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FORTNIGHTLY CASE LAW BULLETIN

(01-09-2024 to 15-09-2024)

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**
Islamic Republic of Pakistan through Secretary M/o Law and Justice, Govt. of Pakistan, Islamabad v. Imran Ahmed Khan Niazi and another
Intra Court Appeals No. 2, 3 and 4 of 2023
Justice Qazi Faez Isa, CJ, Justice Amin-ud-Din Khan, Justice Jamal Khan Mandokhail, Justice Athar Minallah, Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._2_2023_06092024.pdf

Facts: The Petition was filed by a former Prime Minister of Pakistan, who challenged the amendments which were made to the National Accountability Ordinance, 1999 ('the Ordinance').

Issue: What are the pre-requisites to file the petition directly to the Supreme Court to exercise its jurisdiction?

Analysis: A petition may be filed directly in the Supreme Court provided it raises (a) 'a question of public importance' and is (b) 'with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II' of the Constitution. …It does not suffice that the original jurisdiction of the Supreme Court under Article 184(3) of the Constitution is exercised by simply mentioning that one or more Fundamental Rights are contravened. This approach does not conform with the constitutional requirement. The Constitution only permits the Supreme Court to exercise its jurisdiction provided the stated two pre-requisites exist. The stated conditions prescribed by the Constitution can not be ignored nor redundancy attributed to them. There must be a clear nexus between the legislation under challenge with the enforcement of any of the Fundamental Rights and it must be established that the same are violated or that the enforcement of such Fundamental Rights is undermined…

Conclusion: A petition may be filed directly in the Supreme Court provided it raises (a) 'a question of public importance' and is (b) 'with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II' of the Constitution.

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2. **Supreme Court of Pakistan**
Mr. Muhammad Hassanullah (OMG/B-18), Acting Additional Secretary, Health Department, Balochistan v. The Chief Secretary, Government of Balochistan, Civil Secretariat, Quetta and others
Chief Secretary, Government of Balochistan, Civil Secretariat Zarghoon Road, Quetta and another v. Shujaat Ali Khosa BS-18 S&GAD, Government of Balochistan, Quetta and others
Civil Petition No.5795 of 2021 & Civil Petition No.2-Q of 2022
Mr. Justice Qazi Faez Isa, C.J., Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5795_2021.pdf

Facts: The extraordinary jurisdiction vested in the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 was invoked by three petitioners and they challenged the notification whereby petitioner no.1 was posted as 'Acting' Additional Secretary, Health Department. The petition was accepted by the High Court. The petitioner no.1 and the Government of Balochistan separately sought leave against the judgment of the High Court.

Issue: Whether High Court has jurisdiction under Article 199 of the Constitution to ascertain rights regarding the terms and conditions of service of a civil servant?

Analysis: Article 212 starts with a non obstante clause and provides that the appropriate legislature may, by the Act, provide for establishment of one or more administrative courts or tribunals, inter alia, to exercise jurisdiction in respect of matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters. Sub article 2 of Article 212 also begins with a non obstante clause and expressly provides that no court other than an administrative court or tribunal shall grant an injunction, make any order or entertain any proceedings in respect of any matter of which the jurisdiction of such administrative court or tribunal extends. The Constitution has, therefore, expressly declared that the administrative court or tribunal established pursuant to the command under Article 212 shall exercise exclusive jurisdiction in relation to the matters within its jurisdiction. The non obstante clause in Article 212 gives it an overriding effect and thus bars the jurisdiction of a High Court vested under Article 199 of the Constitution. The ouster curtails the jurisdiction of a High Court in respect of matters which fall within the ambit of the exclusive jurisdiction of an administrative court or tribunal. It is noted that in order to make a matter exclusively within the domain of the service tribunal under the Tribunals Act, and thus create a bar contemplated under Article 212, it must be shown that the grievance has been agitated by a civil servant and relates to the terms and conditions of service and does not attract the exceptions set out in clause (b) of section 4 of the Tribunals Act. The Act of 1974 and the Tribunals Act provide for a comprehensive mechanism for agitating a grievance by a civil servant and specific forums have been provided for seeking remedies. The exclusive jurisdiction of the service tribunal and the bar contained under Article 212 are of such a nature that that they are attracted even if the grievance arises from an order which may involve questions of mala fide, corum non judice or having been passed without jurisdiction. In I.A Sherwani's case, a larger Bench of this Court has held and observed that a civil servant cannot bypass the jurisdiction of the service tribunal by adding a ground of violation of fundamental right(s). The service tribunal will have exclusive jurisdiction in a case founded on the terms and conditions of service even if it involves the question of violation of fundamental rights. It has been further held that the service tribunal will be vested with jurisdiction even where the case involves the vires of a statutory rule or notification. It was held that if a statutory rule or notification adversely affects the terms and conditions of a civil servant the

same will be treated as a final order for the purposes of the jurisdiction of a service tribunal. The questions and grievances relating to transfer and postings of a civil servant fall within the ambit of the terms and conditions of service of a civil servant and thus are within the exclusive domain of an administrative tribunal established under the command of Article 212. The bar under Article 212 is complete in respect of the cases in which the Tribunal has jurisdiction under the Tribunals Act.

Conclusion: The High Court has no jurisdiction under Article 199 of the Constitution to ascertain rights regarding the terms and conditions of service of a civil servant.

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3. **Supreme Court of Pakistan**
Ahmad Ullah and others v. District Education Officer (Male), Buner and others
Civil Petition No.6211 of 2021
Mr. Justice Qazi Faez Isa, C.J., Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._6211_2021.pdf

Facts: The petitioners challenged the proceedings of the Departmental Promotion Committee ('**DPC**') meeting to consider eligible candidates to fill the vacant posts of Senior Certified Teacher ('**SCT**') in District Buner, Khyber Pakhtunkhwa. The High Court had entertained the petition but, without adverting to the question of maintainability, dismissed the petition on merits.

Issue: Whether the bar under Article 212 of the Constitution, is absolute?

Analysis: The only factor which is excluded from the exclusive jurisdiction and domain of the Tribunal is the decision of a designated authority/forum regarding 'fitness', while eligibility and all other matters relating to the terms and conditions of service are exclusively within the domain of the Tribunal. The exclusive jurisdiction conferred upon the Tribunal, pursuant to the clear constitutional command under Article 212, ousts the jurisdiction of a High Court while exercising jurisdiction under Article 199 of the Constitution to decide, entertain or adjudicate upon any matter relating to the terms and conditions of service. The bar under Article 212 extends even when an order passed by the departmental authority is without jurisdiction, *mala fide*, *coram non judice*, or in breach of the fundamental rights guaranteed under the Constitution. Article 199 explicitly declares the jurisdiction of the High Court to be subject to the Constitution and, therefore, the bar under Article 212 of the Constitution, besides being a constitutional command, is absolute to the extent of all those matters that fall within the exclusive domain and jurisdiction of a Tribunal established under the Act of 1974.

Conclusion: The bar under Article 212 of the Constitution, besides being a constitutional command, is absolute to the extent of all those matters that fall within the exclusive domain and jurisdiction of a Tribunal established under the Act of 1974.

4. **Supreme Court of Pakistan**
Secretary, Ministry of Finance, Finance Division, Government of Pakistan, and others v. Muhammad Anwar
Civil Petition No.848 of 2022
Mr. Justice Qazi Faez Isa, C.J. Justice Amin-ud-Din Khan, Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._848_2022.pdf

Facts: The Petitioner has challenged the judgment of the Federal Service Tribunal ('Tribunal') whereby the appeal filed by Muhammad Anwar ('the respondent') was allowed.

Issue: i) Whether the Tribunal was competent and vested with jurisdiction to declare the respondent 'qualified' for promotion and then simultaneously direct the competent authority to consider him for proforma promotion?

Analysis: i) The scheme prescribed under the law for promotion of a civil servant to a higher post is distinct from that of being considered for proforma promotion. Moreover, the conditions, qualifications and the prescribed process are also distinct. The promotion to the post is, therefore, one of the modes prescribed for appointment against a higher post. The posts have been broadly divided into two categories i.e. selection and non-selection posts for the purposes of promotion. In case of a selection post the promotion is made on the basis of selection on merit while in case of a non selection post the criteria prescribed under the Act of 1973 is seniority cum fitness. It is implicit from the scheme provided under the Act of 1973 read with the Rules of 1973, that promotion to a higher post is confined to a civil servant who has not retired or superannuated after attaining the age of superannuation. The scheme does not contemplate for a civil servant to be considered for promotion after retirement or having attained the age of superannuation. Even the eligible civil servants are evaluated by competent forums which have been explicitly designated for this purpose under the law. The recommendations of such designated forums are placed before the competent authority. The latter does not perform ministerial functions but has to apply an independent mind while considering the recommendations made by the designated forum. A civil servant who has retired after attaining the age of superannuation cannot claim to be considered for promotion to a higher post. After superannuation the civil servant may, however, claim a right to be considered for pensionary benefits in accordance with the policy or a scheme adopted by the competent authority. The question of promotion rests exclusively within the jurisdiction of the competent authority and it cannot be ordinarily interfered with by a court or a Tribunal, except when the competent authority has acted in violation of the law, in excess of jurisdiction, without jurisdiction or in colourable exercise of powers conferred upon the latter. The determination of the question of fitness, being a subjective evaluation on the basis

of objective criteria, also falls within the exclusive domain of the competent authority and the same falls outside the jurisdiction of the Tribunal or the Court

Conclusion: i) The Tribunal is, therefore, not competent nor vested to alter, vary or in any manner modify the scheme of promotion to a higher post explicitly prescribed under the Act of 1973 and the Rules of 1973.

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5. **Supreme Court of Pakistan**
Abdil Ali v. Additional District Judge, Gojra and others.
Civil Petition No. 2293-L of 2016
Justice Qazi Faez Isa, CJ, Justice Jamal Khan Mandokhail, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2293_l_16.pdf

Facts: Petitioner filed a suit seeking specific performance of agreement for the sale of a house which was dismissed by the trial court, however, appeal before the learned Additional District Judge was allowed and the petitioner was directed to deposit in Court the balance sale consideration within fifteen days from the date of judgment, failing which the suit shall be deemed to have been dismissed. The balance amount was not deposited within the stipulated period therefore, the suit was dismissed. However, the petitioner (despite the dismissal of the suit) filed execution proceedings, seeking the execution of a non-existing decree. The objections filed by the other side were accepted by the Revisional Court and its order was maintained by the High Court through the impugned order.

Issues: i) Whether the courts could legally extend the time for depositing the balance sale consideration contrary to the terms of the agreement?
ii) What are the obligations of the buyer of property if the seller does not receive the payment within the stipulated period?
iii) Whether there is any exception regarding the obligation upon the buyer of a property to make timely payment?

Analysis: i) We may add that courts are not legally empowered to extend the time for depositing the balance sale consideration contrary to the terms of the agreement. And, if they do so they effectively rewrite the agreement between the parties.
ii) The only obligation of a buyer of a property is to make timely payment. However, if the seller does not receive payment the buyer must demonstrate that he was ready, able and willing to pay the same to the seller, failing which he must show that he had offered the payment and upon the seller's refusal to accept it had either prepared a pay order/demand of the said amount or had deposited the same in Court.
iii) The only obligation of a buyer of a property is to make timely payment. (…) One exception could be when the balance sale consideration constitutes a small portion of the total sale consideration.

Conclusions: i) Courts are not legally empowered to extend the time for depositing the balance sale consideration contrary to the terms of the agreement.
ii) See analysis portion No. ii.
iii) The only exception regarding the obligation upon the buyer of a property to make timely payment is when the balance sale consideration constitutes a small portion of the total sale consideration.

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6. **Supreme Court of Pakistan**
Capital View Point Restaurant (La Montana), Islamabad. v. Capital Development Authority through its Chairman, Islamabad, etc.
Civil Review Petition No. 361 of 2024 in CPLA No.304 of 2022
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Jamal Khan Mandokhail,Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._360_2024.pdf

Facts: Civil Review Petition sought the review of the short order and the detailed judgment stating therein that the partner of the Firm who had agreed to vacate the restaurants do not want to do so now.

Issues: i) Weather an undertaking given to the Court by a minority partner does not bind the firm?
ii) Weather a decision of Supreme Court is binding on all courts subordinate to it in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan?

Analysis: i) As regards the contention that an undertaking given to this Court by a minority partner does not bind the firm is contrary to the law. The Partnership Act stipulates that 'a partner is the agent of the firm' (section 18) and that the partner 'binds the firm' (section 19), and also that such authority 'falls within his [partner's] implied authority' and 'binds the firm' (section 20).
ii) Once a case is decided by this Court its decision is binding on all courts subordinate to it in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan. Therefore, if there are any intra court appeals pending adjudication or any other case before the High Court or any other court with regard to the matters attended to in this Court's judgment the same will be binding thereon, and resultantly the said intra court appeals will be rendered infructuous.

Conclusions: i) An undertaking given to the Court by a minority partner binds the firm.
ii) A decision of Supreme Court is binding on all courts subordinate to it in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan.

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7. **Supreme Court of Pakistan**
Mohsin Raza Gondal and another etc. v. Sardar Mahmood etc.
Civil Petitions No.949, 1025, 1028, 1132 to 1134 of 2023
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._949_2023.pdf

Facts: Through instant petitions, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have impugned the judgment of the Islamabad High Court, Islamabad. In this judgment, an Intra-Court Appeal filed by three respondents and a writ petition filed under Article 199 of the Constitution by the other sixteen respondents against the present petitioners were jointly allowed, and the appointments of the petitioners were found to have been made in violation of the law. Consequently, their cases were referred to the Federal Public Service Commission ('FPSC') to determine their fitness and eligibility for the said posts under the relevant law.

Issues: i) Whether regularization of a contractual employee constitutes fresh appointment?
ii) What differences exist between a contractual employee and a regular employee?
iii) Whether posts of BS-16 and above of civil services can be filled without test and examination by the Public Service Commission?
iv) Whether cabinet Sub-Committee can recommend regularization of posts of BS-16 and above?
v) How any institution ought to proceed if it opts to regularize it employees?

Analysis: i) There is no doubt that the regularization of a contractual employee constitutes a fresh appointment into the stream of regular appointments in civil services.
ii) The differences between a contractual employee and a regular employee are material for both the employee and the employer and, inter alia, include (i) Duration of employment; a contractual employee is usually employed for a specific period or task, with a set end date. (ii) Benefits; contractual employees generally do not receive the same benefits or statutory protection as a regular employee. (iii) Scope of work; the contractual employee is engaged for a specific project or task. (iv) Flexibility; contractual employee often has more flexibility in terms of work hours and location. (v) Cost Considerations: a contractual employee can be less costly in the short term as it doesn't require benefits and other long-term financial commitments; and (vi) Risk Management; hiring regular employees is often a long-term commitment, so organizations opt for contractual workers to manage risks associated with fluctuating market demands.
iii) So far as the law regulating the civil services is concerned, the Civil Servant Act, 1973 ('SCA') regulates the appointment of a person to the service of Pakistan and their terms and conditions. Whereas the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 ('APT Rules') framed under section 25 of the SCA regulate their method of appointment and promotion, etc. Its Rule 10 explicitly provides that initial appointment in BS-16 and above or equivalent, except those which under the Federal Public Service Commission (Function) Rules, 1978 do not fall within the purview of the FPSC, shall be made on the basis of tests and examinations to be conducted by the FPSC… Article 242 of the Constitution provides the mechanism for the appointment of a Civil Servant through the Public Service Commission. This Article is a safety valve that ensures the transparent process of induction in the Civil Service. It provides appointment by the Public

Service Commission with the sole object that meritorious candidates join the Civil Service. Similarly, rule 10 of APT Rules explicitly provides that initial appointment in BS-16 and above or equivalent, except those which under the Federal Public Service Commission (Function) Rules, 1978 do not fall within the purview of the FPSC, shall be made on the basis of tests and examinations to be conducted by the FPSC. Undoubtedly, the posts on which the petitioners were regularized are not excluded from the purview of the FPSC, as outlined in the schedule annexed to the Federal Public Service Commission (Functions) Rules, 1978. In view of this legal position, the Ministry was required to request the FPSC to conduct tests and examinations for the recruitment of persons to the posts in BS-16 and above, instead of proceeding with the regularization of the petitioners.

iv) It is abundantly clear from the constitutional provisions [Articles 90, 91, 99(2)] that neither the Prime Minister nor the members of the Federal Cabinet are permitted to perform their functions beyond the legal provisions i.e. the Constitution, statutory law, and the rules. Needless to mention, nobody is above the law. That is why the Rules of Business, 1973, were duly framed to conduct the business of the Federal Government. Under these rules, although there is a concept of Cabinet Sub-Committees on different subjects, there is no provision for the intervention of a Cabinet Sub-Committee in governing the terms and conditions of service of employees. However, the Cabinet Sub-Committee can recommend reforms in the service structure, which can be approved by the Cabinet in accordance with the law and the Constitution. As, the Cabinet Sub-Committee lacks the authority to recommend the regularization of posts in BS-16 and above, therefore, any recommendation by the Cabinet Sub-Committee to regularize appointments in BS-16 and above is void ab initio and without any lawful authority.

v) Even otherwise, any institution opting for regularization of its employees must be either mandated by law or must carry out regularization through a well-thought-out policy of the institution concerned laying down the criteria and the process for regularization; performance evaluation of the contractual employee must be assessed to determine if the employee meets the standards required for a regular position; there must be availability of positions that match the skills and experience of the contractual employee; the budgetary considerations and financial implication of a regular employee be weighed and considered. There must be a fair assessment of the employee's qualifications, performance and merit, so as to ensure only competent and committed employees be granted permanent employment status.

Conclusion: i) The regularization of a contractual employee constitutes a fresh appointment into the stream of regular appointments in civil services.

ii) See analysis no. ii.

iii) Posts of BS-16 and above of civil services cannot be filled without test and examination by the Public Service Commission.

iv) Cabinet Sub-Committee cannot recommend regularization of posts of BS-16 and above.

v) See analysis no. v.

8. **Supreme Court of Pakistan**
Muhammad Ayaz and others v. Mst. Saima Saeed and others
CPLA No.47 of 2024
Mr. Justice Yahya Afridi, Mr. Justice Shahid Waheed, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._47_2024.pdf

Facts: Petitioners applied for summons to be issued to the respondent as their witness. The Trial Court declined the application, and this order was first upheld by the Appellate Court and then by the Revision Court. Hence, this petition under Article 185(3) of the Constitution.

Issue: i) What will be the Effect if the parties refrain from entering the witness box?
ii) Practice of compelling the appearance of opponent by the issuance of witness summon.

Analysis: i) It is a bad practice for parties to refrain from entering the witness box when they are in a position to give personal evidence. Therefore, the first defendant in the suit, giving rise to this petition, is expected to provide personal testimony in support of her case. If she does not appear without sufficient cause, it will amount to suppression or withholding of evidence, and the Court will be entitled to draw an inference against her.
ii) Be it noted that, in the facts of the present case, if the first defendant fails to appear in the witness box, allowing the plaintiffs to compel her presence by the issue of a witness summons would still be objectionable. Such a practice places the examination and cross-examination of a witness in the wrong hands hinders fair trial, and obstructs justice.

Conclusion: i) It is a bad practice for parties to refrain from entering the witness box when they are in a position to give personal evidence.
ii) See above analysis No. ii.

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9. **Supreme Court of Pakistan**
Naeem Sajiad v. The State
Criminal Petition No.46/2024
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Hassan Azhar Rizvi, Mr. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._46_2024.pdf

Facts: The petitioners were arrest in pursuant to FIR registered u/s 302, 148 & 149 PPC. The petitioners filed an application for grant of bail before the Trial Court, which was dismissed. Feeling aggrieved, they approached the Lahore High Court, Lahore, but their application was dismissed by means of the impugned judgment, hence this petition.

Issue: Whether an accused is entitled for the grant of bail, where his involvement in the case is one of further inquiry?

Analysis: The facts and circumstances lead us to a conclusion that the case of the prosecution requires to be proved through a cogent and reliable evidence, which is yet to be produced before the Trial Court. At this stage, on a tentative assessment, prima facie, the petitioners cannot be singled out for commission of the offence. Their involvement in the case is one of a further inquiry, on the basis of which, the petitioners are entitled for the grant of bail.

Conclusion: An accused is entitled for the grant of bail, where his involvement in the case is one of further inquiry.

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10. **Supreme Court of Pakistan**
Ahmad Sikander v. Commissioner Inland Revenue, AEOI Zone, Lahore.
C.R.P.870/2023 in C.P.L.A.2166-L/2023
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._870_2023.pdf

Facts: This civil review petition has been preferred against the order passed by this Court.

Issue: Can a party file a review petition in the Supreme Court requesting a reappraisal of the record if significant legal and factual grounds were overlooked in the court's earlier decision?

Analysis: The petitioner has raised all legal and factual grounds in his petition before this Court, but it seems that the grounds urged by the petitioner escaped the attention of this Court while deciding the civil petition. The petitioner's claim that the findings of the fora below raises serious questions of law and facts, therefore, re-appraisal of the record was necessary in the best interest of justice, but the needful was not done at the time of hearing the above titled petition. This raises sufficient reasons enabling us to accept the contention of the petitioner. Even otherwise, no prejudice would be caused to the respondent, if an opportunity of hearing is provided to the petitioner.

Conclusion: Yes, a party can file a review petition in the Supreme Court if significant legal and factual grounds were overlooked in the earlier decision.

Dissenting Note by Mr. Justice Syed Hasan Azhar Rizvi,

Issues: i) What is the scope of a review petition under the Supreme Court Rules, 1980 and Order XLVII of the CPC?
ii) What is meant by an error apparent on the face of record?
iii) Whether the grounds that were raised during the appellate stage be taken again

during the review stage?
iv) Whether re-appreciation of evidence is permitted at review stage?

Analysis: i) Rule 1 of Order XXVI of the Supreme Court Rules, 1980 provides that subject to the law and the practice of the Court, the Court may review its judgment or order in a Civil proceeding on grounds similar to those mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 and in a criminal proceeding on the ground of an error apparent on the face of the record. (…) As mentioned above, the power of review may be exercised when there is a discovery of new fact or evidence, or when some mistake or error apparent on the face of record is found.
ii) It is well-settled proposition of law that every judgment pronounced by this Court is presumed to be considered solemn, and final decision on all points arising out of the case. If the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. It is also settled principle of law that a "review petition" not competent where there is neither new and important fact nor any error apparent on the face of record, Such error may be error of question of law or fact but the condition precedent is that it must be self-evident floating on the surface and not requiring elaborate discussion or process of ratio cination." (…) The term Mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC." (…) Perusal of the afore-cited cases indicates that an error on the face of record must be such an error which must strike one on mere looking at the record and would not require any in-depth process of reasoning on the points where there may conceivably be two opinions. Thus an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.
iii) Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. It is settled law that power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. (…) Scope of review under Order 47 Rule l CPC is limited and under the guise of review, the petitioner cannot be permitted to re-agitate and reargue questions which have already been addressed and decided. (…) Hence, if an argument has been advanced by the party in the appellate forum then same cannot be argued at the review stage.
iv) It has been time and again observed by this Court that while exercising the review jurisdiction, the Review Court does not sit in appeal over its own order. Review proceedings are distinct from appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC. 10). In exercise of review jurisdiction, the Court cannot re- appreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. (…) It is also settled

proposition of law that the review is not meant for re-hearing of the matter. As mentioned above scope of the review is always very limited and confined to the basic aspect of the case referred to at review stage which was considered in judgment but if the grounds taken in support of the petition were considered in the judgment and decided on merits, the same would not be available for review in the form of re-examination of the case on merits. (…) A review is not a routine procedure. We cannot review our earlier order or judgment unless satisfied that material error manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

Conclusions: i) See analysis portion No.i
ii) The term Mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position.
iii) Under the guise of review, the petitioner cannot be permitted to re-agitate and reargue questions which have already been addressed and decided.
iv) In exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in a matter.

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11. **Supreme Court of Pakistan**
Husnain Salim @ Sunny v. The State
Crl. P.L.A. 354-L/2016
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._354_l_2016.pdf

Facts: FIR was registered against the petitioner under sections 336-B/337-L of PPC and 6 & 7 of Anti-terrorism Act, 1997 **("ATA")**. The petitioner was convicted and sentenced under sections 336-B, 336 read with 337-R and 7 (c) of ATA by the trial court. The judgment of trial court was challenged before High Court, which was dismissed, hence this petition.

Issues: i) Whether the accused shall be convicted for offence of use of coercive substance under section 7 of ATA if it is not proved that offence/the said act is done with an intention to commit terrorism?
ii) Whether a matter falls within definition of section 6 of ATA if such matter is between the accused and the victim?

Analysis: i) The use of coercive substance falls under section 336-B, PPC, however, keeping in view of its gravity it has been included in 3rd Schedule to the ATA for the purpose expeditious trial. In case, it is proved that the offence/the said act is done with an intention to commit terrorism and the allegation is proved against accused, he shall be convicted under section 7 of the ATA. In case the prosecution fails to prove the allegation of terrorism, but otherwise succeeds in establishing its case, in such a scenario, the case shall still be tried by the Special Judge, ATA, and the accused

shall be convicted under the normal offence of the PPC, instead of convicting and sentencing him under sections 7 of ATA.

ii) In the present case, though the complainant in his FIR has alleged that the act of the petitioner has created fear and panic in the area, but such fact has not been established by the prosecution. Even, the complainant did not level the allegation of terrorism against the petitioner. The facts and circumstances of the case lead us to a conclusion that it was a matter between the petitioner and the victim, which does not fall within the definition of section 6 of ATA.

Conclusion: i) The accused will be convicted for offence of use of coercive substance under section 7 of ATA if it is not proved that offence/the said act is done with an intention to commit terrorism rather he shall be convicted under normal offence of PPC.

ii) If the matter is between the petitioner and the victim, it does not fall within the definition of section 6 of ATA.

Dissenting View

Mr. Justice Syed Hasan Azhar Rizvi

Issues: i) What is purpose of enactment of Anti-Terrorism Act of 1997?

ii) Whether hurt caused by corrosive substance is triable by Anti-Terrorism Court?

iii) When act of Acid attack can be classified as terrorism?

iv) When an act amounts as act of terrorism?

Analysis: i) The Anti-Terrorism Act of 1997 ("ATA") has been enacted with the purpose of preventing terrorism and sectarian violence. This legislation provides a comprehensive legal framework to address and mitigate acts of terrorism, ensuring national security and public safety.

ii) The clause (iv) of third schedule annexed to ATA demonstrates that if a corrosive substance causes hurt, then it is triable by Anti-Terrorism Courts. By virtue of section 12, the Anti-terrorism Courts has jurisdiction to try the schedules offence.

iii) Acid attacks can sometimes be classified under the meaning of terrorism, depending on the context and intent behind the act. If an acid attack is intended to create widespread fear or panic among a population, it could be seen as an act of terrorism, as terrorism is often defined by the intent to intimidate or coerce a civilian population. Additionally, it the attack is motivated by political, ideological, or religious beliefs and aims to further these objectives through violence of the threat of violence, it could be classified as terrorism. The broader impact on societal order and security is another factor; if an attack disrupts public order, causes significant fear, and undermines confidence in the security institutions, it may be seen as an act of terrorism. However, not all acid attacks are classified as such, as many are criminal acts motivated by personal vendettas or domestic disputes. The classification depends on the specific circumstances, motives, and broader impact of the attack.

iii) The act of terrorism is to be seen in peculiar facts and circumstances of each case. If act's effect whether actual, intended or potential, is to create fear and

insecurity, etc. in the society at large, it qualifies to be an act of terrorism. The Courts have only to see whether the terrorist act was such which would have the tendency to create sense of fear or insecurity in the minds of people or any section of the society. The venue of the commission of crime, the time of occurrence, the substance used in causing hurt or death, and the sense of fear or insecurity the act created are the few factors among other to meet the standard of terrorism.

Conclusion: i) See analysis no. i.
ii) Hurt caused by corrosive substance is triable by Anti-Terrorism.
iii) See analysis no. ii.
iv) See analysis no iv.

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12. **Supreme Court of Pakistan**
Rao Muhammad Rashid and Others v. Province of Sindh through Chief Secretary etc
Civil Petitions No.525-K to 527-K/2024 and Civil Petitions No.477-K to 511-K of 2024
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._525_k_2024.pdf

Facts: Petitioners were dismissed from the service after they were found ineligible for the appointment due to certain reasons. Being aggrieved and dissatisfied with the said orders of dismissal from service, the present petitioners preferred departmental appeals and thereafter filed Service Appeals which were dismissed. Hence, these Petitions for Leave to Appeal.

Issue: i) Purpose of constitution of Sindh Service Tribunal.
ii) What are the powers of the tribunal?
iii) Limitation on the power of the Tribunal.
iv) what is the astuteness of discretion in the judicial power?
v) What are the procedural requirements for filing an appeal in the Tribunal under Sindh Service Tribunals Rules, 1974?
vi) When a right to sue accrues?
vii) What does the expression "cause of action" means?
viii) What are the rules regarding admission of appeal for regular and preliminary hearing under Sindh Service Tribunals Rules, 1974?
ix) What is the object of procedure?
x) Question of Limitation.
xi) Foremost consideration for rejection of plaint under Order 7 Rule 11 C.P.C.
xii) Powers of the tribunal under Rule. 17 Sindh Service Tribunals Rules, 1974.
xiii) How a witness can be summoned and examined a party before the Tribunal.

Analysis: i) The Sindh Service Tribunal has been constituted by virtue of the Sindh Service Tribunals Act, 1973 to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants and for the matters connected therewith or ancillary thereto.

ii) The powers of the Tribunal are provided under Section 5 of the aforesaid Act, whereby the Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against and for the purpose of deciding any appeal it is deemed to be a Civil Court and have the same powers as are vested in the Code of Civil Procedure, 1908, including the powers of (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents; (c) issuing commission for the examination of witnesses and documents; and (d) execution of its decisions.

iii) A conscientious examination of this provision would show that the only limitation on the power of the Tribunal is that it must ensure and meet the acid test of reasonableness and judiciousness.

iv) The astuteness of discretion in the judicial power is meant to serve and advance the cause of justice in a judicious manner, in aid of justice, rather than perpetuating injustice.

v) In order to regulate the procedure, the Government of Sindh in exercise of the powers conferred by Section 8 of the Act promulgated the Sindh Service Tribunals Rules, 1974. Under Rule 8, procedural requirements for filing an appeal in the Tribunal are provided, in which the most worth mentioning prerequisite is in clause (b), whereby the appellant is bound to state in brief the facts constituting cause of action and the precise date or period when it arose.

vi) It is legally acknowledged and recognized that it is the wrongdoing which in fact originates and triggers the right to sue. The court cannot hear any case nor render any decision without a valid cause of action or without an accrual of right to sue or, in other words, without an accrual of cause of action to set the law into motion.

vii) The expression “cause of action” means a bundle of facts which, if traversed, a suitor claiming relief is required to prove for obtaining judgment. It is also well understood that not only is the party seeking relief supposed to have a cause of action when the transaction or the alleged act is done but also at the time of the institution of the claim. The expression "cause of action" is a fundamental element to confer jurisdiction and is commonly used to mean a state of affairs that enables a party to carry on an action in a court of law or a Tribunal.

viii) The direct admission of appeal for regular hearing is dealt with by Rule 11, unless the Tribunal wishes to hear the appellant or his counsel before admission for which an opportunity of preliminary hearing is provided. Whereas the niceties of Rule 12 expound that after preliminary hearing the Tribunal may, for reasons to be recorded, dismiss the appeal in limine with a further rider that if the appeal is not dismissed in limine, it shall be admitted to regular hearing.

ix) The procedure is a mere device with the object to facilitate and not to obstruct the administration of justice, therefore, to advance the cause of justice, any technical construction of law or rules that leaves no room for reasonable elasticity of interpretation should be guarded against and any construction which reduces the statute to a futility must be avoided; mindful of the reminiscence and resonance of the principle that the role of procedure in any system of justice is to assist, not

obstruct, the granting of rights to the people.

x) As a whole, mixed questions of law and fact activate the intermingling of the scrutiny of question of law as well as the factual resolution. A plea of limitation cannot be decided theoretically or presumably without adverting to the starting point of limitation in each case separately.

xi) Even under Order 7 Rule 11 C.P.C., before rejection of plaint, the foremost consideration for the Courts is always the meaningful construction of the averments made in the plaint.

xii) Rule 17…empowers the Tribunal to decide the issues arising for determination upon affidavits and relevant documents, but the discretion has been accorded to the Tribunal which may direct such issues, as it may consider necessary, to be decided on such other evidence and in such manner as it may deem fit with a further rider that the party affected by any such affidavit may be permitted to cross-examine the deponent.

xiii) Rule 18 is also very significant which elucidates that if the Tribunal directs any issue to be proved by evidence, the party wishing to examine any witness on such issue shall make an application for summoning the witness within three days from the date of such directions and set forth a list of witnesses and state whether the witnesses are required to give evidence, or produce any document with a brief resume of the evidence that each witness is expected to give and brief description of the document which is required to be produce by the witness. However, once again, discretion has been given to the learned Chairman of the Tribunal or any member nominated by him in this behalf that if he is of the opinion that the evidence of any witness specified in the list of witnesses given under sub-rule (1) is material for disposal of an appeal before it, he may direct such witness to be summoned on a date to be fixed.

Conclusion: i) See above analysis No. i.

ii) See above analysis No. ii.

iii) The only limitation on the power of the Tribunal is that it must ensure and meet the test of reasonableness and judiciousness.

iv) The astuteness of discretion in the judicial power is to exercise the same to advance the cause of justice.

v) See above analysis No. v.

vi) See above analysis No. vi.

vii) See above analysis No. vii.

viii) See above analysis No. viii.

ix) The procedure is a mere device with the object to facilitate and not to obstruct the administration of justice.

x) See above analysis No. x.

xi) See above analysis No. xi.

xii) See above analysis No. xii.

xiii) See above analysis No. xiii.

13. **Supreme Court of Pakistan**
Ghulam Murtaza Sheikh v. The Chief Minister, Sindh and others.
Civil Petition Nos. 646 -K to 647 -K of 2021.
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._646_k_2021.pdf

Facts: These two Civil Petitions for leave to appeals are directed against the consolidated judgment, passed by the Sindh Service Tribunal, whereby the appeal filed by the petitioner Ex-Senior Super intendent, was dismissed; however, the penalty awarded to him for reduction to a lower post, from BS -19 to BS -18, was enhanced from 3 years to 5 years and the appeal filed by Deputy Superintendent Jail, was also dismissed, but his compulsory retirement was converted into dismissal from service.

Issues: i) What is the purpose of conducting inquiries?
ii) Whether a witness's statement holds any legal value under civil or criminal law if he has not been cross-examined by the opposing side and whether such opportunity of cross-examination can be denied?
iii) Whether the standard of proof required in a departmental inquiry is analogous to the standard of proof which is considered necessary in the criminal trial?
iv) In what manner should a departmental inquiry be conducted, and under which guiding principles should it operate?
v) What is the effect of defective Departmental inquiry upon the authenticity of the whole process?
vi) Whether the Services Tribunal, for the purposes of deciding any appeal, is deemed to be a Civil Court?

Analysis: i) The purpose of conducting inquiries, on one hand, is to fix the responsibility of the delinquent vis-à-vis the charges leveled against him in the show cause notice or statement of allegations but in unison, it also aids and facilitates the catching and exposing of the actual culprit or delinquent. (…) It is an onerous duty of the Inquiry Officer or Inquiry Committee to explore every avenue so that the inquiry may be conducted in a fair and impartial manner and razing and annihilating the principle of natural justice is avoided which may ensue that there is no miscarriage of justice. While in the case of Usman Ghani Vs The Chief Post Master, GPO Karachi (2022 SCMR 745) , it was held that the foremost aspiration of conducting departmental inquiry was to find out whether a prima facie case of misconduct was made out against the delinquent officer for proceeding further. The guilt or innocence could only be thrashed out from the outcome of inquiry and at the same time it was also required to be seen by the Service Tribunal as to whether due process of law or right to fair trial was followed or ignored which was a fundamental right.
ii) Under the civil and criminal law, the examination-in-chief or mere statement of any witness has no legal value or sanctity unless he appears for cross-examination to the other side. No evidence which is accusatorial to the opposite party would be admissible unless such party is afforded an evenhanded opportunity of skimming

its exactitudes by cross-examination which is a most effective device invented to unearth the truth. It is not a concession but a vested right, hence not only this right should be safeguarded and made available but this right should be provided for effective cross-examination which is a fundamental limb and is at the heart of due process and the doctrine of natural justice. If any such grave lapses are committed by the Courts in judicial proceedings or quasi-judicial authorities in their proceedings, it will deduce without any shadow of doubt that the matter has not been decided in accordance with law. If the elementary principle of law is not contented, then obviously, the whole edifice of unwarranted proceedings will fall apart. In the case of Federation of Pakistan through Chairman FBR Vs. Zahid Malik (2023 SCMR 603), it was held that the right of proper defence and cross - examination of witnesses by the accused is a vested right. Whether the evidence is trustworthy or inspires confidence could only be determined with the tool and measure of cross -examination. The possibility cannot be ruled out in the inquiry that a witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. Not providing an ample opportunity of defence and depriving the accused from the right of cross examination of departmental representatives who lead evidence and produced documents against the accused is against Article 10 -A of the Constitution of the Islamic Republic of Pakistan ("Constitution").The whys and wherefores of cross examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies. While the judgment rendered in the case of Raja Muhammad Shahid Vs. The Inspector General of Police (2023 SCMR 1135), articulates that during regular inquiry it is obligatory for the inquiry officer to allow an even-handed and fair opportunity to the accused to place his defence and if any witness is examined against him, then a fair opportunity should also be afforded to cross-examine the witnesses. (…) Not affording the right of cross-examination in the inquiry was a serious defect and in no way can be construed as taking refuge in procedural lapses; it was a grave blunder which in fact destroyed the whole substratum of inquiry and the case of misconduct made out by the department against the petitioners. It was the legal duty of the Service Tribunal to vet the whole inquiry report for the purposes of fact-finding, including the effect of non-affording the right to cross -examine which was necessary to decide both the appeals on merits.

iii) The standard of proof required in a departmental inquiry is not analogous to the standard of proof which is considered necessary in the criminal trial. The departmental inquiry stems from the charges of misconduct where the standard of proof depends on the balance of probabilities or preponderance of evidence but not a proof beyond reasonable doubt, which is a strict proof required in criminal trials.

iv) It is a well-known fact that the inquiry officer cannot be equated or measured up to a trained judicial officer, but in all disciplinary laws dealing with the acts of misconduct, the precise procedure is already provided for the observance and

guidance of the inquiry officer who is ought to explore every avenue so that the inquiry should be conducted in a fair and impartial manner . The inquiry officer in the present case did not adhere to the principle of natural justice and due process of law. Neither the inquiry report depicts that the statements of the alleged 20 witnesses were recorded in presence of petitioners nor any right of cross-examination was provided to the petitioners. The departmental inquiry should not be conducted in a cursory or perfunctory manner.

v) It is often seen that due to defective Departmental inquiry conducted either intentionally or unintentionally, the whole process is overturned by this Court or Service Tribunal, therefore it must be a grave concern and caution for the competent authority or authorities that while conducting inquiry and appointing an inquiry officer, they should ensure that the inquiry is conducted transparently, fairly and without violating the due process of law and principle of natural justice.

vi) The wisdom of setting up Service Tribunal under Article 212 of the Constitution is to deal with and decide the matters relating to the terms and conditions of service of Civil Servants. The Services Tribunal, for the purposes of deciding any appeal, is deemed to be a Civil Court and has the same powers as are vested in such court, therefore, as a fact finding forum of exclusive jurisdiction, it has the duty to do complete and substantial justice between the parties with a rational denouement of the case.All judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice.

Conclusions: i) The purpose of conducting inquiries, on one hand, is to fix the responsibility of the delinquent vis-à-vis the charges leveled against him in the show cause notice or statement of allegations but in unison, it also aids and facilitates the catching and exposing of the actual culprit or delinquent.

ii) Under the civil and criminal law, the examination-in-chief or mere statement of any witness has no legal value or sanctity unless he appears for cross-examination to the other side and such opportunity of cross-examination cannot be denied.

iii) See above in analysis No. (iii)

iv) The departmental inquiry should not be conducted in a cursory or perfunctory manner, rather it should be conducted in a fair and impartial manner by adhering to the principle of natural justice and due process of law.

v) Due to defective Departmental inquiry conducted either intentionally or unintentionally, the whole process gets overturned.

vi) The Services Tribunal, for the purposes of deciding any appeal, is deemed to be a Civil Court and has the same powers as are vested in such court.

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14. **Supreme Court of Pakistan**
M/s Haque Traders and others v. Sheikh Abid & Co. Pvt. Ltd. and others
Civil Petitions No.563-K to 595-K of 2024, Civil Petitions No.612-K and 613-K of 2024
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._563_k_2024.pdf

Facts: These civil petitions for leave to appeal are directed against the judgment dated 03.04.2024, rendered by the High Court of Sindh, Karachi, whereby the constitution petitions were dismissed and the order passed by the Rent Controller for fixation of the fair rent and the judgment passed by the Appellate Court in the First Rent Appeals were affirmed.

Issue: i) Object of the Sindh Rented Premises Ordinance, 1979.
ii) "Building" defined.
iii) What is fair rent?
iv) Who can file a case for fixation of fair rent?
v) What should be taken into consideration for fixation of fair rent?
vi) Time limit for further increase in the rent.
vii) Powers of the Rent Controller.
viii) Commands of section 22.
ix) Purpose of Article 199 of the Constitution.

Analysis: i) The objectivity of promulgating the Ordinance was to make effective provisions for regulating the relations between landlords and tenants and protect their interests in respect of rented premises within urban areas.

ii) According to Section 2 (a) of the Ordinance, the term "building" means any building or part thereof, together with all fittings and fixtures therein, if any, including any garden, garage, out-house and open space attached or appurtenant thereto.

iii) Indeed, the determination of fair market rent is an essential component of any rented premises, not only for the landlord but also for the tenant. A proper determination of fair rent helps in avoiding the occasion of charging the rent too high or too low, therefore multiple parameters and benchmarks have been fixed in the Ordinance for the assistance of the Rent Controller which he must watch out for and mull over at the time of fixing fair rent of any rented premises in his jurisdiction. There is no standardized formula of "onesize-fits-all" or any other orthodox method which can be applied across the board or universally for every rented premises but each rented premises has its own features such as its location, property category and size, parallel rent statistics, and distinctiveness, therefore, the Rent Controller is obligated to follow, with a conscious approach, the yardstick/indicators provided under Section 8 of the Ordinance for determination of fair rent with regard to such particular rented premises for which an application has been made for determination of fair rent before him. It is not the intent of the legislature that at the time of fixing fair rent by the Rent Controller for any premises, the litmus test of all constituents and characteristics provided under Section 8 of the Ordinance should be present in unison or conjointly, but such conditions are provided as a yardstick which are required to be considered by the Rent Controller. The opposing party cannot claim that all conditions should work together or be congregated with strict proof on the touchstone of conditions word by word, but in our view, if one or two grounds are proved satisfactorily and others are not, even in

that set of circumstances, the Rent Controller may fix the fair rent proportionately and equitably, being mindful to the proven grounds; but cannot decline the application on the ground that the applicant has failed to prove or substantiate all preconditions as sine qua non for fixation of fair rent as provided under Section 8 of the Ordinance.

iv) In order to achieve the payment of fair rent of the premises by the landlord or even by the tenant of the rented premises, a rent case can be filed by both under Section 8 of the Ordinance before the concerned Rent Controller.

v) a rent case can be filed by both under Section 8 of the Ordinance before the concerned Rent Controller, who has the statutory duty to fix the fair rent of the rented premises after taking into consideration (a) the rent of similar premises situated in the similar circumstances, in the same or adjoining locality; (b) the rise in cost of construction and repair charges; (c) the imposition of new taxes, if any, after commencement of the tenancy; and (d) the annual value of the premises, if any, on which property tax is levied. A further rider is provided under sub-section (2) that where any addition to, or improvement in, any premises has been made or any tax or other public charge has been levied, enhanced, reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of Section 9 be determined or, as the case may be, revised after taking such changes into consideration.

vi) it is clearly provided under Section 9 of the Ordinance that where the fair rent of any premises has been fixed, no further increase thereof shall be effected unless a period of three years has elapsed from the date of such fixation or commencement of this Ordinance, whichever is later. While sub-section (2) of Section 9 accentuates that the increase in rent shall not, in any case, exceed ten percent per annum on the existing rent.

vii) It is clearly elucidated in Section 20 of the Ordinance that the Rent Controller and the appellate authority for the purpose of deciding any case under this Ordinance have powers of a Civil Court under the Code of Civil Procedure, 1908 ("CPC") in respect of only (a) summoning and enforcing the attendance of any person and examining him on Oath; (b) compelling production or discovery of documents; (c) inspecting the site; and (d) issuing commission for examination of witnesses or documents

viii) In tandem, Section 22 commands and connotes the way that every final order passed under this Ordinance shall be executed by the Controller and in order to attain the finality and avoid multiplicity of proceedings, it is further provided in this special law, confined to a prescribed field of action or operation, that all questions arising between parties and relating to the execution, discharge or satisfaction of the order shall be determined by the Controller and not by a separate suit, with an explanation that in the execution proceedings relating to the order of ejectment, no payment, compromise or agreement shall be valid unless such payment, compromise or agreement is made before or with the permission of the authority passing the order.

ix) Indubitably, the purposefulness of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is to foster justice, and if the error is so patent, the High Court can interfere. Even the concurrent findings, recorded erroneously by the for below, may not be considered so revered or untouchable that it cannot be upset.

Conclusion: i) See above analysis no.i.
ii) See above analysis no.ii.
iii) See above analysis no.ii.
iv) Land lord and tenant, both can file a case for fixation of fair rent.
v) See above analysis no.v.
vi) Where the fair rent of any premises has been fixed, no further increase thereof shall be effected unless a period of three years has elapsed from the date of such fixation or commencement of this Ordinance.
vii) See above analysis no.vii.
viii) See above analysis no.viii.
ix) See above analysis no. ix.

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15. **Supreme Court of Pakistan**
Town Administration and another v. Mohammad Khalid and others etc.
Civil Petitions No.2697 and 2698-L of 2016
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2697_l_2016.pdf

Facts: The respondents filed grievance petitions against their termination which were accepted. Against such decisions, the petitioners filed appeals before the Punjab Labour Appellate Tribunal with application for condonation of delay, but the appeals were dismissed. The petitioners filed the writ petitions in the High Court which were also dismissed vide impugned order, hence, this these civil petitions.

Issues: i) What does "industrial dispute" means u/s 2 (xv) (Definitions Clause) of the Punjab Industrial Relations Act, 2010?
ii) What is status of Labour Court for the purpose of adjudicating and determining any "industrial dispute?
iii) Whether Standing Order 12 of the Ordinance 1968 permits termination of services of a workman without notice and through oral order?
iv) What is requirement of rule of law for taking any adverse action against a workman?
v) What is determining factor on question as to whether a workman is a permanent workman or not?
vi) What is meant by equality of law while deciding question of law?

Analysis: i) According to Section 2 (xv) (Definitions Clause) of the Punjab Industrial Relations Act, 2010 ("PIRA"), "industrial dispute" means any dispute or difference between employees and employers or between employers and workmen or between

workmen and workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person, and is not in respect of the enforcement of such right guaranteed or accrued to him by or under any law other than the Act, or any award or settlement for the time being in force.

ii) In order to lay down the procedure to be followed, the PIRA, under Section 45, provides that for the purpose of adjudicating and determining any "industrial dispute", the Labour Court is to be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908, including the powers of (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; and (c) issuing commissions for the examination of witnesses or documents.

iii) The procedure of simpliciter termination of employment is provided under Standing Order 12 of the Ordinance 1968, whereas cases of misconduct are dealt with under Standing Order 15 of the Ordinance 1968. The services of a workman can be terminated on one month's notice or with the payment of one month's wages calculated on the basis of average wages earned by the workman during the last three months in lieu of notice. Though it is provided that no temporary workman, whether monthly-rated, weekly-rated, daily-rated or piecerated, and no probationer or badli, shall be entitled to any notice if his services are terminated by the employer, nor shall any such workman be required to give any notice or pay any wages in lieu thereof to the employer if he leaves employment of his own accord; but at the same time, in the same Standing Order, the services of a workman neither can be terminated, nor a workman can be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken so that an aggrieved workman may invoke Section 33 of the PIRA for redressal of his individual grievance. It is further provided that services of permanent or temporary workmen shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in Standing Order 15.

iv) It is an elementary rule of law that before taking any adverse action, the affected party must be given a fair opportunity to respond and defend the action. This principle does not lay down any differentiation or inequality between a quasi-judicial function and an administrative function/action. It applies evenly and uniformly to secure justice and, in turn, prevent the miscarriage of justice. Before taking any punitive or adverse action, putting an end to the services of any employee/workman or civil servant, the precept of fairness and reasonableness commands that an evenhanded opportunity to put forth the defence should be afforded.

v) In the case of Executive Engineer, Central Civil Division Pak. P.W.D. Quetta vs. Abdul Aziz and others (PLD 1996 SC 610), this Court observed that the ratio of Muhammad Yaqoob (supra) seems to be that the period of employment is not the sole determining factor on the question as to whether a workman is a permanent workman or not but the nature of the work will be the main factor for deciding the above question. It was held that if the nature of work for which a person is employed

is of a permanent nature, then he may become permanent upon the expiry of the period of nine months mentioned in terms of clause (b) of paragraph 1 of the Schedule to the Ordinance 1968, provided that he is covered by the definition of the term "worker" given in section 2 (i) thereof. But if the work is not of permanent nature and is not likely to last for more than nine months, then he is not covered by the above provision. This Court further observed that once it was proved that the respondents, without any interruption, remained employees between a period from two years to seven years, the burden of proof was on the appellant-department to have shown that the respondents were employed for the works which were not of permanent nature and which could not have lasted for more than nine months.

vi) Delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied. The doctrine of equality before law demands that all litigants, including the State, are accorded the same treatment and the law is administered in an evenhanded manner.

Conclusion: i) See analysis no. i.

ii) For the purpose of adjudicating and determining any “industrial dispute”, the Labour Court is to be deemed to be a Civil Court.

iii) Though it is provided in Standing Order 12 of Ordinance that no temporary workman, shall be entitled to any notice if his services are terminated by the employer, but at the same time, the services of a workman neither can be terminated, nor a workman can be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken

iv) It is an elementary rule of law that before taking any adverse action, the affected party must be given a fair opportunity to respond and defend the action.

v) See analysis no. v.

vi) The doctrine of equality before law demands that all litigants, including the State, are accorded the same treatment and the law is administered in an evenhanded manner.

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16. **Lahore High Court**
The State vs. Ali Hassan alias Achoo
Murder Reference No. 256 of 2019
Ali Hassan alias Achoo vs. The State etc.
Criminal Appeal No. 71917 of 2019
Mr.Justice Malik Shahzad Ahmad Khan Chief Justice, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC3821.pdf

Facts: Through this single judgment, Criminal Appeal appellant against his convictions and sentences along with Murder Reference transmitted by the trial court for confirmation or otherwise of death sentence of the appellant, being originated from the judgment passed by learned Additional Sessions Judge, for the offences under sections 302, 324, 449, 337A(i), 449, 109 and 34 PPC were decided.

Issues: i) Under what conditions can injured child witness be considered a competent witness?
ii) Whether delay in recording the statement of an eyewitness, whose name is mentioned in the FIR, affect his reliability?
iii) Who can be termed as an interested witness?
iv) Whether minor discrepancies between medical evidence and the witnesses' accounts of injuries would undermine the prosecution's case?
v) Whether substitution of real culprits in cases where eye witnesses lost their kith and kin before their own eyes is a rare phenomenon?
vi) Whether ocular account is alone sufficient to sustain a conviction, even when there is conflicting medical evidence?
vii) Whether failure of the investigating officer to take possession of the source of light is sufficient to discard otherwise trustworthy and credible prosecution evidence?
viii) When does the burden of proof shift to the accused?

Analysis: i) We are of the considered view that when a child witness responds intelligently to cross-examination by the defence, his testimony deserves credit and there remains no reason to believe that he had deposed under influence or instructions. We may also observe here that the child witness, if found intelligent enough, does not ordinarily tell lies and his evidence carries higher value than ordinary witnesses for the reason that he is generally considered to be innocent and obvious of motive and evil considerations. In this case, Muhammad Mudassar, injured (PW.12), who was examined by the trial court as a 'child witness', was found quite capable to make statement in accordance with the provision of Article 3 of the Qanoon-e-Shahadat Order, 1984. (…) As mentioned above, the trial Court had taken all possible and due steps to judge the level of their intelligence and maturity before proceeding to record their statements. Naveed was 12 years of age whereas Naheed Akhtar was of the age of 10 years. It may be observed that mere fact that a witness was of tender age does not ipso facto make his evidence unreliable. It is true that before acting upon the evidence of child witnesses, close and careful scrutiny is required which in the instant case was duly adopted by the trial Court and a note to that effect was also recorded by the trial Court about his satisfaction
ii) Ordinarily if the name of an eye witness is mentioned in FIR but the investigating agency happens to record his statement after the lapse of some time, then it cannot be held that such eye witness is not reliable.
iii) Another objection raised by learned counsel for the appellant is that the ocular account in this case has been furnished by related and interested witnesses, however, he could not controvert that the law has been well-settled by now that an interested witness is one who is interested in the conviction of an accused for some ulterior motive, but in this case, the defence could not bring on record any ulterior motive of the complainant or witnesses to falsely implicate the appellant in this case.

iv) We may observe that the minor discrepancies in the medical evidence relating to the seat of injuries would also not negate the direct evidence as the witnesses are not supposed to give photo picture of each detail of injuries in such situation, therefore, the conflict of nature of ocular account with medical as pointed out being not material would have no adverse effect on the prosecution case.

v) We are of the unanimous view that due to close and blood relation of complainant and the witnesses with the deceased persons, they were in fact not likely to let off the actual perpetrator of the offence by falsely implicating the appellant, against whom they admittedly had no previous malice, ill-will, animosity or grudge. It is by now well settled law that substitution of real culprits especially in cases where the eye witnesses lost their kith and kin before their own eyes is a rare phenomenon.

vi) Similarly ocular account is found trustworthy and confidence inspiring and for this reason, it is given preference over medical evidence and same alone is sufficient to sustain conviction of the appellant.

vii) If the electric bulb (source of light) was not taken into possession by the investigating officer, even then it is no ground to discard the whole trustworthy and confidence inspiring evidence of the prosecution. (…) Presence of electric lights at the mosque presented ample opportunity for the identification of assailants, each named in the crime report. Darkness by itself does not provide immunity to an offender if the witnesses otherwise succeed to capture/ascertain his identity through available means, conspicuously mentioned in the crime report. On our independent analysis, the totality of circumstances does not space any hypothesis other than petitioner's guilt and, thus, do not find ourselves in a position to take a view different than concurrently taken by the courts below.

viii) We may also observe here that when an accused takes a particular stance, onus to prove such stance shifts on the shoulders of accused but in this case, the defence did not produce any evidence in support of the plea of appellant.

Conclusions: i) Injured child witness can be termed as a competent witness if he is found intelligent enough and found quite capable to make statement in accordance with the provision of Article 3 of the Qanoon-e-Shahadat Order, 1984.

ii) If the name of an eye witness is mentioned in FIR but the investigating agency happens to record his statement after the lapse of some time, then it cannot be held that such eye witness is not reliable.

iii) An interested witness is one who is interested in the conviction of an accused for some ulterior motive.

iv) Minor discrepancies in the medical evidence relating to the seat of injuries does not negate the direct evidence as the witnesses are not supposed to give photo picture of each detail of injuries in such situation.

v) See above in analysis No.v.

vi) Where ocular account is found trustworthy and confidence inspiring and for this reason, it is given preference over medical evidence and same alone is sufficient to sustain conviction of the appellant.

vii) If the source of light is not taken into possession by the investigating officer,

even then it is no ground to discard the whole trustworthy and confidence inspiring evidence of the prosecution.
viii) When an accused takes a particular stance, onus to prove such stance shifts on the shoulders of accused.

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17. **Lahore High Court**
Muhammad Waseem v. Maple Leaf Cement Factory Limited
Regular First Appeal No.20 of 2024
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC3895.pdf

Facts: This Regular First Appeal was preferred against the judgment and Decree whereby Additional District Judge decreed the suit filed under Order XXXVII CPC against the Appellant/defendant. The Appellant was proceeded against ex parte and trial court thereafter recorded ex-parte evidence and consequently decreed the suit.

Issues: i) Whether a Suit under Order XXXVII of CPC requires a relationship between the parties?
ii) Weather a suit under Order XXXVII of CPC has to be filed along with supporting documents?

Analysis: i) Cheque is a negotiable instrument under the Negotiable Instrument Act, 1881 and without negotiation of the parties on an agreement; no such suit could be filed. It is settled law that for the purpose of filing suit there has to be a relationship between the parties.
ii) It has been held in a number of cases that suit under Order XXXVII of the "CPC" has to be filed alongwith supporting negotiable instruments of the parties, instrument through a contract or through any relationship, which must be express, implied or in written form or oral.

Conclusion: i) A Suit under Order XXXVII of CPC requires a relationship between the parties.
ii) A suit under Order XXXVII of CPC has to be filed along with supporting documents.

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18. **Lahore High Court**
Xenia Hamayun Sanik v. The Government of Punjab through Secretary Planning & Development Board, Punjab Secretariat, Lahore & others
Writ Petition No.2332 of 2024
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC3730.pdf

Facts: Through instant Petition, petitioner has assailed the vires of notices for vacation of Chief House, ABAD.

Issue: Whether a specific provision enacted to address a particular situation, it supersedes general provisions to the same effect?

Analysis: It is an established principle of law that when a specific provision is enacted to address a particular situation, it supersedes general provisions to the same effect, therefore, in such circumstances, resort has to be made to that specific provision not general provision (…) Undoubtedly, allotment of residence cannot be claimed as a matter of right by a Government servant, yet he / she would be entitled to be dealt with in a fair, reasonable and unbiased manner.

Conclusion: A specific provision is enacted to address a particular situation; it supersedes general provisions to the same effect.

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19. **Lahore High Court**
Raja Abdul Ghafoor v. Province of Punjab through District Collector Rawalpindi
Civil Revision No.991-D of 2014
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC3855.pdf

Facts: The petitioner instituted a suit for declaration along with permanent injunction against the respondent to the effect that he is owner-in-possession of land in terms of registered sale deed and mutation. Trial Court dismissed the suit. The petitioner filed appeal which was also dismissed, hence, this revision petition.

Issues: i) Whether the Chief Settlement Commissioner / Notified Officer has jurisdiction to investigate/ re-open and reverse the allotment order of evacuee land which was obtained fraudulently?
ii)Whether the protection of being a past and closed transaction does apply to fraudulent transactions?

Analysis: i) The Displaced Persons (Land Settlement) Act, 1958 was repealed by the Displaced Persons Laws (Repeal) Act, 1975, whereafter no new allotment could be made by the Notified Officer / Chief Settlement Commissioner. However, if any earlier allotment of evacuee land was obtained fraudulently, the authority possesses inherent powers to investigate such allotments as fraudulent allotments lack legal sanctity. Under Section 10 of the Displaced Persons (Land Settlement) Act, 1958, the Chief Settlement Commissioner has the jurisdiction to adjudicate or investigate the legitimacy of evacuee claims and if, fraud is found in the allotment process, can reverse the allotment order. When an allotment matter is re-opened, the Settlement Authority has the jurisdiction to re-examine all the facts related to the title of the parties from the inception of claim and to decide the matter according to available record and applicable law. Even a Tribunal with limited or special jurisdiction has the power to *suo moto* recall or review an order obtained by fraud.
ii) The fraudulent transactions are subject to review by the competent authorities and the constitutional jurisdiction of this Court cannot be invoked to shield

verification orders for claims obtained through fraud. It is well settled that fraud undermines even the most solemn proceedings, and any benefit/order obtained through fraud, misrepresentation of true facts cannot assume the status of past and closed transaction and that illegal orders always remain vulnerable to the legal proceedings of investigation.

Conclusion: i) The Chief Settlement Commissioner / Notified Officer has jurisdiction to investigate/ re-open and reverse the allotment order of evacuee land which was obtained fraudulently.
ii) The protection of being a past and closed transaction does not apply to fraudulent transactions.

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20. **Lahore High Court**
Raja Zulfiqar Ali v. Muhammad Sadiq & others
Writ Petition No.2390 of 2024
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC3726.pdf

Facts: Petitioner has called in question order judgment passed by learned Special Judge (Rent) and Additional District Judge, respectively, whereby ejectment petition, filed by respondent No.1, was concurrently allowed.

Issues: i) Connotation of the term Pagri under Section 2(e) of the Punjab Rented Premises Act, 2009?
(ii) Jurisdictional Scope and Powers of Rent Tribunals

Analysis: i) Pagri is traditionally defined as a payment made for the right to occupy a rented property and is distinct from costs incurred for property improvements. Such expenses do not fall within the statutory definition of Pagri and are not afforded protection under the Act. Claims related to renovation expenses are more appropriately pursued in a Civil Court, where matters of this nature can be properly adjudicated.
(ii) Rent Tribunals are specifically established to regulate relationships between landlords and tenants, ensuring that disputes arising from tenancy agreements are resolved in a timely and cost effective manner. Their jurisdiction is not intended to serve as an alternative forum for claims that fall under the purview of Civil Courts, particularly those involving financial recoveries or damages unrelated to the tenancy itself. This jurisdiction is also not available qua claims of possession through partition or disputed title or ownership claim on the basis of sale agreement or claim of possession on the basis of some agreement or for that matter other claims that are required to be resolved by the Civil Courts.

Conclusion: i) See analysis above.
(ii) The Rent Tribunal's role is limited to matters directly concerning the tenancy, such as eviction or rent disputes, and does not extend to broader financial claims

that require more comprehensive legal examination of detailed evidence. This jurisdiction is also not available qua claims of possession through partition or disputed title or ownership etc.

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21. **Lahore High Court**
Qatar Lubricants Company W.L.L. ("QALCO") & another v Atif Naeem Rana & Others
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC3709.pdf

Facts: The petitioners/ respondents through this application have sought for a stay of proceedings before High court in the main petition, invoking the provisions of section 34 of the Arbitration Act, 1940.

Issues: i) Whether the right to arbitrate can be enforced by anyone who is not a party to the agreement containing the arbitration clause?
ii) Whether the agents can personally enforce contracts entered into by them on behalf of their principal?
iii) Whether staying proceedings under section 34 of the Arbitration Act, 1940, is discretionary or mandatory?
iv) Whether there is any fixed rule for determining when a stay of proceedings should be refused?
v) Whether in matters where exclusive jurisdiction has been conferred on a special court or tribunal are arbitrable?
vi) What are the powers of High court under section 6 of Companies Act, 2017?

Analysis: i) It is well-settled that where all parties to the main petition are not parties to the arbitration clause, which constitutes a separate agreement as per well-established principles of law, bifurcation of judicial action cannot be allowed. This is because it will not only cause inevitable delay in the resolution of the dispute but can also lead to conflicting decisions, increased litigation costs, and harassment of the parties. The right to arbitrate cannot be enforced by anyone who is not a party to the agreement containing the arbitration clause.
ii) A non-signatory cannot compel arbitration except under exceptional circumstances. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by them on behalf of their principal, nor are they personally bound by them.
iii) The court may refuse to stay the proceedings if it is satisfied that there is no sufficient reason to refer the matter to arbitration and that a substantial miscarriage of justice or inconvenience to the parties would occur. Staying proceedings under Section 34 is discretionary, not mandatory. If the portion of the claim that falls within the scope of the arbitration clause is small compared to the overall claim, and essentially the same evidence (or at least overlapping evidence) would need to be presented to establish both, then the proceedings should not be stayed, even for the claim that may be referable to arbitration.

iv) There is no fixed rule for determining when a stay should be refused. Each case has different facts, and the decision to grant or refuse a stay depends on the specific facts and circumstances of each case. The court can make an objective assessment and decide whether the stay of legal proceedings should be granted or refused. The provisions of section 34 of the Arbitration Act, 1940, imply that the court should first examine whether the arbitration clause applies to the dispute. If it does, the court must determine whether the nature of the dispute is such that the ends of justice would be better served by a decision of the court or by the private forum chosen and agreed upon by the parties.

v) The resolution of disputes through mediation (under section 277 of the Act of 2017) and the referral of matters/disputes to arbitration (under section 278 of the Act of 2017) are options available to companies. The powers to rectify the register (under section 126 of the Act of 2017) and to award punishment for fraudulent entries (under section 127 of the Act of 2017) lie with the court when the rights of third parties are likely to be affected. Similarly, issues of oppression and mismanagement (under section 286 of the Act of 2017), investigation into the affairs of the company (under section 257 of the Companies Act), and the winding up of a company (under sections 301 and 304 of the Act of 2017) fall within the exclusive jurisdiction of the court when the rights or interests of third parties, who are likely to be affected and are not parties to the arbitration agreement, are involved. Besides Company Law, other matters where exclusive jurisdiction has been conferred on a special court or tribunal are not arbitrable, especially when the rights of third parties are likely to be affected. Examples include summary suits under Order XXXVII CPC, banking recovery suits, rent matters, and suits related to mortgages. etc.

vi) The High court is endowed with all requisite powers under section 6 of the Act of 2017 to determine any and all matters which come before it, including any question necessary or expedient to decide for the rectification of the register of members of a company under section 126. The said provision has conferred wide-ranging powers to record evidence, etc. Additionally, sections 256 and 257 of the Act of 2017 empower the commission and the court respectively to investigate into the affairs of a company, which is a sovereign function, delegated to the commission and the court and thus cannot be exercised by the arbitrator.

Conclusion:

i) No, the right to arbitrate cannot be enforced by anyone who is not a party to the agreement containing the arbitration clause.

ii) No, the agents cannot personally enforce contracts entered into by them on behalf of their principal.

iii) Staying proceedings under Section 34 is discretionary, not mandatory.

iv) No, there is no fixed rule for determining when a stay should be refused.

v) No, in other matters where exclusive jurisdiction has been conferred on a special Court or Tribunal are not arbitrable.

vi) The High Court is endowed with all requisite powers under section 6 of the Act of 2017 to determine any and all matters which come before it, including any

question necessary or expedient to decide for the rectification of the register of members of a company under section 126.

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22. **Lahore High Court**
Syed Monis Raza & others v. Mst. Asia Bano & others
Civil Revision No.314-D of 2015
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC3849.pdf

Facts: Through instant revision petition, petitioners have challenged judgment and decree passed by Additional District Judge, whereby appeal against judgment and decree passed by Civil Judge was accepted and petitioners' suit was dismissed.

Issues: i) Whether principal is duty bound to give notice to the agent before cancellation of the power of attorney?
ii) Whether inaction on part of any person invites applicability of the principles of waiver, estoppel and acquiescence?
iii) Is it obligatory upon the attorney to seek specific written permission from the principal before transferring the property to close blood relation / spouse?

Analysis: i) Under section 202 read with section 206 of the Contract Act, 1872, the principal is duty bound to give notice to the agent before cancellation of the power of attorney. The power of attorney could only be rescinded after serving a notice upon the attorney and any revocation without notice to the attorney would be illegal.
ii) Moreover, inaction on part of petitioners also invites applicability of the principles of waiver, estoppel and acquiescence. The implied consent in accepting the mutation in question constituted abandonment of rights on account of failure to enforce it.
iii) There is substance in the argument of learned counsel for petitioners that neither the agent himself could claim ownership rights in the land of the principal nor for his own kith and kin merely on the basis of agency document. It is sine qua non for him to have sought prior approval of the principal in that behalf after acquainting him with material circumstances on the subject, failing which the principal is at liberty to repudiate the transaction.

Conclusion: i) The principal is duty bound to give notice to the agent before cancellation of the power of attorney.
ii) Inaction on part of any person invites applicability of the principles of waiver, estoppel and acquiescence.
iii) It is obligatory upon the attorney to seek specific written permission from the principal before transferring the property to close blood relation / spouse.

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23. **Lahore High Court**
Muhammad Rafique v. Station House Officer and others
Crl. Misc. No.13/H/2024
Mr. Justice Tariq Saleem Sheikh

https://sys.lhc.gov.pk/appjudgments/2024LHC3860.pdf

Facts: The Petitioner's 17-year-old brother went to a nearby mosque to offer Isha prayers but did not return. Concerned, the Petitioner searched for his brother but could not find him. He lodged FIR under section 365 PPC at Police Station against unknown persons for abducting his brother. After that the Petitioner submitted a supplementary statement accusing Respondents No. 3 and 4 of the offence.

Issues:
i) What is the object of writ of habeas corpus?
ii) What is the difference between without lawful authority and unlawful manner?
iii) Whether the Courts are empowered to set at liberty anyone who is illegally or improperly detained in public or private custody?
iv) What is the difference between illegal and unlawful?
v) What is the difference between legal and lawful?
vi) What is the requirement for issuing a writ of habeas corpus?
vii) Whether the habeas corpus jurisdiction can be invoked to locate a missing person or someone regarding whose abduction an FIR has been registered?

Analysis:
i) The object of the writ is not to punish past illegality but to secure release from ongoing unlawful detention. Article 199(1)(b)(i) of the Constitution of 1973 provides that, subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law, make an order directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that the person is not being held in custody without lawful authority or in an unlawful manner. The High Court can exercise this power on the application of any person.
ii) The terms ―without lawful authority and ―in an unlawful manner both imply actions that are not legally permissible, but they differ in scope and application. Without lawful authority refers to actions taken by someone who lacks the legal right or power to act. This term suggests that there is no legal foundation or authorization for the action being performed. …Therefore, the key difference lies in whether there is a legal right to act (without lawful authority) versus whether the action itself is conducted lawfully (in an unlawful manner).
iii) Section 491(1) Cr.P.C. states that any High Court may, at its discretion, order that a person within its appellate criminal jurisdiction be brought before the Court to be dealt with according to law. It also allows the Court to set at liberty anyone who is illegally or improperly detained in public or private custody within its jurisdiction.
iv) The terms ―illegal and ―unlawful are often used interchangeably, but they carry subtle distinctions, particularly in legal contexts. ―Illegal typically refers to actions explicitly prohibited by law, indicating that such acts violate specific statutes or legal provisions… An act can be unlawful if it is forbidden by law, even if it doesn't necessarily violate a specific statute in the same way an illegal act does…

v) The terms ―lawful and ―legal also have distinct meanings. ―Lawful generally refers to something that is authorized or permitted by law, with an emphasis on both ethical and legal legitimacy. On the other hand, ―legal pertains more to the adherence to the technical forms and procedures of the law without necessarily implying ethical approval. Therefore, while an action can be legal by following the proper forms and procedures, it may not be lawful if it lacks ethical or substantive legitimacy.

vi) The essential requirement for issuing a writ of habeas corpus is that the individual for whom the writ is sought must be in some form of detention, whether by authorities or a private person. In other words, detention is the condition precedent for filing a habeas corpus petition.

vii) The habeas corpus jurisdiction cannot be invoked to locate a missing person or someone regarding whose abduction an FIR has been registered with the police. …The Court emphasized that a writ of habeas corpus can only be issued if there is a specific claim that an identified individual had unlawfully detained a particular person. It also stated that the power under Article 226 of the Indian Constitution should not be used to locate missing persons, as this is the responsibility of the investigating agency under the Code of Criminal Procedure.

Conclusion: i) The object of habeas corpus is to secure release from ongoing unlawful detention.

ii) See above in analysis clause No. ii.

iii) See above in analysis clause No. iii.

iv) Illegal typically refers to actions explicitly prohibited by law, indicating that such acts violate specific statutes or legal provisions whereas an act can be unlawful if it is forbidden by law, even if it doesn't necessarily violate a specific statute in the same way an illegal act does.

v) Lawful generally refers to something that is authorized or permitted by law, with an emphasis on both ethical and legal legitimacy. On the other hand legal pertains more to the adherence to the technical forms and procedures of the law without necessarily implying ethical approval.

vi) Detention is the condition precedent for filing a habeas corpus petition.

vii) The habeas corpus jurisdiction cannot be invoked to locate a missing person or someone regarding whose abduction an FIR has been registered with the police.

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24. **Lahore High Court**
Muhammad Umar Farooq v Irshaad Bibi
C.R. No.13867of 2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC3809.pdf

Facts: The petitioner, through this Civil Revision before the High Court, seeks the setting aside of the judgments and decrees of the lower courts, wherein a suit of the

respondent for declaration and cancellation of documents was decreed and against it appeal of petitioner was also dismissed.

Issues: i) What is the inflexible, hard and fast rule regarding any transaction where vital interest of a pardanasheen lady is involved?
ii) Whether the principle of caution is attached to the transaction to protect the rights of a pardanashin woman?
iii) What is the responsibility of a person who has a general power of attorney on behalf of a pardanashin lady?
iv) Whether it is the objective of the Supreme court to protect pardanashin woman from the risk of an unfair deal?
v) What is the concept of protecting the rights of pardanashin women?
vi) Whether the burden of proof will lie on the beneficiary of transaction in case of a pardanashin woman?
vii) Whether in cases of pardanashin women impleading revenue officials is a mandatory requirement of law to prove fraud against them?

Analysis: i) The inflexible, hard and fast rule is that when any transaction is made by any one where vital interest of a pardanasheen lady is involved then the following conditions are to be invariably and essentially fulfilled: to establish through evidence that the transaction was free from any influence, misrepresentation or fraud; that, the amount of consideration equal to the value of the property was indeed paid to the ladies; in the case of pardanasheen rustic village ladies, at the time of transaction such ladies were fully made to understand the nature of the transaction and the consequences, emanating therefrom and; that at the time of transaction, the ladies were having access to independent advice of their nearer and dearer, who have no hostile interest to them.
ii) In the case of a transaction with pardanashin woman, a principle of caution is attached to the transaction to protect her rights. It is necessary that a pardanashin woman is fully cognizant and aware of the transaction and that she has independent advice from a reliable source to understand the nature of the transaction; there must be witnesses to the transaction and to the fact that a pardanashin woman has received the sale consideration. Most importantly, a pardanashin woman must know to whom she is selling her property and the transaction must be explained to her in the language she fully understands.
iii) In a case where a pardanashin woman has trusted a relative and executed a general power of attorney for her to sell the property, it is still incumbent upon the power of attorney holder to fulfil the conditions of making the pardanashin woman aware of the sale that is about to be executed under the power of attorney. This is because the principle is to ensure that at all times where a woman executes a transaction with reference to her property, it is done freely and deliberately.
iv) It is the objective of Supreme court to protect pardanashin women from the risk of an unfair deal and to ensure that any transaction related to the sale of their property is effected by free will and with consent. Wherever there is a transaction

with pardanashin women, it must be established that they were given independent, impartial and objective advice understanding all implications and ramifications of the transaction to ensure that they give their consent to the transaction, because valuable rights are involved and the pardanashin women should be able to make an informed decision with reference to their property with the help of proper advice and consultation.

v) The concept of protecting the rights of pardanashin women finds its root in the cultural practice of women staying within the protection of their home, having limited access to affairs outside their home. Consequently, such women have limited interaction with society and do not participate in matters outside their home. This suggests that their knowledge and information about matters outside their home is limited and insufficient to take informed decisions. Accordingly, the courts have protected the rights of such women in order to protect them from betrayal, exploitation and fraud especially where valuable property rights are concerned. The concept of an illiterate woman is similar to that of a pardanashin woman as both lack education and basic knowledge of worldly affairs and both interact essentially at a limited level with society. This limited participation hampers her ability to take informed decisions. Such women are perceived as being unskilled, uneducated and incompetent so far as the business matters are concerned. They lack experience and are easily susceptible to deceit even by their relatives. The courts endeavour to protect pardanashin or illiterate women due to their social standing and vulnerability not only from society at large but also from relatives. Women are often the targets of fraud and deceit when it comes to property matters, which is why the courts have invoked the principle of caution in protecting the rights of such women so that they are not wrongfully deprived of their property. The limitations of pardanashin or illiterate women have been duly considered by the courts against which the courts have held that such women must be given independent advice from a reliable and trustworthy source so as to ensure that they fully understand the transaction and the consequences of that transaction.

vi) Whenever the authenticity or genuineness of a transaction entered into by a pardanashin woman is disputed or claimed to have been secured on the basis of fraud or misrepresentation, the burden will lie on the beneficiary of that transaction to prove good faith and more importantly, the court will consider whether the transaction was entered into with free will or under duress. It goes without saying that the effort to protect rights of pardanashin and illiterate women is necessary so as to give such women the ability to make independent decisions with reference to their property or belongings so as to ensure that they are not deprived of the ability to take a good decision based on their social standing in society. This is a step towards ensuring that there is an element of financial and economical independence given to women, who have been deprived of education and have limited interaction within the home and the family. While this may be the customary or traditional role of women as seen by society in general, the endeavour of the court has always been to protect the vulnerability and susceptibility of women. The burden of proof lies on the person exercising the power of attorney to prove that the transaction was

carried out in good faith and with full knowledge and consent and grantor. The mere fact that pardanashin women execute a general power of attorney will not absolve the attorney nor the buyer of the obligation to ensure that the pardanashin women have full knowledge of the sale and have given their consent to the sale.
vii) Impleading revenue officials in every case is not a rule of the thumb and that this depends upon the peculiar facts and circumstances of each case and that in the event that the concerned court comes to the conclusion that revenue functionaries needed to be impleaded to enable it to arrive at a just conclusion an appropriate order may be passed and that where sufficient evidence was available to establish fraud and dislodge mutation which had clearly been maneuvered on the basis of fraud, impersonation and misrepresentation involving an illiterate an elderly and illiterate pardanasheen lady who had no independent advice the onus had to be discharged by the beneficiaries for the legal survival of such transaction.

Conclusion

i) See above analysis no. i.
ii) Yes, in the case of a transaction with pardanashin woman, a principle of caution is attached to the transaction to protect her rights
iii) In a case where a pardanashin woman has trusted a relative and executed a general power of attorney for her to sell the property, it is still incumbent upon the power of attorney holder to fulfil the conditions of making the pardanashin woman aware of the sale that is about to be executed under the power of attorney.
iv) Yes, it is the objective of Supreme court to protect pardanashin women from the risk of an unfair deal and to ensure that any transaction related to the sale of their property is effected by free will and with consent.
v) The concept of protecting the rights of pardanashin women finds its root in the cultural practice of women staying within the protection of their home, having limited access to affairs outside their home.
vi) Yes, the burden will lie on the beneficiary of that transaction to prove good faith.
vii) No, impleading revenue officials in every case is not a rule of the thumb and that this depends upon the peculiar facts and circumstances of each case.

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25. **Lahore High Court Lahore**
Human Rights Commission of Pakistan v. Federation of Pakistan through Secretary, Ministry of Economic Affairs, Islamabad and another.
W.P No.154532024 with two connected W.P No. 29024/2024 and W.P No. 34713/2024.
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC3763.pdf

Facts:

Through this and connected constitutional petitions, numbered W.P. No. 29024/2024 and W.P. No.34713/2024, the legality-cum-enforceability of the Policy bearing No.2(2) NGO/Policy/2016 DATED 24th November 2022 - "Policy for Local NGOs/NPOs Receiving Foreign Contributions-2022", (in short, the „Policy") is questioned on the premise that it fails to meet requirements of qualifying clause; clause (a) of Article 18 of the Constitution of Islamic Republic

of Pakistan 1973, and the Federal Government / Federal Cabinet lacked requisite legislative authorization for the purposes of framing the Policy.

Issues: (i) Can a policy, without legislative authorization or legal sanction, be used to restrict the fundamental rights guaranteed under Article 18 of the Constitution, and can executive authority limit these rights solely through policy-making without the backing of law?
(ii) Can the Federal Cabinet exercise legislative powers to regulate trade through a licensing system under clause (a) of Article 18 of the Constitution without legislative authorization, and does this constitute a violation of the constitutional scheme of the trichotomy of powers?
(iii) Can security agencies act as an instrument of the executive without legislative authorization, and does this undermine the principle of constitutional democracy and the supremacy of the legislature?

Analysis: (i) …Whether, the Policy, simplicitor, could be employed to jettison the fundamental rights acknowledged through Article 18 of the Constitution. Policy, in the absence of sanction of law or legislative authorization, cannot be acknowledged as a vehicle to restrict exercise and enjoyment of qualified fundamental rights. Executive authority cannot be allowed to expropriate the rights through policy-making mechanism, unless policy is hedged by law.
(ii) Constitutional scheme does not envisage exercise of legislative powers by the Federal Cabinet, unless such power / authority is exercised under the authority of the legislature. An act of policy making, in absence of legislative authorization, manifests encroachment in legislative domain vis-a-vis the requirements prescribed under qualifying provision of law – clause (a) of Article 18 of the Constitution. No prerogative / authority could be extended to the Federal Cabinet to curtail fundamental rights through executive action, upon framing of policy, unless such action is backed by law. Assumption and exercise of powers, without legislative authorization, for regulation of trade through licensing system in garb of clause (a) of Article 18 of the Constitution, constitutes patent abuse of executive authority and violation of constitutional scheme of trichotomy of powers. Policy under reference cannot be elevated to the status of law for obvious reasons.
(iii) …And likewise, no leeway could be conceived or extended to the security agencies, to act as an instrumentality of the executive, when no legislative authorization was available with the executive to frame the Policy. In fact, allowing superintendence by the security agencies, without the backing of law or requisite legislative authorization, negates the principle and practice of constitutional / parliamentary democracy. Federal Cabinet is constitutionally obligated to adhere to the principle of supremacy of the legislature.

Conclusion: (i) No, a policy without legislative authorization or legal sanction cannot be used to restrict the fundamental rights under Article 18, and executive authority cannot limit these rights through policy-making unless the policy is supported by law.

(ii) No, the Federal Cabinet cannot exercise legislative powers to regulate trade through a licensing system under clause (a) of Article 18 without legislative authorization. Doing so would constitute a violation of the constitutional scheme of trichotomy of powers and an abuse of executive authority.
(iii) Security agencies cannot act as an instrument of the executive without legislative authorization, as this undermines constitutional democracy and the supremacy of the legislature.

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26. **Lahore High Court**
Ashba Kamran v. Federation of Pakistan through Secretary to the President, President's Secretariat, Islamabad and others.
Writ Petition No. 12091/2024.
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC3733.pdf

Facts: Petitioner, based on the information provided, seeks exercise of jurisdiction under Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973 to inquire and adjudicate the question that under what "authority of law" respondent No.6 has been appointed, and is currently holding the office of Chairman, National Database and Registration Authority.

Issues: i) Whether the Federal Government has the power to appoint the Chairman of National Database and Registration Authority?
ii) Whether the legality and scope of delegated authority could be challenged under the jurisdiction of 'quo warranto'?
iii) Whether the court is empowered to inquire into and determine the legality or otherwise of the claim to the public office?
iv) What are the principles and requisite conditions that must be met for a court to assume jurisdiction in a quo warranto proceeding?
v) Whether the jurisdiction of the Court in writ of quo warranto is inquisitorial or adversarial?
vi) What is the meaning of the term "authority of law," and does the use of this specific expression in Article 199(1)(b)(ii) of the Constitution serve as a preface to the jurisdiction of quo warranto?
vii) Whether under quo warranto jurisdiction, can the scope of inquiry be extended to include the determination of the authority or competence of the legislature, or to examining the vires or constitutionality of the law in question?
viii) Whether an act of direct appointment legally covered within the terms of delegation and in accordance with the conditions prescribed for the appointment of the Chairman in the National Database and Registration Authority Ordinance, 2000?
ix) What is the meaning of the legal maxim "expressio unius est exclusio alterius"?

Analysis: i) There is no disagreement over the power of the Federal Government to appoint the Chairman of the Authority, which is an essential component of delegated

authority but subjected to the constraints prescribed under the Ordinance, 2000– primary enactment. Notwithstanding, delegation of rule-making authority, the appointment must conform to the dictates of the primary enactment.(…) for instance vires of sub-section (3) of section 3 of the Ordinance, 2000, which authorize the Federal Government to appoint the Chairman and Members to the Authority.

ii) In these circumstances, the scope of jurisdiction, conferred under Article 199(1)(b)(ii) of the Constitution, needs a sharper focus. Though not explicitly stated but the jurisdiction conferred under Article 199(1)(b)(ii) of the Constitution, is, quintessentially, 'quo-warrant' jurisdiction. (…) Power to adjudge and determine the scope of delegated authority forms an integral part of the 'quo warranto' jurisdiction, which entitles the court to reject alleged claim to the public office, if it reaches conclusion that exercise of delegated authority is beyond the scope of delegation or otherwise inconsistent with the primary enactment. (…) Legality and extent of exercise of delegated authority can be adjudged under 'quo warranto' action.

iii) Jurisprudentially construed, through judicial pronouncements, and contextually examined, jurisdiction conferred under Article 199(1)(b)(ii) of the Constitution essentially empowers the court to inquire into and determine the legality or otherwise of the claim to the public office, which inter alia includes power to determine claim of competence-cum-eligibility of the holder of the Office [the „eligibility test"]. And the jurisdiction extends and enables the Court to test that whether the appointing authority possessed the competence to make the appointment under challenge ["competence test"].(…) Inquiry for deciding the question of usurpation of the Office empowers the court to test that if the appointment is in accordance with the law.

iv) In the case of „University of Mysore v. C.D. Govinda Rao (AIR 1965 SC 491) principles prescribing requisite conditions, for assuming „quo warranto" jurisdiction, were explained in paragraph 7, portion whereof is reproduced hereunder, "It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by a usurper without legal authority, and that necessarily leads to the enquiry as to whether appointment of the said alleged usurper has been made in accordance with the law or not'.

v) The extent of the inquiry to be undertaken in exercise of quo warranto jurisdiction has been explained in the case of „Malik NAWAB SHER v. Ch. MUNEER AHMAD and others" (2013 SCMR 1035), portion of paragraph 11 is reproduced hereunder,…."In the case of PAKISTAN TOBACCO BOARD v. TAHIR RAZA (2007 SCMR 97) it was held that in writ of quo warranto the jurisdiction of the Court was primarily inquisitorial and not adversarial and thus the Court could undertake such inquiry as it may deem necessary in the facts and circumstances of the case, including the examination of the entire record and such exercise can even be done suo motu even the intension of the High Court is not drawn by the party concern."

vi) Use of specific expression „authority of law", in Article 199(1)(b)(ii) of the Constitution, is the preface of the „quo warranto" jurisdiction. (…) The scope of „quo warranto" jurisdiction is construed specifically in the context of the law applicable in particular jurisdiction. In Article 226 of the Constitution of India, expression, „quo warranto" is employed, and in our Constitution jurisdiction character of „quo warranto" is encapsulated in the expression „authority of law". (…) To understand the scope and extent of „authority of law" it is expedient to break down the expression grammatically, by defining the words defined in Black"s law dictionary- 11th Edition Bryan A. Garner. Authority: The official right or permission to act, esp. to act legally on another"s behalf; esp., the power of one person to affect another"s legal relations by acts done in accordance with the other"s manifestations of assent; the power delegated by a principal to an agent.Law: The aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action…., A statute. [Congress passed a law].Of, a „preposition", links the „authority" with „law", indicating the source or origin. Rephrased, expression „authority of law" means official right or permission to act, specially to act legally on another"s behalf by virtue of authority, derived from, or granted by, or under the prevalent legal system – aggregate of legislation, judicial principles and accepted legal principles.

vii) For the purposes of assumption and exercise of „quo warranto" jurisdiction, scope of inquiry cannot be extended to include determination of the authority /competence of the legislature or for that matter embarking upon examining the vires/constitutionality of the law. (…) the wisdom of the legislature to delegate such authority to delegatee cannot be adjudged in guise of 'quo warranto' jurisdiction.

viii) Textual reading of relevant provisions of the enactment – the Ordinance, 2020 – affirm that no direct appointment, albeit in the national interest, is permissible. Whether a delegatee could proceed to claim authority for making direct appointment, on the premise of implied or implicit delegation. To determine the context of implied or implicit delegation, the legislative intent and scope of delegated authority needed focus. In the present context, Federal Government is empowered to make appointment of the Chairman and Members in terms of sub-section (3) of section 3 of the Ordinance, 2000. Does this power include the power to make direct appoint without adhering to the standard of qualification-based appointment. Simplicitor, conferment of authority to make appointment, without prescription of qualifications in the enactment may be construed as extending implied power, to the delegatee, to prescribe requisite qualifications, and where required, make direct appointment. However, no such power or prerogative has been conferred on the Federal Government under the primary enactment. Legislature, through the enactment, had prescribed qualifications for the Office and no discretion was extended to the delegated authority to vary the qualifications or disregard them. Qualifications for the Office are prescribed in terms of sub-section (7) of section 3 of the Ordinance, 2000. Sub-section (3) of section 3 of the Ordinance, 2000, that authorizes Federal Government to appoint Chairman, cannot

be interpreted or construed to extend authority to the Federal Government to make direct or non-advertised appointment(s) to the Office, dispensing with the process of qualification-based evaluation envisaged under the enactment. It is expedient to examine sub-section (7) of section 3 of the Ordinance, 2000, which reads as, Section (3)(7). The Chairman shall be an eminent professional of known integrity and competence with substantial experience in the field of computer science, engineering, statistics, demography, law, business, management, finance, accounting, economics, civil or military administration, or the field of registration. Qualifications prescribed in the enactment need to be read in juxtaposition to the specifications / requirements under Rule-7A of the Rules 2020, to understand the inconsistencies therein – Rule-7A makes no reference to the qualifications prescribed under sub-section (7) of section 3 of the Ordinance, 2000. Non-obstante effect extended to Rule- 7A, ibid, is to the extent of anything contained in the Rules, 2020, and not otherwise. Rule-7A, ibid, envisages and provides mechanism for making direct appointment; empowering the Federal government to appoint any serving officer of the service of Pakistan, not below the rank and status of BPS-21, on secondment or deputation, if deemed expedient in the national interest. Such discourse / mechanism is clearly inconsistent with the enactment, which specifically prescribed the qualifications for the office of Chairman. The enactment, furthermore, confers no authority unto the Federal Government, to resort to direct appointment in wake of alleged national interest. Unarguably, resorting to mechanism or making of direct appointment, without qualification-based evaluation and determining relative suitability, is impermissible and any appointment made in disregard of qualifications tantamount to abuse / excessive exercise of delegated authority, contrary to the terms of the delegation and incongruent with the declared purpose of the enactment – appointment through qualification-based evaluation. Rule making authority is exercised within the limitations prescribed and powers extended in terms of primary enactment and no transgression is permissible. Rule-making authority is not in dispute, but fatal objection is that purported exercise of authority is excessive and in direct conflict with the conditions / limitations prescribed under the enactment. Is Federal Government authorized to draft a rule in a manner to flout the necessity of qualification-based evaluation, intended through prescription of qualifications in the enactment. No, Federal Government cannot travel beyond the terms of delegation or abrogate the mandate of the enactment. I am afraid that section 44 of the Ordinance, 2000 cannot be construed to allow the delegatee to act to vitiate the purpose of the Ordinance, 2000 – no disservice to the statute intended. It is absurd to assume that despite provisioning of qualifications under the enactment, legislature had simultaneously enabled the delegatee to engage in making direct and unadvertised appointment. Claim by respondent No.6 to possess the qualifications, in absolute terms, is otherwise irrelevant, when no qualification-based evaluation was undertaken, while making or confirming the appointment. Diversity of fields indicated in sub-section (7) of section 3 of the Ordinance, 2000 implies ascertainment of relative suitability, instead of embarking upon direct

appointment to the Office – and most unlikely, person centric selection.

ix) Legal maxim „expressio unius est exclusio alterius" [expression of one thing implies the exclusion of others], which mirrors the acknowledged principle, that where a statute has conferred a power to do an act and prescribed a mechanism for exercise of that power, such power cannot be exercised for the purposes of performing the act by adopting a different method, other than what has been prescribed.

Conclusions: i) The Federal Government has the power to appoint the Chairman of the National Database and Registration Authority but subject to the constraints prescribed under the Ordinance, 2000.

ii) Legality and extent of exercise of delegated authority can be adjudged under "quo warranto" action as power to adjudge and determine the scope of delegated authority forms an integral part of the "quo warranto" jurisdiction.

iii) Article 199(1)(b)(ii) of the Constitution empowers the court to inquire into and determine the legality or otherwise of the claim to the public office, which inter alia includes "eligibility test" and "competence test".

iv) The principles and requisite conditions that must be met for a court to assume jurisdiction in a quo warranto proceeding are that the office in question is a public office and is held by a usurper without legal authority, and that necessarily leads to the enquiry as to whether appointment of the said alleged usurper has been made in accordance with the law or not.

v) The jurisdiction of the Court in writ of quo warranto is primarily inquisitorial and not adversarial.

vi) "Authority of law" means official right or permission to act, specially to act legally on another's behalf by virtue of authority, derived from, or granted by, or under the prevalent legal system–aggregate of legislation, judicial principles and accepted legal principle and the use of this specific expression in Article 199(1)(b)(ii) of the Constitution serve as a preface to the jurisdiction of quo warranto.

vii) Under quo warranto jurisdiction, the scope of inquiry cannot be extended to include the determination of the authority or competence of the legislature, or to examining the vires or constitutionality of the law in question.

viii) Direct appointment is not legally covered within the terms of delegation and such exercise of authority is excessive and in direct conflict with the conditions/limitations prescribed under the National Database and Registration Authority Ordinance, 2000.

ix) See above in analysis No. (ix)

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27. **Lahore High Court Lahore**
Muhammad Usman Farooq Malik v. Khaliq Zia & 2 others
Civil Revision No.387 of 2024
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC3881.pdf

Facts: Through this revision petitioner assailed judgment and decree passed by trial court and appeal filed by petitioner against the said decree was dismissed by the Additional District Judge. These judgments have been impugned through this revision petition filed under section 115 of CPC.

Issues: (i) Is a fact pleaded in the plaint deemed accepted as correct if not specifically denied, according to Order VIII Rule 5 of the CPC?
(ii) Whether evidence provided by a witness in examination-in-chief is presumed accepted if not denied or controverted in cross-examination?
(iii) Does the concept of 'novation' involve substituting a new contract that ends or extinguishes the obligations of the original contract?
(iv) What happens if parties only amend a contract without intending to rescind or replace it, and what four elements are required to prove novation?
(v) Can a party introduce a new plea not included in their original pleadings when invoking revisional jurisdiction under Order VI Rule 2 and Order VIII Rule 2 CPC?

Analysis: (i) …It is also established principle of law that where a fact pleaded in the plaint is not specifically denied, the same shall be deemed to be accepted as correct in view of the provisions of Order VIII Rule 5 of CPC whereby an evasive denial would be construed as admission.
(ii) It is well-settled principle of law that any piece/part of evidence of a witness deposed in his examination-in-chief if not denied or controverted in cross examination, is presumed to be accepted by the other side.
(iii) Plain reading of above would show that if parties to a contract have come to an understanding to substitute a new contract either by rescinding or altering the contract, original contract needs not be performed. In case "Muhammad Iftikhar Abbasi v. Mst. Naheed Begum and others", it has been elaborated that the word 'novation' practically and rationally denotes to substitute with a new contract where the obligations under the existing contract are brought to an end or extinguished.
(iv) It has further been observed in the above referred case law that when parties to a contract agree to substitute a new contract in place of previous one, performance of original contract would be dispensed with and where parties without any intention of rescinding or replacing the original contract only bring about any change or amendment in the original contract, the same will become part and parcel of original contract which would not be novated or rescinded. Even, to prove a novation, following four elements are required to coexist: -
(a) Existing of previous valid agreement;
(b) Consensus of the parties to cancel the first agreement;
(c) Agreement of the parties showing substitution of second agreement with the first one; and
(d) Validity of the second agreement.
(v) As per the provisions of Order VI Rule 2 read with Order VIII Rule 2 CPC, a defendant is required to plead specifically the facts which may either constitute a defense or objection. If any party fails to take up a specific ground of attack in his

pleadings, that party would not be permitted to deviate from the pleadings. Such party even cannot be allowed to set up a different and new plea while invoking revisional jurisdiction of this Court.

Conclusion: (i) Yes, a fact pleaded in the plaint is deemed accepted as correct if not specifically denied, according to Order VIII Rule 5 of the CPC.
(ii) Yes, evidence provided by a witness in examination-in-chief is presumed accepted if not denied or controverted in cross-examination.
(iii) Yes, 'novation' involves substituting a new contract that ends or extinguishes the obligations of the original contract.
(iv) See above analysis no.iv.
(v) No, a party cannot introduce a new plea not included in their original pleadings when invoking revisional jurisdiction under Order VI Rule 2 and Order VIII Rule 2 CPC.

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28. **Lahore High Court**
M/s Staco Shahid Builders Joint Venture (JV) v. Lahore Cantonment Board
F.A.O. No.24690 of 2024
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC3838.pdf

Facts: Through this First Appeal against Order, the appellant has called into question the validity and legality of order whereby learned Civil Judge/Judge Special Court for Admin. Commercial Cases, disposed of the appellant's application under Section 20 of the Arbitration Act 1940 by maintaining that the same is premature and referred the matter to the already appointed Arbitrator.

Issues: i) Upon what principle the concept of arbitration is based?
ii) What procedure parties can adopt for appointment of Arbitrators as per provisions of Arbitration Act, 1940?
iii) What conditions need to be satisfied before a person can make an application for filing an agreement in court and what powers and duties of court embodied in section 20 of Arbitration Act?
iv) What course court can adopt under section 20(4) of Arbitration Act, 1940 when question of appointment of new arbitrator arises?
v) What is fundamental principle for interpretation of documents or statutes?

Analysis: i) Arbitration is a method for investigation and determination of a dispute or disputes between the parties by one or more persons chosen by them. The essence of arbitration is the settlement of disputes by the decision not of a regular or ordinary court of law, but of one or more persons acting as arbitrators chosen by the parties, whose decision the parties agreed to accept as binding whether they agree with the decision or not. The concept of arbitration is based upon the principle of withdrawing the dispute from the ordinary courts and enabling the parties to resolve their disputes before a domestic Tribunal. The arbitral tribunal derive

jurisdiction solely from the arbitration agreement... There is no doubt that the whole object underline the Arbitration Act is to enforce the arbitration agreement whereby the parties bound themselves down to have their disputes, arising out of transaction to which such an agreement is applicable, adjudicated upon and decided by the domestic tribunal.

ii) Where differences have arisen between the parties to arbitration agreement, either both the parties or any of them could adopt procedure provided under Sections 3 to 19 of the Act, or could apply to the Court under Section 20 of the Act, that agreement be filed in the Court. Comprehensive procedure for appointment of arbitrator, without intervention of Court has been prescribed under sections 03 to 19 of the Act. Non-invoking of provisions of said Sections would entitle a party to apply for filing the agreement in the Court. Effect of such proceedings would be that the Court after notice and hearing the parties and where no sufficient cause was shown could order agreement to be filed and would make order for reference to arbitrator appointed by the parties in terms of agreement. Where parties failed to agree for appointment of arbitrator, Court would appoint one. Option is given to the parties either to proceed under Section 03 to 19 or apply to the Court that agreement be filed under Section 20.

iii) It appears that before a person can make an application under that provision for a prayer that an agreement be filed in the Court, following conditions have to be satisfied:- **a.** That there should be a pre-existing arbitration agreement between the parties; **b.** That the parties should not have taken any steps under Sections 3 to 19 of the Act prior to the institution of the application under Section 20; **c**. That differences or disputes have arisen between the parties to which the arbitration agreement applies; **d.** That the application is not barred by limitation; and **e.** That the Court to which the application under Section 20 has been made has jurisdiction in the matter to which the agreement relates. Section 20 of the Act provides for powers and duties of the Court which could be divided into two distinct parts. The first part deals with the judicial function to consider the question whether the arbitration agreement should be filed in Court or not. This question has reference to the cause shown by the defendant as to why the agreement should not be ordered to be filed and normally refers to objection as to the existence and validity of the agreement. After the Court has heard the parties with regard to the question whether to order filing of the agreement or not, and if the Court orders the filing

iv) There were three courses open to the Court under clause 4 of Section 20 of the Act, after the arbitration agreement had been ordered to be filed viz. i. to make reference to the arbitrator appointed by the parties in the agreement, or, ii. To make reference to the arbitrator not named in the agreement but with regard to him the parties agree otherwise, or iii. When the parties cannot agree upon an arbitrator, an arbitrator is appointed by the Court itself. Power of the Court to order reference to an arbitrator appointed by itself, does not confer the authority on the Court to substitute the original agreement of the parties by an entirely new agreement of its own choice. If the parties out of their free-will and consent appointed third person knowingly fully well his relation with any one of the parties to dispute, such

arbitration agreement shall not be invalid on the principle of bias and the arbitrator cannot be removed on this ground. Known interest of an arbitrator does not in any way invalidate the appointment, and it was only in a case where such an interest is concealed or comes into existence after the appointment, that the appointment is rendered invalid or liable to be revoked.

v) It is a fundamental principle of interpretation of documents and Statutes that they are to be interpreted in their entire context following a full consideration of all provisions of the documents or Statute, as the case may be, that every attempt shall be made to save the document and for this purpose a difference between general statements and particular statements of the document be differentiated properly to save the document rather to nullify it, that no provision of the document be read in isolation or in bits or pieces, but the entire document is to be read as a whole to gather the intention of the parties, that the court for this purpose can resort to the correspondence exchange between the parties, that the court shall lean to an interpretation, which will effectuate rather than one, which will invalidate an instrument.

Conclusion: i) The concept of arbitration is based upon the principle of withdrawing the dispute from the ordinary courts and enabling the parties to resolve their disputes before a domestic Tribunal.

ii) See analysis no. ii.

iii) See analysis no. iii.

iv) After the Court passes an order for filing of the agreement, the question for appointment of a new arbitrator would arise only when the parties do not agree to the appointment of an arbitrator and court can appoint arbitrator itself.

v) See analysis no. v.

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29. **Lahore High Court**
Imran Haider vs. The State and another
Criminal Revision No. 83203 of 2023
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC3798.pdf

Facts: The petitioner challenged the order passed by an Additional Sessions Judge, whereby an application filed by respondent No. 2 for declaring him juvenile in case FIR for offences under section 363, 302, 375-A and 34 PPC, was allowed and he was declared a 'Juvenile' for the purpose of his trial.

Issue: Whether medical report is necessary to determine the age of an accused juvenile in presence of documentary evidence pertaining to the age of such an accused?

Analysis: …medical report was necessary in terms of Section 7 of the repealed Juvenile Justice System Ordinance, 2000, but in Section 8 of the Juvenile Justice System Act, 2018, it has been mentioned that in absence of documentary evidence about the age of accused person, it may be determined on the basis of medical

examination report by a medical officer, but when there is documentary evidence pertaining to the age of respondent No.2 then no question arises to send him for ossification test, which even otherwise, normally varies one to two years of the age of examinee….The question of juvenility should be firstly decided in the light of documentary evidence and only in the absence of such documents, controversy of age can be resolved through ossification test.

Conclusion: Medical report is not necessary to determine the age of an accused juvenile in presence of documentary evidence pertaining to the age of such an accused.

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30. **Lahore High Court**
Salman Hamid v. The State and another
Crl. Misc. No. 17244-B/2024
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC3779.pdf

Facts: Through this petition, the petitioner supplicates post-arrest bail in case FIR for offences under sections 9(1)6(e) and 15 of CNSA, 1997 (Amended Act, 2022) registered at Police Station RD ANF, Lahore.

Issues: i) Whether the statement of co-accused is admissible in evidence and can be relied upon against the accused?
ii) Can confession of an accused before police be used against him?
iii) Is there presumption that mens rea, an evil intention or knowledge of wrongfulness of the act is an essential ingredient in every offence?
iv) Whether rigors contained in section 51 of the CNSA, 1997 would be attracted, once accused succeeds to establish that his case calls for further inquiry and probe?

Analysis: i) It has straightaway been noticed by this Court that no recovery of narcotics was effected from the possession of petitioner. The narration of the FIR discloses that recovery of the narcotics was effected from petitioner's co-accused. The petitioner has been involved in this case only on the statement of supra mentioned co-accused, which is inadmissible in evidence and cannot be relied upon.
ii) According to Article 38 of the Qanun-e-Shahdat Order, 1984 confession of accused before police could not be used against him. Section 38 of the Order ibid is hereby mentioned below for the purpose of facilitation:- "Confession to police officer not to be proved No confession made to a police officer shall be proved as against a person accused of an offence".
iii) General Rule is that there is presumption that mens rea, an evil intention or a knowledge of wrongfulness of the act is an essential ingredient in every offence. In other words, the prosecution is duty bound to prove that the accused was knowingly in control of something in the circumstances, which showed that he was assenting to being in control of it. There is no evidence except the oral assertion of the prosecution that he facilitated in supply of heroin.
iv) It is settled law that once accused succeeds to establish that his case calls for

further inquiry and probe, then rigors contained in section 51 of the CNSA, 1997 would not be attracted.

Conclusion: i) The statement of co-accused is inadmissible in evidence and cannot be relied upon against the accused.
ii) Confession of an accused before police cannot be used against him.
iii) There is presumption that mens rea, an evil intention or knowledge of wrongfulness of the act is an essential ingredient in every offence.
iv) Rigors contained in section 51 of the CNSA, 1997 would not be attracted, once accused succeeds to establish that his case calls for further inquiry and probe.

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31. **Lahore High Court**
Bilqees Bibi v. The State etc.
Crl. Misc. No. 5564-B of 2024
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC3790.pdf

Facts: Through this petition filed under section 497, Cr.P.C., the petitioner, entreats post-arrest bail in FIR case for offences under sections 302, 148, 149, 109 and 311, PPC wherein, she was nominated for hurling joint Lalkara.

Issues: i) Whether benefit of doubt may be extended to accused at the bail stage?
ii) While deciding the bail application, whether the merits of the case can be touched upon?
iii) Trend of false implication in our society.
iv)Whether question of vicarious liability may be determined at bail stage?
v) Whether mere heinousness of offence may be a ground for declining the relief of bail to an accused, who otherwise becomes entitled for the concession of bail?
vi) When liberty of a person may be curtailed?

Analysis: i) Although tentative assessment of evidence is to be made while deciding the bail application and deeper appreciation of evidence is not permissible nor desirable but the benefit of doubt can be extended in favor of accused even at the bail stage.
ii) It has been well settled by now that while deciding the bail application even the merits of the case can be touched upon.
iii) Now a days' it has become a trend of our society to falsely involve the entire family by ascribing them the role of Lalkara, abetment, Japha and ineffective firing.
iv) It is noteworthy that question of vicarious liability would only be determined by the trial court after having recourse to evidence of the parties.
v) It is well settled proposition of law that mere heinousness of offence is no ground for declining the relief of bail to an accused, who otherwise becomes entitled for the concession of bail.
vi) The liberty of a person is a precious right, which cannot be taken away unless there are exceptional grounds to do so

Conclusion: i) Deeper appreciation of evidence is not desirable however, benefit of doubt may be extended.
ii) Merits of the case may be touched upon at the time of deciding the bail petition.
iii) See above analysis no. iii.
iv) Question of vicarious liability can be determined after recording of evidence by the trial court.
v) Mere heinousness of offence is no ground for declining the relief of bail.
vi) Liberty can't be taken away except for exceptional circumstances.

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32. **Lahore High Court**
Saadia Khalil v. Learned Addl. District Judge, Lahore and 2 Others
Writ Petition No. 27113 of 2024
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC3901.pdf

Facts: The petitioner filed an application, under section 25 of the Guardians and Wards Act, 1890, for the custody of minor born in USA. Father was proceeded against ex-parte due to his failure to pursue the case and thereafter, vide ex-parte judgment the application was allowed and the petitioner was held entitled for the custody of the minor, however, learned Judge Family / Guardian refused the general leave to take the minor abroad and rather a condition has been imposed on shifting the minor beyond territorial jurisdiction. Being aggrieved, the petitioner approached the learned Appellate Court. Nevertheless, to the extent of above said refusal or condition the prayer of the petitioner was turned down, hence, this petition.

Issue: Does section 26 of the Guardian and Wards Act 1890 place complete embargo on granting permission to restrict ward within jurisdiction particularly when the father is not taking any interest or contributing for the welfare of minor and his complete failure in observing schedule?

Analysis: In the present case, respondent-father has not shown any interest in the visitation schedule framed by the learned Guardian Court. It has been apprised that no concern is being demonstrated by the respondent-father in contributing towards the welfare of the minor. Throughout the case before the learned Guardian Court, learned Appellate Court or this Court the respondent-father has not even joined the proceedings. In "Dr. Aisha Yousuf" case (supra) the custodial parent / mother obtained job in Dubai and she requested the learned Court to permit her to take the ward to Dubai. The learned Court found the request reasonable and permitted her to take the ward out of the jurisdiction, while allowing the Constitution Petition…. From a plain reading of above, I do not see any intention of the legislature to place complete embargo on granting permission to restrict ward within jurisdiction. Otherwise, the Courts would not have been empowered to grant leave to take the ward out of the territorial jurisdiction. Sub-section 2 of the above permits the Courts to grant special or general leave and to deny the leave. The learned Appellate Court is correct in its decision that the above provisions are holding the field; however,

ignored that the requirement of leave before removing is also for the wellbeing of the ward and protecting the interest of the ward as well as the non-custodial parents. Such leave can be granted, on case to case basis, when welfare of the ward so demands and being exceedingly cautious in using this power…. After carefully going through the available documents and hearing the arguments, I am of the opinion that the learned Appellate Court has not exercised the jurisdiction conferred by law to properly consider the request of the petitioner. It has been ignored that the respondent-father is not taking any interest or contributing for the welfare of the minor and his complete failure in observing the visitation schedule, framed by the learned Guardian Court. I do not consider it in the welfare of the minor to deprive him from joining his educational institution in USA, restricting him within the territorial jurisdiction of the learned Guardian Court, in the circumstances of the case. It is considered appropriate to permit the custodial-parent / mother to take the minor to USA for education purposes.

Conclusion: Section 26 of the Guardian and Wards Act 1890 does not place complete embargo on granting permission to restrict ward within jurisdiction particularly when the father is not taking any interest or contributing for the welfare of minor and his complete failure in observing schedule.

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33. **Lahore High Court**
Mst. Shamim Bibi alias Seema Bibi and 6 others. v Zakir Hussain and others
Civil Revision No. 49020 of 2024.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC3718.pdf

Facts: Through this civil petition, filed under section 115 of the Code of Civil Procedure-1908, the revision-petitioners have challenged judgment and decree passed by the learned Additional District Judge as well as judgment and decree passed by the learned Civil Court on the ground that the petitioner were minors at the time of alleged mutation so they have opted not to appear as a witness and suit has been decreed without proof of possession and accurately resolving question of limitation.

Issues: i) What inference can be drawn if the beneficiaries of the gift allegedly minors at the time of gift have not opted to depose in their own favor?
ii) Whether the khasra gardawri and other documents are sufficient to prove possession over property?
iii) Under what circumstances, it can be observed that question of limitation has been properly dealt with?
iv) What inference can be drawn where on a material and related part of evidence a witness is not cross examined?

Analysis: i) If the beneficiaries of the gift who were minors at the time of gift but had the capacity to give evidence at the time of institution of suit and when the proceeding was being conducted have not opted to depose in their favour despite the fact they

remained present in the Court during the proceedings, they have withheld best piece of evidence.

ii) The khasra gardawri and other documents are sufficient to prove possession of a party over suit property when during course of cross-examination no relevant question to contradict the evidence was asked.

iii) When the date and mode of knowledge about the gift mutation is pleaded in the plaint and to prove the same specific evidence has been led while deposing clearly mode and manners in which it was learnt about the gift mutation and on the other hand, neither a single question has been asked to the witness vis-à-vis this part of examination-in-chief nor any question regarding the issue relating to limitation. Further, the court dealing it a mixed question of law and facts judiciously discusses it in its findings then, it can be observed that question of limitation has been properly dealt with.

iv) The principle is well settled that where on a material and related part of evidence a witness is not cross examined the same can lead to inference of truth of such part of the statement.

Conclusion: i) If the beneficiaries of the gift who were minors at the time of gift but had the capacity to give evidence have not opted to depose in their favour, they have withheld best piece of evidence.

ii) The khasra gardawri and other documents are sufficient to prove possession of a party over suit property.

iii) When the date and mode of knowledge about the gift mutation is pleaded in the plaint and to prove the same specific evidence has been led and on the other hand, neither a single question has been asked to the witness vis-à-vis this part of examination-in-chief nor any question regarding the issue relating to limitation. Further, the court judiciously discusses it in its findings then, it can be observed that question of limitation has been properly dealt with.

iv) The principle is well settled that where on a material and related part of evidence a witness is not cross examined the same can lead to inference of truth of such part of the statement.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No.131 Government of Punjab, Services and General Administration Department (Regulation Wings) dated 03-09-2024, an amendment is made in the Punjab Communication and Works Department (Architectural Posts) Recruitment Rules 1988.
2. Vide State-Owned Enterprises (Governance and Operations) (Amendment) Act, 2024, published in the official Gazette of Pakistan dated 22.07.2024, amendments are made in sections 4, 10 & 13 of the State-Owned Enterprises (Governance and Operations) Act, 2023.

3. Vide Notification in the Official Gazette of Pakistan dated 26th July 2024, International Islamic Institute for Peace (IIIP) Act, 2024 was promulgated.
4. Vide The Christian Marriage (Amendment) Act, 2024 Published in the Official Gazette of Pakistan dated 26th July 2024, the amendment are made in section 60 of The Christian Marriage Act, 1872.
5. Vide The Elections (Second Amendment) Act 2024, published in the Official Gazette of Pakistan dated 9th August 2024, the amendments are made in sections 66, 104 & 104A of The election Act 2017.

SELECTED ARTICLES

1. CAMBRIDGE LAW JOURNAL
https://www.cambridge.org/core/journals/cambridge-law-journal/article/interpreting-multiple-disputeresolution-clauses-in-crossborder-contracts/A7E6881DC56E4F9F5EA9690DBF987C23

Interpreting Multiple Dispute-Resolution Clauses in Cross-Border Contracts By Ardavan Arzandeh

Cross-border contracts often contain a clause which purports to reflect the parties' intention regarding how disputes arising from their agreement should be resolved. Some such contracts might feature a "jurisdiction clause", thus signifying the parties' wish to subject their disputes to litigation before the courts in a specific state. Others may include an "arbitration clause", meaning that claims arising from the contract should be subjected to an arbitral hearing. More unusual are cases in which the parties have included a jurisdiction and an arbitration clause in the same cross-border contract. This article seeks to assess English law's approach to determining the parties' preferred mode of dispute resolution in these more difficult cases. As it seeks to demonstrate, the current practice in this area is not always easy to defend. The article advances an alternative basis for determining which of the two competing clauses should prevail.

2. NORTHWESTERN PRITZKER SCHOOL OF LAW & MCCORMICK SCHOOL OF ENGINEERING, NORTHWESTERN UNIVERSITY
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4943841

Deepfakes in Court: How Judges Can Proactively Manage Alleged AI-Generated Material in National Security Cases by Daniel W. Linna Jr., Abhishek Dalal, Chongyang Gao, Paul W. Grimm, Maura R. Grossman, Chiara Pulice, V.S. Subrahmanian and Hon. John Tunheim

Dall-E. Chat GPT. GPT-4. Words that did not exist in the English lexicon just a few years ago are now commonplace. With the widespread availability of Artificial Intelligence (AI) tools, specifically Generative AI, whether in the context of text, audio, video, imagery, or even combinations of these, it is inevitable that trials related to national security will

involve evidentiary issues raised by Generative AI. We must confront two possibilities: first, that evidence presented is AI generated and not real and, second, that other evidence is genuine but alleged to be fabricated. Technologies designed to detect AI generated content have proven to be unreliable, and also biased. Humans have also proven to be poor judges of whether a digital artifact is real or fake. There is no foolproof way today to classify text, audio, video, or images as authentic or AI generated, especially as adversaries continually evolve their deep fake generation methodology to evade detection. Thus, the generation and detection of fake evidence will continue to be a cat and mouse game. These are not challenges of a far-off future, they are already here. Judges will increasingly need to establish best practices to deal with a potential deluge of evidentiary issues.

We will discuss the evidentiary challenges posed by Generative AI using a civil lawsuit hypothetical. The hypothetical describes a scenario involving a U.S. presidential candidate seeking an injunction against her opponent for circulating disinformation in the weeks leading up to the election. We address the risk that fabricated evidence might be treated as genuine and genuine evidence as fake. Through this scenario, we discuss the best practices that judges should follow to raise and resolve Generative AI issues under the Federal Rules of Evidence.

We will then provide a step-by-step approach for judges to follow when they grapple with the prospect of alleged AI-generated fake evidence. Under this approach, judges should go beyond a showing that the evidence is merely more likely than not what it purports to be. Instead, they must balance the risks of negative consequences that could occur if the evidence turns out to be fake. Our suggested approach ensures that courts schedule a pretrial evidentiary hearing far in advance of trial, where both proponents and opponents can make arguments on the admissibility of the evidence in question. In its ruling, the judge should only admit evidence, allowing the jury to decide its disputed authenticity, after considering under Rule 403 whether its probative value is substantially outweighed by danger of unfair prejudice to the party against whom the evidence will be used. Our suggested approach thus illustrates how judges can protect the integrity of jury deliberations in a manner that is consistent with the current Federal Rules of Evidence and relevant case law.

3. MANUPTRA

https://articles.manupatra.com/article-details/The-Role-of-Intellectual-Property-Right-in-the-Success-and-Growth-of-Startups

The Role of Intellectual Property Right in the Success and Growth of Startups by Vaibhav Srivastava, Tamanna Pandey

The Intellectual Property Rights is a crucial for any startups, it provide the essential protection for the innovation and the fostering the competitive edge. This research comprehensively examines the significance of the IPR for any startups which highlights the various forms such as patent, trademarks, copyright and trade secrets and their respective roles in the safeguarding the intellectual assets. This paper emphasizes the strategic

importance of IPR in securing the funding and the investment, where robust the IP portfolios can be attract the venture capital and increase the startup valuations. It also explore how the IPR can be created the barriers to entry for competitors, thus the strengthening a startup market position[1].

The research further investigates the monetization potential for the IPR through the licensing, franchising and the sale or the transfer of the intellectual property. However the managing IPR present the unique challenges for the startup that have successfully leveraged IPR to achieve the growth and those have faced the setback due to the inadequate IP strategies. These case studies illustrate the best practices and the common pitfalls in the IPR management.[2]

This research also underscores that the well-structured IPR strategy is the essential for any startups which not only protect their innovations but also to attract the investment which achieves the market differentiation and ensure the long term success. By the understanding and the effectively managing of the IPR, startups can be navigate the complex legal landscape and the capitalize on their Intellectual assets.

4. LUMS LAW JOURNAL

https://sahsol.lums.edu.pk/law-journal/1766

Judicial Appointments in Pakistan: Coming Full Circle By Saroop Ijaz

This comment pertains to judicial appointments in Pakistan. It explains how the traditional or pre-18th Amendment process of appointing judges gave the judiciary clear dominance over regulating the appointment of judges. Consequently, this process lacked all the necessary checks and balances. The 18th Amendment attempted to change this state of affairs by giving the Parliament a role in judicial appointments by establishing two necessary bodies: the Judicial Commission and the Parliamentary Committee. However, subsequent legislative and judicial developments have reverted the situation to the pre-18th Amendment position.

5. LAWYERS CLUB INDIA

https://www.lawyersclubindia.com/articles/how-human-rights-lawyers-can-help-remove-an-interpol-blue-notice--16987.asp

How Human Rights Lawyers Can Help Remove an Interpol Blue Notice? By Yaksh Sharma

Interpol uses Blue Notices to locate and gather data on national suspects. This notice warns law enforcement authorities globally of illegal activity or investigations, but it is not an international arrest warrant. A member country may seek a Blue Notice to monitor suspected criminals and give essential information to improve international police collaboration. Transnational crimes including human rights breaches need human rights attorneys to work together to protect multinational victims. A Blue Notice prevents countries from becoming safe havens for foreign criminals. These notifications ensure law enforcement can react quickly, protecting national and international security. Interpol's strategic use of Blue Notices identifies offenders and promotes worldwide human rights

and justice, highlighting the importance of international law enforcement in crime prevention and societal protection.
