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FORTNIGHTLY CASE LAW BULLETIN

(16-01-2024 to 31-01-2024)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
National Logistics Cell, Government of Pakistan, HQ NLC, Karachi v. The Collector of Customs, Model Customs Collectorate, Port Muhammad Bin Qasim, Karachi, etc.
Suo Moto Case No.16/2010 & Civil Petition Nos. 1600 to 2807 of 2021
Mr. Justice Umer Ata Bandial, HCJ, Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1600_2021_dt_25_01_2024.pdf

Facts: Through these civil petitions the petitioner seeks leave to appeal against a single consolidated order, whereby the High Court has dismissed the Special Custom Reference Applications filed by the Petitioner under section 196 of the Customs Act, 1969. The genesis of the cases in hand was a news report, which was made the basis for Suo Motu proceedings initiated by this Court, under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 to inquire into the alleged pilferage of commercial and non-commercial cargos meant for transportation to Afghanistan for ISAF and NATO forces under the Afghan Transit Trade Agreement, 1965.

Issues: i) Whether scope and extent of the jurisdiction of Supreme Court and High Court is limited to interfere while deciding question of law, which may arise from the order passed by the Appellate Tribunal under various tax statutes?
ii) Whether decision of Appellate Tribunal based upon erroneous finding of fact can be corrected by the High Court?
iii) Whether Supreme Court may exercise the jurisdiction that is vested in the High Court in order to correct the perverse or arbitrary findings of fact?
iv) What is the extent of exception to the general rule of not interfering with the findings of fact, recorded by the Appellate Tribunal?
v) Whether Supreme Court while invoking the exception of interference in findings of fact, recorded by the Appellate Tribunal, can accept the additional material produced before it for the first time?
vi) Whether efficacy of the exercise of the Suo Motu jurisdiction vested in Supreme Court under Article 184(3) of the Constitution can be disputed?

Analysis: i) Generally, it is for the Appellate Tribunal, being the last fact-finding adjudicator, to finally determine the factual aspects of the controversy, and such findings are not interfered with by the High Court, while exercising its jurisdiction under various tax statutes; as the scope and extent of the power of the High Court hearing matters under the tax statutes in reference jurisdiction, as well as of this Court hearing appeals against decisions of the High Court made in such reference jurisdiction, is limited to deciding the question(s) of law, which may arise from the order passed by the Appellate Tribunal.
ii) Where the Appellate Tribunal has based its decision on some perverse or totally incorrect finding of fact, which is contrary to the material available on

record or which is based on surmises and conjectures; the decision based on such erroneous finding of fact can be corrected by the High Court.

iii) In cases, where the High Court has relied on the findings of the Appellate Tribunal, without a proper appraisal of the material before it, this Court being the appellate court of the High Court, may positively exercise the jurisdiction that is vested in the High Court but having not been exercised by it, in order to correct the perverse or arbitrary findings of fact.

iv) The exception to the general rule of not interfering with the findings of fact, recorded by the Appellate Tribunal, is by no means to be exercised in order to facilitate a delinquent party, with a chance to fill up the lacunas in his case. Thus, this exception is not meant for allowing the additional material, particularly in circumstances, where in the grounds of appeal, a case for additional evidence has not been set out, or any independent formal application has been moved for the purposes of producing additional evidence (…)

v)The Supreme Court can invoke the exception and accept the additional material produced before it for the first time, provided that: firstly, it is relevant to resolving the controversy in the case; and that the additional material proposed to be adduced was neither in the possession nor knowledge of the party seeking to produce the same in evidence; and finally, that the party proposing to introduce that additional material in the evidence has been prompt in seeking its production without any delay… Once this Court finds it just and proper to consider the additional material, it would then have to decide; whether it is to pass a finding thereon or refer the matter to a lower forum (...)

vi) None can dispute the efficacy of the exercise of the Suo Motu jurisdiction vested in this Court under Article 184(3) of the Constitution, in matters of public importance involving enforcement of any of the fundamental rights, which require urgent attention of the Court to ensure that the rule of law in the country prevails. However, the exercise of this jurisdiction by the Court is intended to be the need of the hour to ensure and enforce the rule of law; and not to undermine the lawful authority of the departments, institutions, authorities or offices. Not to mention the prejudice it may cause the parties who would not have any right of appeal against the orders passed by this Court in its Suo Moto jurisdiction and the adverse effect it may have on the adjudicatory process that may ensue.

Conclusion: i) Yes, scope and extent of the jurisdiction of Supreme Court and High Court is limited to interfere generally while deciding question of law, which may arise from the order passed by the Appellate Tribunal under various tax statutes.

ii) Yes, decision of Appellate Tribunal based upon erroneous finding of fact can be corrected by the High Court.

iii) Yes, Supreme Court may exercise the jurisdiction that is vested in the High Court in order to correct the perverse or arbitrary findings of fact.

iv) See above in analysis No. (iv).

v)Yes, Supreme Court while invoking the exception of interference in findings of fact, recorded by the Appellate Tribunal, can accept the additional material

produced before it for the first time.
vi) The efficacy of the exercise of the Suo Motu jurisdiction vested in Supreme Court under Article 184(3) of the Constitution cannot be disputed.

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2. **Supreme Court of Pakistan**
All Pakistan Muslim League thr. its Chairman Jahan Zarin v. Election Commission of Pakistan through Chief Election Commissioner, Islamabad
C.M.A.10566/2023 in C.A.NIL/2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._10566_2023.pdf

Facts: This appeal is filed under section 202(6) of the Elections Act, 2017 impugning the order of the Election Commission of Pakistan whereby All Pakistan Muslim League (APML), a political party was delisted and the applications for allocation of symbol submitted by unauthorized and self-styled office bearers were rejected due to non-fulfillment of the criteria laid down in Article 17(3) of the Constitution of Pakistan read with section, 202, 209 and 210 of the Election Act 2017.

Issue: Whether a political party is under obligation to provide valid statements of accounts and fulfill the requirement of section 209 and 210 of the Act of 2017?

Analysis: The order of the ECP assailed before us concludes as under: '25. In view of the above discussion and scanning of record, the Commission holds and decides that there are no elected office bearers of APML, therefore, the party is virtually non-existent. Due to non-existence of the elected office bearers in accordance with the party constitution and the provisions of the Act of 2017, the party has been unable to provide valid consolidated statements of accounts of last Four (4) years which is requirement of the Article 17(3) of the Constitution read with Section 210 of the Act of 2017. The APML has failed to fulfill the requirement of section 209 and 210 of the Act of 2017 which is one of the pre-requisite for enlistment of a political party in terms of section 202. In exercise of powers conferred upon under Article 218(3) read with section 202(5) of the Act ibid, APML, as a political party is hereby delisted and the applications for allocation of symbol submitted by unauthorized and self styled office bearers are rejected. Resultantly the symbol Eagle becomes available for allocation in accordance with law.'… Learned counsel was asked whether the statements of accounts, which were required by the ECP, were provided but he could not refer to a single document in this regard; further establishing that the requisite statements were not provided to the ECP. Learned counsel was repeatedly asked to show us any illegality or unconstitutionality in the impugned order of the ECP dated 19 September 2023 but was unable to do so and there is no justification to set it aside.

Conclusion: A political party is under obligation to provide valid statements of accounts which is requirement of the Article 17(3) of the Constitution read with Section 210 of

the Act of 2017 and fulfill the requirement of section 209 and 210 of the Act of 2017.

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3. **Supreme Court of Pakistan**
The Election Commission of Pakistan through its Secretary and others v. Pakistan Tehreek-e-Insaf through its authorized person and others
Civil Petition No. 42 of 2024
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar , Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._42_2024_25012024.pdf

Facts: Through this petition, the petitioner challenged the judgment of the Peshawar High Court passed in Writ Petition. The said petition had challenged the order passed by the Election Commission of Pakistan ('ECP') in which he Election Commission of Pakistan decided the complaints received from fourteen complainants and the objections of the 'Political Finance Wing' of the ECP with regard to the intra-party elections of the Pakistan-Tehreek-e-Insaf ('PTI').

Issues: i) Can a party file the same case in two courts simultaneously?
ii) What will be the effect if intra-party elections are not held in a political party?
iii) Whether any challenge has been thrown to the Elections Act or with regard to any of its provisions?
iv) Whether the amendments in the Representation of the People Act, 1976 had disabled political parties from obtaining a common election symbol for their candidates?

Analysis: i) A party cannot simultaneously agitate the same matter before two courts. Section 10 of the Code of Civil Procedure, 1908 prohibits this; it stipulates that cases 'in which the matter in issue is also directly and substantially in issue in a previously instituted' case, the court in which the subsequent case is filed shall not proceed therewith. The rule of law and judicial process would be seriously undermined if a party simultaneously agitates the same matter before two different High Courts. This may also result in conflicting decisions.
(ii) If intra-party elections are not held in a political party it severs its relationship with its members, and renders a party a mere name without meaning or substance… The Fundamental Right enshrined in Article 17(2) of the Constitution secures the right to form political parties. If members of political parties are not allowed to participate in intra-party elections, their Fundamental Right of putting themselves forward as candidates, contesting elections and voting for the candidates of their choice is violated.
iii) The laws of Pakistan enacted by Parliament must be abided by, including by Judges of the superior courts, whose oath of office also requires adherence therewith. Unless a law, or any provision thereof, is challenged and is found to contravene the Constitution and declared unconstitutional, it must be given effect to. The Elections Act became law on 2 October 2017 and during the last six years

no successful challenge has been thrown to it or with regard to any of its provisions.
iv) Section 21(1)(b) of the Representation of the People Act, 1976 ('ROPA') had been amended through Ordinances No. II and VIII of 1985, promulgated by General Muhammad Zia-ul-Haq, which amendments had disabled political parties from obtaining a common election symbol for their candidates, which meant that general elections would be on non-party basis.

Conclusion: i) A party cannot simultaneously agitate the same matter before two courts.
ii) If intra-party elections are not held in a political party it severs its relationship with its members, and renders a party a mere name without meaning or substance.
iii) The Elections Act became law on 2 October 2017 and during the last six years no successful challenge has been thrown to it or with regard to any of its provisions.
iv) See above in analysis No. (iv).

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4. **Supreme Court of Pakistan**
Kashif v. Imran and another.
Criminal Petition No.188-P of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Mussarat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._188_p_2023.pdf

Facts: Through this criminal petition the petitioner sought post arrest bail in case FIR registered against him allegedly for committing dacoity in the complainant's house.

Issues: i) Whether the request of complainant can be accommodated in bail matters where sufficient notice has been given and accused was in jail?
ii) Whether non-disclosure of description of the accused in FIR makes the case one of the further inquiry in bail matters?

Analysis: i) In bail matter where the accused is in Jail and sufficient notice has been given, the complainant's request for adjournment cannot be accommodated (...)
ii) The FIR states that three sub-machine guns (SMGs)/7.62 bore weapons and one 9 mm pistol, gold ornaments and mobile phones were stolen when the dacoity was committed. In view of the fact that the description of the petitioner was not mentioned in the FIR, this brings into question the identification parade. And none of the stolen goods were recovered from the petitioner which makes this case one of further inquiry (...)

Conclusion: i) The request of complainant cannot be accommodated in bail matters where sufficient notice has been given and accused was in jail.
ii) Yes, non-disclosure of description of the accused in FIR makes the case one of the further inquiry in bail matters.

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5. **Supreme Court of Pakistan**
Amanullah v. Muhammad Shareef Khan
Civil Appeal No. 179 of 2016
Mr. Justice Ijaz ul Ahsan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._179_2016.pdf

Facts: The appellant being pre-emptor filed a civil suit against the respondent which was decreed by the trial court but dismissed by the first appellate court on the ground that the notice of *talb-e-ishhad* was on a printed specimen. The appellant filed civil revision before Peshawar High Court which was also dismissed. The appellant challenged the said judgment of the High Court.

Issue: Whether a notice of *talb-e-ishhad* tendered on a printed specimen/form, with the blank columns filled in by a petition writer, is valid?

Analysis: The requirement of sending a notice of *talb-e-ishhad* for confirming the intention to assert the right of pre-emption is imperative and is, essentially, a foundation stone without which no right of pre-emption can be asserted, therefore it commands a great deal of seriousness, attention, and focus. In this case, admittedly, the notice was tendered on a printed form containing stereotyped and generalized text with different columns for land, house, and shops, allowing the pre-emptor or petition writer, as the case may be, to simply erase/cut out the inapplicable terms and fill in the blanks. In our view, this ready-made format does not fulfill the purpose of a statutory notice and this court cannot countenance the use of such *pro formas* which every pre-emptor can simply purchase from a vendor, shop/stall, or petition writer who, for his own convenience, got the template for the notice printed in advance and utilizes stereotyped text in all cases by simply filling in the blank spaces for the pre-emptor to sign and send. Such a notice does not provide any classification of the pre-emptory rights and fails to convey a confirmation of the intention to press the demand of pre-emption. The purpose of a notice under the law is to convey all the necessary particulars, specifically and with a proper application of mind, on a case to case basis, in a customized/personalized form, or in the vein of a tailor-made notice rather than a ready-made notice in which the mixing or merging of irrelevant or general text with the relevant information cannot be avoided. Therefore, a notice on a printed *pro forma* cannot be considered a valid notice in accordance with the tenets and dictates of the law and the same should be drafted especially and individually for each particular case on its own facts and circumstances. The notice should not be a published template of the petition writer who was either not capable of drafting a custom- made or customized notice or, due to sluggishness or laziness, wrongly advised the appellant to send notice in the template form. In this regard the appellant is also equally responsible for depending solely on the petition writer.

Conclusion: A notice of *talb-e-ishhad* tendered on a printed specimen/form, with the blank columns filled in by a petition writer, is invalid.

6. **Supreme Court of Pakistan**
Mst. Nazeeran and others v. Ali Bux and others
Civil Appeal No.81-K of 2022
Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._81_k_2022.pdf

Facts: The appellant filed an appeal under Article 185(2)(d) of the Constitution of the Islamic Republic of Pakistan, 1973 against the judgment of the High Court of Sindh, whereby a Civil Revision filed by the respondents under section 115 of the Code of Civil Procedure, 1908 was allowed and the judgment and decree passed by the trial court decreeing the suit of the respondents were upheld.

Issues: i) Whether the standard of evidence is uniform when challenging a registered document as compared to challenging an unregistered document?
ii) Whether a *de facto* guardian of a minor has any power to transfer any right to or interest in the immovable property of the minor?

Analysis: i) The standard of evidence required to discharge the initial burden depends on the facts and circumstances of each case. It cannot be said that it will be consistent in all situations. Sometimes, a simple denial is adequate to shift the burden to the opposite party, while at other times, material evidence is necessary for the same purpose. Therefore, the standard of evidence is not uniform when challenging a registered document as compared to challenging an unregistered document. It has been observed that in disputes relating to registered documents, a common misconception may arise when an executant attempts to dispute the validity of the document through mere denial. It is essential to emphasize that the act of registration is not a perfunctory formality but rather a deliberate and legally binding process. When a document is registered, it becomes an official record available to the public. This adds credibility to the authenticity and legal purpose of the transaction. On the other hand, unregistered documents lack the same level of legal endorsement. While they may carry evidentiary weight, their value is inherently lessor as compared to the registered document. The absence of registration renders unregistered documents vulnerable to challenges regarding their authenticity and enforceability. Moreover, a document duly registered by the Registration Authority in accordance with the law becomes a legal document that carries a presumption as to the genuineness and correctness under Articles 85(5) and 129(e) of the Q.S.O. and which cannot be dispelled by an oral assertion that isinsufficient to rebut the said presumption… a mere denial by the executant of a registered sale deed is insufficient to shift the burden onto the beneficiary of the registered document. He (executant) must establish his assertion of fraud or forgery, etc. by producing some evidence other than his denial to shift the burden onto the beneficiary to prove the valid execution of the registered document. This legal principle reflects the recognition of the high evidentiary value attached to registered documents as compared to unregistereddocuments.

ii) Under section 11 of the Contract Act 1872, a contract made by a minor is of no legal effect. Moreover, it is a well-established principle of Muslim Law that a *de facto* guardian of a minor has no power to transfer any right to or interest in the immovable property of the minor.Such a transfer is not merely voidable but is void… No rights and liabilities could be attached to or arise out of a void contract. Even the principle of estoppel is also inapplicable in the case of a minor...Thus, a void contract is entirely void, as if a part of it has no effect, the other part cannot stand by itself and be operative.

Conclusion: i) The standard of evidence is not uniform when challenging a registered document as compared to challenging an unregistered document.
ii) A *de facto* guardian of a minor has no power to transfer any right to or interest in the immovable property of the minor.

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7. **Supreme Court of Pakistan**
Duniya Gul and another v. Niaz Muhammad and others
Civil Petition No.920-P of 2023
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._920_p_2023.pdf

Facts: Through this petition, filed under Article 185(3) of the Constitution, the petitioners have impugned the judgment of the Peshawar High Court, Peshawar whereby their first appeal was dismissed and the order of the trial court, closing their right to produce oral evidence, was upheld.

Issue: What course court should adopt when the last opportunity to produce evidence is granted and the party has been duly warned of the consequences?

Analysis: It is relevant to observe here that when the last opportunity to produce evidence is granted and the party has been duly warned of the consequences, the court must execute its order consistently and strongly, without exceptions. Such a measure would not only realign the system and reaffirm the authority of the law but also curb the trend of seeking multiple adjournments on frivolous grounds, which serve to needlessly prolong and delay proceedings without valid or legitimate justification. Moreover, when the court issues an order providing the final chance, it not only issues a judicial order but also extends a commitment to the parties that no further adjournments will be permitted for any reason. The court must stand by its order and uphold its commitment, leaving no room or option for any alternative action.

Conclusion: When the last opportunity to produce evidence is granted and the party has been duly warned of the consequences, the court must execute its order consistently and strongly, without exceptions.

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8. **Supreme Court of Pakistan**
Chief Executive Officer NPGCL, GENCO-III, TPS Muzafargarrah v. Khalid Umar Tariq Imran and others
Civil Petition No.1787-L of 2022
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1787_l_2022.pdf

Facts: Through this petition, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"), the petitioner has impugned the judgment of High Court whereby the constitution petition filed by the petitioner under Article 199 of the Constitution to challenge the legality of the order of the Full Bench of the National Industrial Relations Commission ("NIRC"), was dismissed while the orders of the Member NIRC were upheld.

Issues: i) What is the effect of not filing appeal under section 58 of Industrial Relations Act against ex-parte judgment of member National Industrial Relations Commission?
ii) Whether procedure prescribed under Civil Procedure Code in relation to suits may be followed by National Industrial Relations Commission, for the adjudication and determination of industrial disputes including the redressal of individual grievance?
iii) What is doctrine of election and from where this doctrine is derived by the courts?
iv) Why the rule of prudence of giving a choice to select a remedy from among several co-existent and/or concurrent remedies, has been developed by the courts of law?
v) What is the nature of order passed by member NIRC dismissing the application for setting aside ex-parte judgment and what remedy is available to aggrieved person against such order?
vi) Under what condition the benefit of Section 5 (condonation of delay) can be availed, when a special law governing a proceeding itself provides for a period limitation?
vii) For what purpose law of limitation is designed and whether valuable rights accrue in favour of other party on the expiration of limitation period?

Analysis: i) So, the petitioner, if feeling aggrieved by the said ex-parte judgment of the member NIRC, should have filed an appeal within 30 days. It is a matter of record that the petitioner did not file any appeal, and the prescribed period of limitation for filing the appeal under Section 58 of IRA expired; therefore, the said ex-parte judgment is final between the parties on the basis of the well known principle of *res judicata(…)*
ii) The objection raised by the counsel for the respondent that the petitioner could not have filed the aforementioned applications under the general law lacks merit and is rejected as being misconceived. This is because Regulation 45 of the National Industrial Relations Commission (Procedure and Functions) Regulations,

2016 stipulates that the procedure prescribed under the Civil Procedure Code (C.P.C.) in relation to suits may be followed for the adjudication and determination of industrial disputes, including the redressal of individual grievances. Therefore, the respondent could have filed such an application for setting aside the ex-parte judgment.

iii) It is a well-settled proposition of law that when an aggrieved person intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst the actions or remedies available under the law. The choice to initiate and pursue one out of the available concurrent or coexistent actions or remedy from a forum of competent jurisdiction vest with the aggrieved person. Once the choice is exercised and the election is made then the aggrieved person is prohibited from launching another proceeding to seek relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/action and or remedy, which in legal parlance is recognized as 'doctrine of election', which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2) C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of *res-judicata* as articulated in section 11, C.P.C. and its explanations.

iv) Giving a choice to select a remedy from among several coexistent and/or concurrent remedies prevents the recourse to multiple or successive redressals of a singular wrong or impugned action. It also provides an opportunity for an aggrieved person to choose a remedy that best suits the given circumstances. Such a rule of prudence has been developed by courts of law to reduce the multiplicity of proceedings. As long as a party does not avail of the remedy before a Court of competent jurisdiction all such remedies remain open to be invoked. Once the election is made then the party generally, cannot be allowed to hop over and shop for one after another coexistent remedies.

v) We have however no hesitation to observe here that the order of the member NIRC, dismissing the application to set aside the ex-parte judgment would amount to a 'decision given' in terms of section 58 of the IRA. Therefore, the petitioner could have challenged this order by filing an appeal under section 58 of the IRA.

vi) It would be relevant to mention here that when the law under which proceedings have been initiated prescribes a period of limitation, the benefit of Section 5 of the Limitation Act, 1908 ("Limitation Act") which allows for the filing of an appeal, application for revision, or a review of the judgment, etc. after the period of limitation after satisfying sufficient cause, cannot be availed unless Section 5 has been made applicable as per Section 29(2) of the Limitation Act.

vii) The law of limitation provides an element of certainty in the conduct of human affairs. The law of limitation is a law that is designed to impose *quietus* on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence. Therefore, the limitation

cannot be regarded as a mere technicality. With the expiration of the limitation period, valuable rights accrue to the other party.

Conclusion: i) When appeal is not filed against ex-parte judgment of member NIRC within prescribed period of limitation under Section 58 of IRA, the said ex-parte judgment is final between the parties on the basis of the well-known principle of res judicata.

ii) Yes, as per Regulation 45 of the National Industrial Relations Commission (Procedure and Functions) Regulations, 2016, procedure prescribed under Civil Procedure Code in relation to suits may be followed by National Industrial Relations Commission, for the adjudication and determination of industrial disputes including the redressal of individual grievance.

iii) See corresponding analysis no. iii, above.

iv) Such a rule of prudence has been developed by courts of law to reduce the multiplicity of proceedings.

v) The order passed by member NIRC dismissing the application for setting aside ex-parte judgment would amount to a 'decision given' in terms of section 58 of the Industrial Relations Act and remedy of appeal under said section 58 is available to aggrieved person.

vi) When a special law governing a proceeding itself provides for a period limitation, the benefit of Section 5 (condonation of delay) cannot be availed unless it has been made applicable by that law in accordance with Section 29(2) of the Limitation Act, 1908.

vii) The law of limitation is a law that is designed to impose quietus on legal dissensions and conflicts and with the expiration of the limitation period, valuable rights accrue in favour of other party.

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9. **Supreme Court of Pakistan**
Qudrat Ullah v. Additional District Judge, Renala Khurd District Okara etc.
Civil Petition No.8-L of 2023
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._8_l_2023_r.pdf

Facts: The Respondent No.3 instituted a suit for recovery of maintenance for her minor daughter/respondent No.4, when she was six months old, in the Court of Family Judge, which was decreed. Subsequently, Respondent No.3 filed a Family Suit for enhancement of maintenance amount. That suit was decreed and maintenance amount was enhanced. Thereafter, respondents preferred an appeal before the Additional District Judge, for further enhancement of maintenance which too was allowed. Being aggrieved, the petitioner filed a Writ Petition before High Court, which was dismissed. The petitioner has called in question the order passed by the High Court through this petition.

Issues: i) How the word “maintenance” can be defined?

ii) Whether it is a legal and religious duty of a man to maintain his wife and children?

iii) Whether the ratification by Pakistan of the United Nations Convention on the Rights of the Child, 1989, has become absolute?
iv) Whether a Muslim father is under an obligation to pay the expenses incurred on education of his children?

Analysis: i) In Pakistan, issues related to child maintenance are dealt with by the Muslim Family Laws Ordinance, 1961, and the West Pakistan Family Courts Act, 1964. However, these laws do not provide a specific definition for "maintenance." For better understanding it is suitable to rely on the dictionary meaning of the term. The word “maintenance” is derived from Arabic word “Nafaq” which means “to spend” and in literal sense, the word “nafaqah” (ةَقَفَن (means what a person spends on his family. The word “maintenance” has been defined in Black’s Law Dictionary, as under: “Financial support given by one person to another.” It has been defined in Section 369 of the Principles of Muhammadan Law by D.F Mulla… Such definition of maintenance is not exhaustive. The word "includes" is generally used in interpretation clauses in order to enlarge the meaning of words or phrases, occurring in the body of the Statute; and when it is so used those words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. In this view of the matter, it does not exclude other necessary expenses for mental and physical well-being of a minor. This view is also fortified by the judgment in Arslan Humayun and another wherein it was held that Section 369 ibid has a wider connotation and should be given an extended meaning, for the purposes of social, physical, mental growth, upbringing and wellbeing of the minor.

ii) Undeniably, the Almighty Allah is the only sustainer, but, He has created means through which this task is accomplished. Bearing the expenses of children is the second most important task of the father. In Islamic law “maintenance” is termed as Nafaqah (ةَقَفَن (and signifies all those things which are necessary to support life. It is the legal and religious duty of a man to maintain his wife and children. The obligation to maintain wife and children is derived from the Holy Quran and is one of the incidences of marriage. Verse 233 of Surah Al-Baqarah says: “…and it is incumbent upon him who has begotten the child to provide in a fair manner for their sustenance and clothing.” Furthermore, Verse 34 of Surah An-Nisaa enjoins: “Men are the protectors and maintainers of women because God has given the one more (strength) than the other and because they support them from their means.” Thus, right of child to be maintained by the father is ordained by Islamic law as mentioned above. Similarly, under Pakistani law, the maintenance of a child is an obligation primarily upon the father. The Family Courts Act 1964 and the Muslim Family Laws Ordinance 1961 (“MFLO”) deal with the issue of maintenance of minors in Pakistan.

iii) All the civilized nations of the world have recognised that children have rights by virtue of being children. These obligations are also erga omnes and have since been codified in the United Nations Convention on the Rights of the Child, 1989

(the "UNCRC"). UNCRC is an international treaty which sets out the rights of children. The State of Pakistan ratified the UNCRC on 12.11.1990 with its only reservation that its Articles will be interpreted in light of Islamic injunctions. However, in 1997, this reservation was withdrawn, thus, ratification became absolute.

iv) The concept of the "child's best interests" is not new. Indeed, it pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, 1979, as well as in regional instruments and many national and international laws. When assessing and determining the best interests of a child the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being should be taken into consideration. Children's well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety. It is in the best interests of the child to have access to quality education, including early childhood education. All decisions on measures and actions concerning a specific child must respect the best interests of the child or children, with regard to education. The above discussion leads us to draw a conclusion that it would be absolutely safe to include educational expenses also within the concept of maintenance of a child.

Conclusion: i) See under analysis No. (i).

ii) It is a legal and religious duty of a man to maintain his wife and children.

iii) The ratification by Pakistan of the United Nations Convention on the Rights of the Child, 1989 has become absolute.

iv) A Muslim father is under an obligation to pay the expenses incurred on education of his children however he is not bound to provide the maintenance for education at higher levels ad infinitum.

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10. **Supreme Court of Pakistan**
Syed Asghar Ali Shah etc. v. Kaleem Arshad and others
Civil Petitions No. 167-P and 391/2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._167_p_2022.pdf

Facts: Petitioners seek leave to appeal under Article 212(3) of the Constitution against the judgment of the Khyber Pakhtunkhwa Subordinate Judiciary Tribunal whereby the issue of seniority of respondent No.1 appointed as Additional District and Sessions Judge from the selection process of the year 2001 was considered and decided in terms of Rule 10(a) of the Khyber Pakhtunkhwa Judicial Service Rules 2011 read with Section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act 1973, and his seniority was fixed along with his batch mates above the petitioners who were appointed from the selection process of the years 2002 and 2003.

Issues: i) What three parts of Article 212 of constitution describe?

ii) Whether administrative tribunal with specialized subject matter and a dedicated forum of appeal i.e. Supreme Court, is the significance of non-obstante clause in Article 212 (1) of Constitution that enables Article 212 to override the regular Constitutional regimes?

iii) What is effect of non-obstante clause in Article 212(2) of Constitution?

iv) Whether clause (2) of Article 212 of Constitution is merely an ouster clause and not jurisdictional clause?

v) Whether only federal legislature can vest jurisdiction in the Supreme Court under the Constitution (entry 55 of the Federal Legislative List) and therefore unless there is an Act of Parliament extending clause (2) (of Article 212) to a Provincial Tribunal, right to appeal is not available to this Court under clause (3) of Article 212?

vi) Whether appeal to the Supreme Court is available against orders of both the Federal and Provincial Administrative Tribunals by a special constitutional scheme provided under Article 212?

vii) Whether due to absence of law passed by Parliament to activate right of appeal before Supreme Court, the decision of a tribunal established under the provincial law is to be challenged under Article 199 of Constitution?

viii) Whether date or year of selection process determines the seniority of an officer as per Rule 10(a) of section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973?

Analysis: i) Article 212, starts with a non-obstante clause and has three parts: (i) clause (1) empowers the appropriate legislature to establish Administrative Tribunals with exclusive jurisdiction over specific subject matters provided in clauses (a), (b) and (c); (ii) clause (2) does two things, it provides for an "ouster clause", excluding the jurisdiction of other courts in matters falling under the jurisdiction of the Administrative Tribunals under clause (1), and an "abatement clause", abating any proceedings in respect of any such matter pending before any other court except the Supreme Court. The proviso to clause (2) extends the "ouster clause" in clause (2) to the Provincial Administrative Tribunals established under clause (1) only if on the request of the Provincial Assembly through a resolution, clause(2) is extended to a Provincial Tribunal through an Act of Parliament; and (iii) under clause (3) an appeal by leave is provided to the Supreme Court against the decisions of these Administrative Tribunals, if they involve a substantial question of law of public importance.

ii) Article 212(1) has a non-obstante clause, i.e., "Notwithstanding hereinbefore contained", that overrides other provisions of the Constitution, in particular, Article 142, [Article 142 also begins with the phrase: "Subject to the Constitution"] which vests exclusive power in the federal legislature to make laws with respect to any matter in the Federal Legislative List and concurrent power in the federal and provincial legislatures to make laws only with respect to criminal law, criminal procedure and evidence. Article 212(1) authorizes and allows the

appropriate legislatures, both federal and provincial, to establish Administrative Tribunals with exclusive jurisdiction for dealing with specific subject matters as provided in clauses (a), (b) and (c) thereof. Federal legislature might not otherwise possess legislative competence under the Federal Legislative List, or under the concurrent power mentioned in Article 142, to establish these Administrative Tribunals regarding subject matters enumerated under clauses (a), (b) and (c) of Article 212(1); however, Article 212(1) of the Constitution empowers both the federal and provincial legislatures to establish such Administrative Tribunals over and above the permissible legislative competence under Article 142 and the Federal Legislative List. This unique legislative power of the provincial and federal legislatures to establish Administrative Tribunals under Article 212 with specialized subject matter and a dedicated forum of appeal, i.e., the Supreme Court, is the significance of the non-obstante clause that enables Article 212 to override the regular constitutional regime.

iii) Clause (2) of Article 212 also contains a non-obstante clause, which does two things: first, it ousts the jurisdiction of all other courts vested in them in terms of Article 175 to deal with matters covered under the exclusive jurisdiction of the Administrative Tribunals established under Article 212(1); and second, it provides that any such matter pending before any other court shall abate, excluding matters pending before the Supreme Court. The proviso to clause (2) further provides that the said ouster clause will come into effect for the Provincial Tribunals only if on the resolution of the Provincial Assembly the Parliament passes an Act, which extends the provisions of clause (2) to such a Tribunal. Such a Federal Law was once enacted in 1974 titled, the Provincial Service Tribunals (Extension of Provisions of the Constitution) Act, 1974 and admittedly there is no such law that extends to the Provincial Tribunal in question.

iv) Clause (2) of Article 212 is, in our opinion, merely an ouster clause and not a jurisdiction clause. In case of Federal Tribunals, it provides that no other court can take jurisdiction over any matter which falls under the subject matter of the Administrative Tribunal established under Article 212(1). If clause (2) has not been made applicable to a Provincial Tribunal, it at best means that there are other forums also available to redress the grievance of the officers, e.g., the High Court under Article 199 or the Civil Courts under Section 9 of the Civil of Procedure Code, 1908. In the absence of clause (2), all the judicial forums in a Province have concurrent jurisdiction along with the Provincial Administrative Tribunal. Once a civil servant invokes the jurisdiction of the Provincial Tribunal, the remedy of an appeal by leave against any decision of the Provincial Tribunal before this Court becomes alive. Remedy of appeal under clause (3) will not be available if the civil servant approaches the High Court or the Civil Court for the redressal of his grievance. Applicability of clause (2) to a Provincial Tribunal is totally insignificant as it has no effect on the remedy of appeal against the decision of the Provincial Tribunal before this Court which is ensured under clause (3).

v) Gomal [PLD 2023 SC 190] repeatedly lays stress on clause (2) and its proviso

to say that unless the provision of clause (2) is made applicable to a Provincial Tribunal, the remedy of appeal under clause (3) before this Court is not available against any decision of a Provincial Tribunal. This line of reasoning is based on the central principle formulated in Gomal; that only federal legislature can vest jurisdiction in the Supreme Court under the Constitution (entry 55 of the Federal Legislative List) and therefore unless there is an Act of Parliament extending clause (2) to a Provincial Tribunal, right to appeal is not available to this Court under clause (3). This line of reasoning is, with respect, flawed as Gomal fails to appreciate the clear and direct provision of the Constitution, i.e. clause (3) of Article 212, and instead places reliance on the legislative competence to enact a sub-constitutional law under the Constitution. While Gomal is right when it reasons that the appellate jurisdiction can only be conferred upon the Supreme Court by federal legislature under entry 55 of the Federal Legislative List and not by the provincial legislature, it utterly fails to appreciate that it is the non-obstante provision of Article 212 of the Constitution itself that is allowing appeal by leave from a Provincial Administrative Tribunal to the Supreme Court. The "principle" enunciated in Gomal, that "it is only the Parliament that can (if at all) enact legislation that acts upon or affects the jurisdiction of this Court[;] [t]he provincial assemblies cannot do so", has little significance once the Constitution itself has conferred appellate jurisdiction on the Supreme Court against matters arising from a Tribunal constituted under Article 212(1)(a). Even otherwise, the foundational premise of Gomal that only federal legislature can vest jurisdiction in this Court seems to have no nexus or co-relation with clause (2) which is simply an ouster clause. It is not as if the act of the Parliament under the proviso to clause (2) converts the Provincial Tribunal into a Federal Tribunal, or the provincial legislation into federal legislation, it simply ousts other courts from exercising jurisdiction in matters covered by a Provincial Tribunal.

vi) Clause (3) is the third part of Article 212, which provides than an appeal shall lie to the Supreme Court from a judgment, decree order or sentence of the Administrative Tribunal, and the Supreme Court shall grant leave if the Supreme Court is satisfied that a substantial question of law of public importance arises in the case. Clause (3) has no co-relation whatsoever with the ouster clause of clause (2). Whether a Provincial Tribunal enjoys the ouster clause or not, does not affect the appellate jurisdiction of this Court. Clause (3) is independently connected with all the administrative Tribunals, including Provincial Tribunals, established under Article 212(1). It is once again reiterated that the appeal to the Supreme Court is available against orders of both the Federal and Provincial Administrative Tribunals by a special constitutional scheme provided under Article 212, which due to the non-obstante clause is over and above any sub-constitutional legislation under the regular constitutional scheme.

vii) The law declared in Gomal that unless and until the proviso to Article 212(2) of the Constitution is activated, appeal against an order of a Provincial Tribunal is not available before this Court under Article 212(3) of the Constitution, and that in the absence of such a law passed by the Parliament, the decision of a Tribunal

established under the Provincial law is to be challenged under Article 199 of the Constitution, is not correct and is therefore overruled.

viii) Section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides that the seniority shall be determined in accordance with the Rules prescribed under the said Act and Rule 10(a) of the Rules, 2001 provides that persons selected for the service in the "earlier selection" shall rank senior to the persons selected in a "later selection." The date or year of selection process determines the seniority of an officer as per Rule 10(a). Implied in the selection process is a group or batch of candidates who go through the selection process together and are subsequently selected and appointed together. Admittedly, respondent No.1 was a part and parcel of selection process of the year 2001 but he was denied appointment which he challenged before the High Court and was successfully appointed on the direction of the High Court. His seniority under Rule 10(a) will be considered from the date of his selection process along with his group and batch mates who were a part of the same selection process.

Conclusion: i) See above under analysis no. 01.

ii) Administrative Tribunals under Article 212 with specialized subject matter and a dedicated forum of appeal, i.e., the Supreme Court, is the significance of the non-obstante clause that enables Article 212 to override the regular constitutional regime.

iii) Clause (2) of Article 212 also contains a non-obstante clause, which does two things: first, it ousts the jurisdiction of all other courts vested in them in terms of Article 175 to deal with matters covered under the exclusive jurisdiction of the Administrative Tribunals established under Article 212(1); and second, it provides that any such matter pending before any other court shall abate, excluding matters pending before the Supreme Court.

iv) In the opinion of Supreme Court, Clause (2) of Article 212 is merely an ouster clause and not a jurisdiction clause.

v) The "principle" enunciated in Gomal, that "it is only the Parliament that can (if at all) enact legislation that acts upon or affects the jurisdiction of this Court[;] [t]he provincial assemblies cannot do so", has little significance once the Constitution itself has conferred appellate jurisdiction on the Supreme Court against matters arising from a Tribunal constituted under Article 212(1)(a).

vi) The appeal to the Supreme Court is available against orders of both the Federal and Provincial Administrative Tribunals by a special constitutional scheme provided under Article 212, which due to the non-obstante clause is over and above any sub-constitutional legislation under the regular constitutional scheme.

vii) It is incorrect that due to absence of law passed by Parliament to activate right of appeal before Supreme Court, the decision of a tribunal established under the provincial law is to be challenged under Article 199 of Constitution.

viii) Seniority under Rule 10(a)) of section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 will be considered from the date of selection process

along with group and batch mates who were a part of the same selection process.

Additional Note:
Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._167_p_2022_an.pdf

Issues: i) Whether Article 212(2) of constitution provides right of appeal to Supreme Court as of right?
ii) What is the effect of ouster of jurisdiction under Article 212(2) and whether it is mandatory for the proviso contained therein to be activated in order for the leave to appeal to be filed before this Court?
iii) Whether proviso to Article 212(2) act as a bridge between Sub-Articles (1) and (3) of Article 212?
iv) Whether remedy of leave to appeal before the Supreme Court is available against the decision of the KPK Service Tribunal established under Article 212(1)?

Analysis: i) Article 212 clause (3) provides an appeal to the Supreme Court from the judgment, decree, order or sentence of the Tribunal shall lie to the Supreme Court. This appeal under Article 212(3) is not as of right but is subject to the satisfaction that a substantial question of law of public importance arises in the case.
ii) To my mind, Article 212(3) of the Constitution is the constitutional mandate which prescribes that leave to appeal before the Supreme Court for the Tribunal established under Article 212(1) of the Constitution can be filed directly, meaning thereby, the Constitution itself provides for the remedy of appeal before the Supreme Court. Both Sub-Articles (1) and (3) of Article 212 of the Constitution are exceptions to the legislative authority contained in Article 142 of the Constitution as the Constitution itself authorizes and permits the Federal and Provincial Legislature, irrespective of the authority given in Article 142 of the Constitution read with the Federal Legislative List (FLL), to establish the Tribunal and to allow its leave to appeal directly before this Court. Article 212(2) merely ousts the jurisdiction of other courts or fora. Resultantly, even though the Tribunal is established under Article 212(1), the ouster of jurisdiction of other courts is automatically triggered by Article 212(2) of the Constitution and with respect to federal courts but for the provincial courts it is necessary that the Provincial Assembly activate the proviso to Article 212(2) of the Constitution. In such case, the Tribunal will be an exclusive forum, which totally and completely ousts the jurisdiction of all other courts or fora with respect to the special subject-matters contained in SubArticles (a), (b) and (c) of Article 212(1) of the Constitution. However, if the proviso is not activated, meaning there is no resolution by the Provincial Legislature (followed by an Act of Parliament) the ouster of jurisdiction will not be triggered. Consequently, a litigant will have the option to avail its remedy before any other forum including the remedy before the Supreme Court.

iii) The proviso does not act as a bridge between Sub-Articles (1) and (3) of Article 212, rather it allows and empowers the Provincial Legislature to decide whether, for the purposes of the establishment of the Provincial Tribunal, remedy should lie exclusively to the Supreme Court or, in the alternate, giving more options to the litigant.

iv) As Article 212(1) of the Constitution itself confers jurisdiction on the Provincial Legislature to establish the Provincial Tribunal under Article 212(1), the Constitution also confers appellate jurisdiction to the Supreme Court from a judgment, decree, order or sentence of the said Provincial Tribunal, the remedy of leave to appeal before the Supreme Court is available against the decision of the KPK Service Tribunal established under Article 212(1) since these Petitions are with reference to the appeal under Section 5 of the SJST Act from an order of the said Service Tribunal.

Conclusion: i) Appeal under Article 212(3) is not as of right but is subject to the satisfaction that a substantial question of law of public importance arises in the case.

ii) Even though the Tribunal is established under Article 212(1), the ouster of jurisdiction of other courts is automatically triggered by Article 212(2) of the Constitution and with respect to federal courts but for the provincial courts it is necessary that the Provincial Assembly activate the proviso to Article 212(2) of the Constitution. If the proviso is not activated, meaning there is no resolution by the Provincial Legislature (followed by an Act of Parliament) the ouster of jurisdiction will not be triggered. Consequently, a litigant will have the option to avail its remedy before any other forum including the remedy before the Supreme Court.

iii) Proviso to Article 212(2) does not act as a bridge between Sub-Articles (1) and (3) of Article 212.

iv) The remedy of leave to appeal before the Supreme Court is available against the decision of the KPK Service Tribunal established under Article 212(1) in the view of section 5 of the SJST Act from an order of the KPK Service Tribunal.

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11. **Supreme Court of Pakistan**
Pervez Elahi v. Election Commission of Pakistan, etc.
Civil Petition No.181 of 2024.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._181_2024_n.pdf

Facts: The petitioner filed nomination paper for the seat of a Member of the Punjab Provincial Assembly and Respondent No. 4 submitted his objections against the candidature of the petitioner. The Returning Officer rejected the nomination paper of the petitioner. The appeal of the petitioner before the Election Tribunal failed. The petitioner then preferred a writ petition in the Lahore High Court, which was also dismissed by a Full Bench of the Lahore High Court through the impugned order. Hence, this petition for leave to appeal.

Issues: i) Is the law require that a candidate must open a separate bank account for every seat he is contesting for election?

ii) Whether Returning Officer should reject nomination paper on the ground of any defect/ misdeclaration of the asset which is of a substantial nature?

Analysis: i) As for the first ground of rejection of nomination paper, the contention of the respondents is that the exclusive bank account has to be for every seat the candidate is contesting for and as the petitioner is also contesting for other seats, but he has mentioned one and the same bank account for all his nomination papers filed for several seats. We are afraid, the contention is misconceived. Our reading of the said provision is that the exclusivity of the required bank account is for the "purpose of election expenses", and not for the number of seats the candidate is contesting for in the elections. One exclusive bank account for the election expenses to contest for any number of seats, in our view, meets the statutory requirement. For the purpose of requiring such exclusive bank account is to ensure compliance with the provisions of Section 132(3) of the Act, which has prescribed an upper limit of expenses for election to a seat in the Senate, the National Assembly and a Provincial Assembly. If a person contests for election to more than one seats, his expenses should not exceed the aggregate of the prescribed expenses for all those seats. The stance taken by the respondents that the candidate must open a separate bank account for every seat he is contesting for, is not the intent and purpose of the law and is therefore not legally sustainable.

ii) As far as the objection of misdeclaration of the asset in Form B is concerned, the said asset is a 10 marla land in Tehsil Phalia, District Mandi Bahauddin. According to the mutation placed before us the land was purchased on 30.11.2023, whereas the requirement of Section 60(2)(d) is that the statement of assets and liabilities should be as on the preceding 30th day of June i.e., 30.06.2023 and, therefore, the alleged procurement of the asset in question, though denied by the petitioner, has no bearing on the nomination paper filed by the petitioner. Perusal of the Form B submitted by the petitioner clearly shows that the listed assets are as on 30.06.2023. Even otherwise, the petitioner has categorically denied that he has purchased the said property and no summary inquiry has been conducted by the RO to ascertain the factual position under section 62(9) of the Act (…) Had the petitioner not disputed his ownership of the said land, the RO may have directed him to mention the same in his statement of assets; as the second proviso to Section 62(9) of the Act specifically prescribes for the ROs that they should not reject any nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith.

Conclusion: i) The law does not require that a candidate must open a separate bank account for every seat he is contesting for election.

ii) Returning Officer should not reject nomination paper on the ground of any defect/ misdeclaration of the asset which is not of a substantial nature.

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12. **Supreme Court of Pakistan**
Rohan Ahmad v. The State etc.
Crl.P.894-L/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._894_l_2023.pdf

Facts: Through this petition**,** the Petitioner sought leave to appeal against the order dated 22.08.2023 of High Court, whereby his second post arrest bail in case FIR, under Section 11 PECA, 2016 read with sections 295-B, 298-C, 120-B, 34 and 109 PPC at the FIA Cybercrime Reporting Centre, Police Station FIA Cybercrime Wing was declined.

Issues: i) Whether statutory right to be released on bail under the third proviso to Section 497 CrPC merely a statutory right?
ii) In what circumstances statutory right of bail along with other constitutional rights are available to an accused?
iii) Whether merely counting the number of adjournment requests alone is not enough to justify withholding bail?
iv) When trial of accused is suspended by revisional court, can the same be attributed to accused for bail on statutory right?
v) How a High Court should exercise authority to order stay or suspend the proceedings in a criminal trial?

Analysis: i) In our view the statutory right to be released on bail under the third proviso to Section 497 CrPC is not merely a statutory right but also stands firmly on constitutional guarantees under Article 4, 9 and 10A of the Constitution. Under the said Articles the accused, like any other citizen enjoys the protection of law and to be treated in accordance with law; the accused cannot be deprived of liberty, except in accordance with law; and in determination of any criminal charge against him the accused shall be entitled to a fair trial and due process.
ii) These basket of rights are available to an accused who enjoys a presumption of innocence in his favour and understandably cannot be subjected to an indefinite pre-trial detention and therefore cannot be denied bail under the third proviso to section 497(1), Cr.P.C unless there is convincing material that the delay has been occasioned by the act or omission of the accused himself or if his case falls under any of the exceptions under the fourth proviso to section 497 CrPC.
iii) For an accused to be denied statutory bail, it must be demonstrated that his act or omission, was intentionally aimed at prolonging the trial. It must show a deliberate pattern of seeking adjournments without valid reasons during key hearings such as the examination or cross-examination of prosecution witnesses. Mere counting the number of adjournment requests alone is not enough to justify withholding bail. The application of the third proviso to Section 497(1) of the

Cr.P.C when interpreted in the light of Articles 9 and 10A of the Constitution, broadens and enhances the rights of an accused who is presumed innocent during trial. The prosecution must present clear evidence that the accused or his counsel was actively trying to delay the trial through unnecessary adjournments or irrelevant applications, in order to justify denying bail. As already held by this Court, the act or omission on the part of the accused to delay of the timely conclusion of the trial must be an outcome of a concerted and consistent effort of the accused orchestrated to delay the trial.

iv) …The Criminal Revision has not progressed for no fault of the petitioner, there is nothing on the record that the delay has been occasioned by the act or omission of the petitioner. The delay has been mainly due to the act of the High Court as the case was repeatedly relisted and not taken up on several hearings for no fault of the accused and thus the indefinite delay in the trail has been due to the act of the High Court which cannot be attributed to the accused in any circumstance.

v) While the High Court enjoys the authority to order stay or suspend the proceedings in a criminal trial, in a deserving case, it is equally important that such an exercise of authority must be carried out with caution and circumspection, ensuring expeditious disposal of the case after the grant of injunctive relief. High Court should not lose sight of the case where it has exercised its extraordinary power of staying or suspending the proceeding of a criminal trial but should make it a point of finally disposing of such proceedings as early as possible. Public interest necessitates that the administration of justice is improved for sustaining the faith of a common man in rule of law and justice delivery system, which are closely and inextricably linked.

Conclusion: i) Statutory right of an accused to be released on bail under the third proviso to Section 497 CrPC is not merely a statutory right but also stands firmly on constitutional guarantees under Article 4, 9 and 10A of the Constitution.

ii) See corresponding analysis no. ii, above.

iii) Mere counting the number of adjournment requests alone is not enough to justify withholding bail. For an accused to be denied statutory bail, it must be demonstrated that his act or omission, was intentionally aimed at prolonging the trial.

iv) A delay caused by the suspension of a trial due to an act of the Revisional Court cannot be attributed to the accused under any circumstances.

v) See corresponding analysis no. v, above.

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13. **Supreme Court of Pakistan**
Umar Aslam Khan v. Election Commission of Pakistan, etc.
Civil Petition No.159 of 2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail
Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._159_2024.pdf

Facts: The petitioner sought leave to appeal against the order passed by a Full Bench of the Lahore High Court, Lahore, whereby his nomination paper for seat of the National Assembly was rejected on the ground that he is a proclaimed offender in a criminal case.

Issue: Whether a proclaimed offender is disqualified from contesting the elections?

Analysis: The august court observed that since there is no provision either in the Constitution or in the Elections Act that makes a proclaimed offender disqualified from contesting the election, the courts cannot on their own create such additional disqualification, without any backing of the law. Further reference was made to Civil Appeal No. 982 of 2018 etc. titled Hamza Rasheed Khan v. Election Appellate Tribunal & Others to opine that Article 62 (1) (d), (e), (f) and (g) was not to be considered self-executory and to serve as guidelines for the voters in exercising their right to vote, hence even being a proclaimed offender would not attract the disqualification under the said provisions.

Conclusion: See analysis part above

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14. **Supreme Court of Pakistan**
Commissioner Inland Revenue Zone-IV, Karachi v. M/s A.P. Moller Maersk
Civil Petition No. 560-K to 573-K of 2019
Commissioner Inland Revenue Zone-IV, Karachi v. M/s Safmarine Container Line
Civil Petition No. 574-K to 589-K of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._560_k_2019.pdf

Facts: In these petitions, the petitioner raised a question whether income arising from container detention charges ("CDC"), container service charges ("CSC") and terminal handling charges ("THC") falls within the category of "profits from the operation of ships in international traffic" in the context of double taxation conventions concluded between Pakistan and Denmark, as well as between Pakistan and Belgium.

Issues: i) Whether the Pakistan-Denmark Convention and the Pakistan-Belgium Convention have overriding effect on the Income Tax Ordinance 2001?
ii) Whether Tax treaties require a broad purposive interpretation and their interpretation may be more liberal than domestic law?
iii) What are meanings of the terms CDC, CSC and THC?
iv) Whether profits arising from CDC, CSC, and THC fall within the scope of the term "profits from the operation of ships in international traffic"?

Analysis: i) The respondents, being tax residents of Denmark and Belgium, are entitled to the benefits and concessions under the Pakistan-Denmark Convention and the Pakistan-Belgium Convention, as the case may be, in line with the provisions of

Section 107 of the Income Tax Ordinance 2001 ("Ordinance"). Under subsection 2(c) of Section 107 of the Ordinance, the taxability of the respondents' income is to be determined under the provisions contained in the two Conventions which override the Ordinance. These Conventions provide for allocation of taxing jurisdiction to the contracting States in respect of different heads of income.

ii) International tax treaties, conventions or agreements, given their unique nature, as held in Snamprogetti, require a distinct interpretive approach compared to the one used while interpreting domestic legislation. These agreements being international treaties are governed by the rules of interpretation outlined in the Vienna Convention on the Law of Treaties. Tax treaties differ from domestic tax laws in language, application, and purpose. These treaties are relieving in nature and seek to avoid double taxation, while domestic tax law imposes tax in specific situations. Tax treaties require a broad purposive interpretation, and their interpretation may be more liberal than domestic law. Treaty interpretation is a separate subject from statutory interpretation, accentuating the need to interpret tax treaties independently of domestic law. The role of a State in a bilateral agreement is more of implementing the terms of such agreement rather than that of interpreting the same and that too in a unilateral manner. Given that the primary purpose of tax treaties is to avoid and relieve double taxation through equitable and acceptable distribution of tax claims between the countries, it is important that the provisions of these treaties are interpreted in a common and workable manner, taking into account international tax language, legal decisions of other countries, model treaties, along with their commentaries, developed by the Organization for Economic Cooperation and Development ("OECD") and the United Nations ("UN") , and scholarly academic works where appropriate.

iii) CDC is the amount collected on account of rent of container, which is charged if a customer holds the said container beyond the stipulated time required to discharge the goods at the intended port of disembarkation; CSC is collected by shipping lines on account of services in respect of containers which may be required due to discharge of goods at the destination; and THC is collected by shipping lines on account of terminal charges incurred at the port of disembarkation.

iv) We see that the operation of ships in international traffic has been given special tax treatment in Pakistan-Denmark Convention and the Pakistan-Belgium Convention in accord with the OECD Model Convention ("OECD MC") and the UN Model Convention ("UN MC"). The expression "profits from the operation of ships in international traffic" also covers profits from activities directly connected with such operations as well as profits from activities which are not directly connected with the operation of the enterprise's ship in international traffic as long as they are ancillary to such operation – activities that the enterprise does not need to carry on for the purposes of its own operation of ships in international traffic but which make a minor contribution relative to such operation and are so closely related to such operation that they should not be regarded as a separate business or source of income of the enterprise should be

considered to be ancillary to the operation of ships in international traffic. The objective scope of Article 8 of the OECD MC and the UN MC with its reference to "profits from the operation of ships in international traffic" covers not only profits directly obtained by the enterprise from the transportation of passengers or cargo by ships that it operates in international traffic, but also, profits from activities directly connected with such operations as well as profits from activities which are not directly connected with the operation of the enterprise's ships in international traffic as long as they are ancillary to such operation. Activities are to be considered ancillary to the operation of ships in international traffic if (i) the enterprise does not need to undertake them for the purposes of its own operation of ships in international traffic but which otherwise (ii) make a minor contribution relative to such operation and (iii) are so closely related to such operation that they should not be regarded as a separate business or source of income. Article 8 OECD and UN MC therefore applies not only to profits directly obtained in international traffic e.g. transport of passengers or cargo, sales of tickets of the enterprise, leasing of ships, but also to profits directly connected with international traffic and to profits ancillary to international traffic e.g. inland transport, interest, code sharing and slot chartering, haulage services and catering services, provision of goods and services to other enterprises, sales of tickets on behalf of other enterprises, advertising on behalf of other enterprises, letting of immovable property, rental of containers. The issue in question concerns income arising from three sources: CDC, CSC, and THC. Notably, two of these sources involve charges imposed for services related to containers, whereas the third pertains to charges associated with terminal services for cargo handling. In the context of such income sources, Vogel, a recognized authority, emphasizes the widespread use of containers in international transport. Profits arising from short-term storage of containers or from detention charges for the late return of containers, according to Vogel, are covered within the purview of "profits from the operation of ships in international traffic". Further, special remuneration for services ancillary to container operations are covered within the ambit of shipping income from international traffic. Income derived from services provided for cargo handling is also considered part of shipping income from international traffic when directly connected or ancillary to the operation of ships in international traffic. We thus reach the conclusion that profits arising from CDC, CSC and THC are connected with and ancillary to the operation of ships in international traffic. Consequently, these profits squarely fall within the purview of the expression "profits from the operation of ships in international traffic".

Conclusion: i) The Pakistan-Denmark Convention and the Pakistan-Belgium Convention have overriding effect on the Income Tax Ordinance 2001.

ii) Tax treaties require a broad purposive interpretation and their interpretation may be more liberal than domestic law.

iii) See under analysis no. (iii)

iv) Profits arising from CDC, CSC and THC are connected with and ancillary to

the operation of ships in international traffic. Consequently, these profits squarely fall within the purview of the expression "profits from the operation of ships in international traffic".

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15. **Supreme Court of Pakistan**
Tahir Sadiq (in both cases) v. Faisal Ali, etc. (in both cases)
Civil Petition No.150 & 152 of 2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._150_2024_3012024.pdf

Facts: The nomination paper of the petitioner for the seat of a Member of the National Assembly was rejected by the Returning Officer mainly on the ground that the petitioner was a 'proclaimed offender'. However, on appeals of the petitioner, the Appellate Tribunal accepted his nomination paper. Thereafter, the respondent filed writ petitions before the Lahore High Court which were accepted. Hence, these petitions.

Issues: i) What does right to form or be a member of a political party under Article 17(2) of Constitution include?
ii) How the courts ought to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections?
iii) Whether an accused can be treated as proclaimed offender without taking proceedings u/s 87 Cr.P.C.?
iv) Whether proclaimed offender is denied all discretionary reliefs in cases having no nexus with case in which he has been so proclaimed?
v) Whether nomination paper of a candidate can be rejected on the ground of his being proclaimed offender?

Analysis: i) The right to form or be a member of a political party under Article 17(2) of our Constitution includes not only the right to contest elections but also the right to vote for the candidate of one's choice. When viewed against the backdrop of the constitutional value of 'political justice', Article 17(2) remains hollow unless it also recognizes the right of citizens to choose their representatives fairly and freely from amongst the candidates. This right is also an expression of the choice of the citizens, which finds further support under Article 19 of the Constitution. In exercise of these fundamental rights, citizens shape their destiny by forming the government they want.
ii) The aim of prescribing qualifications and disqualifications for candidacies to contest elections is to maintain the integrity and effectiveness of the political process. Qualifications and disqualifications of a candidate for the electoral process must therefore be clearly spelled out in the Constitution or the law. Otherwise, electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement so that maximum choice remains with the voters to elect their future leadership. With this approach rooted in the high constitutional rights

and values, the courts are to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections.

iii) In the absence of proceedings taken under Section 87, Cr.P.C., an accused cannot be said or treated to be a proclaimed offender.

iv) As the rule of declining discretionary reliefs to a proclaimed offender is one of propriety when the same is confronted with a right, it is the right, not the rule of propriety that prevails. It is also important to note that the disadvantage, if any, for being a proclaimed offender ordinarily relates only to the case in which a person has been so proclaimed, and not to the other cases or matters which have no nexus to that case. For instance, a proclaimed offender is not disentitled to institute or defend a civil suit, or an appeal arising therefrom, regarding his civil rights and obligations.

v) Articles 62 and 63 of the Constitution read with Sections 231 and 232 of the Act provide for qualification and disqualification of a candidate, which does not mention that a "proclaimed offender" is disqualified from being elected or from being a member of Parliament. The grounds provided for rejection of a nomination paper in Section 62(9) of the Act also do not empower the Returning Officers to reject the nomination paper of a candidate on the ground of his being a proclaimed offender. Although no provision of the Act has been pointed out to us that requires the necessary presence of the candidate during the electoral process, we may observe that if there is any such provision, the absence of the candidate may have its own consequences under that provision, but his nomination paper cannot be rejected on such ground unless the legislature so provides in Section 62(9) of the Act.

Conclusion: i) The right to form or be a member of a political party under Article 17(2) of Constitution includes not only the right to contest elections but also the right to vote for the candidate of one's choice.

ii) The courts are to consider that qualifications and disqualifications of a candidate for the electoral process must be clearly spelled out in the Constitution or the law otherwise, electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement.

iii) In the absence of proceedings taken under Section 87, Cr.P.C, an accused cannot be said or treated to be a proclaimed offender.

iv) The disadvantage, if any, for being a proclaimed offender ordinarily relates only to the case in which a person has been so proclaimed, and not to the other cases or matters which have no nexus to that case.

v) Nomination paper of a candidate cannot be rejected on the ground of his being proclaimed offender unless the legislature so provides in Section 62(9) of the Elections Act.

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16. **Supreme Court of Pakistan**
Vice Chancellor Agriculture University, Peshawar, etc. v. Muhammad Shafiq, etc.
C.Ps No. 2270, 4783 and 4784 of 2019 etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2270_2019.pdf

Facts: Respondents filed a writ petition before the Peshawar High Court, Peshawar praying for their regularization of service and grant of all back benefits. The High Court held that as some of the Respondents having a similar nature of job, have already been regularized, the Respondents were also entitled to be dealt with accordingly. The petitioners challenged the said judgment of High Court.

Issues: i) Whether contractual employees can be regularized in the absence of any law or policy allowing such regularization?
ii) Whether regularization of service can be given a retrospective effect?

Analysis: i) It is well settled that there is no vested right to seek regularization for employees hired on contractual basis unless there is any legal or statutory basis for the same. The process of regularization requires backing of any law, rules or policy. It should adhere to the relevant statutory provisions and government policies. In the absence of any of the same, a contractual employee cannot claim regularization… Any regularization without the backing of law offends the principles of fairness, transparency and meritocracy and that too at the expense of public exchequer.
ii) It is well established that regularization takes effect prospectively, from the date when a regularization order is passed. This is because regularization is based on several considerations which help gauge not only the competence and ability of the employee, proposed to be regularized, but also the financial impact and long term legal obligations on the employer institution. It is a conscious decision to be taken by the employer institution at a particular time and therefore cannot be given a retrospective effect.

Conclusion: i) Contractual employees cannot be regularized in the absence of any law or policy allowing such regularization.
ii) Regularization of service cannot be given a retrospective effect.

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17. **Supreme Court of Pakistan**
Mst. Haseena Bibi v. Abdul Haleem, etc.
Civil Appeal No. 1227 of 2016
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1227_2016.pdf

Facts: The appellant filed suit for recovery of dower etc. which was decreed family court and same was upheld by appellate court. The respondent filed writ petition before

Peshawar High Court which was allowed, hence this appeal.

Issues: i) Whether estoppel can lie against right of wife to dower?
ii) What is status of an agreement by mother waiving her statutory right of Hizanat of minor child?

Analysis: i) Dower is a right rendered by Islam and has a footing in statutes. It is a well-known fact that no estoppel lies against a statute and it has been held by this Court in the case of Bahadur Khan and others v. Federation of Pakistan [2017 SCMR 2066], that there could be no estoppel against the statute or the rules having statutory force. Since right to dower has its footing in Section 5 of the Act, therefore, a wife cannot be estopped from such right and any agreement where she waives the same is void.
ii) So far as the custody of minor is concerned, Para 352 (5) of the Muhammadan Law provides that the mother is entitled to the custody (Hizanat) of her male child until he has completed the age of seven years and of her female child until she has attained puberty. These rights cannot be denied to her as any such action would be contrary to law. Any agreement related to the custody of minor child would be violative of law and cannot be enforced by a Court of law. Any Iqrarnama/ Agreement/Compromise made by the mother waiving her statutory right of Hizanat of a minor child would be violative of law and cannot be enforced by a Court of law.

Conclusion: i) Right to dower has its footing in Section 5 of the Act, therefore, a wife cannot be estopped from such right and any agreement whereby she waives the same is void.
ii) Any Iqrarnama/ Agreement/Compromise made by the mother waiving her statutory right of Hizanat of a minor child would be violative of law and cannot be enforced by a Court of law.

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18. **Supreme Court of Pakistan**
Matloob Ellahi Paracha v. Raja Arshad Mahmood & another
Civil Appeal No.1877 of 2016
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1877_2016_dt_24_01_2024.pdf

Facts: A suit for specific performance was instituted. The case continued until it was dismissed after eight years of litigation. The second round of litigation was brought by the plaintiff to recover earnest money, to which the cause of action arose after the dismissal of the first suit for specific performance, and has reached Supreme Court in appeal 18 years after the sale agreement.

Issues: i) What is the object of Order II, Rule 2 CPC?

ii) Whether the plaintiff should sue for all causes of action in one suit if these arise from one transaction as per Order II, Rule 2 CPC?
iii) Whether the plaintiff, after withdrawing his suit for specific performance of the agreement to sell, could file a fresh suit to recover the earnest money paid to the defendants under the said agreement?
iv) What is the limitation period if the suit to recover the earnest money is found to be competent?

Analysis: i) It is now old-line that Order II, Rule 2 CPC is intended to deal with the vice of splitting a cause of action. It provides that a suit must include the whole of any claim that the plaintiff is entitled to make in respect of the cause of action on which he sues and that if he omits (except with the leave of the Court) to sue for any relief to which his cause of action would entitle him, he cannot claim it in a subsequent suit. The object of this salutary rule is doubtlessly to prevent a multiplicity of suits.

ii) Order II, Rule 2 CPC does not require that when several causes of action arise from one transaction, the plaintiff should sue for all of them in one suit. This proposition gets strength from Saminathan Chetty v. Planaiappa Chetty, 2 in which the Privy Council observed that Rule 2 of Order II CPC is directed to securing the exhaustion of the relief in respect of a cause of action and not to inclusion in one and the same action of different causes of action, even though they arise from the same transactions.
iii) …the right to possession accrues only when specific performance is decreed, similarly, the right to refund of earnest money accrues only when specific performance is denied. As such, the facts relating to the denial of specific performance resulting from the cancellation of the agreement to sell, and the settlement agreement in the case constituted a fresh cause of action, and therefore, the second suit for recovery of money based thereon could not be held to be barred under Order II, Rule 2 CPC…Apropos of the objection based on the bar contained in the provisions of Order XXIII, Rule 1 CPC, it would be enough to say that the subject-matter or claim of the second suit, as stated above, was different from the first suit and, as such, the plaintiff could not be held to be precluded from instituting the second suit.
iv) Article 97 deals with a suit "for money paid upon an existing consideration which afterwards fails". We say so because a plain reading of it dictates three ingredients for its applicability: firstly, the suit must be for money; secondly, such money must have been paid upon a consideration which was in existence at the time of the payment; and lastly, the said consideration must have afterwards failed. Be it noted that if all these ingredients are established, the application of Article 97 cannot be resisted, and the starting point of limitation of three years under it would be not the date when the money was paid but when the consideration fails.

Conclusion: i) The object of this salutary rule is doubtlessly to prevent a multiplicity of suits.

ii) Order II, Rule 2 CPC does not require that when several causes of action arise from one transaction, the plaintiff should sue for all of them in one suit.
iii) The plaintiff, after withdrawing his suit for specific performance of the agreement to sell, could file a fresh suit to recover the earnest money paid to the defendants under the said agreement.
iv) See above in analysis clause.

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19. **Supreme Court of Pakistan**
Khaleelullah & others v. Muhaim Khan & others.
Civil Appeal No. 25-Q/2018
Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._25_q_2018_dt_25_01_2024.pdf

Facts: The petitioners filed instant appeal challenging three concurrent findings recorded by the Courts below of a matter concerned the legacy of maternal great-grandfather as legal heirs being his great-grandchildren after a lapse of thirty years following the death of their mother.

Issues: i) Whether the law of limitation applies to a case when a third-party interest in the estate of the deceased predecessor has already been established?
ii) When the cause of action to sue accrues to an heir in the case of denial of the inheritance?
iii) Is it necessary to specify the details of an objection mentioned in written statement and is the court obliged to consider & decide objection to the law of limitation even not raised?

Analysis: i) … where third-party interest is created in the inherited property, is legally more problematic, as the legal heir would then have to face the wrath of the period of limitation. The burden of proof would rest on the claimant heir to demonstrate and prove that he was not aware of having been deprived, give cogent reasons for not challenging the property record of long-standing, or showing complicity between the buyer and the seller (the ostensible owner) or that the buyer knew of his interest in the property and yet proceeded to acquire the same. It is when faced with such legal handicap that the claimant heir may seek exception to the bar of limitation provided under Section 18 of the Limitation Act, by establishing that he was kept oblivious to the cause of action or accrual of his rights through fraud, and therefore, was an „injuriously affected person". Thus, in cases, where the claimant heir, being an „injuriously affected person" has a right to sue, does not institute the suit claiming his right within the prescribed limitation period, no fresh period of limitation can be available to him, his legal heir(s) or any other person who derives his right to sue from or through him (the injuriously affected person) (…) In the matter at hand, the threatened or apprehended denial occurred when Hafeezullah (the predecessor of the respondents) transferred the share of Mehrullah into his own name in the revenue records during 1958-60. The actual denial of the rights of the appellant took place over sixty years ago, when

Hafeezullah, father of the respondents, sold to others, portions of the disputed property in years 1994 and 1997. Therefore, considering that the third-party transactions were executed sixty years ago, the period of limitation under Article 120 of the Schedule to the Limitation Act has elapsed and therefore, makes the suit filed by the appellants in 2007, time-barred.

ii) In the case of denial of the inheritance to an heir, the cause of action to sue accrues to him, when the co-sharer[s]/legal heir[s] in actual possession of the inherited property denies (actually) or is interested to deny (threatens) the share of the claimant legal heir in the inherited property. The actual denial of right of a co-sharer by the other co-sharer may occur, when the latter does something explicit in denial of the rights of former, such as by making a fraudulent sale or gift deed. This Court has recently clarified that the transfer of property to a third party, be it through sale or gift, constitutes an actual denial of rights. In contrast, a simple annotation in the revenue records is regarded as a threatened or apprehended denial of rights.

iii) As to the objection of the learned counsel for the appellants that the creation of third-party interest was not mentioned in the written statement, and therefore, the same should not be pleaded or evidenced in the current case. Upon reviewing the written statement, we noted that the objection regarding limitation has been appropriately recorded. According to the principles of pleadings, once an assertion is duly recorded, its specifics need not be detailed therein. Even otherwise, if the objection as to the law of limitation is not raised by any of the parties to the suit, the trial Court and the appellate Court are obligated under section 3 of the Limitation Act to consider and decide the same.

Conclusion: i) The law of limitation applies to a case when a third-party interest in the estate of the deceased predecessor has already been established.

ii) In the case of denial of the inheritance to an heir, the cause of action to sue accrues to him, when the co-sharer[s]/legal heir[s] in actual possession of the inherited property denies (actually) or is interested to deny (threatens) the share of the claimant legal heir in the inherited property.

iii) According to the principles of pleadings, once an assertion is duly recorded, its specifics need not be detailed therein and if the objection as to the law of limitation is not raised by any of the parties to the suit, the trial Court and the appellate Court are obligated under section 3 of the Limitation Act to consider and decide the same.

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20. **Supreme Court of Pakistan**
Muhammad Saleem v. Govt. of Balochistan through Chief Secretary and another
CMA No.145-Q/2022 in Civil Petition No. 61-Q of 2018
Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a.145_q_2022_dt_02_01_23.pdf

Facts: The petitioner in essence seeks to challenge the judgment of the Balochistan Service Tribunal, whereby his request for accepting his lien against the post of Junior Scale Stenographer was rejected.

Issues: i) What is the meaning of the term *'lien'* in the context of service law?
ii) Whether under rule 6(2) of the Civil Servants (Confirmation) Rules, 1993, right of lien of a civil servant is forfeited who takes up an appointment on selection, other than by way of transfer on deputation, to a position in an autonomous body under the control of Federal Government, Provincial Government, local authority or a private organization?

Analysis: i) The ordinary dictionary meaning of the word "*lien*", is stated to be "a right to keep possession of property belonging to another person until a debt owed by that person is discharged" or "a right to retain possession of another's property pending discharge of a debt". While, according to Black's Law Dictionary, the said term is defined as "a legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied". However, the above definitions of the term "lien" cannot be strictly applied to a civil servant under the service law of our country. In the context of service law, the term "lien" has a statutory connotation and refers to a legal right of a civil servant to hold a particular post, typically a higher one, to which they have been promoted or transferred, while still retaining a right on their original post, based on provisions provided for the same under the rules or regulations framed by the appropriate Government. Hence, simply put, lien in service law is a right of a civil servant to return to his original position, based on the fulfillment of the conditions set out in the rules or regulations framed by the appropriate Government.
ii) As per Rule 6(2) of the Rules of 1993, a civil servant who takes up an appointment on selection, other than by way of transfer on deputation5, to a position in an autonomous body under the control of Federal Government, Provincial Government, local authority or a private organization, effectively undergoes a change of status from that of a civil servant to a different employment category. Crucially, this transition results in the forfeiture of his lien against the post in his parent department or authority. The lien, representing the legal right to return to his former position within the civil service, is thus relinquished when he moves, on his own accord, to a non-governmental body and accepts an appointment therein on selection. It may be underlined that while transfers within various Government departments (whether Federal or Provincial) do not alter the fundamental status of a civil servant, a move to an autonomous body under the control of Government, except by way of transfer on deputation6, signifies a substantive change in the nature of employment. This change is of such a magnitude that it necessitates the relinquishment of specific rights and privileges inherent to his previous civil service position, including the lien.

Conclusion: i) The term *'lien'* in service law is a right of a civil servant to return to his original position, based on the fulfillment of the conditions set out in the rules or

regulations framed by the appropriate Government.
ii) Under rule 6(2) of the Civil Servants (Confirmation) Rules, 1993, right of lien of a civil servant is forfeited who takes up an appointment on selection, other than by way of transfer on deputation, to a position in an autonomous body under the control of Federal Government, Provincial Government, local authority or a private organization.

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21. **Supreme Court of Pakistan**
Shaukat Ali v. The State through Prosecutor General, Punjab, Lahore and Ali Ashraf
Criminal Petition No.528-L/2023
Azeem Hassan Mushtaq v. The State through Prosecutor General, Punjab, Lahore and Shaukat Ali
Criminal Petition No. 1068-L/2023
Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._528_l_2023.pdf

Facts: Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner/complainant assails the order passed by the High Court by which post arrest bail was granted to the respondent.

Issue: Whether a post arrest bail can be cancelled on the ground that the accused is extending threats of dire consequences to the complainant?

Analysis: The learned Additional Sessions Judge found that sufficient incriminating material is available against all the accused including the respondent. As regard the respondent being a highly influential person WHO is extending threats of dire consequences to the petitioner, we observe that it amounts to the misuse of concession of bail, thus in the circumstances, the impugned order cannot sustain.

Conclusion: A post arrest bail can be cancelled on the ground that the accused is extending threats of dire consequences to the complainant.

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22. **Supreme Court of Pakistan**
Senior General Manager, Pakistan Railways, etc. v. Muhammad Pervaiz
Civil Appeal No. 512 of 2021
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._512_2021.pdf

Facts: This Civil Appeal with leave of the Court is directed against the judgment passed by the Federal Service Tribunal, Islamabad in Appeal whereby the appeal filed by the instant respondent was allowed and the respondent was held to be entitled to receive advance increments from the date of acquiring the higher qualification of L.L.B.

Issues: i) Whether an employee of Pakistan Railways who has obtained two advance increments on acquiring M.A./M.Sc. degree is entitled to any advance increments on acquiring L.L.B. degree and vice versa?

ii) Whether the policy of granting advance increments on acquiring L.L.B. degree is only available to the official of Pakistan Railway who is either dispensing justice or directly connected with the work of dispensing justice?

iii) Whether the Court can act as an appellate authority with the aim of scrutinizing the propriety, suitability, and/or adequacy of a policy, or may it act as an advisor to the executive on matters of policy which they are entitled to formulate?

Analysis: i) The learned Tribunal observed that the policy of advance increments was discontinued by Pakistan Railways vide Notification dated 13.09.2001. In fact, the office of the Auditor General of Pakistan, Islamabad, in consultation with the Finance Division, decided that two advance increments are admissible on acquiring either L.L.B. degree or M.A. or M.Sc. (Master of Science) degree to the employees in BS-1 to BS15 working in organizations which are either dispensing justice, or directly connected with the work of dispensing justice, with a further rider that employees who have obtained two advance increments on acquiring M.A./M.Sc. degree are not entitled to any advance increments on acquiring L.L.B. degree and vice versa.

ii) Moreover, according to the aforementioned O.M. dated 12.01.2000, the policy of granting advance increments on acquiring L.L.B. degree was only available to the employees of the courts. The O.M. dated 16.01.2000 on the other hand conveyed the approval of the competent authority for allowing two advance increments on acquiring L.L.B. degree, being equal to a M.A./M.Sc. degree, to all the officials working in the organizations which are either dispensing justice or directly connected with the work of dispensing justice, with immediate effect. The learned counsel for the respondent neither argued that the respondent was ever engaged in or assigned any duty which was directly related to court work or directly connected with the work of dispensing justice, nor was she able to highlight that any other persons were granted advance increments on qualifying L.L.B. in addition to, or in spite of already having been granted advance increments on qualifying M.A./M.Sc.

iii) The ambit and purview of judicial review of government policies is now well settled and defined and thereunder the Court can neither act as an appellate authority with the aim of scrutinizing the propriety, suitability, and/or adequacy of a policy, nor may it act as an advisor to the executive on matters of policy which they are entitled to formulate. The object of judicially reviewing a policy is to ascertain whether it violates the fundamental rights of the citizens, or is at variance to the provisions of the Constitution, or opposed to any statutory provision, or demonstrably arbitrary or discriminatory. The court may invalidate laws, acts and governmental actions that are incompatible with a higher authority, or an executive decision for being unlawful which maintains a check and balance. Such a declaration can be sought on the ground that the decision-maker misdirected itself in law, exercised a power wrongly or improperly or purported to exercise a power that it did not have, which is known as acting ultra vires; a

decision may be challenged as unreasonable if it is so unreasonable that no reasonable authority could ever have come to it, or due to a failure to observe the statutory procedures. The dominance of judicial review of the executive and legislative action must be kept within the precincts of the constitutional structure so as to avoid any misgivings or apprehension that the judiciary is overstepping its bounds by engaging in unwarranted judicial activism.

Conclusion: i) An employee of Pakistan Railways who has obtained two advance increments on acquiring M.A./M.Sc. degree is not entitled to any advance increments on acquiring L.L.B. degree and vice versa.
ii) The policy of granting advance increments on acquiring L.L.B. degree is only available to the official of Pakistan Railways who is either dispensing justice or directly connected with the work of dispensing justice.
iii) The Court cannot act as an appellate authority with the aim of scrutinizing the propriety, suitability, and/or adequacy of a policy, nor may it act as an advisor to the executive on matters of policy which they are entitled to formulate.

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23. **Supreme Court of Pakistan**
Rahimullah Khan v. Deputy Postmaster General, Southern Postal Region, Khyber Pakhtunkhwa and others.
Civil Petition No. 1066 of 2022.
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1066_2022.pdf

Facts: The petitioner filed this Civil Petition for leave to appeal against the judgment passed by the Federal Service Tribunal, Islamabad in appeal contended the grievance of the petitioner that he was appointed as a postman and on attaining the age of superannuation, he was retired from service in year 2015 and after four years of retirement, the respondent department issued the impugned order in year 2019 whereby the intervening period with effect from 01.09.2013 to 17.05.2015 was treated without leave. The appeal filed by the petitioner was dismissed.

Issues: i) Whether the principle of "no work, no pay" is applicable when consequential back benefits have been accorded by the Tribunal?
ii) Whether the letter after considerable period of retirement of civil servant for withholding the salary with retrospective effect is warranted under the law?

Analysis: i) The petitioner was deprived of his pay for the intervening period, from 01.09.2013 to 17.05.2015, in view of F.R. 54 (a) merely on the ground that he was not honourably acquitted by the Tribunal, and the major penalty was modified in view of the judgment passed on 25.05.2016 in Appeal No. 791 (P) CS/2013. Still, in tandem, the department is ignoring that the same Tribunal in the same judgment also set aside the impugned orders, and the petitioner was reinstated into service with consequential back benefits. In another judgment in the case of the same petitioner by the same Tribunal on the very next date, i.e., 26.05.2016, in Appeal No. 789 (P) CS/2013, the major penalty of withholding of two steps

increment for two years without future effect was modified into withholding one increment for one year only. However, in the judgment dated 25.05.2016, the reinstatement order was passed with consequential back benefits, which order is in the field. There is a marked distinction between criminal cases and service matters. The petitioner was not indicted by the Tribunal in any criminal case or offence; rather, the decision was rendered on the appeals of the petitioner, whereby he challenged the order of the departmental authority and not the order or judgment of any court of law trying the offence under criminal or penal laws. Therefore, in the present set of circumstances, the question of honourable acquittal or conviction does not arise. Furthermore, when the Tribunal has passed the reinstatement order with consequential back benefits, then, in this particular situation, the revising or appellate authority cannot undo or make ineffective the order or judgment passed by the Tribunal for the payment of consequential back benefits. The penalty imposed on the petitioner was only confined to withholding of an increment for a certain period, which does not otherwise mean to withhold his pay for the period he actually rendered his services to the department, and the principle of "no work, no pay" is not applicable when consequential back benefits have been accorded by the Tribunal.

ii) The Civil Service Regulations are premeditated to define the conditions under which salaries, leaves, pension, and other allowances are earned by the employees in the service of the Civil Departments and the manner in which the perks are calculated. But at the same time, these regulations do not deal otherwise than indirectly and incidentally with matters relating to recruitment, promotion, official duties, and discipline. Since the intricacies of Article 417-A of the Civil Service Regulations ("C.S.R.") bear significance in addressing the controversy (…) the petitioner retired on 18.05.2015 and the letter for withholding his emoluments from 01.09.2013 to 17.05.2015 was issued to him on 14.02.2019, whereas, under Article 417-A of the C.S.R., the pending disciplinary proceedings could not continue if the officer attains the age of superannuation before the completion of the inquiry. Therefore, in that context too, the pending proceedings if any were abated and there was no justification to issue the letter after considerable period of retirement for withholding the salary with retrospective effect which was totally unjustified and unwarranted.

Conclusion: i) The principle of "no work, no pay" is not applicable when consequential back benefits have been accorded by the Tribunal.

ii) The letter after considerable period of retirement of civil servant for withholding the salary with retrospective effect is unwarranted under the law as well unjustified.

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24. **Lahore High Court**
Moonis Elahi v. Election Commission of Pakistan & others.
Writ Petition No.2431 of 2024
Mr. Justice Ali Baqar Najafi, Mr. Justice Shahid Bilal Hassan, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC160.pdf

Facts: Through this Constitutional petition the petitioner/candidate has challenged order passed by the learned Election Tribunal as well as order passed by the Returning Officer whereby nomination papers of the petitioner were concurrently rejected.

Issues: i) What is the definition of "Power of Attorney" or "Mukhtar Nama"?
ii) Under what circumstances is a power of attorney commonly used, and when does it become ineffective?
iii) What is the relevant provision of 'Recognized agents and Pleaders'?

Analysis: i) According to section 2 of the Attorney Act, 1882, power of attorney is written authorization, whereby the "Principal" authorizes the agent to do the acts specified therein on behalf of "Principal" which when executed will be binding on the "Principal" as if done by him. Primary purpose of instrument of such nature is to assign authority of Principal to another person as his agent…A power of attorney (known in Urdu as "Mukhtar Nama") is a legally binding document authorizing someone to manage a person's property, medical, or financial affairs, etc. or perform some other acts as enshrined in the power of attorney on behalf of the Principal.
ii) It is commonly used when a person cannot manage his affairs due to his absence, disability, incapacity, or infirmity; it allows an agent to make decisions on behalf of the principal. It empowers the agent to decide the principal's affairs. However, it becomes null and void when its purpose is accomplished, or else the person who executes it or the agent dies. Nonetheless, instructions for managing assets and affairs after death are listed in the last will or living trust.
iii) Order III Rules 1 & 2 of the Code of Civil Procedure, 1908 deal with 'Recognized agents and Pleaders'. A study of Order III Rule 1 of the Code of Civil Procedure, 1908 shows that it empowers the party, his recognized agent, or his pleader to make an appearance, file an application, or act in or to any court required or approved by any law. Further, Order III Rule 2 of the Code, 1908 describes the recognized agents as persons with power of attorney and persons carrying on trade or business for and in the names of parties who are not residents within the local limits of the court's jurisdiction. Order III Rules 1 and 2 of the Code, 1908 also allows the agent/holder of power of attorney to "act" on behalf of the principal. Nevertheless, if the power of attorney holder has performed some "acts" according to the instrument, he may depose for the principal for those acts, but not for acts performed by the principal and not by him. Similarly, he cannot testify on behalf of the principal in matters about which only the principal has personal knowledge and about which the principal is entitled to cross-examination.

Conclusion: i) See above in analysis portion.
ii) See above in analysis portion.
iii) Order III Rules 1 & 2 of the Code of Civil Procedure, 1908 is the relevant provision of 'Recognized agents and Pleaders'.

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25. **Lahore High Court**
Muhammad Nawaz Kasuri v. Haji Muhammad Aslam Qadri and others
C.R. No. 3472 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC7565.pdf

Facts: Civil Revision has been filed impugning the order passed by the trial court under section 12(2) CPC reviving the earlier suit which was dismissed on the basis of settlement between the parties.

Issues: (i) Can a relief be claimed under section 12(2) CPC 1908 where the party had already exhausted the remedies envisaged under the law but failed to obtain a favourable decision?
(ii) Limitation for filing an application under section 12(2), CPC?

Analysis: (i) The Court observed that no one can be allowed to reopen a chapter, which has already been closed under the garb of filing an application under section 12(2) CPC in particular where the requirements of Order VI, Rule 4 CPC are not met. Nobody could be allowed to do indirectly what law barred him from doing directly. By relying on 2011 SCMR 551, it was observed that where the object of the petitioner in moving application under section 12(2), C.P.C. was to re-agitate the issue which already stood closed on account of his withdrawal of the suits, the petitioner then could not be allowed to do indirectly what the law barred him from doing directly.
(ii) The court by relying on 2011 SCMR 551 opined that an application under section 12(2), C.P.C. being a substitute for a suit, the limitation imposed by law on filing of suits were relevant for applications under section 12(2), C.P.C.

Conclusion: (i) See analysis part above.
(ii) See analysis part above.

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26. **Lahore High Court**
Imran Ahmad Khan Niazi v. Spl. Judge, A.T.C, etc.
Criminal Revision No.54056/2023
Miss. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC175.pdf

Facts: Through this single consolidated order all the petitions filed by petitioner, are being decided because one and the same question is involved in said petitions with the identical prayer for setting-aside the orders of similar nature passed by

learned Special Judge, Anti-Terrorism Court, Lahore whereby applications for exemption from personal attendance and applications for pre-arrest bail filed by the petitioner in the cases, have been dismissed.

Issues: i) Whether during pendency of application for pre-arrest bail if some explanation has been given or brought into notice of the court regarding non-appearance of the accused and said explanation is satisfactory, then his presence can be exempted?

ii) Whether court can procure attendance of an accused, who is arrested in another case or confined in jail in another case and it is made impossible for him to approach the court where his application for pre-arrest bail is pending on the relevant date and said state of affairs comes into notice/knowledge of the court, to decide the application for pre-arrest bail on merits?

Analysis: i) By now it is well settled that presence of accused on each and every date of hearing before the court during pendency of application for pre-arrest bail is necessary/ mandatory and if he is not present in the court, his petition is to be dismissed due to lack of his presence, however, it is also equally well settled that if some explanation has been given or brought into notice of the court regarding non-appearance of the accused and said explanation is satisfactory, then his presence can be exempted.

ii) It goes without saying that if an accused is granted ad-interim pre-arrest bail in a case and during pendency of said application for pre-arrest bail before the court, he is arrested in another case or confined in jail in another case and it is made impossible for him to approach the court where his application for pre-arrest bail is pending on the relevant date and said state of affairs comes into notice/knowledge of the court, then court has to consider that whether absence of the accused is for the reason beyond his control and in such circumstances, court can procure his attendance to decide the application for pre-arrest bail on merits.

Conclusion: i) During pendency of application for pre-arrest bail if some explanation has been given or brought into notice of the court regarding non-appearance of the accused and said explanation is satisfactory, then his presence can be exempted.

ii) Court can procure attendance of an accused, who is arrested in another case or confined in jail in another case and it is made impossible for him to approach the court where his application for pre-arrest bail is pending on the relevant date and said state of affairs comes into notice/knowledge of the court, to decide the application for pre-arrest bail on merits.

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27. **Lahore High Court**
Muhammad Waqas v. Additional Sessions Judge, etc.
Writ Petition No.79261 of 2023
Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC187.pdf

Facts: Through instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has prayed for setting aside the order passed by the learned Ex-Officio Justice of Peace at Lahore, whereby I.G. Punjab,

Lahore, was directed to proceed against the petitioner under section 155-C of Police Order 2002, after registering a case against him.

Issues: i) Where an accused is arrested and detained in the physical custody of the police, whether he can be detained in police custody for more than 24 hours?
ii) Under Article 10 (2) of the Constitution and Section 61 of Cr.P.C., for getting authorization from the Court for detention, either in judicial custody or police custody, whether the accused has to be physically produced before the Magistrate under Section 167 of Cr.P.C?

Analysis: i) Personal liberty is one of the cherished objects of the Constitution of the Islamic Republic of Pakistan 1973. The deprivation of the same can only be by the procedure established by law and in conformity with the provisions thereof, as stipulated in Article 10 (2) of the Constitution of the Islamic Republic of Pakistan 1973 which mandates that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. A similar provision is found in Section 61 of the Code of Criminal Procedure, which also mandates that no police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable. In the absence of a particular order of a Magistrate under Section 167 of the Code of Criminal Procedure, such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. These two provisions reveal that without the authorization of a Magistrate, no arrestee shall be detained in the custody of the police beyond 24 hours from the time of arrest, excluding the time taken for the journey from the place of arrest to the Court. In this regard, there could be no controversy that when an accused is detained in police custody after arrest beyond 24 hours, excluding the time taken for the journey from the place of arrest to the Court, such detention beyond the said period is undoubtedly illegal.
ii) As is mandated under Article 10 (2) of the Constitution of the Islamic Republic of Pakistan 1973 and Section 61 of the Code of Criminal Procedure, for getting authorization from the Court for detention, either in judicial custody or police custody, the accused has to be physically produced before the Magistrate under Section 167 of Cr.P.C., is the law which regulates and empowers a Magistrate to authorize the detention of the accused either in police custody or in judicial custody, as the case may be.

Conclusion: i) Where an accused is arrested and detained in the physical custody of the police, he cannot be detained in police custody for more than 24 hours.
ii) Under Article 10 (2) of the Constitution and Section 61 of Cr.P.C., for getting authorization from the Court for detention, either in judicial custody or police custody, the accused has to be physically produced before the Magistrate under

Section 167 of Cr.P.C.

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28. **Lahore High Court**
Sardar Waseem Ilyas v. Federation of Pakistan, etc.
Writ Petition No.71690 of 2023
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC7493.pdf

Facts: Petitioner is aggrieved of withdrawing an amount from his personal account by invoking Section 140 of the Income Tax Ordinance, 2001.

Issues: i) Whether it is necessary that every notice shall contain the necessary information of the proceedings and material based on which the coercive measure for recovery of demand is to be taken?
ii) What is the impact of forceful withdrawal of an amount from personal and business account in absence of due process?
iii) Whether the Commissioner can invoke the provisions of Section 140 without seeking prior approval from FBR?

Analysis: i) Though Article 19A of the Constitution gives an independent fundamental right regarding dissemination of necessary information, however, the way FBR is proceeding in recovery matters has made it necessary to hold that every notice shall contain the necessary information of the proceedings and material, based on which the coercive measure for recovery of demand is to be taken.
ii) Forceful withdrawal of an amount from personal and business account, in absence of due process, is infringement of fundamental rights under Article 23 of the Constitution, besides having negative impact on taxpayer's business and business activities in general.
iii) The provisions of Section 140 shall be invoked, when Commissioner believes that the taxpayer may run away with the demand, which will become irrecoverable forever. Such action against an active taxpayer, for the sake of recovery only, amounts to robbery, if due process is not followed. Till the time it is incorporated in the Rules, the Commissioner shall not invoke the provisions of Section 140 without seeking prior approval from FBR.

Conclusion: i) It is necessary that every notice shall contain the necessary information of the proceedings and material based on which the coercive measure for recovery of demand is to be taken.
ii) See above in analysis clause.
iii) Till the time it is incorporated in the Rules, the Commissioner shall not invoke the provisions of Section 140 without seeking prior approval from FBR.

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29. **Lahore High Court**
Haroon Farooq v. Govt. of the Punjab & others
W.P No.227807/2018
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC7619.pdf

Facts: Through this writ petition the High Court issued the continuing mandamus to Water & Environment Commission through which different directions were issued for the conversion of water and preservation of environment. The report has been submitted by the Members of the Water & Environment Commission appointed by this Court that alludes to the sustainable efforts which continued during the year 2023 which has now come to a close.

Issue: What is the scope of continuing mandamus or supervisory jurisdiction of High Court?

Analysis: It is clear from the narration above that substantial and practical steps have been taken to control air pollution and to preserve groundwater. During the winter season these steps largely contributed to lowering AQI at different places in Lahore and thereby smog was controlled which had initially assumed dangerous proportions. This is an illustration of judicial review in action, and enforcement of climate justice. These actions are beyond mere judgements which adorn law journals and fail to address in actual terms, the climate chaos which surrounds us. It is, in essence, a case of continuing mandamus or supervisory jurisdiction where orders of this Court are enforced by a Commission set up to compel implementation. The departments in turn, come back with reports of compliance and further orders are issued for complete climate justice and to protect fundamental rights of persons. This is a unique tool being employed by this Court which has yielded substantial results.

Conclusion: See above in analysis clause.

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30. **Lahore High Court,**
Mst. Munawarjan and 6 others v. Mst. Safaidan and 4 others,
Civil Revision No.934-D of 2012,
Mr. Justice MirzaViqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2023LHC7553.pdf

Facts: The suit filed by the petitioners for declaration, separate possession through partition and injunction, challenging sanctity of a gift mutation intended to alienate land of predecessor in interest of parties in favour of one of his sons, had been decreed by the Trial Court, however, the Appellate Court allowed consequent appeal setting at naught the judgment and decree passed by the Trial Court, hence, instant revision under Section 115 of the Code of Civil Procedure, 1908.

Issues: i) Whether it is necessary for a beneficiary of the challenged gift mutation to assert or lead any material with regard to relevant transaction of gift after such mutation is admitted by witness of claimants challenging sanctity thereof?
ii) When the limitation period of six-year to challenge a gift through a suit for decree of declaration, as provided by Article 120 of the Limitation Act, 1908, would start running?
iii) If judgments of the Trial Court and the Appellant Court are at variance, then finding of which court should in ordinary course be preferred while exercising jurisdiction under section 115 of the Code of Civil Procedure, 1908?

Analysis: i) In terms of Order VI, Rule 4 of the Code of Civil Procedure, 1908, a party pleading any misrepresentation or fraud regarding a transaction is obliged to narrate particulars to that effect. Article 113 of the Qanun-e-Shahadat Order, 1984 ordains that no fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which they agree to admit by any writing under their hands before the hearing, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings.
ii) A suit for declaration of any right as to any property has to be instituted under Section 42 of the Specific Relief Act, 1877, while the limitation of such suit is to be regulated and governed by Article 120 of the Limitation Act, 1908. The right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right.
iii) Whilst exercising revisional jurisdiction, a comparative analysis is supposed to be made of both the judgments of the Trial Court and the Appellant Court in order to examine their validity on the touchstones of Section 115 of the Code of Civil Procedure, 1908, especially when there is divergence of views in judgments of both the courts below and their conclusions are contrary to each other.

Conclusion: i) There remains no necessity for the beneficiary of the challenged gift mutation to assert or lead any material with regard to relevant gift transaction in the case when such mutation is admitted by witness of claimants challenging sanctity thereof.
ii) The limitation period of six-year to challenge a gift through a suit for decree of declaration, as provided by Article 120 of the Limitation Act, 1908, would start running from the date of donor's knowledge regarding such gift.
iii) In the matter of giving preference to the judgments of lower courts while analyzing the same in exercise of revisional jurisdiction, the preference and regard is always given to the findings of the appellate court, unless those are suffering with any legal infirmity or material irregularity.

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31. **Lahore High Court**
Riaz Ahmed Khan v. Election Commission of Pakistan, etc.
W.P.No.195 of 2024
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC193.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 stems from order, whereby District Returning Officer, while proceeding on the application of respondents No.3 and 4 changed their polling station.

Issues: i) Whether under sub-section (5) of section 59 of the Elections Act 2017, a candidate can file objections and suggestions with regard to any polling station in his constituency and a voter with respect to a polling station to which he has been assigned?

ii) Whether the criteria for the establishment or change of polling station is to be made dependent upon the number of F.I.R's registered in the police station of that area and vote casting ratio?

iii) Where once it evinces from the record that there is some grave violation of law in the conducting of elections and establishment of polling stations, whether High Court is vested with the jurisdiction to redress and cure such patent illegalities in exercise of its powers under judicial review?

Analysis: i) In order to amend, consolidate and unify laws relating to the conduct of elections and matters connected therewith or ancillary thereto, the Elections Act (XXXIII of 2017) (hereinafter referred to as "Act, 2017") was enacted. Chapter V of the "Act, 2017" lays down the procedure for the conduct of elections to the Assemblies. Section 59 is directly related to the matter in issue as it deals with the establishment of Polling Stations for the purpose of election. It clearly manifests from the bare reading of the above referred provision that while notifying polling station, the Election Commission, in ordinary circumstances, shall retain the polling stations established for the preceding election. Sub-section (5), however, postulates that a candidate can file objections and suggestions with regard to any polling station in his constituency and a voter with respect to a polling station to which he has been assigned.

ii) It is, thus, apparent from the tenor of the impugned order that the respondent No.2 was mainly influenced with the vote casting ratio and registration of F.I.R's of murder and attempt of murder against some persons living near Govt. Primary School Allah Dad, Khelan Wala. In order to defend the impugned order, a report is also submitted by respondent No.2 in response to this constitutional petition. In para-4 of parawise comments, three F.I.R's are mentioned, which relate to the years 2006, 2018 and 2020 respectively. Needless to observe that if criteria for the establishment or change of polling station is made dependent upon the number of F.I.R's registered in the police station of that area, no polling station can be allowed to subsist. If such a trend is allowed to prevail, then there will be no constituency where a polling station can be established. Registration of only three cases in fourteen years starting from 2006 to 2020 would speak loudly that this part of the world is more peaceful as compared to any other territory. So far second limb of reasons which prevailed upon the respondent No.2 for swapping

the notified polling station that there is less vote casting ratio; suffice to observe that respondent No.2 while forming this view was surely oblivious of turnover of the voters in the preceding election where vote casting ratio at the Govt. Boys Primary School, Allah Dad Khelan Wala was more than 50%.

iii) There is no cavil to the proposition that conducting of elections and establishment of polling stations is primarily a subject falling within the domain of Election Commission. Needless to mention that establishment of a polling station at a suitable place is one of the steps to ensure fair and transparent voting process. Where once it evinces from the record that there is some grave violation of law in the said process, this Court is vested with the jurisdiction to redress and cure such patent illegalities in exercise of its powers under judicial review.

Conclusion: i) Under sub-section (5) of section 59 of the Elections Act 2017, a candidate can file objections and suggestions with regard to any polling station in his constituency and a voter with respect to a polling station to which he has been assigned.

ii) The criteria for the establishment or change of polling station is not to be made dependent upon the number of F.I.R's registered in the police station of that area and vote casting ratio.

iii) Where once it evinces from the record that there is some grave violation of law in the conducting of elections and establishment of polling stations, High Court is vested with the jurisdiction to redress and cure such patent illegalities in exercise of its powers under judicial review.

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32. **Lahore High Court**

Employees Old Age Benefit Institution v. M/s Mughals Pakistan (Pvt.) Ltd., etc.

R.F.A. No.43092 of 2022

Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez

https://sys.lhc.gov.pk/appjudgments/2023LHC7498.pdf

Facts: This and connected appeal are directed against decision, whereby Civil Court, exercising powers under sections 14 and 17 of the Arbitration Act 1940, made Award Rule of the Court. Aggrieved of the order, two separate appeals are preferred, one by EOBI and other by Pakistan Real Estate Investment and Management Company (Pvt). Ltd.

Issues: i) Whether during proceedings under section 20 of the Arbitration Act 1940, in the absence of party to the arbitration agreement, a matter can be referred to the Arbitral Tribunal?

ii) Whether a person or an entity, merely being the signatory to the agreement, for and on behalf of one of the party to the agreement, is competent to file petition under section 20 of the Arbitration Act, 1940, unless its status as party to the agreement is satisfactorily established, by virtue of any law or under any contractual arrangement?

Analysis: i) In terms of sub-section (1) of section 20 of the Act, 1940, apparently four conditions must be satisfied before the jurisdiction is exercised by the court:- (i) There must be arbitration agreement between person(s). (ii) Agreement was entered before the institution of any suit with respect to subject matter of the agreement. (iii) A difference has arisen to which agreement applies. (iv) And they or any of them, instead of proceeding under Chapter II, may apply to the Court having jurisdiction in the matter to which the agreement relates. In the instant case compliance of aforesaid conditions are found missing. By no stretch of imagination PRIMACO could be construed as party to the agreement – by pulling it within the ambit of the expressions, 'they" or 'any of them'. Command of sub-section (3) of section 20 of the Act, 1940 is clear, which directs that 'the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants. Civil Court, before referring the matter to Arbitral Tribunal, failed in its duty to ensure notice to the party to the agreement – EOBI. Arbitrators otherwise could only be appointed with the consent of the parties to the agreement but here presence of one of the party to the agreement [EOBI] was conspicuous by its absence – [requirement of sub-section 4 of section 20 of the Act, 1940 was not fulfilled]. Mere knowledge of the Board of EOBI would not satisfy the requirements of section 20 of the Act, 1940 nor condone the legal flaw occasioned upon referring matter to Arbitral Tribunal, without impleading EOBI as party.

ii) No person or an entity, merely being the signatory to the agreement, for and on behalf of one of the party to the agreement, was competent to file petition under section 20 of the Act, 1940, unless its status as party to the agreement is satisfactorily established, by virtue of any law or under any contractually arrangement. PRIMACO fails on both counts to claim any alleged assignment of rights or novation of contractual obligation. In these circumstances, order of referring the matter to Arbitral Tribunal and proceedings conducted subsequent thereto, including arbitration proceedings and issuance of Award without EOBI, are found unlawful and invalid. No validity could otherwise be extended to the Award in wake of an invalid order of reference. No plausible explanation is provided that if PRIMACO was to be treated as an alter ego of EOBI, why EOBI was impleaded as necessary / proper party to the proceedings under sections 14 and 17 of the Act, 1940. It is nobody's case that Award was exclusively enforceable against PRIMACO, and if EOBI was not party to the Award how Award could be enforced against EOBI.

Conclusion: i) During proceedings under section 20 of the Arbitration Act 1940, in the absence of party to the arbitration agreement, a matter cannot be referred to the Arbitral Tribunal.

ii) No person or an entity, merely being the signatory to the agreement, for and on behalf of one of the party to the agreement, is competent to file petition under section 20 of the Arbitration Act, 1940, unless its status as party to the agreement is satisfactorily established, by virtue of any law or under any contractual

arrangement.

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33. **Lahore High Court**
Hamza Khalid v. The State and another
Crl. Misc. No.72452/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC7628.pdf

Facts: The petitioner seeks post-arrest bail in case FIR registered at Police Station FIA, for an offence under section 18 of the Emigration Ordinance, 1979 read with section 6 of Passport Act, 1974 and sections 34/109 PPC.

Issues: i) Whether an officer claiming authority under section 5(5) of the FIA Act have unfettered powers?
ii) Where the property is seized as a result of an illegal raid or the powers are not exercised in accordance with section 5(5) of the FIA Act, what would be the effect of such illegality or irregularity on the fate of the case?

Analysis: i) An officer claiming authority under section 5(5) of the FIA Act does not have unfettered powers. He must act in good faith and refrain from arbitrary actions. There must be circumstances justifying the necessity for swift intervention. Furthermore, the property sought to be seized should have a nexus with the investigation of the alleged offence…To assert jurisdiction under section 5(5) of the FIA Act, the officer concerned must document the facts and reasons in the case diary (to the extent possible), laying the foundation for his decision/opinion.
ii) In *Justice Qazi Faez Isa and others v. President ofPakistan and others* (PLD 2022 SC 119), the Supreme Court ruled that the Qanun-e-Shahadat, 1984, governs the admissibility of evidence. According to Article 18 of this law, the criterion is whether the evidence is relevant to the facts in issue. Therefore, unless there is an express or necessarily implied prohibition in the Constitution or other laws, evidence obtained through illegal search or seizure is not liable to be excluded. Ordinarily, the same principle applies in both civil and criminal proceedings…Nevertheless, our judicial system insists that tax authorities strictly follow the legal procedure for conducting searches. The courts have consistently held that carrying out raids on taxpayers' premises by tax authorities without obtaining permission from a magistrate and without providing reasons for the claim of an emergencyis illegal…criminal cases falling within the ambit of the FIA Act are notably different from those under the purview of tax authorities. As such, they must be dealt with distinctively. In these matters, the principles established by the Supreme Court in *Justice QaziFaez Isa's* case apply… Considering the urgency involved, any procedural irregularities or illegalities in the process should be condoned, especially when the petitioner has not alleged any malice on the Complainant's part or any member of his team. Nonetheless, the petitioner may demonstrate during the trial if the actions caused him any prejudice.

Conclusion: i) An officer claiming authority under section 5(5) of the FIA Act does not have

unfettered powers.
ii) Where the property is seized as a result of an illegal raid or the powers are not exercised in accordance with section 5(5) of the FIA Act, such illegality or irregularity would not adversely affect the case unless malice on part of the complainant or any member of his team is established.

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34. **Lahore High Court**
Khushi Muhammad v. Raj Bibi
Civil Revision No.295-D/2013
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC7640.pdf

Facts: The Respondent/Plaintiff instituted a declaratory suit against the Petitioner/Defendant which was dismissed by the trial court but the said judgment and decree was set aside by the appellate court. Consequently, the petitioner filed revision petition against the said judgment and decree of the said appellate court.

Issues: i) Whether limitation runs against a co-sharer/co-owner?
ii) How the limitation shall be computed if a person entitled to institute a suit or submit an application has, by means of fraud, been kept from the knowledge of such right or the title on which it is founded?
iii) Whether mutation confers any title?
iv) Whether the failure of the revenue staff to comply with the provisions of section 42 of the Punjab Land Revenue Act, 1967, invalidates the transactions covered by mutations?
v) Whether mutation alone can prove the transaction specially in cases involving an elderly, illiterate, and *pardanashin* lady?
vi) Whether *Roznamcha Waqiati* forms a part of the record of rights?

Analysis: i) It is trite that no limitation runs against a co-sharer/co-owner. Every co-sharer/co-owner is presumed to be in possession of every inch of the joint property unless it is partitioned.
ii) Section 18 of the Limitation Act addresses this issue. It states that if a person entitled to institute a suit or submit an application has, by means of fraud, been kept from the knowledge of such right or the title on which it is founded, or if any document necessary to establish such right has been fraudulently concealed from them, the time limit for filing a suit or application (a) against the person guilty of the fraud or accessory thereto, or (b) against any person claiming through them otherwise than in good faith and for valuable consideration, shall be computed from the time when the fraud first became known to the person injuriously affected thereby. In the case of the concealed document, the computation starts when the person first gains the means to present it or enforce its production.
iii) Mutation does not confer any title. It primarily serves the purpose of updating records for fiscal purposes. Despite its limited role, mutation plays a crucial role in preventing fraud by protecting the owner's proprietary rights and securing the

rights of the vendee/transferee once attested.

iv) Section 42(7) of the 1967 Act imposes mandatory requirements for the attestation of mutations. The failure of the revenue staff to comply with the provisions of section 42 does not invalidate the transactions covered by mutations. If a dispute arises, the parties involved must substantiate transactions according to the law of evidence.

v) Mutation alone cannot prove the transaction. It must be independently substantiated through cogent, reliable, and convincing evidence. Specifically, in cases involving an elderly, illiterate, and *pardanashin* lady, the onus of proving its legitimacy lies on the party asserting it…The court must be meticulous in such matters. It should be satisfied with clear evidence that the said document was executed by her or by a duly constituted attorney appointed by her with a complete understanding and intelligence regarding the nature of the document.

vi) *Roznamcha Waqiati* does not form a part of the record of rights…no presumption of correctness attaches to the entry made in it.

Conclusion: i) Limitation does not run against a co-sharer/co-owner.

ii) If a person entitled to institute a suit or submit an application has, by means of fraud, been kept from the knowledge of such right or the title on which it is founded, the limitation shall be computed from the time when the fraud first became known to the person injuriously affected thereby.

iii) Mutation does not confer any title.

iv) The failure of the revenue staff to comply with the provisions of section 42 of the Punjab Land Revenue Act, 1967, does not invalidate the transactions covered by mutations.

v) Mutation alone cannot prove the transaction specially in cases involving an elderly, illiterate, and *pardanashin* lady.

vi) *Roznamcha Waqiati* does not form a part of the record of rights.

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35. **Lahore High Court**
Abdul Qayyum Khan Jatoi v. Election Commission of Pakistan etc.
Writ Petition No. 57371 of 2023
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2024LHC172.pdf

Facts: This consolidated order decides instant petition alongwith two other writ petitions as similar issue of election symbol was involved in all these petitions.

Issue: Whether the question of making requests for specific symbols is within time in terms of Section 67 of the Act or not, may be disputed and determined in constitutional jurisdiction of High Court?

Analysis: …Even it may be assumed that dates have wrongly been mentioned as is apparent from applications that said dates have still not arrived and have mistakenly been mentioned in the applications, receipt of any request by petitioners of afore referred symbols within time is not forthcoming on the record and it is disputed

fact whether request was made within time in terms of Section 67 of the Act or not which disputed fact cannot be determined in constitutional jurisdiction of this Court. Consequently, the petitioners have failed to make out a ground for this Court to exercise its constitutional jurisdiction for directing the returning officer to allot symbols sought by the candidates for the purpose of contesting election, more so for the reason that the orders, refusing relief to the petitioners passed by Regional Election Commissioner on the representation of the petitioners, have not been called in question. Hence, no interference is called for.

Conclusion: The question of making requests for specific symbols within time in terms of Section 67 of the Act or not, cannot be disputed and determined in constitutional jurisdiction of High Court.

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36. **Lahore High Court**
Election Appeal No.87 of 2024
Mst. Qaisra Ellahi v Returning Officer etc.
Election Appeal No.89 of 2024
Ch. Pervaiz Ellahi v Returning Officer etc.
Election Appeal No.90 of 2024
Mst. Qaisra Ellahi v Returning Officer etc.
Election Appeal No.91 of 2024
Ch. Pervaiz Ellahi v Returning Officer etc.
Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2024LHC119.pdf

Facts: The appellants through these election appeals have assailed the decisions of respective Returning Officers wherein, they rejected the nomination papers of appellants.

Issues: i) What is the procedure for proper attestation of declaration by Oath Commissioner?
ii) Whether the nomination papers can be rejected without adhering to the provisions of section 60 of Election Act 2017?
iii) What is the purpose for opening an exclusive account for election expenses?
iv) What is the intention of legislature behind the words exclusive and dedication regarding bank account?
v) How a legal provision can be interpreted?
vi) Whether non mentioning of balance amount in the accounts is a deliberate concealment of assets?
vii) Whether the purpose of nomination papers is to assess the value of assets?
viii) Whether the omission of non-mentioning of expenses of foreign trips in the nomination papers by the candidate is of a serious in nature?

Analysis: i) The procedure of attestation by an Oath Commissioner is mentioned in Rule 14 of Chapter 12 of High Court Rules and Order, Volume-IV. From the perusal of Rule 14 it gets unambiguously cleared that the attestation of the Oath

Commissioner must be at the bottom/end of each declaration or affidavit, more importantly when it comprises upon more than one page.

ii) The nomination papers which are submitted without adhering to the provisions of Section 60 can legitimately be rejected by a Returning Officer under Section 62(9) (c) of the Elections Act, 2017.

iii) A separate account for election expenditure is the only way out for examining the expenses incurred by a candidate during his campaign.

iv) The words exclusive and dedication towards opening of accounts further manifest the intention of legislature aimed at keeping a watch over the wasteful election expenses. The declaration required to be submitted about the exclusive bank account was inserted through Section 60(2) (b) by virtue of an amendment, thus the provision is still an under explored legal question.

v) A legal provision can be scanned through four rules of interpretation which are classified as literal rule, golden rule, mischief rule and purposive rule. If the literal interpretation of a legal provision gives rise to an irrationality, the golden rule of interpretation can be used for ascertaining the legislative intent to give it a practical effect. The third rule of mischief can be used to see the unconstitutionality of the legislation. The purposive rule can be set in motion for ensuring the effectiveness of the law in accordance with the will of Parliament.

vi) The non-mentioning of balance amount in the accounts is a deliberate concealment of assets.

vii) The purpose of nomination papers is not to assess the value of the assets but to examine their description and quantity.

viii) The omission of non-mentioning the expenses of foreign trips by the candidate in nomination papers gains significance when seen in the context that the information about the cost incurred on foreign trips is required to be submitted according to the format of declaration of assets and liabilities and its consequences are mentioned which for all practical purposes are serious in nature.

Conclusion: i) The procedure of attestation by an Oath Commissioner is mentioned in Rule 14 of Chapter 12 of High Court Rules and Order, Volume-IV.

ii) The nomination papers which are submitted without adhering to the provisions of Section 60 can legitimately be rejected by a Returning Officer.

iii) A separate account for election expenditure is the only way out for examining the expenses incurred by a candidate during his campaign.

iv) The words exclusive and dedication towards opening of accounts further manifest the intention of legislature aimed at keeping a watch over the wasteful election expenses.

v) A legal provision can be scanned through four rules of interpretation which are classified as literal rule, golden rule, mischief rule and purposive rule.

vi) The non-mentioning of balance amount in the accounts is a deliberate concealment of assets.

vii) The purpose of nomination papers is not to assess the value of the assets but to examine their description and quantity.
viii) The omission of non-mentioning the expenses of foreign trips by the candidate in nomination papers is a serious in nature.

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37. **Lahore High Court/Appellate Tribunal**
Hafiz Ammar Yasir v. Returning Officer NA-59 and another
Election Appeal No.95 of 2024
Hafiz Ammar Yasir v. Returning Officer PP-22 and another
Election Appeal No.98 of 2024
Hafiz Ammar Yasir v. Returning Officer PP-23 and another
Election Appeal No.99 of 2024
Mr. Justice Ch.Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC130.pdf

Facts: The titled Election Appeals are disposed of through this single judgment since all are tied with the common knot of similar facts and background in which the Returning Officers rejected the nomination papers of appellant from three different constituencies through separate orders.

Issues: i) Whether abscondence of a candidate for election can be made basis for the rejection of his nomination papers?
ii)Whether failure of a candidate for election to open exclusive account or to dedicate already existing account for each constituency can be made basis for the rejection of his nomination papers?

Analysis: i) It will be a mockery of the election process to let the absconded candidate enter the parliament though he has demonstrated least respect towards the law and courts, especially when no acceptable explanation of his non-surrendering before the process of law is furnished on his behalf, even after gaining knowledge about his status as proclaimed offender. Such case comes within the purview of Article 62 (1) (f) of the Constitution of Islamic Republic of Pakistan, 1973.
ii) Section 132(2) of the Elections Act 2017 provides the limit of election expenditure, whereas section 133 of the Act ibid lays emphasis to open an exclusive account or to dedicate an existing account for the election expenses. The legislative intent of opening an exclusive account or dedicating an existing account in terms of section 133 of the Act ibid manifests that the same is aimed at keeping an eye over the election expenditures of a candidate and to keep it within the limits provided in section 132(2) of the Act ibid. If a candidate is contesting elections from different constituencies without opening of an exclusive account for each of them, he will get leverage of incurring expenditure more than the prescribed limit, which for all practical purposes will frustrate the mandate of sections 132 and 133 of the Elections Act-2017.

Conclusion: i) The abscondence of a candidate for election can be made basis for the rejection of his nomination papers as him not being sagacious and righteous.
ii) The failure of a candidate for election to open exclusive account or to dedicate already existing account for each constituency can be made basis for the rejection of his nomination papers.

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38. **Lahore High Court**
Kashf Foundation through its Chief Executive v. Chief Commissioner Inland Revenue, LTU, Federal Board of Revenue and two others.
W.P. No. 79632/2022
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC7605.pdf

Facts: The Constitutional petition was filed to challenge the order of the Income Tax Department whereby the approval extended to the petitioner as Non-Profit-Organization (NPO), was withdrawn in exercise of powers under Rule 217 of the Income Tax Rules 2002 (Rules, 2002) primarily on the allegation that assets of petitioner entity were employed in a manner to confer private benefit / personal gain to another person.

Issue: Whether provisioning of private benefit by non-profit organization disentitles it from claiming concession and benefits under Income Tax Ordinance, 2001 as well as Rules made thereunder?

Analysis: There is no cavil that petitioner functioned under section 42 of the erstwhile Companies Ordinance, 1984, and carried charitable and not for profits activities still, in the context of provisions of Ordinance, 2001, petitioner was essentially obligated to fulfil conditionalities and requirements prescribed under section 2(36) of the Ordinance, 2001 and those prescribed under Chapter XVII of the Rules 2002. Simplicitor the protection and privileges available under section 42 of erstwhile Companies Ordinance 1984 would not entitle the petitioner to per se claim NPO status under the Ordinance, 2001. Textual reading of section 2(36) of the Ordinance does not suggest immediately realizable benefit but also includes deferred benefits, realized in due course.

Conclusion: Mischief intended to be remedied through the limitations prescribed under section 2(36) of the Ordinance, 2001 and Rule 217(1)(b) of Rules, 2002 was traced and rightly targeted by holding that provisioning of private benefit by non-profit organization disentitled it from claiming concession and benefits under Income Tax Ordinance, 2001 as well as Rules made thereunder in the capacity of a Non-Profit Organization.

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39. **Lahore High Court**
The State v. Ashfaq Hussain
Murder Reference No. 51 of 2022
Ashfaq Hussain v. The State
Criminal Appeal No. 684-J of 2022
Abdul Majeed Shah v. The State
Criminal Appeal No. 683 of 2022
Shafaqat Mehmood v. The State and another
Criminal Revision No. 340 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem

https://sys.lhc.gov.pk/appjudgments/2023LHC7536.pdf

Facts: The learned Trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the one of the convicts in case FIR registered under sections 302, 34 P.P.C. and the appellants lodged Criminal appeals assailing their convictions and sentences whereas, complainant has filed Criminal Revision for the conversion of sentence of life imprisonment of one of the accused into sentence of death.

Issues: i) How testimony of a chance witness is to be adjudged?
ii) What can be inferred if the witnesses are not present during identification of dead body of deceased at the time of autopsy and at the time of preparing the inquest report?
iii) Whether it makes the presence of witnesses improbable if their clothes have not been stained with blood while attending the deceased?
iv) Whether mere evidence of call data record is helpful for the prosecution case?
v) What is the legal value of recovery of motorcycle if no registration number, colour, has been described in the FIR?
vi) Whether evidence of a witness whose ocular account has been disbelieved can be helpful as a corroborative piece of evidence?

Analysis: i) In normal course, presumption under the law would operate about absence of a witness from the crime spot. True that in rare cases, the testimony of a chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.
ii) It can be inferred that the witnesses are not present at the time and place of occurrence because had the witnesses been present at the scene of the occurrence at the relevant time, they must have been the witnesses of identification of dead body of deceased at the time of autopsy and at the time of preparing the inquest report.
iii) It is improbable when a person has sustained multiple injuries with fire shot and sharp-edged weapon, blood would not ooze and would not touch the clothes of attending persons. This fact can constrain to hold that eyewitnesses are not present at the time and place of occurrence, otherwise, their clothes must have been stained with blood while attending the deceased, hence, the witnesses of ocular account are not reliable and there is likelihood that they had not witnessed the occurrence.
iv) Mere evidence of call data is not helpful for the prosecution if no voice record transcript has been brought on record. It just shows that they were in telephonically contact and not more than this.
v) Recovery of motorcycle at the pointation of the accused is inconsequential and not helpful to the prosecution case if no registration number, colour, has been described in the FIR.

vi) If evidence of a witness who is witness of ocular account has been disbelieved then his evidence to the extent of corroborative piece of evidence is also not helpful to the prosecution case.

Conclusion: i) In rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth.
ii) If the witnesses are not present during identification of deadbody of deceased at the time of autopsy and at the time of preparing the inquest report then this fact shows that they were not present at the time and place of occurrence.
iii) Presence of the witnesses is improbable if the clothes of eye witnesses have not been stained with blood while attending the deceased.
iv) Mere evidence of call data record is not helpful for the prosecution case.
v) Recovery of motorcycle has no legal value if no registration number, colour, has been described in the FIR.
vi) If evidence of a witness who is witness of ocular account has been disbelieved then his evidence to the extent of corroborative piece of evidence is also not helpful to the prosecution case.

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40. **Lahore High Court**
Muhammad Nadeem v. The State etc.
Criminal Appeal No. 151 of 2016.
Mst. Bachal Mai v. The State etc.
Criminal Revision No. 107 of 2016.
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7518.pdf

Facts: Criminal Appeal was filed by accused against his conviction and sentence passed under sections 302/34 of PPC as well as, Criminal Revision filed by complainant for enhancement of the sentence of the appellant.

Issues: i) What are the parameters to prove the case based on circumstantial evidence?
ii) What is the evidentiary value of extra-judicial confession?
iii) Whether it is safe to rely on footprint tracker's evidence?
iv) What is the nature of medical evidence?
v) Whether the prosecution witnesses once disbelieved with respect to a co-accused, can be relied upon regarding the other co-accused?
vi) What are the consequences where prosecution sets up a motive but fails to prove it?
vii) How is the benefit of doubt given to the accused?
viii) Whether recovery at the pointation of accused is helpful to the prosecution in case no description of such recovered item has been given by the prosecution witnesses?

Analysis: i) The prosecution has heavily relied upon circumstantial evidence, which is normally considered a weak type of evidence. It is well settled by now that in

such like cases, prosecution is required to link each circumstance to the other in a manner that it must form a complete, continuous and unbroken chain of circumstances, firmly connecting the accused with the alleged offence and if any link is missing then obviously benefit is to be given to the accused.

ii) In the given circumstances, the evidence of extra-judicial confession does not bear any credibility and that cannot be permitted to render any sort of help to the case of the prosecution. Even otherwise, the evidentiary value of extra-judicial confession has been declared a weak type of evidence.

iii) Identification of human footprints has not developed as a definite science so far as we have sciences of identification of handwriting and fingerprints, therefore, evidence of foot track described is always treated to be weak type of evidence. (...) Even otherwise, it is by now well- settled law that the evidence of footprints tracker is a weak type of evidence, of all kinds of evidence, admitted in a court this may be regarded as evidence of the least satisfactory character, thus, there is considerable force in the contention that it will be very unsafe to rely on footprint tracker's evidence. At the most, it may be said that the evidence led against the appellant disclosed grave suspicion of guilt but it did not raise that high degree of probability on which a conviction should be based.

iv) It is well settled by now that medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailants.

v) It is a trite principle of law and justice that once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are supported by corroboratory evidence coming from any independent source and shall be unimpeachable in nature.

vi) Although, the prosecution is not under obligation to establish the motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

vii) When the case against the appellant is replete with doubts then his conviction and sentence cannot be upheld on the basis of such shaky and untrustworthy evidence. The Supreme Court of Pakistan has time and again held that in the event of a doubt, its benefit must be given to the accused not as a matter of grace, but as a matter of right.

viii) With regard to the recovery of motorcycle at the pointation of appellant if no registration number, colour, company name has been described by the prosecution witnesses then the recovery at the pointation of appellant is inconsequential and not helpful to the prosecution case.

Conclusion: i) In a case of circumstantial evidence, prosecution is required to link each circumstance to the other in a manner that it must form a complete, continuous and unbroken chain of circumstances, firmly connecting the accused with the

alleged offence and if any link is missing then obviously benefit is to be given to the accused.
ii) See above in analysis portion.
iii) The evidence of footprints tracker is a weak type of evidence, and this may be regarded as evidence of the least satisfactory character, thus, there is considerable force in the contention that it will be very unsafe to rely on footprint tracker's evidence.
iv) Medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailants.
v) The prosecution witnesses once disbelieved with respect to a co-accused, cannot be relied upon regarding the other co-accused.
vi) If the prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.
vii) In case of any doubt, the benefit is given to the accused not as a matter of grace, but as a matter of right.
viii) Recovery at the pointation of accused in case no description of such recovered item has been given by the prosecution witnesses is inconsequential and not helpful to the prosecution case.

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41. **Lahore High Court**
Khalida Bibi and another v. The State etc.
Case No. Crl. Misc. No. 885-B/2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC150.pdf

Facts: Through this petition under Section 497 Cr.P.C., petitioners have sought post arrest bail in case registered under Sections 371A & 371B PPC.

Issues: i) Whether a man who is running a brothel, will be charged under section 371A or 371B PPC?
ii) Which law specifically prohibits keeping of brothel or allowing any place to be used as a brothel?
iii) Whether a man and a woman found busy in sexual intercourse in a brothel house, can be made subject of section 371A/371B PPC?
iv) Whether the Police can enter into places or resort of loose and disorderly character without warrant?

Analysis: i) When a man is running a brothel, he will not also be charged under section 371A or 371B PPC if he simply offers the service of a prostitute for sexual intercourse to a man, barring a situation when any person is actually found busy in a brothel house for sale, purchase or hiring etc. of a woman with the intent that she may be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be

likely that such person shall at any time be employed or used for any such purpose.

ii) The Punjab Suppression of Prostitution Ordinance, 1961 is in fact the apt law which specifically prohibits keeping of brothel or allowing any place to be used as a brothel.

iii) Willful sexual intercourse by a man and woman shall be viewed as an offence of fornication but not one under section 371A/371B PPC…when a man and a woman are found busy in sexual intercourse in a brothel house, they cannot be made subject of section 371A/371B PPC.

iv) Police can enter into places or resort of loose and disorderly characters without warrant and then depending upon the nature of offence are authorized to initiate criminal action either through registration of FIR for an offence under sections 371A/371B PPC or under the Punjab Suppression of Prostitution Ordinance, 1961, or through complaint under section 203C Cr.P.C. for fornication or investigation with the permission of Magistrate for offences under section 294 PPC.

Conclusion: i) If a man is operating a brothel, he will not be charged under section 371A or 371B PPC solely for offering the services of a prostitute for sexual intercourse to a man.

ii) The Punjab Suppression of Prostitution Ordinance, 1961 is in fact the apt law which specifically prohibits keeping of brothel or allowing any place to be used as a brothel.

iii) When a man and a woman are found busy in sexual intercourse in a brothel house, they cannot be made subject of section 371A/371B PPC.

iv) Police can enter into places or resort of loose and disorderly characters without warrant and then depending upon the nature of offence are authorized to initiate criminal action.

LATEST LEGISLATION / AMENDMENTS

1. Notification No. 14/EXEC-III, dated 02.01.2024 is issued by the Provincial Police Officer vide which rules 22.3(2), 22.48 (1), 24.5 (1), 25.53 (1) &(2), 25.54 (1) & (2), form 24.5(1),and sub rules (4)&(5), 25.18 of Police Rules 1934 are substituted whereas rules 22.45, 24.1, 25.23 are amended.
2. Notification No. SOR-III (S&G) 1-10/2007 issued by the Regulations Wing of Services and General Administration Department regarding amendment in the Punjab Social welfare and Bait-ul-Maal Department Directorate Service Rules, 2009 in the schedule at Sr.No. 4 in column No. 3 & column No. 7 and in column no. 3 at Sr. No. 11.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Furthering-the-Rights-of-Good-Samaritans

Furthering the Rights of Good Samaritans by Nyaaya

Motor vehicle accidents require immediate rescue and medical care. which people who are closest to the scene of the accident can provide. The support from bystanders can improve the chances of survival of a victim in the first hour of the injury, also known as the Golden Hour. To make sure that the victims of road accidents receive help from the bystanders without the bystanders having any fear of harassment, the Supreme Court has given effect to the Good Samaritan Law. According to this law, a Good Samaritan is a person who voluntarily, in good faith and without expectation of any reward helps a victim in getting emergency medical or non-medical care or assistance at the place where the accident takes place. This includes taking the victim to the hospital.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Business-Efficacy-Provision-A-Double-Edged-Sword

Business Efficacy Provision A Double Edged Sword by Ashwini Panwar (Mr) and Priyanshi Aggarwal (Ms), Alaya Legal Advocates

Contracts are executed generally for 'business efficacy', yet often, 'business efficacy' may require a review of the already executed contract. The above statement sounds like a loop and would end up in a loop unless some parameters for defining 'business efficacy' are crystallized. Often, even though the executed contract may contain clearly drafted provisions, the affected party may wish to creatively introduce 'new meaning' on grounds including 'implied understanding', 'business efficacy' or 'business necessity'.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Judicial-Appointments-In-India-And-Pakistan-The-Need-For-Responsive-Judicial-Review-And-Institutional-Dialogue

Judicial Appointments In India And Pakistan The Need For Responsive Judicial Review And Institutional Dialogue by Rushil Batra

Judicial Appointments were and continue to remain a hotly contested issue even after four landmark pronouncements by the Supreme Court. In the latest judgement on judicial appointments in 2015, the Supreme Court of India ('SCI'), in SCORA v. Union of India declared the National Judicial Appointment Commission, brought in by the 99th Amendment, as unconstitutional for violating the basic structure. The judgement has been highly criticised by scholars for ignoring the principles of separation of powers and ignoring "parliamentary supremacy" by striking down a constitutional amendment in toto. Interestingly, the Supreme Court of Pakistan ('SCP') was faced with a similar

question in Nadeem Ahmed regarding the constitutional validity of the 18th Amendment, which, inter alia, introduced a Judicial Appointments Commission. The SCP acted in stark contrast to the SCI by engaging in institutional dialogue as opposed to striking down the Amendment. This paper attempts to provide multiple suggestions and ways as to how the SCI could have decided the case differently by drawing on jurisprudence from Pakistan. The article attempts to compare and contrast the approach adopted by the SCI with that of the SCP and argues for engaging in institutional dialogue on questions like judicial appointments, which do not form the "democratic minimum core" in a democracy.

4. MANUPATRA

https://articles.manupatra.com/article-details/Constitutional-Jurisdictions-In-The-ICT-Revolution-Looking-For-Legitimacy-Through-Communication

Constitutional Jurisdictions In The ICT Revolution Looking For Legitimacy Through Communication by Tania Groppi

The article discusses the growing importance of the communication of constitutional and supreme courts with public opinion and how new technologies are transforming this relationship. It highlights the need for an empirical analysis of court communication, due to the scarcity of norms regulating these activities. The author examines the generators. The object, the tools, and the recipients of the communication of 27 constitutional jurisdictions worldwide. The research was conducted using three types of tools. First, an examination of the courts' websites and social media platforms. Secondly, a dedicated questionnaire was submitted from scholars of the respective jurisdictions. Finally, the publications on the subject were considered, although they are rather limited and sporadic. The main findings of the research are that in the last fifteen years, almost all the analysed courts have changed their communication strategies. In many cases, these changes have been promoted by some prominent chief justices, and they covered both the communication tools (there was a shift from communication through websites and press releases to social networks), its content (which extended from judicial to extrajudicial activities, and especially to the promotion of constitutional literacy), and the recipients of the communication (which are more and more the general public).

5. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/boardriders-minority-lenders-win-round-one

Boardriders: Minority Lenders Win Round One by: Peter J. Antoszyk , David M. Hillman , Michael T. Mervis , Patrick D. Walling , Matthew R. Koch of Proskauer Rose LLP

A common yet contentious liability management strategy is an "uptier" transaction, where lenders holding a majority of loans or notes under a financing agreement seek to elevate or "roll-up" the priority of their debt above the previously pari passu debt held by the non-participating minority lenders. In a recent decision in the Boardriders case,

the minority lenders defeated a motion to dismiss various claims challenging an uptier transaction..

6. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/harnessing-power-ai-law-firm-marketing-and-business-development

Harnessing the Power of AI in Law Firm Marketing and Business Development by Stefanie M. Marrone of Stefanie Marrone Consulting

In an era where technology continually reshapes business landscapes, law firms are increasingly turning towards Artificial Intelligence (AI) to enhance their marketing and business development strategies. AI offers a myriad of possibilities for law firms to not only streamline operations but also provide more personalized client experiences. Here's how AI is revolutionizing the legal sector and how your law firm can use it to your advantage.

7. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/crucial-importance-updating-documents-after-divorce

The Crucial Importance of Updating Documents After Divorce by Jennifer Weisberg Millner of Stark & Stark

Divorce can be a challenging and emotionally draining experience, leaving individuals with numerous legal and personal matters to resolve. Amidst all the turmoil, it is vital for people to understand the significance of updating beneficiaries on various accounts and financial instruments. Failing to update beneficiaries after a divorce is over can have serious consequences, as illustrated in the recently decided case of In the Matter of the Estate of Michael C. Jones.

8. THE OXFORD ACADEMIC

https://academic.oup.com/ejil/advance-article/doi/10.1093/ejil/chad062/7510879

A Love Triangle? Mapping Interactions between International Human Rights Institutions, Meta and Its Oversight Board by Anna Sophia Tiedeke

Three years ago, the Oversight Board commenced its work 'to make principled, independent, and binding decisions … based on respect for freedom of expression and human rights' for Meta's platforms Facebook and Instagram. From the very beginning, the vocabulary employed to talk about the Oversight Board was laden with court metaphors. Wary that these metaphors have stirred legal analysis into a specific direction, we move away from trying to fit the Oversight Board within established institutional categories. Instead, we shift the focus from institutions to interactions – that is, to the 'in-between'. Rather than continuing to debate what the Oversight Board is, we focus on what the Oversight Board does. Our study maps different stages and modes of

interaction between Meta, the Oversight Board and international human rights institutions. We show how different actors carefully craft entry points for constructing their respective semantic authority and what kind of strategies they pursue to contest semantic authority of others. Thereby, we uncover the first traces of emerging conversations between Meta, the Oversight Board and international human rights institutions and highlight who is included and excluded and who refuses to participate or to respond. With our intervention, we intend to offer empirically grounded insights into the dynamics at play and paint a more detailed picture of the various roles that novel actors, such as Meta and the Oversight Board, are beginning to assume in the protection of international human rights online.
