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BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-12-2023 to 15-12-2023)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

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1. **Supreme Court of Pakistan**
Aminullah and others v. Syed Haji Muhammad Ayub and others
Civil Petition No.116 of 2020
Justice Qazi Faez Isa, HC.J., Justice Amin-ud-Din Khan, Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._116_2020.pdf

Facts: Petitioners have sought leave against the judgement whereby the High Court, while exercising its extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has allowed the petition filed by the respondent.

Issues: i) Why proceedings under section 145 Cr.P.C are of an executive nature?
ii) What is the main object and purpose of the powers vested under section 145 Cr.P.C?
iii) What are the factors of undertaking proceedings under section 145 Cr.P.C?
iv) What is pre-condition to invoke jurisdiction under section 145 Cr.P.C.?
v) When exercise of power under section 145 Cr.P.C is not justified?
vi) Whether under section 145 Cr.P.C a magistrate is empowered to decide question of title of property or the lawfulness of the possession and when can property be attached?

Analysis: i) It is obvious from the above analysis that the nature of proceedings under section 145 of the Cr.P.C. are more in the nature of an executive function because the right of ownership nor that of possession is adjudicated. The exercise of the powers are subject to fulfilment of the jurisdictional pre-conditions, particularly the satisfaction of the Magistrate that the dispute is likely to cause a breach of the peace.
ii) The main object and purpose of the powers vested under section 145 of the Cr.P.C. is to prevent a likely breach of the peace and to maintain the status quo. The parties are provided an opportunity to resolve the dispute regarding the title or right of possession before a competent forum.
iii) The most crucial factor for undertaking the proceedings is the likelihood of breach of the peace because of the dispute. The dispute must be in respect of land or water or boundaries thereof and the subject matter must be situated within the limits of the territorial jurisdiction of the Magistrate who has to exercise the powers. The existence of these factors is a pre-requisite for making a preliminary order under sub -section (1) of Section 145 of the Cr.P.C. and the grounds required to be stated in the order must justify the satisfaction of the Magistrate.
iv) The mere existence of a dispute is not sufficient to put the powers in motion. There must be sufficient material giving rise to an imminent danger or a breach of the peace. In the absence of such an apprehension of a breach of the peace the exercise of the power would not be lawful.

v) … Moreover, the exercise of powers under section 145 will not be justified if the factor of breach of the peace can be prevented by resorting to powers vested under section 107 of the Cr.P.C.

vi) … While conducting an inquiry under section 145 of the Cr.P.C. the Magistrate does not have the power or jurisdiction to decide either the question of title of property or the lawfulness of the possession. It merely empowers the Magistrate to regulate the possession of the property in dispute temporality in order to avert an apprehension of breach of the peace. The attachment of the property under the second proviso of section 145 (4) is subject to the satisfaction of the Magistrate that a case of emergency has been made out.

Conclusion: i) Proceedings under section 145 of the Cr.P.C. are more in the nature of an executive function because the right of ownership nor that of possession is adjudicated.

ii) The main object and purpose of the powers vested under section 145 Cr.P.C. is to prevent a likely breach of the peace and to maintain the status quo.

iii) The factors for undertaking the proceedings under section 145 Cr.P.C are the likelihood of breach of the peace, dispute must be in respect of land or water or boundaries thereof and the subject matter must be situated within the limits of the territorial jurisdiction of the Magistrate.

iv) There must be sufficient material giving rise to an imminent danger or a breach of the peace.

v) Exercise of powers under section 145 will not be justified if the factor of breach of the peace can be prevented by resorting to powers vested under section 107 of the Cr.P.C.

vi) A magistrate under section 145 Cr.P.C is not empowered to decide question of title of property or the lawfulness of the possession. Property may be attached when magistrate is satisfied that a case of emergency is made out.

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2. **Supreme Court of Pakistan**
Regional Manager, NADRA RHO, Hayatabad, Peshawar and another v. Mst. Hajira and another
Civil Petition No.355 of 2020
Mr. Justice QaziFaez Isa, CJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice AtharMinallah.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3575_2020.pdf

Facts: This petition has been filed by petitioners assailing judgment, whereby the writ petition had been allowed with direction to issue Pakistan Origin Card to one of respondents.

Issue: What is status of NADRA under the National Database and Registration Authority Ordinance, 2000 and how it may sue?

Analysis: NADRA is a statutory corporate body, therefore, the Regional Manager, NADRA, Regional Head Office and Director General, NADRA, Project Directorate

NADRA Head Quarters, Islamabad, are not authorized to file the petition. Litigation on behalf of NADRA has to be conducted in accordance with the law.

Conclusion: Section 3(2) of the National Database and Registration Authority Ordinance, 2000 stipulates that NADRA is a corporate body, hence, it has to sue in its own name through the authorized person.

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3. **Supreme Court of Pakistan**
Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education Department, Peshawar and others v. Amjad ur Rahman and others
Civil Petition No.225-P of 2023
Justice Qazi Faez Isa, HCJ, Justice Amin-ud-Din Khan, Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._225_p_2023.pdf

Facts: The petitioners had advertised in the year 2018 for the selection of two computer teachers in basic pay scale of 12 and had prescribed the minimum qualification as Intermediate with one year diploma in computer sciences. The respondent No.1 held a B.Sc. and M.Sc. degree in computer science and came on the top of the merit list but still was not appointed for the reason that he was over-qualified.

Issue: Whether a person can be deprived of a post on the ground that he is over-qualified?

Analysis: The petitioners had advertised in the year 2018 for the selection of two computer teachers in basic pay scale of 12 and had prescribed the minimum qualification as Intermediate with one year diploma in computer sciences. The respondent No.1 held a B.Sc. and M.Sc. degree in computer science and came on the top of the merit list but still was not appointed for the reason that he was over-qualified. It appears that those in charge of educating the children of the province were bereft of common sense by disqualifying a person who was more qualified and thus better placed to impart computer science education and favoured one less qualified. Not only the respondent No.1 was made to suffer but the children, who would have benefited from his knowledge, were condemned.

Conclusion: A person cannot be deprived of a post on the ground that he is over-qualified.

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4. **Supreme Court of Pakistan**
Khalid Pervaiz v. Samina, etc.
Civil Petition No.2734-L of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2734_l_2023.pdf

Facts: The mehr was not paid by the petitioner to the respondent, who filed a suit, which was decided in her favour. The petitioner appealed the judgment and decree of the

Family Court and the Additional District Judge partly allowed it, by holding that the wife was not entitled to her mehr as her marriage subsisted. The wife successfully assailed the judgment of the appellate court before the High Court which restored the judgment of the learned Civil Judge.

Issues: i) Whether mehr has to be paid whenever demanded by the wife?
ii) If a decision is challenged whether it becomes ineffective?

Analysis: i) Mehr is an Islamic concept mentioned in the Holy Quran, (An-Nisa (4) verse 4 and Al-Baqrah (2) verses 236-7) and it is specifically recognised by the law of Pakistan, that is, section 2 of the Muslim Personal Law (Shariat) Application Act, 1962. Mehr has to be paid whenever demanded by the wife.
ii) The excuse put forward that, since the decision was challenged it was not complied with, is untenable. If a decision is challenged it does not mean that it becomes ineffective, and need not be complied with.

Conclusion: i) Mehr has to be paid whenever demanded by the wife.
ii) If a decision is challenged it does not mean that it becomes ineffective, and need not be complied with.

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5. **Supreme Court of Pakistan**
Muslim Commercial Bank Limited v. Rizwan Ali Khan and others
Civil Petition No.4980 OF 2021
Mr. Justice Ijaz ul Ahsan, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4980_2021.pdf

Facts: Through this Civil Petition, the Petitioner, Muslim Commercial Bank, Limited (Petitioner-Bank) impugns judgment of the High Court, whereby Constitutional petition filed by the Petitioner-Bank was dismissed, and Respondent No.1 (Respondent) was declared a workman.

Issues: i) Whether the workman can invoke the jurisdiction of the Labour Court or National Industrial Relations Commission for redressal of their grievance?
ii) Whether the designation alone is relevant and can be considered conclusive evidence for a claimant to be categorized as a workman?
iii) Who is to discharge the burden of proof to establish the claim of the workman?

Analysis: i) In the event of a grievance, by a workman, of unfair labour practices, the workman can invoke the jurisdiction of the Labour Court or National Industrial Relations Commission for redressal of their grievance. The fundamental requirement for such invocation is that the grievance must be of a person employed in an establishment as a workman.
ii) The question as to who is a workman has been considered by this Court time and again in various cases. It has been consistently held that evidence must be

produced to establish the nature of work and functions of the aggrieved claimant, particularly to show that the work is manual or clerical and not managerial or supervisory. It has been emphasized that the court has to give due consideration to the cumulative effect of the evidence in the context of the nature of work that the workman claims he was doing so as to determine if he is a workman and not rely on piecemeal evidence. For a claimant to be categorized as a workman, his designation alone is not relevant and cannot be considered conclusive evidence of his work status rather, it is the pith and substance of his duties and functions which must be manual or clerical. Manual and clerical work involves physical exertion as opposed to mental or intellectual exertion. The judicial consensus of the Court with respect to the determination of the work status is clear such that the court must analyze the nature of the actual duties and functions of the employee to ascertain whether he falls within the ambit of the definition of worker or workman for which collective evidence must be examined to ascertain whether the duties were supervisory or managerial or whether they are manual or clerical. Therefore, in determining the work status, the overall nature of duties assigned to that person along with the functions of the job and the manner in which he performs his duties must be brought onto evidence and must be duly considered.

iii) The question of burden of proof in establishing the status of the workman, this Court has consistently held that such burden lies on the person claiming to be a workman. It is the bounden duty of a person who approaches the Labour Court to demonstrate through evidence the nature of duties and functions, and to show that he is not working in any managerial or administrative capacity and that he is not an employer. In the absence of such evidence, a grievance petition would not be maintainable before the Labour Court for lack of jurisdiction. Moreover, it has been established that this burden of proof is to be discharged by the claimant through documentary and oral evidence supporting his claim that the nature of his work is, in fact, manual or clerical. This requires the production of evidence, documentary or oral, which shows the nature of duties and the functions of the claimant pursuant to his claim that he is a workman.

Conclusion: i) The workman can invoke the jurisdiction of the Labour Court or National Industrial Relations Commission for redressal of their grievance.

ii) For a claimant to be categorized as a workman, his designation alone is not relevant and cannot be considered conclusive evidence of his work status rather, it is the pith and substance of his duties and functions which must be manual or clerical.

iii) The burden of proof is to be discharged by the claimant through documentary and oral evidence supporting his claim of the workman that the nature of his work is, in fact, manual or clerical.

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6. **Supreme Court of Pakistan**
Noorullah and others. v. Ghulam Murtaza and others
dvi/Appeat No.17-Q and Civil Petition No.257-Q of 2023
Mr. Justice Ijaz ul Ahsan, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._17_q_2023.pdf

Facts: The respondents filed civil suits for declaration etc. against the appellants/petitioners, whereas the appellants/petitioners filed civil suit for declaration and perpetual injunction against the respondents, which were consolidated by the trial Court. The suits of the respondents were dismissed; whereas suit of the petitioner was decreed by the trial court through a consolidated judgment. Being aggrieved with the said judgment, both the parties filed appeals before the District Judge which met the fate of dismissal. The respondents filed civil revisions before the High Court and the same have been partially allowed, which impugned herein.

Issue: Whether a minor is competent to enter into a legal contract of sale of his property?

Analysis: Section 11 of the Contract Act, 1872 has provided that every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. So, it is obvious that a minor is incompetent to enter into a contract for sale of his property.

Conclusion: A minor is incompetent to enter into a contract of sale of his property.

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7. **Supreme Court of Pakistan**
Collector of Customs & another v. M/s. Young Tech Private Limited etc.
Civil Petitions No.890-K to 909-K/2023
Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Hasan Azhar Rizvi, Mr.Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._890_k_2023.pdf

Facts: Leave to appeal is sought against the order of the High Court. Through the impugned order a number of constitutional petitions filed by the respondents were allowed and it was held that the demand for mobile handset levy on phones other than smart phones was unlawful and without jurisdiction.

Issues: Whether without amending the charging section levy can be imposed by merely changing the same in the table?

Analysis: The learned counsel for the petitioners has argued that the intention of the legislature was clear that the phones other than smart phones were also subjected to the levy and such intention was reflected in the table. The argument has not appealed to us in view of the fact that the right to recover any levy rests in the charging section and not in the table that specifies the rates at which such charge

is to be recovered. The power to recover a levy is anchored in the charging section and the table is merely meant to prescribe the rates at which such levy is to be recovered on various goods/items. Unless the charging section confers a power to recover a levy on an article or class of goods, mere mention of a different class, types or category of goods clearly goes beyond the scope of the charging section. This, in our opinion, cannot be done. A schedule/table is merely a supplement of the charging section and cannot go beyond it and create a new and altogether different levy on a different class of goods not mentioned or contemplated by the charging section.

Conclusions: Right to recover any levy rests in the charging section and not in the table that specifies the rates at which such charge is to be recovered. A table is merely a supplement of the charging section and cannot go beyond it.

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8. **Supreme Court of Pakistan**
Liaqat University of Medical and Health Sciences (LUMHS) Jamshoro through it Registrar & another v. Muhammad Ahsan Shakeel & others
Civil Petition No.3933/2023
Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3933_2023.pdf

Facts: The Respondent No.1 got admission in Liaqat University of Medical and Health Sciences on basis of forged and fabricated mark sheet and on verification from BISE his admission was cancelled. He challenged the cancellation in High Court and the High Court ordered the instant petitioner to consider the admission on the basis of his genuine mark sheet with less marks. The petitioner challenged the said order in the instant petition.

Issue: Whether the courts should interfere in disciplinary, administrative and policy matters of the universities or educational institutions?

Analysis: It is simply prudent that the courts keep their hands-off educational matters and avoid dislodging decisions of the university authorities, who possess technical expertise and experience of actual day to day workings of the educational institutions. Every university has the right to set out its disciplinary and other policies in accordance with law, and unless any such policy offends the fundamental rights of the students or violates any law, interference by the courts would result in disrupting the smooth functioning and governance of the said universities. It is, therefore, best to leave the disciplinary, administrative and policy matters of the universities or educational institutions to the professional expertise of the people running them, unless of course there is a violation of any of the fundamental rights or any law.

Conclusion: The courts should not interfere in disciplinary, administrative and policy matters of the universities or educational institutions unless there is a violation of any of the fundamental rights or any law.

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9. **Supreme Court of Pakistan**
Govt. of Pakistan through Secretary M/o Defence Rawalpindi and another v. Akhtar Ullah Khan Khattak and others.
C.A. 538/2022 etc.
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._538_2022.pdf

Facts: The appellants/petitioners want to withdraw proceedings for the acquisition of lands initiated by them under the Land Acquisition Act, 1894, but the landowners insist that the appellants/petitioners should be directed to go ahead with the acquisition and pay them compensation. The appellants/petitioners applied to the District Court for execution of the decree and permission was sought to return the land to their owners on the ground that the acquiring department (the appellants) had no funds to make payment. This request was declined by the executing Court, which the High Court upheld. Thereafter, the appellants/petitioners issued the notification to withdraw from the acquisition. This led the landowners to invoke the constitutional jurisdiction of the High Court for an order in the nature of a writ of certiorari for quashing the said notification. This petition was granted by the judgment of the High Court which is now under our review.

Issue: Whether the Government or Collector is competent to withdraw from the acquisition of the land after taking its possession in pursuance of the award under Section 11 of the Land Acquisition Act, 1894?

Analysis: Since the appellants/petitioners had taken possession of the land in pursuance of the award under Section 11 of the Land Acquisition Act, 1894, the acquisition had become past and closed, denuding the Commissioner of the right to withdraw, rescind, recall or amend any notification regarding the acquisition. Therefore, he could not rely on Section 48 merely because the acquiring department had no funds to pay for the compensation. The Land Acquisition Act, 1894, dehors such grounds of withdrawal from the acquisition of land once possession is obtained. The landowners could not be left in a quandary. They could not be expected to wait indefinitely, as the Government had acquired their valuable right to the immovable property. If the Government or its acquiring department did not have the funds, it should have made up its mind quickly and that too before taking possession and told the landowners where they stood. The land acquisition process started in 1977 and was delayed due to ineptitude and negligence of the appellants/petitioners. Since then, the landowners have been struggling to get their legitimate rights. Based on these facts, no law can condone the indolence of the appellants/petitioners and approve the action for withdrawal of the land acquisition.

Conclusion: The Government or Collector is not competent to withdraw from the acquisition of the land after taking its possession in pursuance of the award under Section 11 of the Land Acquisition Act, 1894.

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10. **Supreme Court of Pakistan**
Jehanzeb son of Khushal Khan and others v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others
Civil Appeal No. 1444 of 2013
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1444_2013.pdf

Facts: Provincial Assembly passed a resolution wherein name of a village was changed. In pursuance of resolution, Secretary to Government passed a notification. The private respondents filed a writ petition before High Court which was accepted and notification was declared null and void. Now, appellants have challenged the judgment of High Court.

Issues: What is legal procedure for changing the name of a village?

Analysis: The procedure laid-down for assigning or renaming of a road, street, square, park or any other public place, to be adopted by the Government before issuing Notification under Para 7.69 of the Land Record Manual, in the matter of changing the name of a village as the official name of a village is used in land revenue record, postal zone and other official and private documents, therefore, objections/suggestions of the inhabitants of village need to be invited through publication in newspapers.

Conclusion: The legal procedure for changing the name of a village is to be through publication in newspapers by inviting the objections/suggestions of the inhabitants of village.

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11. **Supreme Court of Pakistan**
Chief Secretary, Government of Balochistan, Civil Secretariat, Quetta & others v. Adeel-ur-Rehman & others
Civil Appeal No.441 of 2020
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._441_2020.pdf

Facts: This appeal, by leave of the Court, is directed against judgment passed by the High Court of Balochistan, whereby the appellants were directed to regularize the services of the respondents and also to pay them the arrears of salaries and allowances.

Issues: i) Whether it is mandatory that the appointment to posts in BPS-16 and above or equivalent shall be made through the Balochistan Public Service Commission?

ii) Whether wrong concession in favour of one person entitles any other person to claim same benefit under Article 25 of the Constitution?
iii) Whether mere creation of posts on regular side does confer an automatic right of regularization to the contract employees working against said project posts?

Analysis: i) Rule 9(1)(a) of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 (the AP&T Rules) clearly provides that the appointment to posts in BPS-16 and above or equivalent, if fall within the purview of the Commission, shall be made on the basis of a test and interview to be conducted by the Balochistan Public Service Commission (the Commission). Similarly, Rule 3(i)(a) of the Balochistan Public Service Commission (Functions) Rules, 1982 (the BPSC Functions Rules), provides that the Commission shall conduct tests and examinations for initial recruitments to civil posts in BPS 16 to 22 connected with the affairs of the province, except those specified in the Schedule appended to the Rules. Sub clause (b) of Rule 3 (i) of the BPSC Functions Rules further empowers the Commission to conduct a test and interview for initial recruitment to any other post which may be referred to it by the Government, which may otherwise not fall within the purview of the Commission. (…) This Court in plethora of judgments has ruled out that the posts in BPS-16 and above shall be filled through Public Service Commission.
ii) As far as the question of regularization of similarly placed persons by the Department vide Notifications dated 26th July, 2007 and 22nd February, 2011 is concerned, suffice it to say that Article 25 of the Constitution does not envisage negative equality. Such right can only be claimed when decision is taken in accordance with law. A wrong concession in favour of one person does not entitle any other person to claim benefit of a wrong decision.
iii) As far as the regularization of contract employees subsequent to creation of posts on regular side is concerned, in number of cases it has been held by this Court that mere creation of posts on regular side does not confer, in the absence of any statutory support, an automatic right of regularization in favour of the contract employees working against project posts.

Conclusions: i) Yes, the posts in BPS-16 and above or equivalent shall be filled through Public Service Commission.
ii) A wrong concession in favour of one person does not entitle any other person to claim benefit of a wrong decision, as Article 25 of the Constitution does not envisage negative equality.
iii) Mere creation of posts on regular side does not confer, an automatic right of regularization in favour of the contract employees working against project posts.

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12. **Supreme Court of Pakistan**
Masood Ahmad Bhatti and another v. Khan Badshah and another
Civil Petition No. 5632 of 2021
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5632_2021.pdf

Facts: Through the instant petition filed under Article l85(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have assailed the judgment passed by the Islamabad High Court, Islamabad whereby Regular First Appeal filed by them was dismissed.

Issues: i) What is required from the vendee seeking a specific performance of the agreement to sell in case the vendor refuses to accept the sale consideration amount?
ii) How can a vendee seek enforcement of reciprocal obligation of the vendor?

Analysis: i) In such circumstances, we are of the firm view that Respondent No.1 has proved that he honoured his commitments and fulfilled his obligation as agreed upon in between the parties qua agreements. Even otherwise, it is now well settled that where the vendor refuses to accept the sale consideration amount, the vendee seeking a specific performance of the agreement to sell is essentially required to deposit the amount in the Court.
ii) The vendee has to demonstrate that he has been at all relevant times ready and willing to pay the amount and to show the availability of the amount with him. A vendee cannot seek enforcement of reciprocal obligation of the vendor unless he is able to demonstrate that not only his willingness but also his capability to fulfil his obligations under the contract.

Conclusions: i) Where the vendor refuses to accept the sale consideration amount, the vendee is essentially required to deposit the amount in the Court.
ii) A vendee can seek enforcement of reciprocal obligation of the vendor by demonstrating his willingness and capability to fulfil his obligations under the contract.

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13. **Supreme Court of Pakistan**
Hafsa Habib Qureshi v. Amir Hamza and others
(in C.P. No.3747 of 2023)
(in C.P. No.3748 of 2023)
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3747_2023.pdf

Facts: Through these petitions, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"), the petitioners have impugned the judgment of the High Court. The said judgment disposed of the constitution petition filed by respondent No. 1, along with 87 connected petitions,

while upholding the decision of the provincial government to retake the Medical College Admission Test ("MDCAT").

Issues: i) When a court exercises suo motu power?
ii) Whether the High Court has the power to convert and treat one type of proceeding into another type?
iii) Whether the courts can deprive the educational institutions while interfering in their internal affairs?
iv) Whether there is absolute ban on courts that they cannot interfere/intervene in the internal matters of educational institutions?

Analysis: i) When a court exercises suo motu power, it means the court is acting on its own initiative, often to address a matter it deems important or to ensure that justice is served. This authority allows the court to intervene in certain situations even if no formal complaint has been filed. Suo motu power is often invoked in cases where there is a perceived violation of law and fundamental rights, public interest, or the principles of justice as this Court is empowered under Article 184(3) of the Constitution.
ii) The High Court has the power to convert and treat one type of proceeding into another type. After doing so, it can proceed to decide the matter itself, provided it has jurisdiction over the issue, or it may remit the matter to the competent authority, forum, or court for a decision on its merits.
iii) So far as the ground of interference by the Court in the internal affairs of the educational institutions is concerned, we are of the view that educational institutions occupy a special niche in our society which provides them a substantial right of "educational autonomy," within which public higher educational institutions are insulated from legal intrusion. Within that autonomous realm, educational institutions are entitled to deference when making academic decisions related to their educational mission. Thus, any interference by Courts of law with orders passed by educational institutions in the interest of the maintenance of discipline would defeat the very purpose for which these institutions exist or it would stultify the powers of the authorities/in charge of educational institutions or prevent them from taking any action against students' misconduct. The Universities and educational institutions generally are armed with abundant powers of disciplinary action against recalcitrant students and the Courts are, in no way, minded to deprive them of their powers.
iv) While there exists a general principle of judicial restraint, implying that courts should be cautious in intervening in the internal matters of educational institutions, it is not an absolute ban. This restraint is exercised with prudence, and courts may step in when university authorities exceed the defined scope of their authority or act in violation of the statutes. In such cases, the courts play a crucial role in upholding legal standards and ensuring that educational institutions operate within the bounds of the law. The delicate balance between non-

interference and necessary intervention is maintained to safeguard the integrity of academic institutions while also holding them accountable to legal frameworks.

Conclusion: i) Suo motu power is often invoked in cases where there is a perceived violation of law and fundamental rights, public interest.
ii) The High Court has the power to convert and treat one type of proceeding into another type.
iii) The Universities and educational institutions generally are armed with abundant powers of disciplinary action against recalcitrant students and the Courts are, in no way, minded to deprive them of their powers.
iv) The courts may step in when university authorities exceed the defined scope of their authority or act in violation of the statutes.

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14. **Supreme Court of Pakistan**
Muhammad Usman v. The State & another
Criminal Petition No. 1233 of 2023
Justice Amin-ud-Din Khan, Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1233_2023.pdf

Facts: The petitioner was arrested because he was nominated in FIR, registered at the Police Station for allegedly committing the offences under sections 302, 148, 149 and 109 of the Pakistan Penal Code. The petitioner had filed his first application seeking bail on merits and it was dismissed by the High Court. He then filed another petition which was not pressed in order to avail the remedy on the fresh ground of delay in conclusion of trial. This ground had not ripened when the two petitions were filed. Since the second petition was not pressed, therefore, it was dismissed by the High Court. Consequently, a third petition was filed on the sole ground of seeking bail on statutory delay. The petition was, however, dismissed on account of non-prosecution. The petitioner filed a fresh petition and it was dismissed by the High Court vide the impugned judgment.

Issues: i) Whether a second bail petition on the same grounds that were earlier taken is competent?
ii) Whether there is any exception to the rule that grounds raised by an accused in a subsequent bail application which were available at the time of filing of the earlier petition could not be treated as fresh grounds?
iii) Whether delay caused by the co-accused of the petitioner can be attributed to him, to disentitle him for grant of bail on statutory ground?
iv) What is object behind the recognition of a right granting bail on statutory ground?
v) Whether accused becomes entitled to bail on statutory ground as of right after the statutory period or its still discretion of court?
vi) How the quantum of delay is to be calculated?
vii) Whether dismissal of bail petition for non-prosecution precludes the accused from filing fresh bail application before the same forum?

Analysis: i) It is settled law that a second bail petition repeating the same grounds that were earlier taken is not competent.

ii) Moreover, the grounds raised by an accused in a subsequent bail application which were available at the time of filing of the earlier petition could also not be treated as fresh grounds nor urged for the purposes of seeking the same relief. This Court has already highlighted the principles regarding maintainability of a subsequent bail petition. If the ground on which bail has been sought subsists when a bail petition is withdrawn then such a ground can also not be taken again. However, the exception to this rule is in the case of entitlement of bail on statutory grounds as has been held by this Court. If any act or omission of the accused has hindered the conclusion of trial within the period specified in the third proviso of section 497 (1) of the Code of Criminal Procedure, 1868 ('Cr.P.C.') then a right, as contemplated thereunder, will not accrue in the latter's favour and, therefore, he or she, as the case may be, would not become entitled to be released on bail on the statutory ground of delay in conclusion of the trial. Nonetheless, if after the rejection of the plea of bail on statutory grounds, the accused has subsequently corrected himself/herself and has abstained from doing any act or omission in the following period specified under the third proviso, then a fresh ground would accrue to the accused to invoke the jurisdiction of the court f or grant of bail. The third proviso to section 497 (1) of Cr.P.C. would thus become operative as and when the period specified therein has expired but the trial has not concluded without any fault on part of the accused.

iii) The legislature has expressly confined the delay under the third proviso to an act or omission of the 'accused' or 'any person acting on his behalf'. The accused cannot be made liable for the acts or omissions of a co accused regardless of the relationship, except when the prosecution can clearly show, based on undisputed facts that the accused seeking bail was complicit. The latter's acts and omissions, or those of a person acting on his behalf, are crucial and could be considered for the court to determine the right to be released on bail on the ground described under the third proviso. The delay caused by the co accused is not attributable to the petitioner because no act or omission on the latter's part nor a person acting on his behalf could be shown.

iv) The object of recognition of a right to be released on bail on statutory ground, subject to meeting the conditions described under the third and fourth provisos of section 497(1) of the Cr.P.C. is to ensure that criminal trials are not unnecessarily delayed and that the prosecution is not enabled to prolong the incarceration or hardship of an accused awaiting trial. The right of an accused to seek bail on statutory grounds cannot be defeated for any other reason except on the ground as has been explicitly described under the third and fourth provisos to section 497(1) of Cr.P.C.

v) The accused becomes entitled to bail as of right after the statutory period expressly stated in clauses (a) and (b), as the case may be, have expired and the trial has not concluded. This accrual of right is manifest from the language of the

third proviso. Such a right can only be defeated if the prosecution is able to show that the delay in the trial was attributable to an act or omission of the accused or a person acting on his behalf. If the prosecution succeeds in showing to the satisfaction of the court that the accused was at fault then the right stands forfeited. (…) It has been held by this Court that the right recognized under the third proviso of section 497(1) cannot be denied to an accused on the basis of discretionary powers of the court to grant bail. The right has not been left to the discretion of the court, rather, its accrual is subject to the fulfillment of the conditions mentioned under the third proviso of section 497(1) of the Cr.P.C.

vi) Moreover, while calculating the quantum of delay attributable to an accused, the court is required to consider whether or not the progress and conclusion of the trial was in any manner delayed by the act and omission on the part of the accused. While ascertaining the delay, the cumulative effect in disposal of the case has to be considered and its assessment cannot be determined on the basis of mathematical calculations by excluding those dates for which adjournments had been sought by the accused or the latter's counsel. The main factor for consideration is the attendance of the witnesses and whether, despite the matter having become ripe for the recording of evidence, whether the delay was caused by the defence. The recording of the statement of a last witness would also not defeat the right recognized under the third proviso and it would be unreasonable to conclude that the trial has been completed.

vii) The petition before the High Court was dismissed for non -prosecution and such dismissal did not prejudice his right to file a fresh petition before the High Court, which he did.

Conclusions: i) A second bail petition repeating the same grounds that were earlier taken is not competent.

ii) The grounds raised by an accused in a subsequent bail application which were available at the time of filing of the earlier petition could also not be treated as fresh grounds, however, the exception to this rule is in the case of entitlement of bail on statutory grounds.

iii) The petitioner's acts and omissions, or those of a person acting on his behalf, are crucial and could be considered by the court to determine the right to be released on bail on the statutory ground. The petitioner/accused cannot be made liable for the acts or omissions of a co accused.

iv) The object of recognition of a right to be released on bail on statutory ground is to ensure that criminal trials are not unnecessarily delayed.

v) The accused becomes entitled to bail as of right after the statutory period as provided under section 497 Cr.P.C. have expired and the trial has not concluded. This right has not been left to the discretion of the court.

vi) While ascertaining the delay, the cumulative effect in disposal of the case has to be considered and its assessment cannot be determined on the basis of mathematical calculations.

vii) See above in analysis portion.

15. **Supreme Court of Pakistan**
Muhammad Riaz. v. Khurram Shehzad and another
Criminal Petition No. 290-L of 2015.
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._290_l_2015.pdf

Facts: This Criminal Petition for leave to appeal is directed against the Judgment passed by the learned High Court, in criminal appeal whereby the respondent No.1 was acquitted of the charge against him as the prosecution had failed to establish the guilt beyond reasonable doubt.

Issues: i) What sort of standard of proof is required in a criminal trial in the light of the term "beyond reasonable doubt"?
ii) What is the credibility of ocular evidence when the presence of eye witnesses on the spot is doubtful?
iii) What is substratum and philosophy of term "the accused is the favourite child of law"?

Analysis: i) The term 'beyond reasonable doubt' is a legal fiction whereby a hefty burden of proof is required to be discharged to award or maintain a sentence or verdict of guilt in a criminal case. Id est, it connotes that the prosecution is obligated to satisfy the Court with regard to the actuality of reasonable grounds, beyond any shadow of doubt, in order to secure a verdict of guilt.
ii) When the presence of eye witnesses on the spot is doubtful then, in such situations, the ocular testimony should be excluded from consideration.
iii) The substratum of this concept is based on the farsightedness and prudence, 'let a hundred guilty be acquitted but one innocent should not be convicted'; or that it is better to run the risk of sparing the guilty than to condemn the innocent. The raison d'être is to assess and scrutinize whether the police and prosecution have performed their tasks accurately and diligently in order to apprehend and expose the actual culprits, or whether they dragged innocent persons in the crime report on account of a defective or botched-up investigation which became a serious cause of concern for the victim who was deprived of justice. The philosophy of the turn of phrase "the accused is the favourite child of law" does not imply that the Court should grant any unwarranted favour, indulgence or preferential treatment to the accused, rather it was coined to maintain a fair-minded and unbiased sense of justice in all circumstances, as a safety gauge or safety contrivance to ensure an evenhanded right of defence with a fair trial for compliance with the due process of law, which is an integral limb of the safe administration of criminal justice and is crucial in order to avoid erroneous verdicts, and to advocate for the reinforcement of the renowned doctrine "innocent until proven guilty".

Conclusion: i) The term "beyond reasonable doubt" is a legal fiction whereby a hefty burden of proof is required to be discharged in a criminal trial.
ii) When the presence of eye witnesses on the spot is doubtful then the ocular testimony should be excluded from consideration.
iii) The substratum of term "the accused is the favourite child of law"is based on the farsightedness and prudence and the Court should not grant any unwarranted favour, indulgence or preferential treatment to the accused, rather it was coined to maintain a fair-minded and unbiased sense of justice.

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16. **Supreme Court of Pakistan**
Salman Mushtaq and another v. The State through PG Punjab and another
Ahmar Ali v. The State through PG Punjab and another
Criminal Petitions no. 1121 & 1128 of 2023
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1121_2023.pdf

Facts: This Criminal Petition for leave to appeal is directed against the separate Orders passed by the High Court in two separate criminal miscellaneous petitions whereby the bail applications moved by the petitioners were dismissed.

Issues: i) Whether in rape cases negligence of prosecution for not carrying out DNA test is violation of settled principle i.e 'administration of DNA test and preservation of DNA evidence should be made mandatory'?
ii) What are the paramount factors which require consideration while granting pre-arrest bail?
iii) Whether in bail matters the atrociousness, viciousness and/or gravity of the offence are by themselves, sufficient for the rejection of bail, when nature of evidence produced creates doubt?
iv) In what circumstances bail cannot be withheld as a punishment and what other interconnected rudiments court must consider?
v) What are other interconnected rudiments, court must dwell on while considering bail application?
vi) What an accused has to show while seeking concession of bail?

Analysis: i) …No explanation was offered for this clear negligence on the part of prosecution, which is also violation of the judgment rendered by this Court in the case of Salman Akram Raja and another vs. Government of Punjab through Chief Secretary and others (PLJ 2013 SC 107) wherein it was *inter alia* directed in paragraph 16 that in rape cases, the administration of DNA tests and preservation of DNA evidence should be made mandatory.
ii) The paramount factors which require consideration while granting pre-arrest bail are whether the arrest will cause humiliation and /or unwarranted persecution or harassment to the applicant for some ulterior motives; or that the prosecution is motivated by malice to perpetrate irreparable injury to the reputation and liberty of the accused.

iii) While considering the grounds agitated for enlargement on bail, whether pre-arrest or post-arrest, the atrociousness, viciousness and/or gravity of the offence are not, by themselves, sufficient for the rejection of bail where the nature of the evidence produced in support of the indictment creates some doubt as to the veracity of the prosecution case.

iv) Therefore, where, on a tentative assessment, there is no reasonable ground to believe that the accused has committed the offence, and the prosecution case appears to require further inquiry, then in such circumstances the benefit of bail may not be withheld as a punishment to the accused.

v) The Court must dwell on all interconnected rudiments, including the gravity of the offence and the degree of involvement of the applicant /accused for bail in the commission of offence, together with the likelihood of absconding or repeating the offence and/ or obstructing or hindering the course of justice, or any reasonable apprehension of extending threats to the complainant or witnesses or winning over the prosecution witnesses.

vi) The doctrine of 'further inquiry ' refers to a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. The expression "reasonable grounds" as contained under Section 497, Cr.P.C., obligates the prosecution to unveil sufficient material or evidence to divulge that the accused has committed an offence falling within the prohibitory clause of Section 497, Cr.P.C. However, for seeking the concession of bail, the accused person has to show that the evidence collected against him during the investigation gives rise to clear-headed suspicions regarding his involvement.

Conclusion: i) Yes, in rape cases negligence of prosecution for not carrying out DNA test is violation of settled principle i.e 'administration of DNA test and preservation of DNA evidence should be made mandatory'.

ii) These paramount factors are; whether the arrest will cause humiliation and /or unwarranted persecution or harassment to the applicant for some ulterior motives; or that the prosecution is motivated by malice to perpetrate irreparable injury to the reputation and liberty of the accused.

iii) In bail matters, whether pre-arrest or post arrest, the atrociousness, viciousness and/or gravity of the offence are not by themselves, sufficient for the rejection of bail, when nature of evidence produced creates doubt as to prosecution case.

iv) Bail may not be withheld as a punishment, where, on a tentative assessment, there is no reasonable ground to believe that the accused has committed the offence and prosecution case appears to require further inquiry.

v) Court must dwell on other interconnected rudiments in bail i.e. gravity of offence, degree of involvement, likelihood of absconding or repetition of offence, obstructing course of justice any reasonable apprehension of extending threats to the complainant or witnesses or winning over the prosecution witnesses.

vi) For seeking the concession of bail, the accused has to show that the evidence collected against him during the investigation gives rise to clear-headed suspicions regarding his involvement.

17. **Lahore High Court**
Mst. Gulnaz Ajmal v. The State
Criminal Appeal No.72371-J/2019
The State Vs. Mst. Gulnaz
Murder Reference No.297/2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6219.pdf

Facts: The appellant lodged the criminal appeal assailing her conviction and sentence in case FIR registered in respect of an offence under section 302 P.P.C. and learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Why First Information Report being foundation of the criminal case needs to be promptly recorded?
ii) Whether examining the motivating factors are necessary for making extra judicial confession particularly before the persons who are closely related to the deceased?
iii) Whether the chance witnesses are required to explain valid reason regarding their presence at place of occurrence?
iv) What is the scope of medical evidence?

Analysis: i) By now it is well settled that First Information Report lays foundation of the criminal case and when it has not been promptly recorded and no reasonable explanation regarding its delayed recording has come on the record, then it is fatal for the case of prosecution.
ii) It is appropriate to examine the motivating factors for making extra judicial confession as to what has compelled the accused to confess the crime, particularly before the persons, who being closely related to the deceased might immediately become witness against the accused.
iii) The chance witnesses are required to explain and establish plausible as well as valid reason regarding their stated arrival and presence at the place of occurrence.
iv) It is trite law that medical evidence is mere supportive/confirmatory type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury.

Conclusion: i) First Information Report being foundation of the criminal case needs to be promptly recorded.
ii) It is appropriate to examine the motivating factors for making extra judicial confession particularly when it is made before the persons, who are closely related to the deceased.
iii) The chance witnesses are required to explain valid reasons regarding their presence at place of occurrence.

iv) It is trite law that medical evidence is mere supportive/confirmatory type of evidence.

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18. **Lahore High Court**
Sughran Bibi etc. v. Muhammad Nawaz etc.
C.R. No.2401 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6374.pdf

Facts: The petitioners filed Civil Revision against the concurrent findings of the Trial as well as Appellate court whereby suit for specific performance of agreement to sell, declaration and permanent injunction as a consequential relief of respondents was decreed.

Issues: i) Rule of interpretation of General Power of Attorney?
ii) Whether scribe of a document could be equated with marginal witness?
iii) Requirement of Article 79 of the Qanun-e-Shahadat Order, 1984?
iv) Pre cautions to be adopted by Court in transactions involving parda nasheen old and illiterate ladies?
v) Principles for allowing Civil Revision where there are concurrent judgments and decrees?

Analysis: i) Power of attorney is to be construed strictly. Such power would give only the authority as it would confer expressly and it could not empower beyond that, what it really conveyed. Regard must be had to the recitals which shows the scope and object of power and would control all general terms in the operative part of the instrument. Where a specific power of entering into an agreement to sell of the suit property was not given although powers of sale have been conferred upon the attorney- he was found to be incompetent to enter into any kind of agreement to sell.
ii) The scribe of the document cannot be equated with marginal witness; reliance was placed on PLD 2011 Supreme Court 241.
iii) Non-production of the second marginal witness is fatal to the case. Withholding of the best available evidence without any incapacity, attracts the adverse presumption as per Article 129(g) of Qanun-e-Shahadat Order, 1984 that had the said witness been produced, he would not have supported the stance of the plaintiffs.
iv) By relying on the cases reported as 2016 SCMR, 1225 2021 SCMR 19 and PLD 2022 Supreme Court 99, the court opined that in transactions involving parda nasheen and illiterate women, the beneficiary of it has to prove interalia that it was executed with free consent and will of the lady, she was aware of the meaning, scope and implications of the document that she was executing. She was made to understand the implications and consequences of the same and had independent and objective advice either of a lawyer or a male member of her immediate family available to her.

v) The Court is vested with ample power and jurisdiction to reverse and revise the concurrent judgments and decrees, when the same suffer from material illegalities and irregularities as well as are a result of misreading and non-reading of evidence.

Conclusion: i) Power of attorney is to be construed strictly nothing could be read in it unless the same was specifically provided therein and the attorney was to act within scope of the authority as described in instrument.
ii) Scribe of the document cannot be equated with marginal witness.
iii) Non-production of the second marginal witness is fatal to the case.
iv) In respect of a transaction germane to property with a pardanasheen, village household and rustic ladies the guidelines laid down in the following case precedents i.e 2016 SCMR 1225, 2021 SCMR 19 and PLD 2022 Supreme Court 99 need to be followed as mentioned supra.
v) Concurrent judgments/decrees could be revised if the same suffer from material illegalities and irregularities as well as are a result of misreading and non-reading of evidence.

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19. **Lahore High Court**
Asadullah v. The State etc.
Criminal Appeal No. 654/2023
Mr. Justice Abid Aziz Sheikh, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6365.pdf

Facts: The trial court during the trial, on application of prosecution passed an order to send the complete case property to the Punjab Forensic Science Agency for re-testing. The Appellant being aggrieved of the order has filed this appeal under section 48 of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether a drug case can succeed without the report of the government analyst which supports the witnesses who testify regarding the recovery and confirms that the recovered substance is contraband?
ii) Whether any test conducted without a protocol loses its reliability and during the trial, any contraband substance can be sent to the Government Analyst for re-testing?

Analysis: i) In drugs cases, it cannot succeed unless the report from the Government Analyst supports the witnesses who testify regarding the recovery and confirms that the recovered substance is contraband. The courts have issued guidelines from time to time to ensure that the report of the Government Analyst is authentic and reliable. Generally, they have opposed re-testing of the substance.
ii) In The State v. Amjad Ali (PLD 2007 SC 85), the Supreme Court observed that unscrupulous litigants are increasingly manoeuvring substitution of the substances and articles stored in the Malkhana. Following the replacement, these people request for the re-examination of the material, and the consequence is that what was originally tested as contraband is found to be something else. As a result,

offenders get acquitted…In Qaiser Javed Khan v. The State and another (PLD 2020 SC 57), the Supreme Court stated that the Government Analyst's report must show that the contraband was tested in accordance with a recognized standard protocol. Any test conducted without a protocol loses its reliability and evidentiary value. Therefore, the said report must specify (i) the test applied, (ii) the protocols applied to carry out those tests, and (iii) the results of the tests. It further stated that once these requirements, which are outlined in Rule 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, are included in the Government Analyst's report, any ambiguity can be resolved by the trial court by exercising its powers under the Proviso of section 510 Cr.P.C. which stipulates that the court may if it considers necessary in the interest of justice, summon and examine the person by whom such report has been made. Hence, while reviewing the report, the trial court can summon the Government Analyst to clarify any ambiguities. However, the Supreme Court cautioned that this does not allow the Government Analyst to conduct a fresh test or prepare a new report because doing so would provide the prosecution with an opportunity to fill the gaps and lacunas in the report…The trial court's direction for sending the entire material to the PFSA gives the prosecution a premium to fill the lacunas. Such judicial intervention is contrary to the adversarial concept. It violates the fundamental right of fair trial and due process guaranteed by the Constitution…

Conclusion: i) A drugs case cannot succeed unless the report from the Government Analyst supports the witnesses who testify regarding the recovery and confirms that the recovered substance is contraband.
ii) Any test conducted without a protocol loses its reliability and evidentiary value and generally during the trial, any contraband substance cannot be sent to the Government Analyst for re-testing.

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20. **Lahore High Court**
M/s Pak Hygienic Industries v. Federation of Pakistan etc.
Writ Petition No.75402/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6173.pdf

Facts: This Constitutional Petition is directed against the order passed by respondent No.3 under Section 38(1) and 40 of the Sales Tax Act, 1990, whereby respondent No.4 alongwith his team was duly authorized to make inspection and take into custody the record/documents belonging to petitioner-company. The petitioner has also challenged the search warrant order issued under Section 40 of the Act, 1990.

Issues: i) Whether an officer has power under Section 38 of the Act, 1990 to compel production of any record or document that is not in plain sight or that has not been voluntarily produced?
ii) Whether pendency of any proceedings against registered person or a person liable for registration is a precondition under Section 40 of the Act, 1990 for

issuance of search warrant?

Analysis: i) Plain reading of Section 38(1) of the Act shows that any officer, authorized by the Commissioner Inland Revenue, shall have free excess to the business or manufacturing premises, registered office or any other place where any stock, business record or documents required under this Act are kept or maintained belonging to the registered person or a person liable for registration or whose business activities are covered under this Act or who may be required for any inquiry or investigation in any tax fraud. Under section 38 of the Act, an officer authorized may inspect and also take into custody the record mentioned therein, as he may deem fit, against a signed receipt… there is no precondition in Section 38 of the Act that proceedings be pending for inspection or taken into custody the record, however, the Division Bench of this Court in "GHULAM HUSSAIN Vs. FEDERATION OF PAKISTAN through Ministry of Finance, Islamabad and 5 others" (2021 PTD 1379) held that purpose of visit, in terms of Section 38 of the Act, is to see whether proper record under the Act, relevant Rules and Regulations is maintained or not, and the authorized officer in this regard must produce the copy of authorization before commencing the inspection and visit must be confined to inspect the record and documents that are in plain sight or voluntarily made available for inspection by the person(s) present at the premises on request, and consequently only such record can be taken into custody within the meaning of Section 38 of the Act. The Division Bench further held that the officer has no power, under Section 38 of the Act, to compel production of any record or document that is not in plain sight or that has not been voluntarily made available as above.

ii) Whereas under Section 40 of the Act, where any officer of Inland Revenue has reason to believe that any document or things which in his opinion, may be useful for, or relevant to any proceedings under this Act are kept in any place, he may, after obtaining warrant from Magistrate, enter that place or cause a search to be made at any time…there are no proceedings pending under the Act for which the documents may be useful or relevant, which is a precondition under Section 40 of the Act for issuance of search warrant. The Supreme Court in "Collector of Sales Tax and Central Excise (Enforcement) and another Vs. Messrs Mega Tech (Pvt.) Ltd." (2005 PTD 1933) held that as per the language employed in Sections 40 & 40A of the Act, the requirement of law appears to be that where an officer of sales tax has reason to believe that any document or things, which in his opinion may be relevant to any proceedings under the Act, are concealed or kept in any place and there is a danger of removal of such documents or records, he may, after obtaining warrant from Magistrate, enter that place and cause a search to be made at any time and the search authorized shall be carried out strictly in accordance with relevant provisions of the Code of Criminal Procedure, 1898 (Cr.PC)…This Court, in "Pakistan Chipboard (Pvt.) Ltd. through Chief Executive Officer Vs. Federation of Pakistan etc." (2015 PTD 1520), also held that when there are no proceedings pending under the Act, the provision of Section 40 of the Act for

search cannot be invoked. The desk audit analysis can at best be treated as inquiry or investigation but does not amount to proceedings under the Act, therefore, the provision of Section 40 of the Act could not be invoked in the impugned order or search warrant, therefore, to that extent the impugned order & search warrant are not sustainable.

Conclusion: i) An officer has no power under Section 38 of the Act, 1990 to compel production of any record or document that is not in plain sight or that has not been voluntarily produced.
ii) Pendency of any proceedings against registered person or a person liable for registration is a precondition under Section 40 of the Act, 1990 for issuance of search warrant.

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21. **Lahore High Court**
Muhammad Akbar Ali v. ASJ & others
Criminal Misc. No.43746-M of 2023
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2023LHC6412.pdf

Facts: Through this petition, petitioner assails the order passed by the learned Additional Sessions Judge in criminal revision, whereby the order passed by the learned Magistrate regarding the summoning of certain respondents in the petitioner's private complaint stood set aside.

Issues: i)What is required by law for the purpose of issuance of process to the accused under section 204 Cr.P.C.?
ii)What is the limit of the revisional court while determining the propriety or legality of the summoning order of trial court?

Analysis: i) The Court is desired by Law only to look for the availability of sufficient ground to proceed further with the complaint, which requires tentative assessment of the evidence at hand. Till such stage, only sufficiency or insufficiency of the evidence available for the issuance of process is the matter to be decided by the Court seized with the matter. The Court is not even required to state detailed reasons in support of its order.
ii) The learned Additional Sessions Judge should not travel beyond his limit by considering the record produced by the accused/respondent, which was not the part of the record at time of passing the order summoning accused/respondent.

Conclusion: i) Evidence sufficient to establish guilt of the accused is not required for the purpose of issuance of process to the accused under section 204 Cr.P.C.
ii) The revisional court, while determining the propriety or legality of order for summoning of accused/respondent, could only look into the material or evidence available to the learned court below at the stage when such order was passed.

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22. **Lahore High Court**
Muhammad Razzaq, etc. v Federation of Pakistan, etc.
Writ Petition No.5973 of 2017
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6402.pdf

Facts: Under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has filed this petition alleging that statutory bodies i.e. Provincial Public Safety Commission and District Public Safety Commission under the provisions of Police Order, 2002 have not been constituted.

Issues: i) What is the required to be done under Subsection (2) of Section 37 of the Police Order 2002?
ii) Whether the representatives lastly elected by the people shall continue to represent the people unless newly elected representatives replace them?

Analysis: i) Under Subsection (2) of Section 37 of the Police Order 2002, independent budget shall be allocated whereafter notification of the Members of the Public Safety Commission shall be a routine wherein elected members can be notified or re-notified from time to time.
ii) It is held for the purpose of the Section 37 of the Police Order 2002 that in absence of newly elected representation, the representatives lastly elected by the people shall continue to represent the people unless newly elected representatives replace them. It is reiterated that there cannot be a gap for the people to exercise sovereignty through their elected representation.

Conclusion: i) Independent budget shall be allocated whereafter notification of the Members for the Public Safety Commission shall be a routine.
ii) The representatives lastly elected by the people shall continue to represent the people in the Public Safety Commission unless newly elected representatives replace them.

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23. **Lahore High Court**
Mahnoor Shabbir v. Additional District Judge, etc.
Case No. W. P. No.62482 of 2022
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6415.pdf

Facts: Petitioner has assailed judgment passed by Additional District Judge, exercising appellate jurisdiction, whereby suit of the petitioner for maintenance against her paternal uncle has been dismissed by reversing the judgment and decree by the trial Court.

Issues: i) Whether Muhammadan Law by D.F. Mulla is a statutory law and binding upon Courts?
ii) Whether in suit for maintenance allowance paternal uncle could be replaced as defendant against grandfather, in case of his death?

Analysis: i) “Mulla's "Principles of Muhammadan Law" is a reference or a text book as some times referred in our judgments like other books of this category and not a statutory book. Usually, when the Courts consult it, this exercise is just like consulting a book where the opinions of the great Muslim jurists are easy to get because opinions are mentioned in English language in an over simplified language and paragraphs of the book are numerically marked. The very style of composition of this book often create a confusion amongst the reader that it is a statute book which it is not. Perhaps this is the reason why the petitioner states in his petition that the book of D.F. Mulla comes within the purview of custom and usage which is absolutely wrong and incorrect.” (…) D.F Mulla’s Muhammadan Law is just a text book, which can be referred or relied upon by Courts like any other text book. Being neither a statute nor a custom or usage, the opinion in it is not binding.

ii) Learned counsel for the petitioner is asked whether Section 373 of Muhammadan Law is a statutory provision, the answer is in negative. He is also asked to produce any judgment where decree of maintenance against the distant relative is issued on the basis of Section 373, he could not produce. (…) Without prejudice to the legal position, ibid, in this Court’s opinion, the findings given by the Appellate Court are factual and based on the Section 373 holding that conditions of this Section of the text book are not met. The petitioner could not establish before the Appellate Court that she would get inheritance from the estate of her respondent-paternal uncle on his death. (…) The Appellate Court also determined that the petitioner could not prove herself to be poor distant relative. The reasons for claiming maintenance from grandfather in absence of father are on different premises whereas claim of maintenance from a relative under Section 373 and different principles of Islamic jurisprudence. (…) In this Court’s opinion, if suit was filed to claim maintenance from grandfather after death of father, the paternal uncle could not have been replaced as defendant in the shoes of grandfather.

Conclusions: i) “Mulla's "Principles of Muhammadan Law" is mere a reference or a text book which is neither a statute nor a custom or usage, therefore, not binding on Courts.

ii) Claim of maintenance from grandfather and paternal uncle is on different principles of Islamic Jurisprudence, hence paternal uncle could not replace the grandfather, as defendant, after his death.

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24. **Lahore High Court,**
M/s Hadi Developers Private Limited v. Government of the Punjab etc.,
Writ Petition No. 70681 of 2023,
Mr. Justice Shahid Jamil Khan.
https://sys.lhc.gov.pk/appjudgments/2023LHC6408.pdf

Facts: Through this writ petition, the petitioner seeks direction for decision on applications for Preliminary Planning Permission of a Private Housing Scheme

having been addressed to Administrator, Town Municipal Administration and Chief Officer, District Council.

Issues: i) Whether operation of law may be deemed suspended as outcome of suspension of judgment of High Court in which such law is referred?
ii) Whether the interim Local Government can exercise powers meant to be exercised by the elected Local Government?

Analysis: i) The effect of the suspension of judgment is "in *personum*" i.e. only to the extent of the case. The law or its interpretation mentioned/referred in the judgment, being in *rem*, cannot be suspended as outcome of suspension of operation of judgment of High Court, unless the law is otherwise interpreted and overruled by the Bench of higher strength.
ii) Sections 166 to 169 of Part 9 and Chapter XXVIII of the Punjab Local Government Act, 2022 envisage a procedure to be carried out by the Head of Local Government with other elected office-bearers. Under inevitable circumstances, if the next elected Local Government is delayed, provisions of Sections 205 and 71 of Act ibid would come into play, which need to be construed narrowly for performance of function only and not exercise of power vested in elected Local Government.

Conclusion: i) The law cannot be deemed suspended as outcome of suspension of judgment of High Court in which such law is referred, unless declared *ultra vires.*
ii) The interim Local Government cannot exercise powers meant to be exercised by the elected Local Government.

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25. **Lahore High Court**
Gujranwala Steel Industries v. Industrial Development Bank of Pakistan, etc.
E.F.A No.8251/2023
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6308.pdf

Facts: Through instant Execution Appeal the appellant has assailed the order of Banking Court, whereby, Banking Court declared allotment in favour of appellant void, upon invoking section 23 of the Financial Institutions (Recovery of Finances) Ordinance, 2001('FIO'). It further directed decree holder-cum-mortgagee to redeem subject matter property to judgment debtors-cum-mortgagor and deliver possession thereof. And also various applications of the appellant were dismissed by the Banking Court, having the effect of denying alleged rights claimed by the appellant.

Issues: Whether after satisfaction of the decree and redemption of lease hold rights Banking Court has jurisdiction to invoke section 23 of the Financial Institution (Recovery of Finance) Ordinance, 2001 to decide validity of order of cancellation of lease and/or right consequently claimed?

Analysis: Composite reading of sub-sections to section 23 of the FIO manifests the objectivity intended for protecting the interest of the mortgagee or other categories of charge holder(s) described therein. Section 23 of the FIO defines limits and restricts the exercise of rights by the customer or the judgment debtor, as situation warrants, with respect to the property / asset(s) under mortgage / charge / encumbrance. There is no cavil that sub-section (2) of section 23 of the FIO is relevant and attracted so long the decree is outstanding or the mortgage / charge / encumbrance is enforceable, depending upon the facts in each case. Under sub-section (2) of section 23 of the FIO, element of voidness is attributed to the transaction, through legal fiat, for the purpose of protecting, preserving and safeguarding the rights and entitlement of the respondent No.1 - decree holder. Once decree was adjusted in full, question of voidness of the alleged transaction would become irrelevant for the decree holder, and at that point in time jurisdiction of the Bank Court ends. According to the facts of the case at hand, question of determination of voidness of allotment, upon satisfaction of the decree, falls outside the jurisdiction of Banking Court. And subsection (2) of section 23 of the FIO has no application. Once decree stood satisfied the effect of attachment order would also disappear. Lessor, lessee and allottee each are at liberty to plead, raise or agitate their respective claims before the courts having general jurisdiction.

Conclusion: After satisfaction of the decree and redemption of lease hold rights Banking Court has no jurisdiction to invoke section 23 of the Financial Institution (Recovery of Finance) Ordinance, 2001 to decide validity of order of cancellation of lease and/or right consequently claimed.

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26. **Lahore High Court**
Fazal Hussain v. Razia Begum, etc.,
W.P.No.2998 of 2018,
Mr. Justice Mirza Viqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2023LHC6270.pdf

Facts: This constitutional petition emanates from a suit for recovery of maintenance allowance instituted by one of the respondents, which was ex-parte decreed followed by dismissal of petitioner's application for setting aside said ex-parte decree, hence this petition.

Issues: i) What is the limitation for filing an application for setting aside ex-parte decree of Family Court and when it starts?
ii) Which will prevail out of rule and the basic provision of statute, if there is an inconsistency between these?

Analysis: i) Section 9 (7) of the Family Courts Act, 1964 commands the Family Court to send a notice of passing of ex-parte decree to the defendant together with a certified copy of the decree within three days of the passing of such decree. A

defendant may apply, within 30 days of the service of said notice, to the Family Court by which the decree was passed for an order to set it aside under Section 9 (7) ibid.

ii) Rule 13 of the Family Court Rules, 1965 postulates that an ex-parte decree or proceeding may, for 'sufficient cause' shown, be set aside by the Court on application made to it within 30 days of the passing of the decree or decision, but this rule is apparently showing scorn and derogative of the basic provision of Section 9 (7) of the Family Courts Act 1964.

Conclusion: i) The limitation of 30 days for filing an application for setting aside ex-parte decree would start from the service of notice under Section 9 (7) of the Family Courts Act, 1964 as added by the Ordinance LV of 2002.

ii) It is trite law that whenever there is an inconsistency between the rule and the basic provision of statute, the latter will prevail.

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27. **Lahore High Court**
Mubarak Ahmad v. Muhammad Hayat (Deceased) Through His Legal Heirs and others,
Civil Revision No.341-D of 2017,
Mr. Justice MirzaViqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2023LHC6202.pdf

Facts: The suit of the predecessor-in-interest of respondents, seeking separate possession through partition of suit properties being joint interse parties, was resisted by the petitioner claiming to be a *bonafide* purchaser. The trial court passed the preliminary decree and consequent appeal filed by the petitioners of both these petitions as well as one of the respondents was dismissed, which verdict is now impugned in these two petitions under Section 115 of the Code of Civil Procedure.

Issues: i) How can a party claim his right relying upon private partition of joint land?

ii) Can any co-sharer sell joint property with specific boundaries,especially during the pendency of the suit?

Analysis: i) Chapter XI of the Land Revenue Act, 1967 deals with the partition of the joint land.Section 147 of the Act ibid provides a mechanism for affirmation of partitions privately effected which clearly manifests that if a party pleads some private partition affected under some family settlement with regard to partition of joint land, then such party has to apply to the revenue officer for obtaining an order for affirmation of such partition.

ii)Any transaction that took place during the pendency of the suit would be governed in terms of Section 52 of the Transfer of Property Act, 1882 on the touchstone of principle of *lis pendens*. A co-sharer has every right to transfer or sell the joint property to a third person, but such transfer or alienation is always dependent upon the actual share of such co-owner and if he transfers or alienates the property within his share, the vendee will step into his shoes accordingly.

Conclusion: i) In absence of any order of affirmation in terms of Section 147 of the Land Revenue Act, 1967, the party relying upon private partition would be precluded to claim any right thereunder.
ii) No co-sharer can sell joint property with specific boundaries and whenever any such transaction is made, that would always be the subject to the partition.

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28. **Lahore High Court**
Evacuee Trust Property Board through its Secretary v. Ghyas Ahmad Rana etc.
W.P.No.17384/2000
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC6472.pdf

Facts: Through this constitutional petition, the Evacuee Trust Property Board has challenged the validity of order passed by Wafaqi Mohtasib whereby the complaint filed by the respondent No.1 was accepted.

Issues: i) Whether a Minister holds the authority to make recommendation/proposal to the Evacuee Trust Property Board to grant an evacuee property to any specific person on lease without adopting the procedure laid down in law?
ii) Whether Wafaqi Mohtasib has jurisdiction to pass direction to any department to comply with any recommendation made by a Minister?
iii) Whether an order passed by any authority beyond its jurisdiction and against the public policy in its inception is nullity in the eyes of law?
iv) Whether it is inalienable obligation of the Courts to be very careful and cautious being custodian of the public properties, public interest and while dealing with its matters?

Analysis: i) The Evacuee Trust Properties (Management & Disposal) Act, 1975 is a special law which provides mechanism for the management, lease and disposal of the evacuee trust properties. In the Act as well as Scheme ibid no provision is available whereby any authority is vested with the Minister to make recommendations to the petitioner-Board for lease of any plot to any individual… A minister is denuded of any power to issue, any such recommendations for lease of plot and if any recommendation is so made that would be patently illegal and without lawful authority, as it is settled law that any order passed by an authority without having jurisdiction that order would be void ab-initio…Any recommendation of the Minister for grant/ lease of the plot are liable to be quashed being void ab- initio and any superstructure built on the basis whereof shall also be dismantled automatically.
ii) Suffice it to say that the office of Wafaqi Mohtasib was created under the "Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983" dated 24.01.1983 whereby under Section 9 of the Order ibid, the jurisdiction, functions and powers of Mohtasib are provided...The case for lease of plot owned

by the petitioner-Board to the respondent No.1 does not fall within the jurisdiction of Wafaqi Mohtasib as provided in Section 9 of the Order ibid.
iii) Admittedly all the affairs of the state are managed and run by the instrument of written constitution as well laws and functions/ business of each and every department is to be carried out under the well described manifest written jurisdiction and each portfolio has to exercise its powers with the described precincts of its jurisdiction and any transgression whereof would be considered as illegal. Moreover according to Section 23 of the Contract Act, 1872, if any order is passed by any authority beyond its jurisdiction and against the public policy, such order in its inception is nullity in the eyes of law and never convey any absolute title in favour of the beneficiary…It is settled law when the basic order has been passed without jurisdiction and without lawful authority, then all the superstructure built on the said order shall automatically collapse/crumble down.
iv) The Courts of law are custodian of the public properties, public interest and while dealing with matters relating to such properties/assets or interests, it is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul is being played with the state assets. An extraordinary obligation is placed upon the courts to keep abreast itself with law and facts of the case and when certain material facts unearthed before it then the matter should be decided as per law even without being influenced by respective pleadings of the parties…

Conclusion: i) A Minister does not hold the authority to make recommendation/proposal to the Evacuee Trust Property Board to grant an evacuee property to any specific person on lease without adopting the procedure laid down in law.
ii) Wafaqi Mohtasib has no jurisdiction to pass direction to any department to comply with any recommendation made by a Minister.
iii) Yes, an order passed by any authority beyond its jurisdiction and against the public policy in its inception is nullity in the eyes of law.
iv) Yes, it is inalienable obligation of the Courts to be very careful and cautious being custodian of the public properties, public interest and while dealing with its matters.

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29. **Lahore High Court**
Mst. Samina Zia v. Federation of Pakistan & others
Writ Petition No.6927 of 2021/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC6183.pdf

Facts: Petitioner sought direction for respondents to pay her the amounts present in the joint saving account, maintained by her along with her deceased husband with Pakistan Postal Services, by calculating settled profit.

Issue: Whether mere death of one of the joint account holders of saving account with Pakistan Postal Services can deprive the survivor from profits accrued on the amounts deposited in the joint account after said death?

Analysis: After amendments brought in the Rules of 1981 by way of the Post Office Savings Account (Amendment) Rules, 2014, types of Savings Accounts have been provided in Rule 4 according to which types of Individual Accounts are: Single Account, Joint Account and Pension Account. Joint Account has further two types: A-Type, payable to the depositors jointly or to two survivors jointly or to the sole survivor. It is provided that such account may be operated by all the depositors or both the survivors or the sole survivor as the case may be; B-Type, payable to any one of the depositors or either of two survivors or to the sole survivor and such account can be operated by one of the depositors or either of the two survivors or the sole survivor as the case may be. In the instant case, joint account was opened by two individuals and the survivor is one person, therefore, irrespective of the types of the joint account, sole survivor is entitled to retain and operate the account within the contemplation of Rule 4 [of the Post Office Savings Account Rules, 1981]…Similar provision is also available in the Post Office Savings Account Scheme, 2019…It is clearly deducible that the joint account, even after death of one of the joint account holders, does not cease to exist rather remains operative to be maintained by the survivor(s) and no damage is caused to the amount available in the joint account or deposited in future…Regarding interest on deposits in joint account, I am unable to see any specific provision in the Rules of 1981 and the Scheme of 2019 on the subject….*Ex facie* non-mentioning of situation of death of one of the account holders of joint accounts in the afore-referred provisions may not necessarily be construed a lacuna or gap in the legislation rather it is due to the fact that such situation does not affect the joint accounts qua its operation / running as well as interest on deposits in such accounts.

Conclusion: Mere death of one of the joint account holders of saving account with Pakistan Postal Services cannot deprive the survivor from profits accrued on the amounts deposited in the joint account after said death.

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30. **Lahore High Court**
Muhammad Akmal son of Riaz Hussain v. The State, etc.
Crl.Misc.No. 1454-B of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6429.pdf

Facts: Through this petition, the petitioner has sought post arrest bail in case FIR registered for the offence under Section 302 PPC.

Issues: i) What is the criteria of grant of bail to an accused in non-bailable case on medical ground?
ii) Whether opinion expressed by the medical board on medical report, being highly technical, can be brushed aside lightly by the Court?

Analysis: i) The criteria for grant of bail to an accused in a non-bailable case on medical

ground is that the sickness or ailment with which he is suffering is such that it cannot be properly treated within the jail premises and that some specialized treatment is needed and his continued detention in jail is likely to affect his capacity or is hazardous to his life. It has been held by the august Supreme Court of Pakistan in case titled "Mian Nazir Ahmad v. The State, etc." (2016 SCMR 1536) that if an accused is patient of acute disease, which cannot be satisfactorily treated in jail and it is not possible to provide first aid in case of emergency of said disease, then the under trial petitioner can be granted bail.

ii) It is also not out of place to mention here that learned counsel for the complainant has failed to counter the opinion/findings of Medical Board in its report. While, on the other hand, the medical report, being highly technical and opinion expressed by the medical board cannot be brushed aside lightly by the Court in the absence of any counter-opinion or any medical literature placed before the court to contradict the opinion given by the Board.

Conclusion: i) The criteria for grant of bail to an accused in a non-bailable case on medical ground is that the sickness or ailment with which he is suffering is such that it cannot be properly treated within the jail premises and that some specialized treatment is needed and his continued detention in jail is likely to affect his capacity or is hazardous to his life.

ii) No, opinion expressed by the medical board on medical report, being highly technical, cannot be brushed aside lightly by the Court in the absence of any counter-opinion or any medical literature placed before the court to contradict the opinion given by the Board.

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31. **Lahore High Court**
Mst. Rubina Khatoon v. ASJ/JOP, etc.
W.P No.5109/2020
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6438.pdf

Facts: This petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is voiced against the order whereby the Ex-Officio Justice of Peace, disposed of the petition filed by the petitioner for implementation of his earlier order for recording of statement of petitioner.

Issue: i) Whether functions of an Ex. Officio Justice of Peace, as described in clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C., are quasi-judicial?

ii) Whether an Ex. Officio Justice of Peace can pass a subsequent superseding order in conflict and in derogation with his earlier order passed by him in the same case?

iii) What does the term "*functus officio*" literally denote?

Analysis: i) It has been settled by now that functions of an Ex. Officio Justice of Peace, as described in clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C.,

are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind.
ii) At present, there exists no provision in the Cr.P.C, which enables and empowers an Ex. Officio Justice of Peace to review or revise its own order once he has passed the same in a case and has attained finality, particularly when in respect of that order of Ex. officio Justice of Peace, no adverse finding or order of this Court is in field.
iii) The term "functus officio" literally denotes 'of no further official authority or legal effect' or 'having performed his office', and is used in the context of an officer who is no longer in office or has fulfilled its purpose. This doctrine has an extensive and pervasive application to both the judicial and quasi-judicial authorities and if such doctrine is considered insignificant, it will lead to disorder, therefore, this should be given credence to bring in decisiveness and certitude to legal proceedings.

Conclusion: i) Functions of an Ex. Officio Justice of Peace, as described in clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C., are quasi-judicial.
ii) An Ex. Officio Justice of Peace cannot pass a subsequent superseding order in conflict and in derogation with his earlier order passed by him in the same case.
iii) The term "functus officio" literally denotes 'of no further official authority or legal effect' or 'having performed his office', and is used in the context of an officer who is no longer in office or has fulfilled its purpose.

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32. **Lahore High Court**
Muhammad Bilal v. The State etc.
W.P No.15198/2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6453.pdf

Facts: Through this constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section 561-A of the Code of Criminal Procedure, 1898, the petitioner has assailed the order passed by Duty Magistrate 1st Class whereby he discharged the respondent No.3 from the case registered for the offences under section 447, 511 of the Pakistan Penal Code, 1860.

Issues: i) Whether there exists any term as "Duty Judge" or "Duty Magistrate" is any provision in the Cr.P.C. which abridges the powers of a magistrate duly appointed in a district in accordance with the law?
ii) Whether the making of rules in respect of distribution of business by the Sessions Judge with respect to performance of duty by an available Magistrate, restraint the powers of such Magistrate?
iii) What does the law require from a Magistrate?

Analysis: i) There exists no "term" as "Duty Judge" or "Duty Magistrate" or any other provision in the Cr.P.C. which abridges the powers of a Magistrate duly appointed

in a District in accordance with the law and the term Duty Magistrate is nothing but alien to the provisions contained in Cr.P.C.

ii) The terms i.e. "Duty Judge or Duty Magistrate" are used in pursuance of "Distribution of Business" by the Sessions Judge of the District, who under Section 17 of Cr.P.C can also frame rules or give special orders consistent with Cr.P.C as to the distribution of business among such Magistrates because they are subordinate to the Sessions Judge by virtue of said Section. Even making of rules in respect of Distribution of business by the Sessions Judge with respect to performance of duty by an available Magistrate in case of absence of a Magistrate to whom the Sessions Judge after making rules or giving social orders has allocated a specific Police Station or category of cases, does not [restraint]s the powers of such Magistrate and also ousting of Jurisdiction of such Magistrate.

iii) Law requires Magistrate to judicially examine the police report and to act fairly, justly and honestly. He is supposed to go through the material collected during investigation, see its admissibility in evidence and then to pass an order in accordance with law. Magistrate is not supposed to rely upon the case diary or a piece of document not admissible in evidence e.g. confession of accused before the Police Officer which evidence is not admissible under articles 38 and 39 of the Qanun-e-Shahadat, Order 1984.

Conclusion: i) There exists no term as "Duty Judge" or "Duty Magistrate" or any other provision in the Cr.P.C. which abridges the powers of a Magistrate duly appointed in a District in accordance with the law.

ii) Even making of rules in respect of distribution of business by the Sessions Judge with respect to performance of duty by an available Magistrate in case of absence of a Magistrate to whom the Sessions Judge after making rules or giving social orders has allocated a specific police station or category of cases, does not restrain the powers of such Magistrate and also ousting of jurisdiction of such Magistrate.

iii) Law requires Magistrate to judicially examine the police report and to act fairly, justly and honestly. He is supposed to go through the material collected during investigation, see its admissibility in evidence and then to pass an order in accordance with law.

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33. **Lahore High Court**
Muhammad Ramzan v. The State and another.
Crl.Revision No.352 of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6420.pdf

Facts: The petitioner facing the trial of case FIR for the offence under section 376 PPC has called in question the order passed by learned Addl: Sessions Judge, whereby he not only allowed the prosecution to submit interim challan owing to receipt of supplementary PFSA report but also accepted application filed under section 540 of the Code of Cr.P.C. for re-examination of lady doctor/PW.

Issue: Whether re-summoning and re-examination of a PW and allowing the prosecution to place on record the Supplementary report of PFSA does or does not amount to fill up the lacuna of prosecution's case?

Analysis: This Court in exercise of his jurisdiction under provisions of Section 540 Cr.P.C. shall ensure that by summoning or recalling the PW.8 would meet the ends of justice but not to give illegal advantage to one party over the other and could not be used as a vehicle of exploitation. It is settled principle of law that the duty of the Court is to administer justice in just and fair manner and nevertheless, assume the status of a prosecutor, to put an accused in undue advantage (…) while exercising powers under section 510 Cr.P.C. the court if considers necessary in the interest of justice, may summon and examine the person by whom report has been made, and in case of any ambiguity in the report seek clarification thereof on the basis of existing report of the Government and to allow the Government analyst to conduct a fresh test or prepare another report, would amount for giving the chance to the prosecution for filling the gaps and lacunas in the report already submitted (…) the Court cannot allow one of the parties to fill lacunas in their evidence or extend second chance to a party to improve their case for or the quality of evidence tendered by them, any such step would tarnish the objectively and impartiality of the Court, which is hallmark, such favourd intervention, no matter how well-meaning, strikes at the very foundation of a Trial, which cannot be allowed at any cost**.**

Conclusion: Re-summoning and re-examination of a PW and allowing the prosecution to place on record the Supplementary report of PFSA does amount to fill up the lacuna of prosecution's case.

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34. **Lahore High Court**
Ghulam Nazik, etc. v. The State, etc.
Crl.Misc.No.7916-B of 2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6463.pdf

Facts: The petitioners sought pre-arrest bail in case FIR lodged under Section 406 PPC, on the ground that the allegations levelled by the complainant are based upon *mala fide* and that no tangible incriminating evidence whatsoever is available against the petitioners to connect them with the alleged crime.

Issues: i) What are the essential ingredients to attract the offence of criminal breach of trust?
ii) Whether mere broken promises or business terms constitute the offence under section 406 PPC?
iii) Whether to prove mala fide or ulterior motive on the part of the complainant as well as police are *sine qua non* for the confirmation of pre-arrest bail in every case?

Analysis: i) [In order] to attract the offence of criminal breach of trust punishable under section 406 PPC, the essential ingredients are:-

i. There should be an entrustment by a person who reposes confidence in the other, to whom property is entrusted.
ii. The person in whom the confidence is placed, dishonestly misappropriates or converts to his own use, the property entrusted.
iii. Dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged.
iv. Dishonestly uses or disposes of that property in violation of any legal contract, express or implied which he has made touching the discharge of such trust.

ii) It has been well settled by now that mere broken promises or business terms do not constitute the offence under section 406 PPC.

iii) Learned counsel for the complainant has argued with vehemence that the petitioners has failed to point out any mala fide or ulterior motive on the part of the complainant as well as police which are *sine qua non* for the confirmation of pre-arrest bail and these grounds are very much lacking in this case. I am not in agreement with the supra mentioned submission because it is not possible in every case to prove the same, however, these grounds can be gathered from the facts and circumstances of the case.

Conclusion: i) Above mentioned are the essential ingredients to attract the offence of criminal breach of trust.

ii) Mere broken promises or business terms do not constitute the offence under section 406 PPC.

iii) To prove mala fide or ulterior motive on the part of the complainant as well as police are not *sine qua non* for the confirmation of pre-arrest bail in every case.

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35. **Lahore High Court**
Muhammad Imran v. The State and another.
Crl.Misc.No.5878-B/2023
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2023LHC6 448.pdf

Facts: Through the instant petition under section 497 Cr.P.C, the petitioner is seeking post-arrest bail in case FIR, registered for the offences under sections 302, 324, 337-F(iii), 337-F(i), 34 PPC.

Issues: i) What is the definition of "Accused"?

ii) Whether the opinion of investigating officer as to the innocence or guilt of the accused depends on the soundness of the material on which it is based?

iii)Whether benefit of doubt can be extended at bail stage?

iv) Whether heinousness of offence can impede the release of accused on bail if otherwise his guilt calls for further probe?

Analysis: i) The definition of an accused person has been provided in a salutary judgment

reported as “Brig.(Retd.) F. B. Ali and another Vs. The State”[PLD 1975 SC 506] according to which “the mere lodging of an information does not make a person an accused nor does a person against whom an investigation is being conducted by the police can strictly be called an accused. Such person may or may not be sent up for trial. The information may be found to be false. **An accused is, therefore, a person charged in a trial**. The *Oxford English Dictionary* defines an “accused” as a person "charged with a crime" and an "accusation" as an "indictment'. *Aiyer* in his *Manual on Law Terms* also gives the same meaning. I am of the view, therefore, that a person becomes an accused only when charged with an offence”… Perusal of the above definition clearly reflects that any person against whom an accusation is made cannot be dubbed as an accused unless and until he is found involved by the Investigating Officer and in this regard a specific order for his arrest is made by him…

ii) Although the opinion of the police is not binding upon the Courts, but being adverse to the prosecution, it creates doubt about the veracity of the prosecution case against the petitioner. The opinion of investigating officer as to the innocence or guilt of the accused depends on the soundness of the material on which it is based [1984 SCMR 429 & 1984 SCMR 521]. The same has the persuasive value, if based upon cogent and concrete material [2021 SCMR 1899 & 2023 SCMR 308] …

iii) It is settled principle of law that benefit of doubt can be even extended at bail stage.

iv) Mere heinousness of offence could not impede the release of accused on bail if otherwise his guilt call for further probe, nor bail could be withheld as a strategy for punishment.

Conclusion: i) See analysis portion.

ii) Yes, the opinion of investigating officer as to the innocence or guilt of the accused depends on the soundness of the material on which it is based.

iii) Yes, benefit of doubt can be extended even at bail stage.

iv) Heinousness of offence can not impede the release of accused on bail if otherwise his guilt calls for further probe.

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36. **Lahore High Court**
The State v. Muhammad Altaf
Criminal Appeal No.482/2022
Mr. Justice Asjad Javaid Ghural, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6388.pdf

Facts: Through instant appeal under Section 48 of the Control of Narcotic Substances Act 1997, the State has assailed the vires of judgment, passed by learned Additional Sessions Judge/MCTC, whereby the respondent/accused was convicted under section 9 (c) of the Act ibid, and sentenced.

Issues: i) Whether plea of guilt could be recorded at any stage during the trial?

ii) Whether a Court, while considering voluntary confession of an accused, can take lenient view, at the time of passing of the sentence?

Analysis: i) According to first view it is mandatory for the Court to follow all the processes in the trial once accused denies the charge because there is no intermediatory stage to record confession or second plea of accused which could only be done when the statement of accused is recorded under section 342 of the Code; of course, second view is otherwise. (…) it can safely be held that there is no specific prohibition for recording plea of guilt at any stage of trial and such arrangement in no case opposes to right to fair trial if accused opts to waive the same to cut short the process in order to avoid the agony or rigors of protracted trial. However, Court is always at guard to take a careful look why the accused is admitting his guilt and shall ensure that the trial of offence entailing capital punishment should not be terminated mere on the admission of guilt by the accused, for which recording of evidence is essential.

ii) It is a well-settled principle of law that when an accused voluntarily admits his guilt before the Court; he must be dealt with more leniently in terms of quantum of sentence. This principle is based on a celebrated legal maxim "Cum confitente sponte, mitius est agendum" which means "he who willingly confesses, should be dealt with more leniently".

Conclusions: i) Plea of guilt could be recorded at any stage of trial as there is no specific prohibition in this regard, however, trial of offence entailing capital punishment should not be terminated mere on the admission of guilt by the accused, for which recording of evidence is essential.

ii) When an accused voluntarily admits his guilt before the Court; he must be dealt with more leniently in terms of quantum of sentence on the principle of Cum confitente sponte, mitius est agendum.

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37. **Lahore High Court**
Shoaib Sohail v. Ex-officio Justice of Peace and others
Writ Petition No. 598/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6369.pdf

Facts: Consequent to the cancellation of FIR against the petitioner being false, the petitioner asked the concerned SHO to initiate proceedings under section 182 PPC against some of the respondents. The SHO refused the said request whereupon he filed an application under section 22-A Cr.P.C before the Ex-officio Justice of peace for a direction in this regard to the said SHO but the said application was also dismissed. The instant petition was directed against the said order.

Issues: i) Whether an Ex-officio Justice of Peace can direct a police officer to initiate action under section 182 PPC?

ii) Whether a person can be proceeded against under section 182 PPC without serving him with a show cause notice?

Analysis: i) Section 195(1)(a) Cr.P.C. sets out the procedure for prosecuting the offence under section 182 PPC. It states that no court shall take cognizance thereof except on the complaint in writing of the public servant concerned or some other public servant to whom he is subordinate….Section 25 Cr.P.C. provides for the appointment of Ex-officio Justice of Peace. It states that by virtue of their respective offices, the Sessions Judges and, on nomination by them, the Additional Sessions Judges are Justices of Peace within and for the whole of the district of the Province in which they are serving. Section 22-A(6) Cr.P.C. describes their powers. There is no doubt that the Ex-officio Justice of Peace can issue directions to the police authorities, and they are bound to comply with them, but they are not subordinate to him within the contemplation of section 195(1)(a) Cr.P.C. Hence, he cannot direct a police officer to initiate action under section 182 PPC….The direction given to the SHO by the learned Ex-officio Justice of Peace to initiate proceedings against the petitioner under section 182 PPC is beyond the purview of section 22-A Cr.P.C., hence in excess of the jurisdiction conferred upon him under the law.

ii) The law is very well settled that before taking action under section 182 PPC, the person sought to be prosecuted should be served with a show cause notice and he may be given an opportunity to explain his position/defence.

Conclusion: i) An Ex-officio Justice of Peace cannot direct a police officer to initiate action under section 182 PPC.

ii) A person cannot be proceeded against under section 182 PPC without serving him with a show cause notice.

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38. **Lahore High Court**
Abdul Rehman v. The State etc.
Criminal Misc. No.62271-B of 2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6469.pdf

Facts: Through instant petition, the petitioner/accused sought post-arrest bail in case FIR registered under Sections: 302, 148, 149 PPC on the ground of juvenility.

Issue: Whether an accused more than sixteen years of age on the day of occurrence against whom reasonable grounds are available that connect him with the commission of a heinous offence is entitled to post-arrest bail?

Analysis: So far as ground of juvenility of the petitioner is concerned, suffice it to say that as per birth certificate of the petitioner annexed with this petition (available at page No.16 of the instant petition), date of birth of the petitioner has been mentioned as 08.01.2007 meaning thereby that he was more than sixteen years of age on the day of occurrence i.e. 01.05.2023, therefore, when there are reasonable grounds available on the record to connect the petitioner with the commission of heinous offence then he does not deserve concession of bail even on the ground of

juvenility and in this regard, sub-Section: (4) of Section: 6 of the Juvenile Justice System Act, 2018 can be advantageously referred… Furthermore, heinous offence has been defined under sub-Section: (g) of Section: (2) of the Act…

Conclusion: An accused more than sixteen years of age on the day of occurrence against whom reasonable grounds are available that connect him with the commission of a heinous offence is not entitled to post-arrest bail.

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39. **Lahore High Court**
Robina Kausar v. Umar Majeeb Shami
C.R. No.75693 of 2022
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC6245.pdf

Facts: Plaintiff filed a suit for specific performance against the defendant. The relief of specific performance was declined by learned Civil Judge on the ground of limitation while the earnest money was directed to be returned. In cross appeals filed by the petitioner and respondent, the judgment of the trial court to the extent of refusal of grant of specific performance was affirmed while the decree for the return of earnest money was set aside. In the two revision petitions plaintiff has assailed judgments/decree of the courts below.

Issues: i) When terms of contract are reduced into writing whether any other evidence could be given except the contents of such document?
ii) Whether it is permissible in presence of written contract of sale to lead any evidence of oral agreement varying, or modifying the terms of agreement?
iii) When the period of limitation shall commence for the purposes of specific performance of a contract?
iv) Whether existence of a mortgage qua the property subject-matter of sale has any bearing on the question of limitation in suit for specific performance?
v) Whether the date stipulated in contract as provided in first part of Article 113 of the Act could be ignored on the basis of its second part on the basis of pending litigation?
vi) When main relief of enforcement of agreement or return of earnest money having been declined on the basis of bar of limitation, whether order for the return of earnest money could be passed on the equitable jurisdiction?

Analysis: i) Chapter VI of Qanun-e-Shahadat Order, 1984 relates to exclusion of oral by documentary evidence. Article 102 provides that where the terms of a contract, or a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence, upon satisfaction of conditions prescribed, is admissible.

ii) Likewise, Article 103 provides that where the terms of a contract are in writing and proved according to the mode provided no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives-in-interest, for the purposes of contradicting, varying, adding to, or subtracting from, its terms.

iii) Article 113 of the Act provides that for the purposes of specific performance of a contract limitation shall commence where the date is fixed for the performance from that date, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

iv) In Muhammad Sadiq and others v. Muhammad Mansha and others (PLD 2018 SC 692) it was observed to the effect that existence of a mortgage qua the property subject-matter of sale has no bearing on the question of limitation for specific performance of agreement to sell which proceed independently and on its own footing, therefore, limitation in suchlike cases would begin to run from the date recorded in the agreement as prescribed by the first limb of Article 113 of the Act.

v) Reference can also be made to the case of Haji Abdul Karim and others v. Messrs Florida Builders (Pvt) Limited (PLD 2012 SC 247) where it was observed to the effect that cases falling in the ambit of first part of Article 113 of the Act could not be considered on the touchstone of the second part for both being independent were meant to cater for two different type of suits for specific performance in relation to limitation and that limitation is a command of law prescribing statutory period within which the right is to be exercised and enforced as such the courts would have no lawful authority to ignore the date/period stipulated in contract which as a legal consequence is meant to regulate the period of limitation in terms of first part of Article 113 of the Act and that no exemption qua the period of limitation could be claimed in law by a party on account of pending litigation simpliciter in the absence of an order of competent court preventing such party from suing.

vi) In so far as the argument that the respondent having not proved the return of earnest money petitioner should have been allowed the return of the earnest money, suffice it to observe that the main relief of enforcement of agreement having been declined, because of bar of limitation with respect to the suit for specific performance or alternatively for the return of earnest money, the same could have been instituted within three years from the fixed date. This not having been done, both reliefs could not be allowed and were rightly so declined. The argument that the court in equitable jurisdiction could order the return of earnest money is without substance. Of course, the court could have allowed the return of money provided the suit itself was not barred by time and having recorded the findings concurrently that the suit was not within time and was filed after more than three years after the expiry of limitation, the petitioner was not entitled to any such relief.

Conclusions: i) Article 102 Qanun-e- Shahadat, 1984 excludes the oral evidence when the

terms of contract have been reduced to the form of a document.
ii) When the terms of a contract are in writing and proved according to the mode provided no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives-in-interest, for the purposes of contradicting, varying, adding to, or subtracting from, its terms.
iii) In suit for specific performance of a contract limitation shall commence where the date is fixed for the performance from that date, or if no such date is fixed, when the plaintiff has notice, that performance is refused.
iv) Existence of a mortgage qua the property subject-matter of sale has no bearing on the question of limitation for specific performance of agreement to sell.
v) First part of Article 113 of the Act could not be considered on the touchstone of the second part. Courts have no lawful authority to ignore the date/period stipulated in contract in terms of first part of Article 113 of the Act and that no exemption qua the period of limitation could be claimed in law by a party on account of pending litigation simpliciter.
vi) When main relief of enforcement of agreement having been declined, because of bar of limitation or alternatively for the return of earnest money, order for return of earnest money could not be passed on the equitable jurisdiction.

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40. **Lahore High Court**
Mst. Samina Kausar and others v. Mst. Nasreen Bibi and others
C.R. No.661 of 2012
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC6258.pdf

Facts: The petitioners in this civil revision have challenged the judgments and decree of the courts below whereby their suit for declaration with consequential relief was dismissed by the Civil Judge which judgment was affirmed in appeal by Addl. District Judge.

Issues: i) Whether the evidence of a relative is relevant?
ii) Whether the appearance of a medical practitioner in the witness-box is necessary to establish the plea of mental unsoundness or disability as claimed?

Analysis: i) In Muhammad Munir and others v. Umer Hayat and others (2023 SCMR 1339) it was observed to the effect that the evidence of layman, especially relatives like son, daughter, wife, etc. may be relevant but being biased and exaggerated it cannot be conclusive.
ii) In law where the treatment is claimed to be by a qualified medical practitioner the appearance of such expert in the witness-box is necessary and non-production of such person without any plausible explanation would amount to a serious evidentiary flaw. The plea of the petitioners of the deceased suffering from marz-ul-maut itself also could not be proved by any medical evidence or other evidence worthy of consideration. Crucial point for determination is the plea of insanity or unsoundness of mind at the time of attestation of mutations and best evidence to

prove it could be of medical attendant/expert who treated the petitioners' predecessor at the relevant time but he was not examined nor any plausible explanation was furnished as to why he was not produced in evidence. Burden of proving the alleged unsoundness of mind was in the first instance on the petitioners who had failed to discharge it by producing any credible evidence.

Conclusion: i) Evidence of layman, especially relatives like son, daughter, wife, etc. may be relevant but being biased and exaggerated it cannot be conclusive.
ii) The appearance of a medical practitioner in the witness-box is necessary to establish the plea of mental unsoundness or disability as claimed and non-production of such person without any plausible explanation would amount to a serious evidentiary flaw.

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41. **Lahore High Court**
Muhammad Munir (deceased) through L.Rs v. Muhammad Zia Ullah and others
C.R. No.63814 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC6235.pdf

Facts: Petitioners in this civil revision challenge the judgments and decree of the courts below whereby the suit of petitioners for pre-emption was dismissed and appellate court upheld the decision of the trial court.

Issues: i) What if the pre-emptor fails to make the requisite Talbs in terms of the law?
ii) What is the procedure to prove Talb-e-Muwathibat?

Analysis: i) Section 13 of the Act contemplates that right of the pre-emptor shall extinguish if the pre-emptor fails to make the requisite Talbs in terms of the law. As per said provision the right of pre-emption shall be extinguished unless a person makes the mandatory Talb-e-Muwathibat, Talb-e-Ishhad and Talb-e-Khasoomat.
ii) The pre-emptor in the first instance has to establish that Talb-e-Muwathibat (i.e. the demand to pre-empt the sale at the very spur of cognition of sale) failing which the right shall become extinct. For proving Talb-e-Muwathibat it was incumbent to prove who informed about the sale, at what date, time and place the pre-emptor received the information, who was present in the Majlis when Talbe-Muwathibat was made and further that there was no delay in this expression of intent as the very first reaction on information of sale i.e. immediate declaration by the pre-emptor that he had a right to pre-empt the reported sale which he shall enforce. In this respect, the source of knowledge i.e. the person who informed about the sale, the precise time at which he received the information and his immediate response to pre-empt the sale are integral elements that need to be established by evidence of unimpeachable probative value in the form of credible, independent and truthful witnesses. The statement of the informer in this context becomes a necessary condition to weight the value and operation of other factors. Under the law the informer is expected to show and prove that he acquired

information through reliable source, like the patwari and/or tehsildar or that he himself was present at the time of sale or had the occasion to be present in the patwarkhana for any other personal purpose but no such context was claimed to exist.

Conclusion: i) Right of the pre-emptor shall extinguish if the pre-emptor fails to make the requisite Talbs in terms of the law.
ii) See above in analysis clause.

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42. **Lahore High Court**
Manzurul Haq v. Federation of Pakistan, etc.
W.P. No.20679/2023
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6154.pdf

Facts: Through this constitutional petitioner, the petitioner has challenged the constitutionality of the first proviso to Division-VII of Part-1 of First Schedule to the Income Tax Ordinance, 2001 Ordinance, inserted through section 5(53) of the Finance Act, 2022.

Issues: i) Whether a person who acquired securities before the omission of the provisio to sub-section (1) of section 37 of the Income Tax Ordinance 2001, retained those securities for over one year and sold after the omission of the provisio to sub-section (1) of section 37 of the Income Tax Ordinance 2001can be subjected to tax on capital gains by virtue of section 37 of the Income Tax Ordinance 2001?
ii) Whether a vested right can be claimed against the right of the legislature to tax, when neither any vested right had conclusively accrued, nor subject matter transaction graduated to achieve status of a past and closed transaction?

Analysis: i) Evidently, securities were acquired in the year 2011 and sold during Tax Year 2023, and amendment was introduced through Finance Act 2022. Apparently, petitioner fails to underpin significance of omission of proviso to subsection (1) of section 37A of Ordinance, 2001 through Finance Act 2014. There is no cavil that 'proviso' provided scaffolding for the reasoning of the decision in the case of Anwar Yahya and 3 others. (supra), but said proviso was omitted through the Finance Act 2014, hence, no protection could be claimed retrospectively. The controversy is not regarding withdrawal of vested rights but it is for the petitioner to demonstrate that how protection of proviso could be extended, after being omitted from the statute book. It is evident that no protection was available to the petitioner at the time of disposal of the securities – a triggering point for the determination of tax under section 37A of the Ordinance, 2001. In absence of the proviso to section 37A – omitted since 2014 – no question of inapplicability of section 37A arises. Learned counsel for the petitioner failed to show any statutory representation / promissory estoppel, allegedly extended before amendment was introduced in Division VII. No question of availability, let alone accrual of vested

right, is made out. No inconsistency between section 37A of the Ordinance, 2001 and impugned amendment is found, since proviso to sub-section (1) of section 37A was earlier omitted through Finance Act 2014, and even the expression "held for a period of less than a year" appearing in section 37A of the Ordinance stood omitted through Finance Act 2015. It is reiterated that at the time of leviability of tax, for the purposes of gain tax accrued, no protection was available to support claim of any exemption or concession, whatsoever.

ii) In terms of the proviso, added through the Finance Act 2022, the criterion for availing benefit of zero percent of rate of tax was made permissible, where holding period exceeds six years but condition of acquisition of securities on or after first day of July 2002 was imposed. The period of holding of securities and date of acquisition for availing benefit of zero percent tax was prescribed. No vested right could be claimed against the right of the legislature to tax, when neither any vested right had conclusively accrued, nor subject matter transaction graduated to achieve status of a past and closed transaction.

Conclusion: i) A person who acquired securities before the omission of the provisio to sub-section (1) of section 37 of the Income Tax Ordinance 2001, retained those securities for over one year and sold after the omission of the provisio to sub-section (1) of section 37 of the Income Tax Ordinance 2001can be subjected to tax on capital gains by virtue of section 37 of the Income Tax Ordinance 2001?

ii) No vested right can be claimed against the right of the legislature to tax, when neither any vested right had conclusively accrued, nor subject matter transaction graduated to achieve status of a past and closed transaction.

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43. **Lahore High Court**
Jahangir Khan v. Abdul Ghaffar (deceased) through L.Rs. etc.,
Civil Revision No.485-D of 1993,
Mr. Justice Ahmad Nadeem Arshad.
https://sys.lhc.gov.pk/appjudgments/2023LHC6290.pdf

Facts: Through this Civil Revision filed U/S 115 of the Code of Civil Procedure, 1908, the petitioner has assailed the vires and legality of the judgment and decree of the appellate court, whereby the petitioner's suit for the decree of declaration and permanent injunction was dismissed by way of allowing the appeal of one of the respondents and setting aside the judgment and decree of the trial Court.

Issues: i) Whether a mutation entered on the strength of registered sale deed may be cancelled by a revenue officer on the basis of violation of Martial Law Regulation?

ii) Whether a purchaser through registered sale deed would cease to be owner of subject property due to cancellation of mutation attested in his favour for implementation of such registered sale deed?

iii) Whether a sale can be cancelled on basis of Para 24 of Martial Law Regulation 115 of 1972 after completion of alienation of the property through a registered sale deed?

iv) Whether protection under Section 41 of the Transfer of Property Act, 1882 may be extended to a subsequent purchaser, who neither specifically seeks such protection in pleadings nor establishes said fact through any evidence?

Analysis: i) The revenue officer is duty bound to incorporate registered sale deed in the revenue record through a mutation and he has no authority to cancel such mutation without affording notice and opportunity of hearing to purchaser.

ii) A mutation is not a title deed. Even if the mutation sanctioned on the strength of the sale deed is cancelled, the title deed in shape of registered sale deed still exists in favour of the purchaser, on the strength whereof he remains owner of subject property.

iii) Under Section 25(4) of the West Pakistan Lands Reforms Regulation (Martial Law Regulation No.64 of 1959) and paragraph No. 24(4) of Land Reforms Regulation, 1972 (Martial Law Regulation No.115 of 1972), there is a restriction upon the owner of a holding to alienate his holding through sale, gift or otherwise of any portion, which might reduce the size of his holding to an area below the limit of an economic holding. Provisions ibid also forbid a person owning an economic holding to reduce it to subsistence holding through alienation. The same restriction is imposed upon a person owning subsistence holding, but there is no restriction against alienation of his entire holding. In case of owning land equal to or less than a subsistence holding, provisions ibid also forbid a person from alienating any part of his holding, but he may alienate his entire holding or any part thereof to only those who are owners or land tenants of the same village, *Deh* or *Mouza*.

iv) A subsequent purchaser claiming protection under Section 41 of the Transfer of Property Act, 1882 is bound to establish that vendor to transfer was an ostensible owner, that transfer so made was with the express or implied consent of the real owner and that said transfer had been made for some consideration as well as that the he had acted in good faith to take all reasonable care and steps before entering into relevant transaction for transfer.

Conclusion: i) A mutation entered on the strength of registered sale deed cannot be cancelled by a revenue officer on the basis of violation of Martial Law Regulation.

ii) A purchaser through registered sale deed would not cease to be owner of subject property due to cancellation of mutation attested in his favour for implementation of such registered sale deed.

iii) Para 24 of Martial Law Regulation 115 of 1972 cannot be used for cancellation of sale after completion of alienation of the property through a registered sale deed.

iv) The protection under Section 41 of the Transfer of Property Act, 1882 cannot be extended to a subsequent purchaser, who neither specifically seeks such protection in pleadings nor establishes said fact through any evidence.

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44. **Lahore High Court**
Zainab Bibi v. Abdul Aziz
Civil Revision No.479-D of 2001
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC6187.pdf

Facts: This civil revision is directed against the judgments & decrees of the Courts below whereby the suit of the respondent No.1 was decreed concurrently.

Issues: i) What procedure is to be followed in case where parentage of a child cannot be easily ascertained?
ii) Whether it is necessary for a father to deny the question of legitimacy/paternity within the stipulated period?
iii) When the evidence about existence of relationship is relevant?
iv) Whether pleadings constitute evidence of their contents?
v) Whether a court can give negative declaration?
vi) Whether the High Court in exercise of revisional jurisdiction can interfere in the concurrent findings of the courts below?

Analysis: i) There is no evidence on record to suggest that Yousaf in his lifetime did not acknowledge the defendants as his daughters. It is settled law that where parentage of a child cannot be easily ascertained, it is generally presumed either from express acknowledgment by the father or from a course of treatment given by the father in his lifetime.
ii) Question of legitimacy/paternity must be denied by the father within the stipulated period.
iii) Evidence about existence of relationship is relevant only if the person has special means of knowledge on the subject. Witness testifying about relationship must led down the foundation of existence of his direct knowledge about the relationship such as being the family member or otherwise having special means of knowledge of relationship.
iv) The learned Courts below failed to consider that pleadings would not constitute evidence of their contents. The facts pleaded, unless admitted by the other party have to be proved. It is matter of record that defendant No.2 namely Mst. Aimana Bibi, who is stated to have filed the said written statement had not appeared in the witness box to support the contents thereof. Without cross-examination of the said lady, the written statement could not have been read in the evidence and even the written statement could be referred to as a piece of evidence it cannot be relied upon as an evidence of the facts stated in it.
v) Even otherwise, negative declaration cannot be given. A Court can make a declaration in a suit in favour of a person who is entitled to any legal character or

to any right, as to any property, which another is denying. Plaintiff claimed that he is sole legal heir of Yousaf and the defendants are not daughters of Yousaf, hence, not his heirs, rather they were born from the earlier wedlock of Marian with Kallu, therefore, they are not entitled to get inheritance from the legacy of Yousaf. Plaintiff seeks a negative declaration and one which has nothing to do with plaintiff‟s own legal character (…) However, a person can bring a suit to assert that he/she is someone's child if his/her legal character is denied.

vi) Although, the scope of revisional jurisdiction of this court is limited and the concurrent findings of facts of the Courts below could not be reversed. But where the concurrent findings are not in accordance with law, there is glaring illegality, non-reading or misreading of evidence, then this court can interfere in the concurrent findings of the courts. If the concurrent findings are perverse, arbitrary or fanciful the same cannot be termed as „sacrosanct' and can be interfered with.

Conclusions: i) It is settled law that where parentage of a child cannot be easily ascertained, it is generally presumed either from express acknowledgment by the father or from a course of treatment given by the father in his lifetime.

ii) Question of legitimacy/paternity must be denied by the father within the stipulated period.

iii) Evidence about the existence of relationship is relevant only if the person has special means of knowledge on the subject. A witness testifying about relationship must lead down the foundation of existence of his direct knowledge about the relationship such as being the family member or otherwise having special means of knowledge of relationship.

iv) Pleadings would not constitute evidence of their contents. The facts pleaded, unless admitted by the other party, must be proved. Without the examination of the concerned party in its support or cross-examination, the written statement could not be read in the evidence, and it cannot be relied upon as evidence of the facts stated in it.

v) A Court can make a declaration in a suit in favour of a person who is entitled to any legal character or to any right, as to any property, which another is denying but negative declaration cannot be given.

vi) Yes, if the concurrent findings are perverse, arbitrary or fanciful the same cannot be termed as „sacrosanct' and can be interfered with.

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45. **Lahore High Court**
Mst. Kaneez Fatima, etc. v. Ghulam Hussain (deceased) through Legal Hairs, etc.
Civil Revision No.751-D of 2004.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC6276.pdf

Facts: The Consolidation officer accepted the petitioners' application for review of mutation which was passed on the basis of registered will deed after obtaining permission from District Collector and appeal of the respondents was dismissed.

The respondents instituted a civil suit for declaration which was decreed and appeal of petitioners was dismissed by the appellate court. Now, petitioners have challenged the decision of lowers courts through Civil Revision.

Issues: i) Whether Consolidation officer has authority to review the mutation passed on the basis of registered will deed?
ii) Whether a will is a legal declaration and signifies the intention of the testator?
iii) What is the concept of will after the death of a person?
iv) What is the concept of will as per Holy Quran and Sunnah?
v) Which are the persons in whose favour a will can be made?
vi) How much property a Mohammadan can dispose of through will?
vii) Whether a testator has a right to make a bequest in favour of a non-heir?
viii) Which kind of consent is required by the legal heirs from the testator to make a will?

Analysis: i) The Consolidation Officer has no authority to review the mutation after lapse of long time, which otherwise had been sanctioned in accordance with law.

ii) A will is essentially a legal declaration which signifies the intention of the testator with regard to the distribution of his or her property. A will does not affect the power of the owner to transfer the property either inter vivos or by any other testamentary disposition. It is not binding upon the testator in any manner, especially before his or her death.

iii) When a person dies his/her property devolves upon his/her heirs. A person may die with or without a will. If he or she dies leaving a will, the property is distributed among his/her heirs according to the rules of Testamentary Succession. In other words, the property is distributed as per the contents of the testament or will. On the other hand if a person dies leaving no testament , that is dies intestate, the rules of intestate Succession are applied for distribution of the property among heirs.

iv) Will is declared lawful in the Quran, though the Quran itself does not provide for the testamentary restriction of 1/3rd. The permissibility of bequest upto 1/3rd is traced to a Hadiath of the Prophet which has been stated by Sa‟d Ibn Abi Waqqas and the information was reported by Bukhari.

v) A will can be made in favour of heir as well as non-heir. In case of heir, the bequest is not valid unless the other heirs consented to the bequest after the death of the testator as defined in Section 117 of D.F. Mulla‟s Mohammadan Law.

vi) A Mohammadan cannot dispose of more than third of the surplus of his estate after payment of funeral expenses and debts, but in excess of one third cannot be taken effect, unless the heirs consented thereto.

vii) A testator can bequest his entire property to a non -heir through will in the following cases i.e. where subject to the provision of any law for the time being in force, such excess is permitted by a valid custom, where there are no heirs

of the testator, where the heirs existing at the time of the testator's death, consent to such bequest after his death and where the only heir is the husband or the wife and the bequest of such excess does not affect his or her share.
viii) The consent given by the heirs may be express or implied. It may be oral or in writing. It can also be implied from conduct. Where the testator makes a bequest and on his death, the other heirs help the legatee in affecting a mutation in name or allow the legatee to take exclusive possession of the property, it is proof of the heir"s consent.

Conclusion:

i) The Consolidation Officer has no authority to review the mutation after lapse of long time.
ii) A will is essentially a legal declaration which signifies the intention of the testator with regard to the distribution of his or her property.
iii) When a person dies his/her property devolves upon his/her heirs.
iv) Will is declared lawful in the Quran, though the Quran itself does not provide for the testamentary restriction of 1/3rd. The permissibility of bequest upto 1/3rd is traced to a Hadiath of the Prophet.
v) A will can be made in favour of heir as well as non-heir.
vi) A Mohammadan cannot dispose of more than one third of the surplus of his estate after payment of funeral expenses and debts.
vii) A testator can bequest his entire property to a non-heir through will.
viii) The consent given by the heirs may be express or implied. It may be oral or in writing. It can also be implied from conduct.

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46. **Lahore High Court**
Umar Asghar Qureshi v. Federation of Pakistan and 03 others
W. P. No. 9041 of 2023
Basar Ali v. Federation of Pakistan and 03 others
W. P. No. 26490 of 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC6328.pdf

Facts:

The Petitioners, in the titled Petitions, call into question the concurrent dismissal Orders passed against them in the service hierarchy of NBP.

Issues:

i) Whether the Banks (Nationalization) Act, 1974 preempts the provisions of the National Bank of Pakistan Ordinance, 1949 in case of any inconsistency between the two enactments?
ii) Whether the Banks (Nationalization) Act, 1974 grants statutory protection to the existing employees of nationalized banks as were applicable to the employees before the commencement of the Nationalization Act?
iii) Whether the Banks (Nationalization) Act, 1974 is only applicable to NBP?
iv) Whether the Board of NBP is empowered to make Bye-laws?
v) Whether the cases already decided before the commencement of the statutory National Bank of Pakistan (Staff) Service Rules, 1973 can be reopened?

vi) Whether the non-statutory National Bank of Pakistan (Staff) Service Rules, 1980 can displace the statutory National Bank of Pakistan (Staff) Service Rules, 1973?

vii) Whether the National Bank of Pakistan (Staff) Service Rules, 2021 made by the Board of NBP are non-statutory?

Analysis: i) NBP as a statutory nationalized bank is run, operated and managed by its Board under the Ordinance and the Nationalization Act. The latter is a subsequent enactment and Section 2 of the Nationalization Act postulates that it shall have effect notwithstanding anything contained in any other law for the time being in force or in any agreement and contract, award, memorandum or articles of association or other instrument. Thus, the Nationalization Act preempts the provisions of the Ordinance in case of any inconsistency between the two enactments.

ii) The Nationalization Act has been promulgated to nationalize banks included in its Schedule. Careful and plain reading of Section 13 of the Nationalization Act makes it manifestly evident that the existing employees of nationalized banks were granted limited statutory protection regarding continuity of service on the same terms and conditions including remuneration and rights as to pension and gratuity, as were applicable to the employees of the banks before the commencement of the Nationalization Act. Section 13 of the Nationalization Act does not place an embargo or limitation upon the powers of the Board of NBP to frame service rules for its employees subject to limited statutory protection to its employees existing or in service before the date of promulgation of the Nationalization Act. The limited statutory protection granted to all existing employees of the banks at the time of promulgation of the Nationalization Act in terms of Section 13 thereof, has fully matured due to afflux of time as there would not be any existing employee after passing of 47 years since the date of enforcement of the Nationalization Act.

iii) The Nationalization Act was not only applicable to NBP as an existing statutory bank owned by the Federal Government but was applicable to all other private banks which were nationalized through the Nationalization Act.

iv) Section 32(1) of the National Bank of Pakistan Ordinance, 1949 empowers the Board of NBP, with the prior approval of the Federal Government, to make Bye-laws not inconsistent with the Ordinance to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the Ordinance. Section 32(2) of the Ordinance lists specific matters regarding which the Bye-laws can be made and clause (xxviii) thereof confers powers with respect to the recruitment of officers and staff of NBP including the terms and conditions of their service and the constitution and management of staff and superannuation funds for the officers and employees of NBP.

v) As per Rule 1(2) thereof, the statutory National Bank of Pakistan (Staff) Service Rules, 1973 came into effect on 01.01.1972 with the stipulation that the cases already decided before the commencement of the Rules, 1973 shall not be

reopened if the decision taken is in conflict with any of provisions of the statutory National Bank of Pakistan (Staff) Service Rules, 1973.

vi) The non-statutory Rules, 1980 framed by the Board of NBP could not annul, repeal, rescind or displace the statutory Rules, 1973. Since, the Rules, 1973 were in force before the commencement of the Nationalization Act with respect to terms and conditions of service of the employees of NBP, therefore, by virtue of Section 13(1) of the Nationalization Act, they were specifically safeguarded and shielded instead of having been replaced, repealed, rescinded or overridden. It was further held that language of Section 13(1) of the Nationalization Act spells out the clear intention of the legislature to preserve the earlier terms and conditions of employees of the nationalized banks which in the present case undoubtedly were the Rules, 1973. Hence, the Board of NBP constituted under Section 11 of the Nationalization Act in exercise of its management powers could not make non-statutory rules to displace or annul the statutory Rules, 1973 which were in force since the executive is not empowered to annul, invalidate or vitiate the command of the statute.

vii) The National Bank of Pakistan (Staff) Service Rules, 2021 made by the Board of NBP in exercise of its powers conferred under Section 11 of the Nationalization Act read with Bye-law 51 of the Bye-laws, 2015 without approval of the Federal Government are non-statutory. After the repeal of statutory Rules, 1973, only the Rules, 2021 are in vogue and the same indiscriminately apply to all employees of NBP employed after the date of enforcement of the Nationalization Act subject to Rule 2 of the National Bank of Pakistan (Staff) Service Rules, 2021.

Conclusion: i) The Banks (Nationalization) Act, 1974 preempts the provisions of the National Bank of Pakistan Ordinance, 1949 in case of any inconsistency between the two enactments.

ii) The Banks (Nationalization) Act, 1974 grants limited statutory protection to the existing employees of nationalized banks as were applicable to the employees before the commencement of the Nationalization Act.

iii) The Banks (Nationalization) Act, 1974 was not only applicable to NBP but is applicable to all other private banks which were nationalized through the Nationalization Act.

iv) Section 32(1) of the National Bank of Pakistan Ordinance, 1949 empowers the Board of NBP, with the prior approval of the Federal Government, to make Bye-laws not inconsistent with the Ordinance.

v) The cases already decided before the commencement of the Rules, 1973 shall not be reopened if the decision taken is in conflict with any of provisions of the statutory National Bank of Pakistan (Staff) Service Rules, 1973.

vi) The non-statutory National Bank of Pakistan (Staff) Service Rules, 1980 cannot displace the statutory National Bank of Pakistan (Staff) Service Rules, 1973.

vii) The National Bank of Pakistan (Staff) Service Rules, 2021 made by the Board of NBP are non-statutory.

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47. **Lahore High Court**
Imtiaz Hussain v. District Judge etc.
Writ Petition No.244677/2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6165.pdf

Facts: The petitioner filed guardian petition for custody of minor daughter which was dismissed and appeal against the order of family court met the same fate, hence, this writ petition.

Issues: i) Whether agreement between parents of minor about losing custody of child on remarriage of mother is enforceable under law?
ii) Whether fact of concealment of second marriage by father disentitles him from custody of minor?
iii) Why visitation schedule ought to be chalked out?

Analysis: i) The children cannot be treated as commodities and their welfare cannot be compromised by their parents by executing any agreement. Suffice to observe that such agreements are against public policy and hence, not enforceable under the law. This Court is of the view that placing a Sword of Damocles of losing the custody of the child upon remarriage on the respondent is not only illegal but also raises a logical question as why such a condition was not placed on the petitioner himself, disentitling him from keeping the custody of the minor son and seeking the custody of the minor daughter In this regard, suffice to observe that it is well settled principle of law that re-marriage of the mother is not a standalone ground for depriving her from keeping custody of her minor children.
ii) The petitioner did his best to conceal factum of his own second marriage by imparting incorrect instructions to his learned counsel, in open Court, as also by tutoring the minor son to lie about the petitioner's re-marriage and having a child from his second wedlock. An effort to conceal his own second marriage in itself adversely reflects upon the conduct of the petitioner, which disentitles him from the custody of the minor daughter. His conduct is unbecoming of a responsible parent as he tutored the minor son to lie, which act is deprecated and cannot be countenanced.
iii) Visitation schedule ought to be chalked out to cater the need of developing a strong parental bonding of the minor with non-custodial parent.

Conclusion: i) Agreement between parents of minor about losing custody of child on remarriage of mother is not enforceable under law.
ii) Fact of concealment of second marriage by father can be one of the grounds to disentitle him from custody of minor.
iii) Visitation schedule ought to be chalked out to cater the need of developing a

strong parental bonding of the minor with non-custodial parent.

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48. **Lahore High Court**
Nazar Muhammad v. DPO, etc.
Writ Petition No. 57371 of 2023
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC6318.pdf

Facts: Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner seeks recovery of the alleged detenue from the illegal and improper custody of respondents No.5 and 6.

Issues: i) Whether an accused may be held guilty of offence of rape for marrying a minor girl/detenue aged 13/14 years?
ii) How it is determined as to whether a girl has attained puberty or not?
iii) What are the consequences of marrying an underage girl?
iv) Whether a law or provision of law, may be declared by the High Court as against the injunctions of Islam?
v) What is the intent of legislature for enacting minimum marriage age as sixteen years for a girl in Child Marriage Restraint Act, 1929?
vi) Whether a minor girl of 13/14 years is competent to get her statement recorded under section 164 Cr.P.C?
vii) Whether specific set of questions in rationality test regarding competence of a child witness are required by law or it is the discretion of the court to satisfy itself and whether the same must be in writing?
viii) Whether section 364 Cr.P.C is relevant while recording statement of a witness in the similar way as it is relevant for recording of confessional statement of an accused?
ix) Whether allowing persons other than accused to cross examine a witness who recorded statement under section 164 Cr.P.C, is warranted by law?
x) Whether providing memorandum at the end of statement of a witness/victim to the effect that she was not bound by law to record the statement, is the requirement of the law?

Analysis: i) … If for the sake of arguments, the statement of the petitioner is considered correct, that she was of 13/14 years of age at the time of her Nikah with respondent, even then respondent cannot be held guilty of the offence of rape. It has been settled since long that when a girl marries after attaining puberty, said marriage cannot be considered a 'void marriage', even if she has not attained the minimum legal age provided under any law for the time being in force. The age of puberty, under different 'Schools of Thought', varies, however, as per the 'Hanafi' school of thought, the minimum age for a girl to attain puberty is 9 years.
ii) … Now the question arises as to how it will be determined whether a girl has attained puberty or not. This query was also answered in *Yousaf Masih alias Bagga* [1994 SCMR 2102] that when a girl after reaching the minimum age of

puberty declares that she has attained puberty, her declaration would be accepted as correct unless and until rebutted by cogent and convincing legal evidence…

iii) For, the consequences of marrying a girl who has not yet attained the minimum age provided by the law to enter into a matrimonial contract, suffice it to say that it is a consistent view of Constitutional Courts of our Country that if a person marries an underage girl, the relevant law providing punishment for such an act is the Child Marriage Restraint Act, 1929 (hereinafter *'the Act of 1929'*)…The Supreme Court strongly repelled the contention by holding that punishment for marrying an underage girl has been provided by the Act of 1929 but such marriage cannot be termed as invalid merely because the girl had not attained the minimum age provided under that Act…

iv) …To declare a law or provision of law against the injunctions of Islam is the sole domain of the Federal Shariat Court established under Article 203-C of the Constitution.

v) … The intent of lawmakers is obvious from the bare reading of the Act of 1929 that they wanted to punish a person solemnizing marriage with a girl less than sixteen years of age. If the legislature intended to declare such marriage as void and to punish the offender under the general law, then there was no need to provide a punishment for such an act in the said enactment and there would have been a simple mentioning that such an act would be punished under the general penal law of the land. Penal provisions cannot be attracted on the basis of analogy or presumptions in cases where there is a clear enactment available dealing with a specific situation.

vi) Regarding the second moot point that alleged victim was not competent to get her statement recorded under Section 164 Cr.P.C., such argument has no substance and highly misapprehended. The age of a witness has nothing to do with her/his competence to depose as a witness. Relevant law dealing with the competence of a witness has been provided under Article 3 of the Qanun-e-Shahadat...

vii) …While applying rationally test, no specific set of questions is required to be put to a child witness and it is sole discretion of concerned court how it would satisfy itself regarding competence of a child witness. Presumption of correctness is attached to the judicial proceedings and declaration of Magistrate/court regarding its satisfaction would be enough to qualify such witness as a competent witness… As discussed earlier, law only requires the satisfaction of the court before recording the statement of a child witness and no specific procedure has been provided by the law to be applied before reaching any conclusion regarding competence of a child witness…

viii) …The rigorous exercise needs not to be followed for recording the statement of a witness under Section 164 of the Cr.P.C. Section 364 of the Cr.P.C. is of general application as it only applies to the statement of an accused recorded during any proceeding. The confession of an accused is recorded under Section 164 read with Section 364 of the Cr.P.C. Every court is bound to comply with all the precautionary measures provided under Section 364 Cr.P.C. whenever

statement of an accused is recorded. But in the case of recording the statement of a witness, Section 364 Cr.P.C. has no relevance.

ix) As far as allowing the petitioner to cross examine alleged victim is concerned, law does not warrant any such concession when petitioner was not an accused in the case. Under sub-section (1-A) of Section 164 Cr.P.C., the opportunity of cross examination is provided to the accused only. Initially this opportunity was also not available to the accused but later sub-section (1-A) was added to Section 164 Cr.P.C. through Section 62 of the Law Reforms Ordinance, 1972... Allowing the petitioner to cross examine alleged victim would mean that Magistrate had considered and declared victim as 'a hostile witness' and allowed the petitioner to put questions to her under Article 150 of the Q.S. which was based upon wrong assumption of law because these were not the trial proceedings during the course of which a witness could be declared hostile and party producing such witness could be allowed to put questions to such a witness. Thus, act of learned Magistrate to allow petitioner to cross examine the alleged victim was not warranted by the law...

x) As far as question of providing the memorandum by the Magistrate at the end of statement of alleged victim to the effect that she was not bound by law to record the statement is concerned, I am afraid that it is not the requirement of law. Section 164(3) Cr.P.C. only requires such memorandum to be provided at the end of the confessional statement of an accused. Sub-section (3) requires that before recording confessional statement of an accused, a Magistrate should convey to the accused that she/he is not bound to make a confession and if she/he does so it may be used as evidence against her/him. It further requires that Magistrate shall put a memorandum to that effect at the foot of such confessional statement… Above referred provision of law makes it profusely clear that such memorandum is to be recorded only at the end of a confessional statement of an accused and there is no legal requirement to provide such memorandum at the end of the statement of a witness recorded under Section 164 Cr.P.C.

Conclusion: i) An accused cannot be held guilty of offence of rape for marrying a minor girl/detenue aged 13/14 years because when a girl marries after attaining puberty, said marriage cannot be considered a 'void marriage', even if she has not attained the minimum legal age provided under any law for the time being in force.

ii) When a girl after reaching the minimum age of puberty declares that she has attained puberty, her declaration would be accepted as correct unless and until rebutted by cogent and convincing legal evidence.

iii) Consequences of marrying an underage girl is punishment as provided by the Act of 1929 but such marriage cannot be termed as invalid merely because the girl had not attained the minimum age provided under that Act.

iv) To declare a law or provision of law against the injunctions of Islam is the sole domain of the Federal Shariat Court established under Article 203-C of the Constitution.

v) The intent of lawmakers is obvious from the bare reading of the Act of 1929

that they wanted to punish a person solemnizing marriage with a girl less than sixteen years of age and not to declare such marriage as void.

vi) The age of a witness has nothing to do with her/his competence to depose as a witness.

vii) While applying rationality test, no specific set of questions is required to be put to a child witness and it is sole discretion of concerned court how it would satisfy itself regarding competence of a child witness. Written question and answer in rationality test is not the requirement of law.

viii) For recording of confessional statement of accused, section 364 Cr.P.C is relevant but in the case of recording the statement of a witness, section 364 Cr.P.C. has no relevance.

ix) Act of allowing persons other than accused to cross examine a witness who recorded statement under section 164 Cr.P.C, is not warranted by law.

x) Section 164(3) Cr.P.C makes it profusely clear that such memorandum is to be recorded only at the end of a confessional statement of an accused and there is no legal requirement to provide such memorandum at the end of the statement of a witness recorded under Section 164 Cr.P.C.

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49. **Lahore High Court**
Muhammad Arshad & 4 others v. Safdar Ali
C.R No. 2048 of 2013
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC10064.pdf

Facts: This revision petition is directed against the judgment and decree passed by the learned Additional District Judge, whereby the judgment and decree passed by the learned Trial Court was set-aside and the appeal was allowed.

Issues: i) Whether in revision petition, a petitioner has right to cause delay and then seek shelter of power of court to exercise a jurisdiction at its own?

ii) Whether a certified copy of the pleadings, documents and orders of Subordinate Court are required to be appended with civil revision?

iii) Whether delay in approaching the Copying Agency extends the benefit under Section 12 of the Limitation Act, 1908.

Analysis: i) The controversy that crept up after the amendment in 1992 by adding second proviso has already been resolved by the Honourable Supreme Court of Pakistan and it has been settled that Applicant/Petitioner has no right to cause a delay and then seek the shelter of the power of the Court to exercise a jurisdiction, at its own.

ii) …The first proviso to sub-section (1) of Section 115 of the Code of Civil Procedure, 1908 does not require that a certified copy of the pleadings, documents and orders of Subordinate Court are required to be appended. It simply says that the copies of the said documents should be attached.

iii) I also disagree with the contentions of learned counsel for the Petitioners that the benefit of time should be allowed in view of the fact that certified copy of the

judgment and decree passed by the learned Trial Court was provided on 22.06.2013. … The certified copy was supplied to the Petitioners by the learned trial Court on the same day when it was requested for i.e. 22.06.2013. No benefit of period prior to 22.06.2013 is available to the Petitioners. Delay in approaching the Copying Agency has not, in any manner, extended the benefit under Section 12 of the Limitation Act, 1908.

Conclusion: i) Applicant/Petitioner in a civil revision has no right to cause a delay and then seek the shelter of the power of the Court to exercise a jurisdiction, at its own.
ii) No, a certified copy of the pleadings, documents and orders of Subordinate Court are not required to be appended with civil revision as per first proviso to sub-section (1) of Section 115 CPC. It simply says that the copies of the said documents should be attached.
iii) Delay in approaching the copying agency does not, in any manner, extend the benefit under Section 12 of the Limitation Act, 1908.

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50. **Lahore High Court**
M/s Popular Sugar Mills Limited v. District Collector, Sargodha & 2 others
Writ Petition No. 40356 of 2019
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC6342.pdf

Facts: Through instant petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has impugned the order dated 10.06.2019 passed by the respondent/revenue department whereby request of petitioner to change the name of company was turned down.

Issues: i) What is the effect of change of name of a company?
ii) What does language of section 42 of Companies Act, 2017 reflect and what the word "a person" clarify?
iii) Whether after ruling of the Board, alternate remedy before commissioner is equally effectual?

Analysis: i) A reading of above reflects that change of name does not affect any right or obligation of a company. The affect by change of name on the rights and obligations of any company remained unchanged in the current legislation on the subject and it has been adopted as such in Section 13(3) of the Companies Act, 2017.
ii) … Now coming to the next argument of Mr. Salman Asif Warraich, learned Assistant Advocate General, regarding section 46 of the *Act.* This provision of the *Act* permits the *Board* to fix the scale of fees for *an entry in any record or register* under Chapter 11 of the *Act*. The respondents have relied on section 42 of the *Act* in order to convince that the change in name of the company in revenue record constitutes an entry, as contemplated in the above provision…Language of the above provision reflects that the same is applicable on *acquiring of any right as land-owner or a tenant*. The words "*a person"* in section 42 of the *Act* further

clarifies that the legislature has envisaged the acquisition of any right or interest as land-owner or a tenant from one person to another.
iii) …It is stated that appeal before the relevant Commissioner should have been filed. However, I am of the opinion that highest revenue authority i.e. the Board has already been approached by respondent No. 1 and the Board has already given the ruling. The Commissioner concerned in view of the ruling can hardly reach to any different conclusion, thus, the alternate remedy indicated before me is not equally effectual.

Conclusion: i) Change of name does not affect any right or obligation of a company.
ii) What does language of section 42 of Companies Act, 2017 reflects that the same is applicable on acquiring of any right as land-owner or a tenant and what the word "a person" clarify "a person" in section 42 of the Act further clarifies that the legislature has envisaged the acquisition of any right or interest as land-owner or a tenant from one person to another.
iii) Yes, when commissioner concerned cannot not reach to any different conclusion as to ruling of board of revenue, then the said alternate remedy before commissioner is not equally effectual in terms of invoking jurisdiction under Article 199 of the Constitution.

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51. **Lahore High Court**
China Machinery Engineering Corporation, Pakistan Branch v. Federation of Pakistan, etc.
Writ Petition No. 29586 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6354.pdf

Facts: The petitioner has assailed recovery of Rs.759,059,945/- from the accounts of the petitioner maintained at Banks in purported exercise of authority under section 140 of the Income Tax Ordinance, 2001 without issuance of prior notice under section 138(1) of the Ordinance after dismissal of appeal of the petitioner by the Commissioner, Inland Revenue (Appeals). A prayer for the return of the aforementioned amount recovered from the petitioner has also been made.

Issues: i) Whether a notice issued to a taxpayer under section 138(1) of the Ordinance for the recovery of tax due during subsistence of a stay order is valid and lawful?
ii) Whether, after an amended assessment order has been upheld by the Commissioner Inland Revenue (Appeals) or the Appellate Tribunal Inland Revenue, the tax authorities are required to serve upon the taxpayer a fresh notice under section 138(1) of the Ordinance requiring him to pay the amount of tax due within the time specified therein before invoking coercive mechanism under section 138(2) or 140 of the Ordinance?

Analysis: i) The amount of tax liability which was disputed by the petitioner in appeal could not be deemed to have become due and recoverable under section 138(1) of the Ordinance in the presence of the stay order while appeal of the petitioner was still

pending, therefore, issuance of the recovery notice dated 26.04.2023 at that juncture was manifestly without lawful authority and the same was of no legal effect. The decision of respondent No.3 not to issue a notice under Section 138(1) of the Ordinance to the petitioner after decision of its appeal and seeking attachment of the bank accounts of the petitioner and effecting coercive recovery of tax determined in the Assessment Order (despite the law laid down by this Court declaring that a notice under Section 138(1) of the Ordinance is a mandatory requirement of law), appears to be aimed at frustrating the right of the petitioner to seek injunctive relief from the Appellate Tribunal.

ii) … regardless whether it is the Commissioner (Appeals), the Tribunal or the High Court upholding an assessment order, the tax authorities are under an obligation to issue a notice under Section 138(1) of the Ordinance before they resort to use of coercive means under Section 138(2) or Section 140 of the Ordinance. It is observed that section 138(1) of the Ordinance conceives that a reasonable timeframe is to be specified by the Commissioner within which the tax due is to be paid. It is inconceivable that such reasonable time could be a period of less than 7 days as the purpose of such provision is to put the taxpayer on notice to discharge the tax obligation within a reasonable period and also afford the taxpayer an opportunity to avail his statutory right of appeal, if so advised.

Conclusion: i) A notice issued to a taxpayer under section 138(1) of the Ordinance for the recovery of tax due during subsistence of a stay order is without lawful authority and the same has of no legal effect.

ii) After an amended assessment order has been upheld by the Commissioner Inland Revenue (Appeals) or the Appellate Tribunal Inland Revenue, the tax authorities are required to serve upon the taxpayer a fresh notice under section 138(1) of the Ordinance requiring him to pay the amount of tax due within the time specified therein before invoking coercive mechanism under section 138(2) or 140 of the Ordinance.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in the Notification No.2108-2019/755-CL(II), dated 13.09.2019 vide Notification No. 176-2023/2223/P-I dated 21.11.2023 issued by the Colonies Department, published in the Punjab Gazette through Notification No.185 of 2023.
2. Amendments in Punjab Public Service Commission Regulation No.62 during its meeting dated 11-10-2023 vide Notification No. Estt.I-4/2023-PPSC/1260, dated 16.11.2023 published in the Punjab Gazette through Notification No.186 of 2023.
3. Vide Notification No. E&A(HD)14-2/2019(P-II), dated 21.11.2023 issued by the Home Department the Governor of the Punjab made "The Punjab Charities (Registration) Rules 2023" published in the Punjab Gazette through Notification No.187 of 2023.

4. Vide Notification No. E&A(HD)14-2/2019(P-II), dated 21.11.2023 issued by the Home Department the Governor of the Punjab made "The Punjab Charities (Appeal) Rules 2023" published in the Punjab Gazette through Notification No.188 of 2023.
5. Vide Notification No. E&A(HD)14-2/2019(P-II), dated 21.11.2023 issued by the Home Department the Governor of the Punjab made "The Punjab Charities (Inspection and Audit) Rules 2023" published in the Punjab Gazette through Notification No.189 of 2023.
6. Amendments in the Punjab Chowkidara Rules, 1982 vide Notification No. 1750-2023/6855-LR-V, dated 23.11.2023 issued by the Board of Revenue, published in the Punjab Gazette through Notification No.190 of 2023.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/COMPUTATION-OF-GRATUITY-ANALYSING-OUTBOUND-SECONDMENT-CASES

Computation of Gratuity - Analysing Outbound Secondment Cases By Anshul Prakash Partner, Deeksha Malik Senior Associate, Shreya Sukhtankar Associate, Khaitan & Co

In this article, we examine eligibility and computation of gratuity in respect of internationally deputed / seconded employees of an Indian entity and analyse the challenges in this regard. We discuss the concept of 'continuous service' and the manner of determination of 'last drawn salary', navigate international secondment arrangements and the possible legal positions on the aforesaid two issues.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/THE-POWER-OF-NETWORKING-WHY-LAW-TEACHERS-SHOULD-CONNECT-AND-COLLABORATE

The Power of Networking: Why Law Teachers Should Connect and Collaborate By Manokamana, Legal Editor, Manupatra

In the profession of teaching, it is not just about imparting knowledge to the students. In the modern learning scenario, the profession of teaching demands that teacher plays an active role in ensuring that their students are skill-ready to join the profession from day 1 after graduating. This holds even truer for a profession like law. Law teachers of today do not just go to class and teach the students what they know; they also focus on the holistic development of their students through a variety of learning experiences. Teaching for law teachers is about nurturing the future generation of legal professionals, shaping their perspectives, and equipping them with the skills and values necessary for a just society.

3. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/recent-developments-artificial-intelligence-governance

Recent Developments in Artificial Intelligence Governance by Susanna Bagdasarova , Justine M. Kasznica of Babst, Calland, Clements & Zomnir, P.C

As the development of artificial intelligence (AI) systems accelerates globally and the benefits and risks of their use become evident, calls for government regulation in the U.S. and abroad have accelerated. Two significant governmental developments occurred in the past month to respond to these calls. In an executive order issued at the end of October, President Joe Biden revealed a comprehensive set of guidelines and policy goals for the future of AI development and regulation. Less than a month later, the U.S., U.K., and more than a dozen other countries unveiled the first international agreement on AI safety and security. Though differing in scope and actionable initiatives, the two documents reflect an international acknowledgment of the global impact and risks posed by AI systems, as well as an urgency to create proactive policies for their regulation.

4. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/corporate-transparency-act-through-real-estate-lens

The Corporate Transparency Act: Through a Real Estate Lens by Marisa N. Bocci , Kari L. Larson , Lysondra Ludwig of K&L Gates

Implemented to combat the use of shell corporations and other entities to facilitate illicit activities, the Corporate Transparency Act (CTA) has prompted new and unprecedented reporting obligations. Starting 1 January 2024, domestic and foreign "reporting companies" will be required to report certain identifying information about their beneficial owners to the Treasury Department's Financial Crimes Enforcement Network (FinCEN). The CTA will likely impose a substantial compliance burden on the real estate sector, which often uses complex structures compromised of numerous legal entities that own and operate real property across many asset classes. The below provides a few considerations for those operating in the real estate sector, and a more thorough summary of the CTA can be found here.

5. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/prepared-liquidation-pre-pack-sales-under-polish-bankruptcy-law

Prepared Liquidation – Pre-Pack Sales Under Polish Bankruptcy Law by Marcin S. Wnukowski , Malgorzata R

Amid the current market uncertainties, distressed asset sales are likely to rise. International investors are looking for efficient solutions, preferably ones that reflect solutions in their home jurisdictions. One popular mechanism is the use of pre-pack sales. A pre-pack sale manages the adverse impact of insolvency proceedings on the

distressed company's business, while reducing the time and cost of such proceedings, and offering greater asset realisation to be distributed among creditors.

6. THE OXFORD ACADEMIC

https://academic.oup.com/clp/article-abstract/76/1/375/7344341?redirectedFrom=fulltext

Competition Law and Policy in the Global South: Power, Coercion and Distribution by Dina I Waked

Countries in the Global South have adopted competition laws and pursued competition policies very similar to countries in the North. This arrangement can be traced to various coercive powers at play—from trading partners in the North, international organizations to development banks, among others. As a result, the adopted laws are often unsuitable to the local needs of the countries in the South and their enforcement policies are often shaped by global pressure. This has alienated countries in the Global South from pursuing competition enforcement policies that could be empowering to their firms, consumers and communities at large. One way to resist and challenge these coercive powers is to pursue alternative competition policies, not alien to the Western nations themselves. In these alternative configurations, competition laws are squared with goals of industrialization and distributive equality. Pursuing these alternative competition goals challenges the dominance of the static model of competition policy aiming to achieve allocative efficiency. Examples from many places around the world are illustrated to show how competition policy, at crucial times of their development, were broadened to encompass an industrial agenda. The latter, more suitable for countries in the South, is discussed as a means of counter-coercion. It is discussed alongside an elaborate program for distribution to assure that the benefits of industrialization do not befall upon only a few. The aim of such a distributive program, built into competition enforcement, is to bring social justice concerns within the purview of competition policy.