment and Conditions of Service) Rules, 2013 clearly suggests that over-riding effect provided in terms thereof is not absolute but cautiously qualified – seemingly limited and preference extended to the extent of any inconsistency, if found qua Chapters 12 and 13 of Police Rules, 1934. Rules 13 and 14 of the Rules 2013 complement each other, which require conjunctive reading… We repel the argument that identification of bare minimum qualifications in the advertisement and non-disclosure of each and every qualification or disqualification in the Rules 2013 would imply exclusion of all other conditions, which otherwise form part and parcel of requirements for determining medical fitness. In essence, conditions, in addition to those minimally prescribed in the Rules 2013, are characterized as supplemental or incidental conditions and vision standards, provided in the Notification of 1965, constitute supplemental / incidental conditions – to be read as part and parcel of the Rules 2013 and for that matter Rule 12.16 of the Police Rules 1934. In brief, claim of exclusion of vision standards in Notification of 1965 manifest erroneous construction of Rule 14 of the Rules 2013, when no inconsistency is otherwise found.

ii) Argument by respondent's counsel that absolute exclusivity was extended to

the minimum qualifications in the schedule by virtue of Rule 14 of the Rules 2013, in the context of other requisite qualifications, is wrong on two-counts. Firstly, absolute exclusion of other conditions, available and attracted in terms of Rule 12.16 of the Police Rules 1934 and appendix thereto was neither intended nor any such effect could be extended while undertaking recruitment, unless any particular requirement under Chapter 12 of the Police Rules 1934 is found contrary to the qualifications identified in the schedule to the Rules 2013. Expression "these rules shall have effect notwithstanding anything contrary contained in Chapters 12 and 13 of the Police Rules 1934" must be accorded due deference, as long as Rules are not amended to otherwise limit or expand the scope of inconsistency(ies). Hence, overriding effect is restricted to the extent of inconsistency and not otherwise. Mere non-mentioning of any qualification, otherwise identified in the Rule 12.16 and appendix thereto or in the Notification of 1965, could not be construed as conscious omission. Evidently, Rules 2013 are not a complete code in itself. Secondly, alternate plea that indication of express conditions entails implied repeal of the requirements under Rule 12.16 of the Police Rules 1934 is also without substance. No question of implied repeal arose upon textual reading of Rule 14 of the Rules 2013. Argument is otherwise illogical.

iii) No recruit could claim absolute entitlement to the appointment against post under reference, simply upon claiming fulfillment of minimum qualifications in the schedule to the Rules 2013. It is reiterated that qualifications prescribed in the schedule constitute bare minimum requirements, which have to be read in conjunction with other applicable qualifications, not otherwise inconsistent. Bare recommendations by the Commission were not enough to secure appointment, unless medical fitness of the recruit is certified in terms of Rule 12.16 of the Police Rules 1934.

iv) Rule 12.16 of Police Rules 1934 and appendix thereto talk of mandatory requirement of the medical certificate, before declaring candidate eligible and fit for the post – and medical certificate requires affirmation of the vision standards. Let's examine a hypothetical situation. No particular reference to any ailment was provided in the schedule to the Rules 2013 or Rule 12.16 of the Police Rules 1934. Does mere non-mentioning of a particular ailment would suggest that any prospective candidate, though suffering from said ailment, considered a disability for appointment to government service or for that matter police department, which ailment was discovered upon conduct of post-approval medical examination, could claim entitlement to the appointment on the premise that such ailment was not identified in the minimum qualifications. No such restrictive or exclusionary interpretation could be attributed to the Rules 2013, provided any inconsistency is found. Even otherwise no inconsistency could be claimed in the context of vision standards prescribed under Notification of 1965.

v) If we go by the erred construction of the Rules 2013, proposed by learned counsel for respondent, which claimed that requirement(s) of "good muscle-balance, visual fields and colour vision, night vision and binocular vision" per se

stood excluded for being not appearing in the schedule to the Rules 2013, and such disabilities, as identified in the Notification of 1965, are not attracted. This implies that even a person with poor night vision could claim entitlement to enrolment on the premise that no particular reference to such defect in the vision was found in the advertisement or the Rules 2013. This construction is fallacious, even bordering absurdity.

vi) Record is examined, which depicts that appeal against order of 06.12.2021 was initially filed on 23.12.2021, wherein various office objections were raised, and seven days were allegedly allowed for removal of objections… if seven days were considered to be granted for removal of office objection on 23.12.2021, then same had to be removed by 31.12.2021, which cut-off date fell in the midst of Court‟s winter vacation. This aspect makes the requirement of notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore extremely essential.

vii) If private person is held entitled to notice in terms of Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore, government cannot be deprived of this treatment.

Conclusion: i) Rules 2013, and conditions prescribed therein, cannot be treated and read as exhaustive or all-inclusive conditions, admitting of no other qualifications / conditions.

ii) Absolute exclusivity cannot be extended to the minimum qualifications in the schedule to the Rules 2013 by virtue of Rule 14 of the Rules 2013, in the context of other requisite qualifications.

iii) Recruit cannot claim absolute entitlement to the appointment against post simply claiming fulfillment of minimum qualifications in the Schedule to the Rules 2013

iv) Restrictive or exclusionary interpretation cannot be attributed to the Rules 2013 and no any inconsistency can be claimed in the context of vision standards prescribed under Notification of 1965.

v) Requirement(s) of “good muscle-balance, visual fields and colour vision, night vision and binocular vision” cannot per se stood excluded for being not appearing in the schedule to the Rules 2013.

vi) Notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore is extremely essential if the cut date for removal of objection falls in the midst of Court’s winter vacation.

vii) Government cannot be deprived of entitlement to notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore.

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42. **Lahore High Court**
National Bank of Pakistan and 04 others Vs. Mumtaz Ahmad
I.C.A. No. 85 of 2024
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC2943.pdf

Facts: Through this Intra Court Appeal, appellants called in question order passed by learned Single Judge of this Court whereby constitution petition filed by the respondent was allowed and impugned order declining promotion to the respondent was set aside and present appellants were directed to proceed in the matter and reconsider the case of the respondent on its own merits and in the light of judgment of Supreme Court of Pakistan mentioned in the said order.

Issue: Is intra court appeal competent from the order of a single judge in constitutional jurisdiction due to availability of appeal against the original order?

Analysis: The question relating to maintainability of Intra Court Appeal in terms of proviso to subsection (2) of Section 3 of Law Reforms Ordinance, 1972 came up for consideration in the case of "Mst. Karim Bibi and others v. Hussain Bakhsh and another" (PLD 1984 SC 344) wherein Supreme Court of Pakistan has held that where there is at least one appeal against the original order, in the proceedings, then no appeal would be competent from the order of a single judge in constitutional jurisdiction. Meaning thereby that the test is whether the original order, passed in the proceedings was subject to an appeal under the relevant law, irrespective of the fact as to whether the remedy of appeal was availed or not by a party. A similar view was rendered by the Supreme Court of Pakistan in the case "Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I, Lahore" (PLD 1985 SC 107) wherein the said Court again reiterated the principle laid down in the Karim Bibi case (supra) and held that Intra Court Appeal was not competent because the law provided for an appeal against the original order. In recent judgment of Supreme Court of Pakistan "International Islamic University, Islamabad through Rector and another Vs. Syed Naveed Altaf and others" (2024 SCMR 472), the Supreme Court of Pakistan upheld the order of High Court declaring the Intra Court Appeal as not maintainable due to availability of appeal against the original order by observing that where decision is made by Single Judge of High Court in proceedings under challenge through constitution petition, the essential requirement to invoke the proviso to section 3(2) of the Law Reforms Ordinance for determination of maintainability of Intra Court Appeal is to see whether the remedy of at least one appeal, review or revision is available under the law against the original order.

Conclusion: Intra court appeal is not competent from the order of a single judge in constitutional jurisdiction due to availability of appeal against the original order.

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43. **Lahore High Court**
Ahsan Allahi Zaheer and another v. Government of Punjab.
Intra Court Appeal No. 57 of 2024.
Mr. Justice Muhammad Waheed Khan, Mr. Justice Sadiq Mahmud Khurram.
https://sys.lhc.gov.pk/appjudgments/2024LHC3038.pdf

Facts: This Intra Court Appeal has been filed against the order passed by the learned Single Judge in Chambers in the Writ Petition, whereby the Petition filed by the appellants under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was dismissed.

Issues: i) What are the constraints imposed by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 on the ability of the high court to compel an employer to renew expired contracts of service through a mandatory injunction?
ii) Whether the high court in the exercise of its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can entertain such kind of allegations which require strict factual proof and recording of evidence?
iii) Whether the contractual employees have an automatic right to continue the employment?
iv) Whether the contract employees have a vested right to claim extension of contract through constitutional jurisdiction of the Court under Article 199 of the Constitution and what alternative legal recourse is available to such employees in cases of alleged wrongful termination or contract breach by their employers?
v) Whether the writ jurisdiction of High Court is barred in presence of alternate and efficacious remedy?

Analysis: i) We are afraid that the subject matter extension of contracts cannot be granted to their appellants as of law as well as of right, firstly, for the reasons that on the day when the appellants invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973,their status was of employees whose contracts had expired and this Court under its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 through a mandatory injunction cannot force an unwilling employer to extend the contracts of service which has already expired.
ii) Secondly, for granting a relief canvassed by the appellants in the petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and now in the instant Intra Court Appeal this Court cannot undertake a factual inquiry. Thirdly, it is not the case of the appellants that non-extension of their contracts suffers from mala fide in law as neither the Contract Policy, 2004 nor the Recruitment Policy 2022 has been challenged nor any statutory instrument or order has been assailed. The nature of challenge put forward by the appellants at maximum can be termed as mala fide in fact, which this Court in the exercise of its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot entertain, as such kind of allegations require strict factual proof and recording of evidence.
iii) It is important to note that the employment of appellants was contractual in nature and being contractual employees, the appellants have no automatic right to continue the employment unless same has specifically been provided in law. Being contractual employees, the relationship between the appellants and respondents will be governed by the principle of master and servant and the

appellants have to serve till the satisfaction of their master.

iv) Hence, in view of the established principle of law that a contract employee is debarred from approaching this Court in its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for reinstatement or extension of a contract and the only remedy available to a contract employee is to file suit for damages alleging any breach of contract or failure to extend the contract, this Court cannot force the employer to reinstate or extend the contract of the employees, even in case of any wrongful termination.

v) Even otherwise, in view of the availability of an alternate efficacious remedy/claim of damages/compensation, if any, to the appellants under the law, the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is also barred.

Conclusions: i) High Court under its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 through a mandatory injunction cannot force an unwilling employer to extend the contracts of service which has already expired

ii) No, the high court in the exercise of its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot entertain, such kind of allegations which require strict factual proof and recording of evidence.

iii) The contractual employees have no automatic right to continue the employment unless same has specifically been provided in law.

iv) See above in analysis no. iv.

v) The jurisdiction of High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is barred in presence of alternate and efficacious remedy.

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44. **Lahore High Court**

Muhammad Dilshad v. The Government of Punjab through Chief Secretary, Punjab Lahore and five others.

Intra Court Appeal No. 56 of 2024

Mr. Justice Muhammad Waheed Khan, Mr. Justice Sadiq Mahmud Khurram

https://sys.lhc.gov.pk/appjudgments/2024LHC3033.pdf

Facts: This Intra Court Appeal has been filed against the order, passed by the learned Single Judge in Chambers in the Writ Petition, whereby the Petition filed by the appellant under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was dismissed.

Issue: What is the basic criteria for the issuance of a writ of mandamus, and can a direction to issue a writ of mandamus be sought by a person who is not aggrieved?

Analysis: The existence of a legal right is the foundation of a writ of mandamus and the appellant has to prove that he was an aggrieved person. The appellant, in order to

obtain relief by way of a writ of mandamus, must satisfy the Court that he had a legal right to compel the performance of a duty and the person against whom the right was sought was under a legal obligation to perform the duty. A person cannot be said to be an aggrieved person unless he has a right in the performance of a statutory duty by a person performing functions in respect of any such right. Only an aggrieved person can file a writ other than a writ of habeas corpus and quo warranto and the learned counsel for the appellant has failed miserably to demonstrate before us that the appellant was an aggrieved person.

Conclusion: The existence of a legal right is the foundation of a writ of mandamus and the petitioner has to prove that he is an aggrieved person.

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45. **Lahore High Court**
Muhammad Arif Malik v. Additional District Judge & two others
W.P No. 12218 of 2022
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2933.pdf

Facts: Instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 was filed to call into question the validity of order and judgments passed by learned Special Judge Rent, and learned Additional District Judge, , respectively, whereby ejectment petition filed by respondent was accepted by learned Special Judge Rent, however, the respondent was held entitled only to receive arrears of rent from the date of filing ejectment petition at the rate of Rs.9000/- per month till vacation of demised premises, and appeals filed by both the parties were decided by dismissing the appeal filed by petitioner and partially allowing the appeal filed by respondent.

Issue: (i) Whether entries in record pertaining to PT-I confer ownership?
(ii) Whether mortgagor can legitimately create mortgage in respect of property, the ownership of which does not vest in him?
(iii) Is the amount agreed to be paid under the lease agreement, which is part of a combined mortgage and lease transaction, legally considered rent payable by a tenant to a landlord, or is it merely interest due on the mortgage money?
(iii) Whether mortgage is merely a charge or ownership?
(iv) What is the effect of simultaneous execution of mortgage and lease by the mortgagor?
(v) What should be kept in view by the Courts while dealing with the cases of lease deed executed simultaneously with the mortgage?
(vi) When concurrent finding of the courts below can be interfered through constitutional jurisdiction under Article 199 of the Constitution of Pakistan?

Analysis: (i) Even otherwise, it is by now a settled principle of law that entries in the record pertaining to PT-I in no way confer ownership rights… wherein while dealing with the authenticity of PT-1 it was observed by the Apex Court that any entry in PT-1 maintained by Excise & Taxation Office would not confer any ownership

right over the property and such document merely speaks about the right of possession.

(ii) There is no cavil with the proposition that no mortgage can legitimately be created in respect of property, the title/ownership whereof does not vest in the mortgagor as the mortgagor does not have any explicit authority to create charge upon such property.

(iii) Undeniably, agreements i.e. one to mortgage the property and second to lease out the property are mentioned in one and the same document Exh:A1. Irresistible and vivid conclusion that can be drawn from the contents of document Exh.A1 would be that lease deal as mentioned in Exh.A1 was coined merely for the purpose of realizing the interest due on mortgage money, therefore, the amount agreed to be paid as a rent can hardly be counted and considered as a rent payable by the tenant to the landlord. As the amount that was shown to be received by the respondent was a certain sum of amount to be received for the consideration of amount to the tune of Rs.200,000/- that was lent to mortgagor, therefore, said amount can hardly be considered as rent amount to be paid by the mortgagor to the mortgagee for the simple reason that the mortgagor still was the owner of the property…it was observed that it is established principle of law that mortgage is a charge and not ownership.

(iv) Simultaneous execution of mortgage and lease by the mortgagor shall be justifiably considered as mechanism/mode for the purposes of realizing due interest on the mortgage money and in such eventuality no relationship of landlord and tenant would come into existence as the lease deed in fact was a device to recover interest on loan.

(v) It was further observed by the Apex Court that in dealing with the cases of that nature it should be kept in view that a lease deed executed simultaneously with the mortgage deed in fact provides a machinery under which the mortgagee has to receive interest on the principal amount advanced as loan to the mortgagor whereafter more than one legal incidents flow from that situation. It was finally resolved by the Apex Court that relationship of landlord and tenant would not thereby come into force in the sense in which those terms were ordinarily understood.

(vi) Indeed this Court while invoking the provisions of Article 199 of the Constitution do not ordinarily interfere with the concurrent findings of fact given by the courts below, however, it is settled principle of law that where the orders passed by the courts below suffer from some legal error or jurisdictional defect, this Court can conveniently invoke the jurisdiction under the provisions of Article 199 and to set aside the impugned order and decrees as being passed in exercise of jurisdiction not vested in the courts below.

Conclusion: (i) Entries in the record pertaining to PT-I in no way confer ownership rights.

(ii) No mortgage can legitimately be created in respect of property, the title/ownership whereof does not vest in the mortgagor.

(iii) Said amount can hardly be considered as rent amount to be paid by the mortgagor to the mortgagee for the simple reason that the mortgagor still was the owner of the property and mortgage is a charge and not ownership.
(iv) See above analysis No. (iv).
(v) While dealing with the cases of that nature it should be kept in view by the Courts that a lease deed executed simultaneously with the mortgage deed in fact provides a machinery under which the mortgagee has to receive interest on the principal amount advanced as loan to the mortgagor.
(vi) See above analysis No. (vi).

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46. **Lahore High Court**
Muhammad Arshad & others v. The State
Criminal Appeal No.24464-J of 2021
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2955.pdf

Facts: Criminal Appeal was filed through jail authorities to challenge conviction and sentences passed under sections 302, 364, 109, 148, 149 PPC by Additional Sessions Judge/Trial Court.

Issues: i) Import of Article 129 Qanun-e-Shahadat Order, 1984.
ii) Circumstances which make presence of PWs at scene of occurrence doubtful.
iii) Motive as corroborative piece of evidence.
iv) Effect of delay in conducting post mortem examination.

Analysis: i) Provisions of Article 129 of Qanun-e-Shahadat Order, 1984 allow the courts to presume the existence of any fact, which it thinks likely to have happened in the ordinary course of natural events and human conduct in relation to the facts of a particular case. The conduct of witnesses of ocular account in the instant case vividly was opposite to the common course of natural events and human conduct, further suggesting that the witnesses of ocular account were not present at the time of occurrence.
ii) It would be hard to believe that assailants would have waited for arrival of PWs so as to enable them to witness the occurrence and on their arrival they started causing injuries on the person. Such a behavior on the part of assailants is not in consonance with the natural human behavior and it can very conveniently be inferred that PWs were not present at the spot and they have merely been introduced as witnesses of ocular account after due deliberations and consultation.
iii) It is also a settled principle of law that motive is always considered as a double edged weapon which cuts both ways. It is an admitted rule of appreciation of evidence that motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone would have no evidentiary value.
iv) It may also be seen that autopsy in this case was conducted….after around seventeen hours of the occurrence. According to post mortem examination report, dead body was received in hospital at 05:00 P.M. and police papers were received

at 09:30 P.M. No plausible explanation is forthcoming by the prosecution to justify such a belated submission of police papers and post mortem examination and the same would give rise to a legitimate presumption that police papers were sent to hospital after deliberations and consultation.

Conclusion: i) Provisions of Article 129 of Qanun-e-Shahadat Order, 1984 allow the courts to presume the existence of any fact, which it thinks likely to have happened in the ordinary course of natural events and human conduct in relation to the facts of a particular case.
ii) See above analysis No. ii.
iii) Motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone would have no evidentiary value.
iv) Delay in conducting post mortem examination gives rise to legitimate presumption of deliberation and consultation.

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47. **Lahore High Court**
Muhammad Umar etc. v. The State, etc.
Criminal Appeal No.58520-J of 2020
Mirza Munawwar Hussain Baig v. The State, etc.
Criminal Revision No. No.49773 of 2020
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC2718.pdf

Facts: The appellants, were tried by the Additional Sessions Judge in case FIR under sections 302, 460 & 411 PPC and on conclusion of trial, they were convicted and sentenced. Sentences of the appellants were ordered to run concurrently with benefit of section 382-B of Cr.P.C. The appellants preferred appeal against conviction, whereas, the complainant filed criminal revision.

Issues: i) What is the duty of the investigator to ensure the safe dispatch and deposit of parcels to PFSA?
ii) Can an expert from PFSA visit the crime scene on its own and dispatch material directly to PFSA for examination?
iii) Is it imperative for the prosecution to provide all links in chain as unbroken of circumstantial evidence, where one end of the same touches the dead body and the other the neck of the accused?
iv) Whether a joint identification parade can be read against the accused?
v) Whether the process of identification of an article is also required to be conducted by the Magistrate in the same fashion as the identification of a suspect?
vi) Can courts be required to take extra care and caution to narrowly examine circumstantial evidence with a pure judicial approach to satisfy itself, about its intrinsic worth and reliability?
vii) Whether mere medical evidence can be made basis to record or sustain conviction?

Analysis: i) According to prosecution's own showing, it was an unseen occurrence, hinges

upon the circumstantial evidence which usually flows from the artefacts of death with sequence of articles lying near or around the dead body, examination whereof with naked eye by the police or expert is required to be done only in prescribed manner, procedural mandate is mentioned in Rule. 25.33 of Police Rules, 1934… Under the command of above Rule, investigating officer can seek technical assistance from the experts as per Rule 25.14 of Police Rules, 1934… Rule 25.14 in all covers calling in aid of PFSA teams for the purpose of preservation, collection, sampling and packaging of articles, biological stains and securing the finger prints followed by handing over the parcels to the police for its dispatch to PFSA analysis. Investigator is required to stamp such parcels with seal of police station by mentioning the particulars of case as required by Rule 25.33 cited above, its entry into register No. 19 of police station and then after obtaining docket/permission from the senior police officer of the district ensure safe dispatch and deposit of parcels to PFSA. Rules-25.41 of Police Rules, 1934 relates to channel of communication with Chemical Examiner which mandates as under:- "Superintendents of Police are authorised to correspond with and submit articles for analysis to the Chemical Examiner direct in all cases other than human poisoning cases….." Further requirement of Rule 25.41, has also been observed by this Court in case reported as "Meer Nawaz alias Meero Vs The State" (PLJ 2022 Cr. C 955 Lahore).

ii) In no case, an expert can take the samples direct to PFSA for analysis because it is the investigator to decide what sort of analysis he is seeking in that particular case. Rule-25.41 (2) impliedly prohibits such practice which is mentioned in said Rule in the form of Notes: - (2) as under:- "(2) In no case should the Medical Officer attempt to apply tests for himself. Any such procedure is liable to vitiate the subsequent investigation of the case in the laboratory of the Chemical Examiner" Juxtaposing of above rule with mandate of PFSA is essential to see if any power is available to PFSA experts to take a lead on crime scene independent of investigators. As per section-4 of the Punjab Forensic Science Agency Act, 2007, functions of PFSA… As per above mandate, PFSA can seek clarification from the person who has collected or handled the forensic material in prescribed manner or subject to direction of government collect forensic material that requires special expertise or scientific methods for collection and preservation. Thus, in no case PFSA, at its own can visit the crime scene except summoned by the investigator which he must do if essential. Similarly, experts of PFSA also cannot dispatch material directly to PFSA. 10. Further introducing an expert in chain of safe custody of parceled articles would amount to compromise the process because it is the legal duty of police to dispatch such articles to PFSA and not the expert and if the custody protocols are breached, then police can be held responsible and not the experts. Such breach amounts to disobeying the direction of law or defective investigation which is culpable under sections 166 & 186 (2) of PPC, however, if at the crime scene any expert in connivance destroys or manipulates evidence can be bracketed for offences under sections 166 or 217 of PPC but not otherwise because their function is to conduct test or analysis of

forensic material, therefore, are held responsible only if tender false opinion as mentioned in section 13 of Punjab Forensic Science Agency Act, 2007…

iii) To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is that it is imperative for the prosecution to provide all links in chain as unbroken, where one end of the same touches the dead body and the other the neck of the accused… Including "LEJZOR TEPER versus THE QUEEN" (PLD 1952 Privy Council 119) & others, dilated upon the strands of circumstantial evidence like motive, plans and preparatory acts, capacity, opportunity, identity, continuance, failure to give evidence and failure to provide evidence, and held that circumstantial evidence must be conclusive.

iv) It has further been observed that it was a joint identification parade which cannot be read against the accused/ appellants because it opposes to dictum laid down by Supreme Court of Pakistan in many cases like PLD 2019 Supreme Court 488 wherein notice was given to Kanwar Anwar Ali, Special Judicial Magistrate for his dereliction of duty and lack of sufficient legal knowledge on conducting defective identification parade…

v) Even otherwise process of identification of an article is also required to be conducted by the Magistrate in the same fashion as he does for identification of a suspect. This has been explained in law in terms that evidentiary value of identification parade as being relevant fact in the form of explanatory evidence is regulated under Article 22 of Qanun-e-Shahadat Order, 1984… The words 'identity of anything or person' in the above Article makes no difference of process for both. I am also mindful of the fact that identification of articles in the manner as has been done in this case, is least permissible in law. The most essential requirement is that the witnesses should not have had an opportunity of seeing the property after its recovery and before its identification before the Magistrate. For that purpose, it is necessary to seal the property as soon as it is recovered and to keep it in a sealed condition till it is produced before the Magistrate. If the police officers who take the sealed bundles to the police station after recovery and who take it to the Magistrate for identification proceedings should be examined to prove that the sealed bundles were not tampered in the way. The sealed bundles should be opened in the presence of the Magistrate conducting the identification proceedings and he should depose about it. The property to be mixed with the property to be identified should also be sealed some days before witnesses are called and the bundle containing it should also be opened in the presence of the Magistrate who should testify about it in Court. Further the result of identification should be entered in the memorandum by the Magistrate in his own hand.

vi) Supreme Court of Pakistan has held that in cases of circumstantial evidence, there is every chance of fabricating the evidence, which can easily be procured; therefore, Courts are required to take extra care and caution to narrowly examine such evidence with pure judicial approach to satisfy itself, about its intrinsic worth and reliability, also ensuring that no dishonesty was committed during the course of collecting such evidence by the investigators. If there are apparent

indications of designs on part of the investigating agency in the preparation of a case resting on circumstantial evidence, the Court must be on guard against the trap of being deliberately misled into a false inference.
vii) It is trite that medical evidence cannot be made basis to record or sustain conviction because it could only give details about the locale, dimension, kind of weapon used, the duration between injury and medical examination or death and autopsy, etc. but never identifies the real assailant.

Conclusion: i) See above analysis No. i.
ii) An expert from PFSA cannot visit the crime scene on its own and dispatch material directly to PFSA for examination.
iii) It is imperative for the prosecution to provide all links in chain as unbroken of circumstantial evidence, where one end of the same touches the dead body and the other the neck of the accused.
iv) A joint identification parade cannot be read against the accused.
v) The process of identification of an article is also required to be conducted by the Magistrate in the same fashion as the identification of a suspect.
vi) Courts are required to take extra care and caution to narrowly examine the circumstantial evidence with pure judicial approach to satisfy itself, about its intrinsic worth and reliability, also ensuring that no dishonesty was committed during the course of collecting such evidence by the investigators.
vii) Mere medical evidence cannot be made basis to record or sustain conviction because it can only give details about the locale, dimension, kind of weapon used, the duration between injury and medical examination or death and autopsy, etc. but never identifies the real assailant.

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48. **Lahore High Court**
Muhammad Shamoon etc. v. SHO, etc.
Criminal Revision No. 31115 of 2021
Muhammad Asif etc. v. SHO, etc.
Criminal Revision No. 27750 of 2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC2802.pdf

Facts: The petitioners filed instant Criminal Revisions against order passed by learned Special Judge (Central), declining the request of petitioners for return of their legal money allegedly recovered by respondent No. 2/Railway Police from them as an embezzled amount in relation to a case FIR u/s 420, 467, 468, 471, 472, 109 PPC read with 5(2) 47 Prevention of Corruption Act, 1947.

Issues: i) When criminal court may pass order regarding disposal of property?
ii) Whether principle of merger applies when decision of trial court is being reversed by the appellate court?
iii) What is recourse to accused for return of property etc., if he has been convicted by trial court but acquitted by appellate court?
iv) Whether High Court can pass appropriate order u/s 520 of Cr.PC if trial court

has not decided petition u/s 517 of Cr.PC on merits?

v) Whether section 517 of Cr.PC is exhaustive section for the purpose of disposal of property?

vi) Whether section 517 of Cr.P.C. provides jurisdiction to Court to decide all questions arising out of acquittal order.?

vii) Whether a criminal trial court has role similar to executing court has u/s 47 of CPC?

Analysis: i) Section 517 Cr.P.C clearly mentions that when an inquiry or trial is concluded, Court concerned may pass order for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document. Conclusion of trial includes decision of case in appeal when no order with respect to case property has been made by the appellate Court. There is no cavil to the proposition that under section 520 of Cr.P.C. High Court is also authorized to pass an appropriate order in case learned trial Court fails to exercise power under section 517 Cr.P.C.

ii) In this case trial Court has ordered confiscation of case property through a judgment of conviction and said decision has been reversed, therefore, principle of merger shall not apply, which attracts only if the appellate Court upholds the decision of trial Court or modify it in substance or relief but in the present case this Court has not upheld or modified the judgment of trial Court, rather quashed it, therefore, by all means, the situation has been reversed.

iii) In the present case this Court has not upheld or modified the judgment of trial Court, rather quashed it, therefore, by all means, the situation has been reversed to the stage when during investigation amount was shown recovered from the petitioners, then accused, while opening an avenue for the petitioners to once again file the petitions on the analogy of section 516-A or 523 of Cr.P.C. but under section 517 of Cr.P.C.

iv) No doubt High Court under section 520 Cr.P.C. can pass an appropriate order, but only when petition under section 517 Cr.P.C. is decided by the trial Court on merits.

v) Section 517 of Cr.P.C. is not an exhaustive section, Court after conclusion of trial can also refer the matter to Magistrate for disposal of property as mentioned in section 518 of Cr.P.C.

vi) Though section 104 of Cr.P.C. authorizes the Court to impound any document or thing yet during the trial and after conclusion it can decide the fate of such property including destruction, confiscation and delivery to person entitled. When the accused, during the trial claims the property as his own, then on acquittal he is entitled to receive it back straightaway by the order of trial Court but when the situation is otherwise then Court must decide the question again by providing opportunity to prove the entitlement and also reason for disowning of such property during the trial and Court can presume any fact while deciding application for claim. Section 517 of Cr.P.C. in that case provides jurisdiction to Court to decide all questions arising out of acquittal order.

vii) Section 517 of CrPC is somewhat like section 47 of CPC which says that all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be decided by the Court executing the decree and not by a separate suit. Similarly, as sections 379, 425 and 442 of Cr.P.C., say that all orders passed by Court of Reference, Appeal and Revision shall be certified to the lower Court which shall pass orders confirmable to the judgment and order of the High Court and if necessary, record shall be amended in accordance with law. Thus, in this way lower Court becomes an executing Court like one under section 47 of CPC, therefore, can decide all ancillary question relating to case property in accordance with law.

Conclusion: i) See above analysis No. i.
ii) Principle of merger does not apply when decision of trial court is being reversed by the appellate court.
iii) See above analysis No. iii.
iv) High Court can pass an appropriate order u/s 520 Cr.P.C., but only when petition under section 517 Cr.P.C. is decided by the trial Court on merits.
v) Section 517 of Cr.P.C. is not an exhaustive section, Court after conclusion of trial can also refer the matter to Magistrate for disposal of property as mentioned in section 518 of Cr.P.C.
vi) Section 517 of Cr.P.C. provides jurisdiction to Court to decide all questions arising out of acquittal order.
vii) See above analysis No. vii.

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49. **Lahore High Court**
Equity Master Securities (Pvt.) Limited & 03 others v. Pakistan Stock Exchange Limited & 937 others
C. O. No. 14225 / 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC2925.pdf

Facts: This winding up Petition is instituted by Petitioner No. 1 / Equity Master Securities (Pvt) Limited in concert with Petitioners No. 2 to 4, the Chief Executive Officer and Directors of the Company in their capacity as contributories seeking to wind up the Company under the supervision of the Court in terms of Sections 301 and 305 of the Companies Act, 2017.

Issues: i) Whether prerequisites are required to be complied with by each category of persons authorized to institute a winding up Petition?
ii) What are the prerequisites of Section 304 of the Companies Act, 2017 in the case of a contributory?
iii) What is the prerequisite stipulated for a company to bring a winding up Petition?

iv) What is the condition precedent for winding up of the company voluntarily or by the court?
v) When SECP can file the winding up Petition?

Analysis: i) Section 304 of the Act accords the right to institute a winding up Petition to a company or to any creditor or creditors or to any contributory or contributories or by all or any of the aforesaid parties together or separately or to the registrar or to the SECP or to a person authorized by the SECP in that behalf subject to the provisions of the said Section. This Section lists certain mandatory prerequisites which are required to be complied with by each category of persons authorized to institute a winding up Petition.

ii) In the case of a contributory, the prerequisites of Section 304 of the Act are that a contributory shall not be entitled to present a winding up Petition unless either the number of members is reduced, in the case of a private company, below two, or, in the case of public company, below three; and the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least one hundred and eighty days during eighteen months before the commencement of the winding up, or have or devolved on him through the death of a former holder.

iii) Similarly, the prerequisite stipulated for a company to bring a winding up Petition are that it has to furnish with its Petition, in the prescribed manner, the particulars of its assets, liabilities, business operations and the suits or proceedings pending against it.

iv) Section 305(1) of the Act stipulates that where a company is being wound up voluntarily or subject to the supervision of the Court, a Petition for its winding up by the Court may be presented by any person authorized to do so under Section 304 and subject to the provisions of that Section. Sub Section (2) thereof casts a mandatory obligation upon the Court that it shall not make a winding up order unless it is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both or it is in the public interest.

v) SECP as the apex regulator may file the winding up Petition as and when in its opinion, it would be just and equitable to do so in terms of Section 148 of the Securities Act read with Sections 304 and 305 of the Act.

Conclusion: i) Section 304 of the Companies Act, 2017 lists certain mandatory prerequisites which are required to be complied with by each category of persons authorized to institute a winding up Petition.

ii) See above analysis No. ii.

iii) See above analysis No. iii.

iv) Sub Section (2) of Section 305(1) of the Companies Act, 2017 casts a mandatory obligation upon the Court that it shall not make a winding up order unless it is satisfied that the voluntary winding up or winding up subject to the

supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both or it is in the public interest.
v) See above analysis No. v.

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50. **Lahore High Court**
Qadeer Ali etc. v. Province of Punjab etc.
W.P No.41334/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2661.pdf

Facts: The petitioners were appointed in the Punjab Social Welfare and Bait-ul-Maal Department, on contract basis, in BPS-01 and BPS-11, and their contracts were extended from time to time and were still in service. The Projects were started on the development side, however, the same was converted from Development (Current) Budget to Non-Development (Regular) Budget. In the given facts and circumstances the petitioners sought regularization of their services from the date of their initial appointments.

Issue: Whether an employee of a project that has been converted from the development side to non-development side, is entitled to be regularized, as a matter of right?

Analysis: At present, the regularization of the project employees is backed up by a uniform policy of the Government of Punjab, which envisages certain safeguards and advantages for such employees, in terms of letter dated 06.06.2022… It is essentially a policy matter falling within the domain of the executive. This Court in exercise of judicial review cannot navigate beyond and above the policy set out by the executive limb of the State, for project employees, as this would surely amount to the judicial overreach. Therefore, a direction cannot be passed to the respondents for regularization of service of the petitioners, as of right, without advertising the posts for general public.

Conclusion: An employee of a project that has been converted from the development side to non-development side, is not entitled to be regularized, as a matter of right.

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51. **Lahore High Court**
Muhammad Atif, etc. v. Government of Punjab etc.
W.P No. 41101 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2667.pdf

Facts: The facts of the case are that the petitioners were admittedly employed by the School Education Department, Punjab on contract basis, and are no more in service, on account of termination of their contracts, *inter alia*, for the reason that they could not obtain the requisite qualification of B.Ed, within the stipulated period of time.

Issues: (i) Whether employees of education department who were admittedly required to obtain B.Ed qualification within stipulated period of time are entitled to be reinstated in service after having obtained the qualification, after the expiry of the contractual period?
(ii) How the Courts are to examine the matter where principle of similarly placed person is agitated.?

Analysis: (i) Whereas the petitioners' earlier round of litigation culminating into judgment dated 04.06.2021, in case of *Muhammad Akmal Khan supra*, holds as under:
… (iv) Those Petitioners who have not qualified the requisite educational qualification within time shall be deemed to have been terminated with effect from the date of their earlier termination as in the case of other Educators after the decision as aforesaid.
Perusal of the record reveals that the case of the petitioners clearly falls under Para 5(iv) quoted hereinabove. Their termination was admittedly upheld. They had an opportunity to immediately file an appeal. Admittedly, the same has not been done. At that point of time, the petitioners had no idea as to whether any Hussain Farabi of District Okara or Syed Atta-ul-Mustafa of District Faisalabad had been given any extension. *Prima facie*, the present petition has been filed to take a chance on the basis of principle of similarly placed persons and amounts to review of the judgment dated 04.06.2021.
(ii) The judgment in case of *Muhammad Shafiq supra* unequivocally has laid down the contours as to how the Courts are to examine the matter where principle of similarly placed person is agitated. If relief is given to one person against the applicable policy and/or law, the same cannot be the ground for the grant of same relief in another case. Two wrongs are not going to make one right.

Conclusion: (i) Such employees are not entitled to be reinstated in service after having obtained the qualification, after the expiry of the contractual period.
(ii) See above analysis No. (ii).

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52. **Lahore High Court**
Liaquat Ali v. Noor Ahmad
R.F.A. No.338 of 2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC3063.pdf

Facts: This appeal is directed against the impugned judgment and decree passed by the Additional District Judge in a suit instituted by the respondent for recovery of Rs.1,100,000/-, on the basis of the impugned cheque issued by the appellant.

Issue: Whether presumption of correctness attached to a negotiable instrument, in terms of Section 118 of the Act, is lost or rebutted if the said instrument is in a mutilated/torn-down condition?

Analysis: It is imperative to note that in terms of Section 118 of the Act, presumptions of correctness, inter alia, are attached in relation as to the consideration; to date; its holder; signature of the drawer. If a cheque is in a torn condition, it is called a mutilated cheque. If the cheque is torn into two or more pieces and the relevant information is damaged, the bank shall reject the cheque and declare it invalid, until the drawer confirms its validation. However, if the cheque is torn in the manner that all the important data on the mutilated cheque is intact, then the bank may process the cheque further for clearance. …Therefore, in such like cases where an instrument forming the basis of the suit under Order XXXVII, CPC, is mutilated, its effect is to be determined on case-to-case basis, considering the nature and extent of the mutilation of such negotiable instrument. This in turn would also determine whether the legal presumption of correctness attached to a negotiable instrument, is lost or rebutted, as a consequence of such mutilation. I am of the opinion that if the key information of an instrument such as the name of payee, date, amount, signatures etc., have not been damaged, the presumption attached thereto is not lost.

Conclusion: In terms of Section 118 of the Act, presumptions of correctness, inter alia, are attached in relation as to the consideration; to date; its holder; signature of the drawer. So, if the key information of an instrument such as the name of payee, date, amount, signatures etc., have not been damaged, the presumption attached thereto is not lost.

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53. **Lahore High Court**
Ghulam Akhtar v. Muhammad Iqbal
C.R. No.16-D of 2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC3055.pdf

Facts: The respondent filed a suit for specific performance of agreement to sell which was dismissed by trial court, against which respondent preferred appeal which was allowed and suit of respondent was decreed, hence, instant revision petition.

Issues: i) Whether judgment of trial court or appellate court should be given preference in case of conflict between judgments of courts below?
ii) Whether grant of relief of specific performance is discretionary in nature or court is bound to decree same?
iii) Whether it is mandatory for vendee to show willingness & readiness to deposit remaining sale consideration in suit for specific performance?
iv) Whether in a suit for specific performance, is it equitable to improve the sale price?

Analysis: i) It is settled principle of law that in the event of a conflict between the judgments of the Courts below, preference should be given to the views of the Appellate Court below, who had the opportunity of reexamining and analyzing the evidence on the record.

ii) This Court cannot lose sight of the fact that in terms of Section 22 of the Specific Relief Act, 1877 ("the Act"), the jurisdiction of the Courts to issue a decree of specific performance is discretionary/equitable in nature, thus, the Court is not bound to grant such relief merely because it is lawful to do so.
iii) In cases involving specific performance, the primary part of the contract is the consideration to be paid by the vendee for which he must exhibit his willingness and readiness, at all times. In this regard, the vendee must unconditionally seek permission of the Court, on the first date of hearing, to deposit the remaining sale consideration.
iv) In the present case, a meager amount was paid as earnest money and the possession of the suit property was also taken over by the respondent where after the respondent continued to retain both the possession of suit property as well as the 96% of outstanding sale consideration, which in the opinion of this Court is inequitable, on the part of the respondent… There is no denial that with the passage of time, there has been inflation in the country and Pakistani Rupee has considerably devalued. While the petitioner claims that price of similar property in the vicinity has escalated thrice, learned counsel for the respondent could not refute that the price has been doubled during the pendency of the proceedings. Therefore, it is equitable to improve the total sale price.

Conclusion: i) Judgment of appellate court should be given preference in case of conflict between judgments of courts below.
ii) The jurisdiction of the Courts to issue a decree of specific performance is discretionary/equitable in nature and the Court is not bound to grant such relief merely because it is lawful to do so.
iii) See above analysis No. iii.
iv) See above analysis No. iv.

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54. **Lahore High Court**
Maqsood Ahmad v. Additional District Judge, etc.
W.P. No. 38539 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2947.pdf

Facts: Respondent no. 03 (who is petitioner in connected petition) initiated eviction proceedings against the petitioner (in present petition) which was allowed. When the appeals were preferred by both sides, the appeal of the respondent was dismissed, whereas, the appeal of the petitioner was partly allowed to the extent of arrears, hence, instant Writ Petitions filed by petitioner and respondent no. 03.

Issues: i) What does term concise statement indicate?
ii) What does term concise statement mandate in relation to eviction proceedings initiated under Punjab Rented Premises Act, 2009 and what is effect of failure to comply with?
iii) Whether strained and hostile relationship between the landlord and the tenant developed, on account of eviction proceedings initiated by the landlord, is a valid

ground for eviction of the tenant, under the Punjab Rented Premises Act, 2009?

Analysis: i) In common legal parlance, concise statement indicates reciting of facts with precision that forms basis of a claim and/or underlies the accrual of cause of action. The underlying purpose is to simplify the key issues in dispute. Therefore, the concise statement must contain enough details of the dispute to steer the Court's focus only to the relevant issues making it easier for it to adjudicate.

ii) The term "concise statement" has not been defined by the Act, however, Order VI, Rule 2 of Code of Civil Procedure, 1908 refers to the term… In relation to the eviction proceedings initiated under the Act, the term concise statement referred in Section 19(3) of the Act, mandates the ejectment petitioner to give the details of the allegation against the respondent and if the allegation of default in payment of monthly rent is made, sufficient details pertaining to the date from which the default occurred as also the claim as on the date of filing of the ejectment petition becomes sine qua non of such eviction petition to succeed… The true mandate of Section 19(3) of the Act is that it is obligatory for the ejectment petitioner/landlord to narrate all the relevant and necessary details of his claim (of default in the instant case) by elaborating the same with precision (in terms of the date of default and total period of default) and if he fails to do so, he cannot be allowed to improve upon the same through the evidence. Any such improvement would be fatal.

iii) The Punjab Rented Premises Act, 2009 aims to consolidate and amend the law relating to the relationship of landlord and tenant, inter alia, eviction of the tenant(s). The Act envisaged grounds of eviction in term of Section 15 of the Act, quoted hereinabove and the fact that on account of litigation between the parties, their relationship have become strained, is not a valid ground to seek eviction. If such like grounds for eviction are allowed to be transplanted, this would amount to the Courts traversing beyond their domain of statutory adherence.

Conclusion: i) Concise statement indicates reciting of facts with precision that forms basis of a claim and/or underlies the accrual of cause of action.

ii) See above analysis No. ii.

iii) Strained and hostile relationship between the landlord and the tenant developed, on account of eviction proceedings initiated by the landlord, is not a valid ground for eviction of the tenant, under the Punjab Rented Premises Act, 2009.

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55. **Lahore High Court**
Mst. Farzana Bibi v. Capital City Police Officer, etc.
Crl. Misc. No. 36448-H/2024
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC3047.pdf

Facts: The petitioner filed a petition under Section 491 of the Criminal Procedure Code, 1898 for the recovery of the alleged detenus, with the assertion that the *detenus*

are currently held in illegal and improper custody by the respondent, No.2/Station House Officer of Police Station.

Issues: i) Whether the due process of law can be bypassed while dealing with hardened and desperate criminals?
ii) How the fake police encounters can be prevented?

Analysis: i) The assertion that police kill hardened and desperate criminals in encounters lacks any legal foundation and fundamentally challenges the credibility and effectiveness of the criminal justice system. Such an ill-founded rationale is not only legally indefensible but also morally reprehensible. By bypassing due process and resorting to extrajudicial killings, law enforcement undermines the very principles upon which a just society is built. Furthermore, this practice casts a long shadow of doubt over the integrity of law enforcement agencies. It suggests a lack of faith in the ability of criminal justice system to deliver justice and a preference for brute force over legal scrutiny. Such actions propagate a dangerous message that the State approves lawlessness among its enforcers. This not only perpetuates a cycle of violence but also breeds resentment and fear within the community.

ii) The complex nature of self-defence can sometimes be overshadowed by the issue of fake police encounters, leading to significant ethical and legal challenges. Striking a balance between the legitimate right of self-defence and the prevention of fake encounters necessitates a balanced approach. A stringent oversight mechanism must be evolved within police department. Independent body in the spirit of *The Torture and Custodial Death (Prevention and Punishment) Act, 2022* should investigate the incidents where lethal force is used, ensuring that each case is meticulously scrutinized and that any misuse of power is promptly addressed. Legal framework should be fortified to delineate clear boundaries for the use of force. It is a settled law that the right of self-defence is contingent upon the presence of an immediate and credible threat. Any deviation from this standard should be met with severe repercussions, reinforcing the message that extrajudicial actions will not be tolerated…Training is another cornerstone in this delicate balance… Transparency is also crucial. The public must be kept informed about the policies governing the use of force and the measures taken to investigate and rectify any abuses. Body cameras and other forms of surveillance can serve as impartial witnesses, providing clear evidence of the circumstances surrounding each encounter.

Conclusion: i) The due process of law cannot be bypassed while dealing with hardened and desperate criminals.

ii) By developing oversight mechanism, enhancing training, ensuring transparency, reinforcing legal standards, and nurturing community relations, the fake police encounters can be prevented.

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56. **Lahore High Court**
Mst. Nimra Sheikh v. Muhammad Umair Siddiqui and another
Writ Petition No. 29490 of 2022
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2809.pdf

Facts: The petitioners were appointed in the Punjab Social Welfare and Bait-ul-Maal Department, on contract basis, in BPS-01 and BPS-11, and their contracts were extended from time to time and were still in service. The Projects were started on the development side, however, the same was converted from Development (Current) Budget to Non-Development (Regular) Budget. In the given facts and circumstances the petitioners sought regularization of their services from the date of their initial appointments.

Issues: i) When issues are to be framed by the court?
ii) Whether the courts can reject the plaint, when it is clear that suit is meritless?

Analysis: i) Order XIV of Code of Civil Procedure, 1908 (CPC) provides for settlement of issues and determination on issue of law or on issues agreed upon. Rule 1(2) of Order XIV of CPC requires material proposition of law or fact(s) to be alleged in the suit in order to show a right to sue. Issues are ought to be framed when a material proposition of fact or law is affirmed by one party and denied by the other…
ii) In case titled "President, Zarai Taraqiati Bank Limited, Head Office, Islamabad vs. Kishwar Khan and others" (2022 SCMR 1598) the Supreme Court of Pakistan made it responsibility of the Courts to give meaningful reading to the plaint and when it is clear that suit is meritless and instead of disclosing a right to sue, as intended by legislature in the above discussed provisions of law, the suit is manifestly vexatious, the Courts can reject the plaint.

Conclusion: i) Issues are ought to be framed when a material proposition of fact or law is affirmed by one party and denied by the other.
ii) When it is clear that suit is meritless and instead of disclosing a right to sue, the suit is manifestly vexatious, the Courts can reject the plaint.

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57. **Lahore High Court**
Dr. Muhammad Asif v. ADJ Layyah, etc.
W.P. No.5637 of 2024
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC2704.pdf

Facts: The petitioner filed Writ Petition under Article 199 of Constitution to challenge the order passed by the Family Court to the extent of meeting schedule chalked out in favour of respondent No.3 and the judgment passed by the appellate court whereby appeal preferred by respondent No.3 was accepted and consequently, her application for the custody of minors was allowed while outlining a visitation

schedule for the petitioner.

Issues: i) What is guiding factor for deciding matter of custody of minor?
ii) What is difference between custody & guardianship and whether factor of maintaining the children has any role in deciding the custody of the minors?
iii) Whether pursuit of education and career attracts any disqualification for a mother seeking custody of minor?
iv) Whether wish of minor is to be given preference in deciding matter of custody?

Analysis: i) Bare reading of section 17 of the Guardian and Wards Act, 1890 reflects that welfare of the minor is the guiding factor in deciding the matter of custody, of course, while giving due consideration to the age, gender and religion of the minor and character and capacity of the proposed guardian.
ii) Father of minors is natural guardian…However, law maintains a distinction between custody and guardianship and respective rights and obligations in that regard under the Guardian and Wards Act, 1890. Custody under the Act involves a right to upbringing of a minor. On the other hand, guardianship entails the concept of taking care of the minor even in situations when the guardian does not have domain over the corpus of the child. A father is considered to be a natural guardian of a minor, since even after separation with the mother, and even when the mother has been granted custody of a minor, he is obligated to provide financial assistance to the minor. The liability to maintain the minor is not only religious and moral but legal. The right of custody of minor is subordinate to the fundamental principle i.e. welfare of the minor. Maintaining the children is the duty of father which cannot be a decisive factor in custody of the minors.
iii) In this day and age, when pursuit of education and career does not attract any disqualification for a father to seek custody of minor, how a mother can be discriminated on that basis. Working mothers are a reality of the day and their participation in the professional life is essential for the progress of societies. It makes roles of women even harder, which needs to be recognized and appreciated rather than discouraged or made more onerous by attributing disqualifications vis-à-vis custody of the minors. This does not mean that the Courts should become insensitive to the needs of the minors merely because their mother is a working woman. Welfare of the minor remains primary consideration for determining his or her custody. It is only recognition and adjustment of expectation from a working mother in comparison to a stay-at-home mother so that the former is not unreasonably put to any disadvantage.
iv) As regards plea that minor wishes to reside with his father, it is observed that minor is not always the best judge of where his or her welfare lies. Minor is of the tender age of about seven years, hence, it is not appropriate to attach much weight to his choice in order to determine where his welfare in relation to his custody lies. Moreover, as discussed above the minor has not been allowed to meet his mother for years, therefore, his mind is seemed to have been tutored. Refusal of the minor to recognize and meet his real mother indeed provides an evidence of

improper child rearing. It establishes that contrary to his welfare, the petitioner failed to prevent his misbehavior towards his mother which highlights the value system being inculcated or allowed to be nurtured in the minor by his parent in custody.

Conclusion: i) See above analysis No. i.
ii) Custody under the Guardian & Ward Act involves a right to upbringing of a minor. On the other hand, guardianship entails the concept of taking care of the minor even in situations when the guardian does not have domain over the corpus of the child. Maintaining the children is the duty of father which cannot be a decisive factor in custody of the minors.
iii) When pursuit of education and career does not attract any disqualification for a father to seek custody of minor, how a mother can be discriminated on that basis.
iv) See above analysis No. iv.

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58. **Lahore High Court**
M/s Radiant Medical (Private) Limited v. The Federal Board of Revenue and others
Writ Petition No. 34736 of 2024
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC2795.pdf

Facts: Through this Writ Petition, the petitioner has assailed the recovery made by the Inland Revenue Officer from the Bank Accounts maintained by the petitioner, pursuant to the notice in purported exercise of authority under Section 140 of the Income Tax Ordinance, 2001.

Issues: i) Whether the tax allegedly due from a taxpayer can be recovered during the pendency of the appeal before extra departmental forum?
ii) Is there any exception to the rule regarding recovery of tax from a person holding money on behalf of a taxpayer?
iii) When can the coercive measures as envisaged in section 140(1) of the Ordinance be adopted?

Analysis: i) It is well settled that the tax allegedly due from a taxpayer cannot be recovered before adjudication of liability in appeal preferred by a taxpayer before at least one extra departmental forum i.e. Appellate Tribunal Inland Revenue.
ii) It is manifest from perusal of the proviso to sub-section (1) of Section 140 of the Ordinance that the same creates exception to the recovery of tax from a person holding money on behalf of a taxpayer. Such exception expressly prohibits Commissioner from issuing notice under this sub-section for the recovery of any tax due from a taxpayer if said taxpayer had filed an appeal under Section 127 of the Ordinance in respect of the order under which the tax sought to be recovered has become payable and the appeal has not been decided… The said prohibition,

however, is subject to the condition that 10% of the said amount of tax is paid by the taxpayer.
iii) This clearly means that as long as the taxpayer is ready and willing to satisfy the condition specified in the aforementioned provision to Section 140(1) of the Ordinance, coercive measure visualized under the aforementioned section cannot be pressed into service.

Conclusion: i) The alleged tax cannot be recovered before adjudication of liability in appeal by at least one extra departmental forum.
ii) See above analysis No. ii.
iii) See above analysis No. iii.

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59. **Lahore High Court**
Muhammad Ilyas v. Muhammad Saeed, etc.
W.P. No.35336 of 2024
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC2799.pdf

Facts: Through this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner assailed the order passed by the Special Judge Rent whereby application of the petitioner for setting aside ex-parte final order was dismissed and appeal there-against was also dismissed by the Additional District Judge.

Issue: Whether an application for setting aside ex-parte order without an application seeking leave to contest under the Punjab Rented Premises Act, 2009 can be taken into consideration?

Analysis: Section 21(4) of the Punjab Rented Premises Act, 2009 ('Act') states that if an ex-parte order is passed against a respondent, the respondent may, within ten days from the date of knowledge, apply to the Rent Tribunal for setting aside ex-parte order along with an application for leave to contest. Section 22(3) of the Act provides that an application for leave to contest shall be in the form of a written reply, stating grounds on which the leave is sought and shall be accompanied by an affidavit of the respondent, copy of all relevant documents in his possession and, if desired, affidavits of not more than two witnesses. From perusal of Section 21(4) of the Act, it is abundantly clear that while applying for setting aside ex-parte order, a separate application for leave to contest, in the form and manner prescribed in Section 22(3) of the Act has to be filed within the period of limitation. Any plea taken on merits of the case in the application for setting aside ex-parte order passed by the Rent Tribunal under Section 21 of the Act without an application seeking leave to contest in the form and manner prescribed under Section 22(3) of the Act cannot be taken into consideration.

Conclusion: An application for setting aside ex-parte order without an application seeking leave to contest in the form and manner prescribed in Section 22(3) of the Punjab Rented Premises Act, 2009 cannot be taken into consideration.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.51 of 2024, dated 23.05.2024, amendments have been made in Rule-1 and Schedule of the Punjab Education Department College Education Recruitment Rules, 1989.
2. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.52 of 2024, dated 29.05.2024, the Governor of Punjab, in exercise of powers under Serial no.8 of the Punjab Motor Vehicle Rules, 1969, appointed the Director General, Excise and Taxation, Punjab for approval of the design, contents, picture or image for any particular personalized vanity plate.
3. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.53 of 2024, dated 29.05.2024, the Governor of Punjab, in exercise of powers under Section 119 of the Provincial Motor Vehicles Ordinance, 1965, the draft rules made by the Governor under section 43 of the said Ordinance, are published for the information of persons likely to be affected thereby while notice is also given for seeking objections and suggestion (if any) regarding the said draft rules.

SELECTED ARTICLES

1. HARVARD LAW REVIEW

https://harvardlawreview.org/print/vol-137/bail-at-the-founding/

Bail at the Founding by Kellen R. Funk & Sandra G. Mayson

How did criminal bail work in the Founding era? This question has become pressing as bail, and bail reform, have attracted increasing attention, in part because history is thought to bear on the meaning of bail-related constitutional provisions. To date, however, there has been no thorough account of bail at the Founding. This Article begins to correct the deficit in our collective memory by describing bail law and practice in the Founding era, from approximately 1790 to 1810. In order to give a full account, we surveyed a wide range of materials, including Founding-era statutes, case law, legal treatises, and manuals for magistrates; and original court, jail, administrative, and justice-of-the-peace records held in archives and private collections. The historical inquiry illuminates three key facts. First, the black-letter law of bail in the Founding era was highly protective of pretrial liberty. A uniquely American framework for bail guaranteed release, in theory, for nearly all accused persons. Second, things were

different on the ground. The primary records reveal that, for those who lived on the margins of society, bail practice bore little resemblance to the law on the books, and pretrial detention was routine. The third key point cuts across the law and reality of criminal bail: both in theory and in practice, the bail system was a system of unsecured pledges, not cash deposits. It operated through reputational capital, not financial capital. This fact refutes the claim, frequently advanced by opponents of contemporary bail reform, that cash bail is a timeless American tradition. The contrast between the written ideals and the actual practice of bail in the Founding era, meanwhile, highlights the difficulty of looking to the past for a determinate guide to legal meaning.

2. **STANFORD LAW REVIEW**
https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/08/Dyk-76-Stan.-L.-Rev.-Online-10.pdf

The Role of Non-Adjudicative Facts in Judicial Decision making by Timothy B.Dyk

The use of the term "legislative facts" in the judicial context seems to be a misnomer. Of course, courts do not legislate, despite the role public policy may play in the development of legal doctrines. For this reason, it seems more appropriate in the judicial context to call these facts non-adjudicative facts rather than legislative facts. This difference in nomenclature does not affect the substance of the analysis. The purpose of this article is not to question the reliance of courts on non-adjudicative facts. The use of non-adjudicative facts is legitimate, but there are problems with their use and potential solutions - issues that concern both advocates and judges…

3. **MODERN LAW REVIEW**
https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12581

What Makes an Administrative Decision Unreasonable? by Hasan Dindjer

The nature of reasonableness review in administrative law has long been obscured behind vivid but uninformative descriptions. In recent years, courts and commentators have recognised that reasonableness review involves assessment of the weight and balance of reasons bearing on a decision. Yet by itself this idea is substantially incomplete, for there are many ways in which issues of weight might be relevant. Drawing on the theory of practical reason, this article offers a new account of the reasonableness standard that explains precisely how the weight of reasons matters. It shows, negatively, that several existing accounts are mistaken. Positively, it proposes that reasonableness be understood as a requirement of 'relativised justification': a decision must be justified relative to some eligible understanding of the balance of reasons. This account explains the standard's central features and yields a coherent, workable test for courts to apply.

4. **OXFORD JOURNAL OF LEGAL STUDIES**
https://academic.oup.com/ojls/article/43/2/322/7030721

Offences against Status by George Letsas

Philosophical accounts of status understand it either pejoratively, as social rank, or laudatorily, as the dignity possessed by all in virtue of our shared humanity. Status is considered to be something either we all have or no one should have. This article aims to show that there is a third, neglected, sense of status. It refers to the moral rights and duties one holds in virtue of one's social position or role. Employees, refugees, doctors, teachers and judges all hold social roles in virtue of which they have distinctive obligations, rights, privileges, powers and the like. This article aims to do two things: first, to distinguish the role-based notion of status from ideas of social rank, and to identify the various ways in which it constitutes a distinct category of moral wrongdoing; and second, to show that status, thus understood, is justified on egalitarian grounds even though, unlike dignity, not everyone has it. The moral point of status, I argue, is to regulate asymmetrical relations in which one of the parties suffers from background vulnerabilities and dependencies. Status as a moral idea vests both parties with a complex set of rights and duties, whose aim is to restore moral equality between the parties.

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The Juvenile Justice (Care and Protection of Children) Act 2015: an analysis by Asha Bajpai

The Juvenile Justice (Care and Protection of Children) Act 2015 was passed by the Parliament of India amidst intense controversy, prolonged debates and street protests by child rights groups, as well as some members of Parliament. This legislative note gives an overview of the background and processes that led to the passing of this Act. It discusses the positive provisions in the Act, like change in nomenclatures to remove negative connotations, inclusion of several new definitions such as orphaned, abandoned and surrendered children, setting timelines for inquiry by the Juvenile Justice Board, streamlining procedures for adoption, inclusion of new offences committed against children and mandatory registration of Child Care Institutions. It discusses the controversial provision of "transferring" children between 16 and 18 years accused of "heinous offences" to the adult criminal justice system. It gives recommendations for law reform and better implementation of the law.