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FORTNIGHTLY CASE LAW BULLETIN

(16-04-2024 to 30-04-2024)

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

JUDGMENTS OF INTEREST

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Naimatullah Khan, Advocate, etc. v. Federation of Pakistan, etc.
Constitution Petition No.9/2010 etc.
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/const.p._9_2010_25042024.pdf

Facts: These Constitutional Petitions etc. have been filed by affectees of Gujjar, Orangi, Mehmoodabad Nallahs, Nasla Tower and Tejori Heights: etc.

Issue: Whether anyone including the provincial and Federal governments, and all those under them can encroach upon public roads and pavements?

Analysis: It is unfortunately noted that encroachments on public roads and pavements are made by those paid out of the public exchequer. Occupants of properties also assume that the pavement running in front of their property is theirs, to do with it as they please. Generators are also installed thereon. Pavements are for the use of the public; access thereto and use thereof cannot be prevented or restricted. Everyone, including the provincial and Federal governments, and all those under them must abide by the law and cannot encroach upon public roads and pavements nor can block them which may stop or restrict public use thereof. Citizens must not be inconvenienced. Those paid out of the public exchequer serve the people, and not vice versa. The misplaced exceptionalism negates the Constitution and the rule of law.

Conclusion: Everyone, including the provincial and Federal governments, and all those under them must abide by the law and cannot encroach upon public roads and pavements nor can block them which may stop or restrict public use thereof. Citizens must not be inconvenienced.

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2. **Supreme Court of Pakistan**
Haji Musharraf Mahmood Khan (deceased) through his legal heirs v. Sardarzada Zafar Abbas (deceased) through his L.Rs., etc.
Civil Petition No. 423-L of 2018
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._423_l_2018.pdf

Facts: This Civil Petition for leave to appeal is directed against the order passed by the Lahore High Court on the Office Objection raised in Civil Revision. The High Court maintained the Office Objection and refused to restore the Civil Revision which was dismissed for non-prosecution.

Issues: i) What is the scope of exercise of revisional jurisdiction by the Court under section 115 CPC?
ii) What is the objective of law of limitation?

iii) Which Article of Limitation Act applies to an application for restoration of revision petition, that is dismissed in default?

iv) Whether Court after dismissal in default of revision petition, can fix the time for its restoration?

v) Where the words of a statute are explicit and unambiguous, can recourse be made to any other interpretation other than the literal rule?

vi) When no procedure has been laid down for restoration, if the revision is dismissed for non-prosecution whether a litigant can be left without any remedy?

Analysis:

i) The language used under Section 115 of the Code of Civil Procedure, 1908 ("C.P.C.") unequivocally visualizes that the revisional court has to analyze the allegations of jurisdictional error, such as when an exercise of jurisdiction is not vested in the court below, or a jurisdiction that is vested in it by law was not exercised, and/or the court has acted in exercise of its jurisdiction illegally or with material irregularity, or committed some error of procedure in the course of the trial which is material and has affected the ultimate decision. The Court can even exercise its *suo motu* jurisdiction to ensure effective superintendence and visitorial powers to make sure, by all means, the strict adherence to the safe administration of justice, and may correct any error unhindered by technicalities.

ii) The objective of the law of limitation is not to confer a right, but it ordains an impediment after a certain period to enforce an existing rights or claims which have become stale by the efflux of time. The Court, under Section 3 of the Limitation Act, 1908 (the "Limitation Act") is obligated, independently and as its primary duty, to advert to the question of limitation and make a decision, regardless of whether this question is raised by the other party or not.

iii) In the C.P.C., there is no specific section or order which applies to the restoration of revision application dismissed in default. In unison, no specific Article is mentioned in the Limitation Act, whereby any specific period of limitation is provided for applying for restoration of a revision application dismissed for non-prosecution. To address this situation, the legislature has provided a residuary Article 181 in the Limitation Act, which is meant for all applications for which no period of limitation is provided elsewhere in the schedule or by Section 48 of the C.P.C., and within the province and under the purview of this Article, all such applications can be preferred within a period of 3 years when the right to apply accrues.

iv) In case reasonable and satisfactory grounds are made out, including the limitation, the Court may restore the case with or without cost, but while dismissing the case for non-prosecution, the Court cannot fix any specific time or period for applying for restoration as was done by the High Court in this case, whereby a barrier of 60 days was fixed for filing of the restoration application. Such directions were contrary to the provisions of Limitation Act, wherein the limitation period for applying for restoration of a revision petition or application is regulated and controlled by the Article 181 of the Limitation Act… Therefore, the fixation of time or limitation of 60 days by the Court is tantamount to

curtailing or restricting the statutory period of 3 years to only 60 days which was unwarranted and in excess of jurisdiction.

v) Where the words of a statute are explicit and unambiguous, recourse cannot be made to any other interpretation other than the literal rule. The language used in a statute is a decisive feature of the legislative intention and aspiration. The Courts are obligated to decide what the law is and not what it should be and should not assume the role of a lawmaker. It is a well-known principle of interpretation of statutes that a statute should be interpreted in a manner which suppresses mischief and advances the remedy.

vi) …there is no doubt that civil revision under section 115, C.P.C. entertained by the High Court has to be disposed of in view of provisions of section 117, C.P.C. A thorough survey of C.P.C. will indicate that there is no provision for recalling/setting aside the order dismissing a revision for non-prosecution. It may be noted that there are many other proceedings under C.P.C. in respect of which no procedure has been laid down if the same is dismissed for non-prosecution but a litigant suffering from such difficulty cannot be left without any remedy because law favours adjudication of matters on merits unless there exists some insuperable practical obstacle… It was further held that there is no specific provision in the C.P.C. to restore a revision dismissed for non-prosecution, therefore, an aggrieved party can claim relief under section 151, C.P.C.

Conclusion: i) See analysis portion above.

ii) See analysis portion above.

iii) Article 181 of Limitation Act applies in such situation as residuary Article.

iv) The Court cannot fix any specific time or period for applying for restoration of revision petition. Fixation of time or limitation of 60 days by the Court is tantamount to curtailing or restricting the statutory period of 3 years to only 60 days.

v) Where the words of a statute are explicit and unambiguous, recourse cannot be made to any other interpretation other than the literal rule.

vi) When no procedure has been laid down for restoration, if the revision is dismissed for non-prosecution, the litigant suffering from such difficulty cannot be left without any remedy and he can claim relief under section 151, C.P.C.

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3. **Supreme Court of Pakistan**
Mst. Jehan Bano & others v. Mehraban Shah & others
Civil Petition No.394-P of 2010
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._394_p_2010.pdf

Facts: This petition for leave to appeal has been filed by the petitioners against the judgment of the Revisional Court, whereby, the Revisional Court upheld the judgment of the Appellate Court in which civil suit filed by the petitioner was dismissed while civil suit filed by the respondents No. 1 to 3 was decreed.

Issues: i) Whether according to section 52 of the West Pakistan Land Revenue Act 1967, presumption of truth is attached to the entries made in the periodical record of rights i.e. jamabandis/khasra girdawari until contrary is proved?
ii) Whether mutation by itself does not create title and it carries a rebuttable presumption?
iii) Whether Supreme Court does lay its hand in the case of concurrent findings based on proper appraisal of evidence?

Analysis: i) According to section 52 of the West Pakistan Land Revenue Act 1967 presumption of truth is attached to the entries made in the periodical record of rights i.e. jamabandis/khasra girdawari until contrary is proved.
ii) It is settled law that mutation by itself does not create title and it carries a rebuttable presumption.
iii) In order to justify the grant of leave under Article 185 (3) of the Constitution of Islamic Republic of Pakistan (hereinafter referred to as the 'Constitution'), serious question of law is prima-facie to be made out or some case of grave miscarriage of justice has to be established. The scope of petition under Article 185 (3) of the Constitution is confined to the extent of substantial question of law. According to settled law, this Court does not lay its hand in the case of concurrent findings based on proper appraisal of evidence unless serious question of law arises or the findings are found improper, perverse or untenable in law.

Conclusion: i) According to section 52 of the West Pakistan Land Revenue Act 1967 presumption of truth is attached to the entries made in the periodical record of rights i.e. jamabandis/khasra girdawari until contrary is proved.
ii) Mutation by itself does not create title and it carries a rebuttable presumption.
iii) Supreme Court does not lay its hand in the case of concurrent findings based on proper appraisal of evidence unless serious question of law arises or the findings are found improper, perverse or untenable in law.

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4. **Supreme Court of Pakistan**
Khawaja Adnan Zafar v. Hina Bashir and others
Civil Petition Nos. 1708-L/2022, 3435-L/2022, 2672-L/2023, 3152-L/2023, 219-L/2024 AND 303-L/2024
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1708_l_2022.pdf

Facts: The petitioner challenged the High Court's interim rulings in habeas corpus and minor custody cases by filing this Petition under Article 183(3) of the Islamic Republic of Pakistan, 1973. Meanwhile, the petitioner's claim for permanent custody of minor under Section 25 of the Act of 1890 is still pending before the Guardian Judge.

Issue: Whether interim orders passed by any High Court can be interfered under Article

185(3) of the Constitution of the Islamic Republic of Pakistan 1973 by the Supreme Court of Pakistan?

Analysis: The orders of the Courts below assailed by the petitioner in the instant petitions are interim in nature. According to the established practice, settled principles of law and policy of this Court, ordinarily interim orders passed by the high Court are not interfered under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 and such intervention is warranted only in exceptional circumstances involving flagrant violation of law, wrongful exercise of jurisdiction or a manifest grave injustice.

Conclusion: Ordinarily interim orders passed by the high Court are not interfered under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 and such intervention is warranted only in exceptional circumstances involving flagrant violation of law, wrongful exercise of jurisdiction or a manifest grave injustice.

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5. **Supreme Court of Pakistan**
Mehboob-ur-Rehman and Jawar v. The State through Prosecutor General, Balochistan.
Crl. M. Appeal No. 1-0/24 in Criminal Petition No. Nil /2024.
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.m.appeal._1_q_2024.pdf

Facts: The appellants, were tried, convicted, and sentenced for commission of offences under Sections 380 and 457 of the Pakistan Penal Code, 1860, by learned Judicial Magistrate. The convictions and sentences awarded to the appellants were confirmed by the appellate and, thereafter, maintained by the Revisional Courts, respectively. Aggrieved thereof, the appellants filed the petition for leave to appeal against the judgment of the Revisional Court maintaining their conviction and sentence, which was not entertained by the office of this Court, leading to the filing of the instant Criminal Misc. Appeal.

Issue: How to deal matter relating to the presence of the accused/convict challenging adverse orders/judgment at the time of filing criminal petitions before Supreme Court?

Analysis: The matter relating to the presence of the accused/convict challenging adverse orders/judgment at the time of filing criminal petitions before this Court has been provided under Rule-8 of Order XXIII of the Supreme Court Rules, 1980…A careful reading of the above provisions makes it clear that: firstly, for an accused challenging any adverse order relating to his prayer for the grant of bail before arrest, the accused may not surrender to the police, and still undertake to appear and surrender in this Court at the time of hearing of his petition for the grant of bail before arrest, to render the petition maintainable; secondly, and more relevant

to the issue in hand, for a convict challenging his conviction and sentence of imprisonment, he has to first surrender to undergo the term of the sentence awarded, so as to render his petition maintainable.

Conclusion: See above in analysis portion.

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6. **Supreme Court of Pakistan**
Fozia Mazhar v. Additional District Judge, Jhang and others
Civil Petition No.1737-L/2020
Mr. Justice Yahya Afridi, Mr. Justice Amin-Ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1737_l_2020.pdf

Facts: The petitioner filed a suit for dissolution of marriage which following failure of pre-trial reconciliation, was decreed on the basis of khula. A purported joint application for setting aside the decree was filed on behalf of the petitioner and the respondent, which was allowed. This order of recalling the decree of dissolution of marriage on the basis of khula was challenged by the respondent in a petition under Section 12(2) of C.P.C. which was allowed by the Family Court and confirmed by the District Court, and not interfered with by the High Court in the impugned judgment, hence, the present petition.

Issues: i) Whether provisions of CPC are applicable before family court and application u/s 12(2) can be filed before family court?
ii) Whether High Court in exercise of Constitutional Jurisdiction can interfere in the findings on controversial questions of fact based on evidence?

Analysis: i) The Family Court may apply the general principles enshrined in C.P.C. in proceeding with not only the trial but also exercise jurisdiction in entertaining an application of an aggrieved party, challenging the validity of a judgment, decree or order on the plea of fraud or misrepresentation.
ii) The High Court, in exercise of its constitutional writ jurisdiction, is not supposed to interfere in the findings on controversial questions of fact based on evidence. The scope of judicial review by the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in such cases is limited to the extent of misreading or non-reading of evidence, or if the finding is based on no evidence, which may cause a miscarriage of justice. It is not proper for the High Court to disturb the finding of fact through a reappraisal of evidence in constitutional writ jurisdiction or to exercise this jurisdiction as a substitute for revision or appeal.

Conclusion: i) See under above analysis no. 01.
ii) See under above analysis no. 02.

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7. **Supreme Court of Pakistan**
Shaista Habib v. Muhammad Arif Habib and others
Civil Petition No.3801 Of 2022
Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3801_2022.pdf

Facts: The High Court has dismissed the petition of petitioner, who had invoked the jurisdiction vested under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. She had challenged the orders of two competent courts, whereby the question of custody of a child was decided against her. Through this Petition she has sought leave against the judgment of the High Court.

Issues: i) What is the foundational principle for deciding the custody disputes?
ii) Whether the rule that the father is a natural guardian and, therefore, entitled to the custody of the child or the mother loses the right of hizanat after the minor has attained the prescribed age or puberty is absolute?
iii) What should be the paramount and overarching consideration while deciding the custody of child?
iv) Whether the factors or variables that may be taken into consideration while determining the question of custody of a child are exhaustive and same for all cases?
v) Whether the second marriage contracted by the mother can be a stand-alone reason to disqualify her from obtaining the custody of the child?
vi) Whether in the context of custody disputes the court can grant the custody to a person other than the parents?
vii) Whether the guardian and family court is the final arbiter for determining the question of custody?
viii) What if the court has ignored the welfare of the child and the latter's best interest or has given preference to some other ground?
ix) What is the constitutional duty of the State regarding the protection of the rights of children?

Analysis: i) This was definitely an overarching principle which ought to have been considered while deciding the custody dispute. The rights of the parents were subservient to the welfare of the minor and thus it was the duty of the courts to assess and determine a course that would have served the best interest of the minor. Any decision regarding the custody of a child without assessment and determination of the latter's welfare and best interests by taking into consideration the relevant factors and variables cannot be sustainable, nor can the exercise of discretion be lawful. The welfare of a minor and the latter's best interest is the foundational principle for deciding custody disputes.
ii) It is settled law that the father is the natural guardian while the mother is entitled to the custody (hizanat) of a male child till the age of seven years while in case of a female till she attains puberty. This right continues notwithstanding a divorce or separation. As a natural guardian it is the obligation of the father to

maintain the child even if the custody is with the mother. The inability of the mother to financially support the child is not a determinate ground to deprive her from custody because in such an eventuality the father's obligation regarding maintenance is not extinguished. The rule that the father is a natural guardian and, therefore, entitled to the custody of the child nor that the mother loses the right of hizanat after the minor has attained the prescribed age or puberty, as the case may be, is not absolute, rather subject to exceptions.

iii) The decision regarding custody of a child is governed on the fundamental principle, the paramount and overarching consideration is the welfare of the child i.e to ascertain the course which is in the latter's best interest. The crucial criterion is, therefore, the best interest and welfare of a child while determining the question of custody. The rights or aspirations of the parents or some other person are subservient to this principle and each case of custody must be decided on the basis of ascertaining a course which is in the 'best interest of the child'.

iv) The factors or variables that may be taken into consideration while determining the question of custody of a child are not exhaustive but they would depend on the facts and circumstances of each case. The guiding principle is to ensure that the determination of custody promotes the rights of the child as well as the latter's wellbeing. The overriding consideration must be to protect the child from any physical, mental or emotional injury, neglect or negligent treatment. The mother’s disability, illiteracy or financial status is not the sole determinant factors.

v) The second marriage contracted by the mother also cannot become a stand-alone reason to disqualify her from obtaining the custody of the child. The question of custody involves taking into consideration the factors which are relevant to the upbringing, nursing and fostering of the child. It essentially extends to the emotional, personal and physical wellbeing of a child. The sole object is to ensure that the overall growth and development of the child is guaranteed.

vi) The overarching principle in cases involving the question of custody and visitation rights of the parents is, therefore, determination of the welfare of the child, i.e. to ascertain a course that would serve the best interest of the child. Sections 17 and 25 of the Act of 1890 set out the broad guidelines which are to be taken into consideration while deciding custody disputes. It is the duty of the court to form an opinion and adopt a course on the basis of the paramount principle of the welfare of the child. Section 17 explicitly provides that a court shall be guided by what appears in the circumstances to secure the welfare of the minor, consistent with the law to which the minor is subject. Sub- section (3) provides that if the minor is old enough to form an intelligent preference then the court may consider that preference. … while determining the welfare of the child in the context of custody disputes the court may grant the custody to a person other than the parents e.g the grandparents or aunt, if doing so would promote the welfare and best interest of the child.

vii) As a general rule the guardian and family court is the final arbiter for determining the question of custody, except when it has made a determination in

an arbitrary, capricious or fanciful manner i.e when the fundamental principle of welfare of the child has not been considered or determined in the light of the variables which are relevant in the given circumstances.

viii) If the court has ignored the welfare of the child and the latter's best interest or has given preference to some other ground then the decision would not be sustainable. The court, in its endeavor to assess and determine the welfare of a child, is not bound to follow rigid formalities, strict adherence to procedure or rules or technicalities if doing so may hamper the determination or undermine the fundamental criterion of the best interest of the child.

ix) It is a constitutional duty under Article 29(3) of the President or the Governor of the Province, as the case may be, to cause to be prepared and laid before the respective legislatures a report in respect of each year, inter alia, regarding observance and implementation of the obligation relating to children under Article 37 of the Constitution. Likewise, it is an obligation of the State to ensure that the fundamental rights enshrined in the Constitution are protected and fulfilled in the case of children. It is, therefore, implicit in the obligation of the State towards protecting the rights of the children to provide child friendly courts presided by specially trained professional judges.

Conclusion: i) The welfare of a minor and the best interest is the foundational principle for deciding custody's disputes.

ii) The rule that the father is a natural guardian and, therefore, entitled to the custody of the child and that the mother loses the right of hizanat after the minor has attained the prescribed age or puberty, as the case may be, is not absolute, rather subject to exceptions.

iii) The decision regarding custody of a child is governed on the fundamental principle that the paramount and overarching consideration is the welfare of the child i.e. to ascertain the course which is in the latter's best interest.

iv) The factors or variables that may be taken into consideration while determining the question of custody of a child are not exhaustive but they would depend on the facts and circumstances of each case.

v) The second marriage contracted by the mother also cannot become a stand-alone reason to disqualify her from obtaining the custody of the child.

vi) While determining the welfare of the child in the context of custody's disputes the court may grant the custody to a person other than the parents' e.g the grandparents or aunt, if doing so would promote the welfare and best interest of the child.

vii) See above analysis no. vii.

viii) If the court has ignored the welfare of the child and the latter's best interest or has given preference to some other ground then the decision would not be sustainable.

ix) See above analysis no. ix.

8. **Supreme Court of Pakistan**
Muhammad Yousaf v. Huma Saeed and others
Civil Petition No.2673of 2022
Mr. Justice Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2673_2022.pdf

Facts: The respondent's suit seeking recovery of dower, maintenance, dowry articles and gold ornaments was partially decreed by the trial court, which decree was challenged by both parties preferring separate appeals. The appeal preferred by the petitioner was partially allowed and that of the respondent was dismissed. Then, both the parties invoked the jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and the High Court declared the respondent entitled to the plot described in column 17 of the *Nikah Nama*. Hence, this Petition.

Issues: i) What presumption is attached with entries in the columns of *Nikah Nama*?
ii) What is significance of informed understanding of the bride regarding her rights whilst determining dower at the time of the execution of the *Nikah Nama*?
iii) Whether intention of the contracting parties may be ascertained from the entries in the *Nikah Nama* described in Form II of the Rules of 1961, merely on the basis of headings thereof?
iv) How the terms and conditions stipulated in a *Nikah Nama* should be interpreted and if there is doubt and ambiguity regarding the intent of the parties, how can it be resolved?

Analysis: i) The *Nikah Nama* is a contract between man and woman, which contains the terms of the *Nikah* and conditions which are meant to secure the rights and interests of both the parties.
ii) *Nikah Nama* is in the nature of a civil contract and it contains the terms agreed upon by the husband and the wife. The foundational principle ingredient of *Nikah* is the free consent of the contracting parties, which inherently involves the informed understanding of each party regarding his or her rights and as well as freedom to negotiate and settle the terms and conditions. 'Dower' is obligatory because it is an essential requirement of a valid marriage contract. Dower is given by the husband to the wife and its determination is subject to the consent of the wife as well as such determination at the time of the execution of the *Nikah Nama* must necessarily be guided by an informed understanding of the bride regarding her rights. The freedom to negotiate and settle the terms by the bride, therefore, becomes crucial.
iii) Form II of the West Pakistan Rules of 1961 has prescribed the form of *Nikah Nama* and its entries. *Nikah Nama* is the deed of marriage contract between the parties and its clauses/columns/contents are to be construed and interpreted in the light of the intention of the parties. The contract has to be read as a whole and the words are to be taken in their literal, plain and ordinary meaning. Hence, the form of *Nikah Nama* nor its headings are conclusive or sacrosanct. It is the intent of the

parties which would be the determining factor.
iv) The rule of *contra proferentem*, known as the rule of interpretation against the draftsman, is a recognized principle of contractual interpretation which provides that in case of an ambiguous promise, agreement or term, the preferred construction should be the one that works against the interests of the party which had drafted the contract. It therefore becomes crucial for a court to be satisfied, while interpreting the contents of the columns of a *Nikah Nama*, that the wife understood each column and was informed of her rights at the time of its execution and that she had exercised her free consent while settling the terms and conditions thereof.

Conclusion: i) *Nikah Nama* is a public document and a strong presumption of truth is attached with the entries recorded in the columns of *Nikah Nama*.
ii) The bride is entitled, as an expression of her free consent, to negotiate the terms of dower or at least take informed decisions in the context of its determination before the *Nikah Nama* is executed.
iii) Neither the prescribed form under Form II of the West Pakistan Rules of 1961 nor the headings of the entries contained therein are conclusive for ascertaining the intent of the two parties to the marriage contract.
iv) In case the columns of the *Nikah Nama* have been filled by others without meaningful consultation of the wife, then a doubt or ambiguity cannot be interpreted against her rights or interests because any ambiguity in a contract is to be resolved by ascertaining the real intention of the parties.

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9. **Supreme Court of Pakistan**
Syed Sakhawat Hussain v. The State and another
Criminal Petition No. 155 of 2024
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._155_2024.pdf

Facts: The petitioner called in question an order passed by the Lahore High Court whereby his post arrest bail application in a Case FIR for offences under Sections 34, 109, 406,419, 420, 467, 468 and 471 PPC, was dismissed.

Issue: Whether mere receipt of funds in the bank account of a person can be construed as proof of his involvement in a scam?

Analysis: The grant of bail is a fundamental right and must be considered in light of the circumstances of each case, mere receipt of funds in a bank account cannot be construed as proof of involvement in the scam at this stage as there is insufficient and incomplete material available on the record to establish any connection of the petitioner. Petitioner's criminal liability can only be determined after recording of evidence by the Trial Court. The mere nomination of the petitioner in the FIR without substantive material and without nominating the account holder by whom

the amount was allegedly transferred in the bank account of the petitioner's company is insufficient to justify his further detention.

Conclusion: Mere receipt of funds in the bank account of a person cannot be construed as proof of his involvement in a scam unless there is sufficient material available on the record to establish any connection of such person with the scam.

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10. **Supreme Court of Pakistan**
Muhammad Ramzan v. Khizar Hayat and another
Criminal Petition No.887-L of 2013
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gosv.pk/downloads_judgements/crl.p._887_l_2013_24042024.pdf

Facts: This Criminal Petition is directed against judgment passed by the Lahore High Court, whereby the criminal appeal filed by one of the respondents was allowed by acquitting him from the charge and the murder reference was answered in the negative by not confirming the death sentence.

Issues: i) Whether capital punishment can be awarded on the basis of testimony of an interested witness without corroboration by any independent evidence?
ii) What is the importance of forensic science in the criminal justice system?

Analysis: i) The testimony of an interested witness should be scrutinized with care and caution. Independent corroborating evidence is essential to test the validity and credibility of the testimony of interested witness.
ii) The cornerstone of the criminal justice system is the effective functionality of the investigating agency and prosecution. The principle of fair trial and due process are guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. The dispensation of justice and fair adjudication require that the accused be equitably treated, investigated and prosecuted in accordance with the law. Forensic deals with the application of scientific techniques to provide objective, circumstantial evidence. Forensic science means the science which is used in the courts of law for the purposes of detection and prosecution of crime.

Conclusion: i) Capital punishment cannot be awarded on the basis of testimony of an interested witness unless same is corroborated by independent evidence.
ii) The forensic science plays a significant role in the criminal justice system by providing data that can be used to assess the degree of guilt of a suspect.

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11. **Supreme Court of Pakistan**
The Inspector General of Police, Punjab & Others v. Waris Ali (deceased) through LRs & Others
Civil Appeal No. 3-L OF 2016
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._3_l_2016.pdf

Facts: By leave of Supreme Court granted earlier, the Appellants, Inspector General of Police, Punjab (IGP) and others challenged the order by the Punjab Service Tribunal, Lahore (Tribunal) whereby the appeal filed by Respondent No.1 was allowed.

Issues: i) What is the criteria of promotion of upper subordinates i.e. Inspector, SI and ASI?
ii) Why there is focus on Rule 19.25 of Police Rules 1934 for the purposes of promotions?

Analysis: i) As per Rule 19.25, officers have to undergo various courses (A, B, C and D) to qualify for promotion. Training of upper subordinates, being Inspector, SI and ASI, is a mandatory requirement of law for the purposes of promotion in terms of Rule 19.25 of the Rules. Hence, for all intents and purposes, promotion from the date of the promotion of juniors is not possible for upper subordinates in terms of the clear provisions of Rule 19.25. It is critical to note that an officer must complete the required course(s) before seeking promotion.
ii) We also note that the focus of Rule 19.25 of the Rules is capacity building in order to develop knowledge, skill and the necessary traits required for the post and rank. The purpose being that officers must have the requisite abilities to perform their duty.

Conclusion: i) Training of upper subordinates, being Inspector, SI and ASI, is a mandatory requirement of law for the purposes of promotion in terms of Rule 19.25 of the Rules and an officer must complete the required course(s) before seeking promotion.
ii) See analysis portion above.

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12. **Supreme Court of Pakistan**
Sardaran Bibi v. The State and others
Criminal Petition No.412-L/2014
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._412_l_2014.pdf

Facts: This Criminal Petition is directed against the judgment passed by the Lahore High Court in criminal appeal relating to Murder Reference, whereby the Appeal filed by accused persons was accepted and the conviction and the sentence awarded to them by the Trial Court in Sessions Complaint was set aside**.**

Issues: i) Whether a single circumstance is enough to extend benefit of the doubt to the accused?
ii) What is the scope of interference in appeal against acquittal?

Analysis: i) For extending benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation as it is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace.
ii) It is well settled exposition of law that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, in other words, the presumption of innocence is doubled.

Conclusion: i) For extending benefit of doubt there may not be many circumstances, as a single confidence aspiring doubt is enough to give benefit of the same to the accused.
ii) The Courts are very slow in interfering with an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law or suffering from the errors of grave misreading or non-reading of the evidence.

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13. **Supreme Court of Pakistan**
Syed Qamber Ali Shah v. Province of Sindh and others
Criminal Petition No.99-K/2018
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._99_k_2018.pdf

Facts: This Criminal Petition for leave to appeal is directed against the consolidated order, whereby the High Court of Sindh, Karachi, set aside the order passed by the Justice of Peace/IInd Additional & District and Sessions Judge, in Criminal Misc. Application.

Issues: i) Whether under section 22-A, Cr.P.C, it is the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits?
ii) Whether there is any provision in any law, including Section 154 or 155 of the Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or falsity of the information before complying with the command of the said provisions?
iii) Whether the remedy of filing a direct complaint can measure or match up to the mechanism provided under section 154, Cr.P.C?
iv) Whether the High Court in its inherent jurisdiction conferred under Section 561- A, Cr.P.C., can be deemed to be an alternative jurisdiction or additional

jurisdiction and can be exploited to disrupt or impede the procedural law on the basis of presumptive findings or hyper-technicalities?

v) Whether the mere registration of FIR does insinuate the conviction?

Analysis: i) Under section 22-A, Cr.P.C, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits but he has to ensure whether, from the facts narrated in the application, any cognizable case is made out or not; and if yes, then he can obviously issue directions that the statement of the complainant be recorded under Section 154. Such powers of the Justice of Peace are limited to aid and assist in the administration of the criminal justice system. He has no right to assume the role of an investigating agency or a prosecutor but has been conferred with a role of vigilance to redress the grievance of those complainants who have been refused by the police officials to register their reports. If the Justice of Peace will assume and undertake a full-fledged investigation and enquiry before the registration of FIR, then every person will have to first approach the Justice of Peace for scrutiny of his complaint and only after clearance, his FIR will be registered, which is beyond the comprehension, prudence, and intention of the legislature. Minute examination of a case and conducting a fact-finding exercise is not included in the functions of a Justice of Peace but he is saddled with a sense of duty to redress the grievance of the complainant who is aggrieved by refusal of a Police Officer to register his report.

ii) At whatever time, an Officer Incharge of a Police Station receives some information about the commission of an offence, he is expected first to find out whether the offence disclosed fell into the category of cognizable offences or non-cognizable offences. There is no provision in any law, including Section 154 or 155 of the Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or falsity of the information before complying with the command of the said provisions. He is obligated to reduce the same into writing, notwithstanding the fact whether such information is true or otherwise. The condition precedent for recording an FIR is that it should convey the information of an offence and that too a cognizable one.

iii) The remedy of filing a direct complaint cannot measure or match up to the mechanism provided under section 154, Cr.P.C., in which the Officer Incharge of a Police Station is duty bound to record the statement and register the FIR if a cognizable offence is made out. If in each and every case it is presumed or assumed that instead of insisting or emphasizing the lodgment of an FIR, the party may file a direct complaint, then the purpose of recording an FIR, as envisaged under section 154, Cr.P.C., will become redundant and futile and it would be very easy for the police to refuse the registration of an FIR with the advice to file direct complaint.

iv) It is well-known that the inherent jurisdiction conferred under Section 561- A, Cr.P.C., cannot be deemed to be an alternative jurisdiction or additional jurisdiction and cannot be exploited to disrupt or impede the procedural law on

the basis of presumptive findings or hyper-technicalities, but it is meant to protect and safeguard the interest of justice to redress grievances of aggrieved persons for which no other procedure or remedy is provided in the Cr.P.C. Despite everything, the ends of justice inescapably denote justice as administered and dispensed with by the courts but not justice in an abstract and intangible notion.

v) The mere registration of FIR does not insinuate the conviction but as a rider, it is clearly provided under Section 169 of the Cr.P.C. that if upon an investigation, it appears to the officer incharge of the police-station, or to the police-officer making the investigation that there is no sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or send him for trial. While Section 173 Cr.P.C inter alia provides that as soon as the investigation is completed, the officer incharge of the police station shall, through the Public Prosecutor, forward to a Magistrate empowered to take cognizance of the offence on a policereport, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and communicate, in such manner as may be prescribed by the Provincial Government.

Conclusion: i) Under section 22-A, Cr.P.C, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits.

ii) There is no provision in any law, including Section 154 or 155 of the Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or falsity of the information before complying with the command of the said provisions.

iii) The remedy of filing a direct complaint cannot measure or match up to the mechanism provided under section 154, Cr.P.C.

iv) The High Court in its inherent jurisdiction conferred under Section 561- A, Cr.P.C., cannot be deemed to be an alternative jurisdiction or additional jurisdiction and cannot be exploited to disrupt or impede the procedural law on the basis of presumptive findings or hyper-technicalities.

v) The mere registration of FIR does not insinuate the conviction.

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14. **Lahore High Court**
Province of Punjab through DOR/ADC & others v. Firm Friends & Engineers Bahawalpur & others
Civil Revision No.235 of 2016/BWP
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC1582.pdf

Facts: A contract for construction of metalled road was awarded to the respondent contractor. Subsequently, a dispute arose between the parties whereupon the Ombudsman, Punjab, directed the departmental authorities to get the matter resolved through arbitration. The trial court while making the Award as rule of the Court, modified the same. Being aggrieved the petitioners preferred an appeal whereas the respondent-contractor, instead of challenging the judgment and decree of the learned Trial Court through independent appeal, filed cross-objections. The Appellate Court while dismissing the appeal of the petitioners accepted the cross-objections filed by the respondent-contractor.

Issues: i) How the period of limitation is to be calculated where no notices were issued to the parties by the Arbitrator(s), in terms of section 14 of the Act 1940?
ii) Where no objections were filed by a party against the Award announced by the Arbitrators, whether such a party can move the Court for modification of the same?
iii) Whether the decision of a court can be set aside merely on the ground that independent findings on all *Issues* have not been given?
iv) Whether a party can be allowed to raise objection at some subsequent stage when such a party opts to lead evidence and gets decision of a matter, without raising any objection against framing of *Issues* by the court of first instance?
v) Whether the request of a party before the Civil Court for modification of the Award is entertainable where no objections were filed by such a party before the Arbitrators?

Analysis: i) Where notices are issued to the parties by the Arbitrator(s), in terms of section 14 of the Act 1940, the period of limitation to file Award in the court by the Arbitrator or to move an application by any of the parties seeking direction for filing of Award in the Court and to make the same as rule of the court, is governed under Article 178 of the Limitation Act, 1908. As far as the case in hand is concerned, no such notices were issued, thus, the period of limitation for the respondent-contractor to file the application, subject matter of this petition, was to be governed under residuary Article 181 of the Limitation Act, 1908.
ii) Section 15 of the Act, 1940 empowers the Court to modify an Award announced by the Arbitrator(s) while dealing with an application filed under the Act, 1940 provided the conditions stipulated under the said provision are fulfilled. A party can move the court for modification of an Arbitration Award even if no objections were filed by such party against the Award announced by the Arbitrators…
iii) In routine if a court fails to give its independent findings under each *Issue* same is not sustainable, however, when controversy between the parties has been clinched in an exhaustive manner, the decision of a court cannot be set aside merely on the ground that independent findings on all *Issues* have not been given.
iv) When a party opts to lead evidence and gets decision of a matter, without raising any objection against framing of *Issues* by the court of first instance, it cannot be allowed to raise such objection at some subsequent stage.

v) while dealing with an application for making an Award as rule of the court, the Court is supposed to consider as to whether the request can be acceded to or not notwithstanding the fact as to whether any objection was filed by the either side or not.

Conclusion: i) Where no notices were issued to the parties by the Arbitrator(s), in terms of section 14 of the Act 1940, the period of limitation is to be governed under residuary Article 181 of the Limitation Act, 1908.
ii) A party can move the court for modification of an Arbitration Award even if no objections were filed by such party against the Award announced by the Arbitrators.
iii) The decision of a court cannot be set aside merely on the ground that independent findings on all *Issues* have not been given when controversy between the parties has been clinched in an exhaustive manner.
iv) A party cannot be allowed to raise objection at some subsequent stage when such a party opts to lead evidence and gets decision of a matter, without raising any objection against framing of *Issues* by the court of first instance.
v) The request of a party before the Civil Court for modification of the Award is entertainable even where no objections were filed by such a party before the Arbitrators.

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15. **Lahore High Court**
Wajid Ali v. The Govt. of Punjab & others
Writ Petition No.68366 of 2023
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC1849.pdf

Facts: The petitioner applied against the post of Assistant Director (Records) BS-17. Upon conclusion of the recruitment process, appointment of the petitioner was recommended by the PPSC to respondent No.2. Resultantly, the petitioner was appointed against the aforesaid post, on contract basis for a period of three years and he assumed the charge of the post. Since the petitioner completed three years' mandatory service, he made various requests before the competent authority for regularization of his services in the light of the Punjab Regularization of Service Act, 2018 but as the same were given deaf ear, the petitioner has filed this Petition seeking regularization of his services against the subject post.

Issues: i) When a person falls within the definition of a necessary party or proper party, whether he can be added as a party in a lis by a court, even without filing of a formal application in that regard?
ii) Whether according to section 4(1) of the Punjab Regularization of Service Act 2018, the case of a contract employee, appointed on the recommendations of the PPSC, is to be submitted to the competent authority for regularization?
iii) Whether Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates that every citizen should be dealt with in accordance with law?

iv) Whether Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 provides shield against any kind of discrimination by the authorities at the helm of affairs of the government or its institutions?

v) Whether mere pendency of a complaint/application and that too by a co-employee, can be used to deny a vested right of a government servant whose performance otherwise has been assessed satisfactory?

vi) Whether putting up the case of the petitioner for regularization prior the expiry of extended period of contract has created legitimate expectancy in the mind of petitioner for regularization of his service?

Analysis: i) The sole reason advanced by the applicant, in support of this application, is that he filed the connected petition prior to filing of this petition, thus, he is a necessary party. There is no cavil with the proposition that when a person falls within the definition of a "necessary party" or "proper party", he can be added as a party in a lis by a court, even without filing of a formal application in that regard. Since the applicant has no concern with prayer made by the petitioner in this petition, thus, the applicant is neither a necessary nor proper party.

ii) Section 4 of the Act 2018 deals with procedure relating to regularization of services of a contract employee. According to subsection (1) of the afore-quoted provision, the case of a contract employee, appointed on the recommendations of the PPSC, is to be submitted to the competent authority for regularization. Insofar as matter of the petitioner is concerned respondent No.4 put up the matter of the petitioner for regularization before respondent No.2 with positive note but instead of regularization of services of the petitioner, respondent No.2 referred matter to different subordinates for inquiry/opinion in utter disregard to section 4 ibid. The matter did not end there as respondent No.2 did not regularize the services of the petitioner despite favourable recommendations by the authorities to whom matter was referred by him. This fact alone is sufficient to believe that respondent No.2 failed to perform his duties in line with the provisions of section 4 ibid.

iii) It is important to mention over here that Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates that every citizen should be dealt with in accordance with law. Undeniably, the relevant law in the matter of the petitioner was/is the Act, 2018 which envisages that a contract employee, who completes three years of service, is entitled to regularization but inaction on the part of respondent No.2 to regularize services of the petitioner in line with the provisions of the said enactment constitutes willful defiance of the fundamental right of the petitioner guaranteed under the aforereferred provision of the Constitution.

iv) It is relevant to note that Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 provides shield against any kind of discrimination by the authorities at the helm of affairs of the government or its institutions.

v) In the report and parawise comments, some of the respondents have adopted the plea that since certain complaints were filed against the petitioner, his services could not be regularized. The said stance of the department stands negated from

the contents of the report, submitted by the Deputy Secretary (A&L), wherein he concluded that the complaints, filed against the petitioner, were baseless and devoid of facts and endorsed the recommendations/proposals for regularization of services of the petitioner….. Even otherwise, mere pendency of a complaint/ application and that too by a co-employee, cannot be used to deny a vested right of a government servant whose performance otherwise has been assessed satisfactory.

vi) It has not been denied by respondents‟ side that prior to the expiry of extended period of contract the case of the petitioner for regularization was put up before the competent authority with positive note. In this backdrop, the case of the petitioner was also covered under the principle of legitimate expectancy.

Conclusion: i) When a person falls within the definition of a necessary party or proper party, he can be added as a party in a lis by a court, even without filing of a formal application in that regard.

ii) According to section 4(1) of the Punjab Regularization of Service Act 2018, the case of a contract employee, appointed on the recommendations of the PPSC, is to be submitted to the competent authority for regularization.

iii) Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates that every citizen should be dealt with in accordance with law.

iv) Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 provides shield against any kind of discrimination by the authorities at the helm of affairs of the government or its institutions.

v) Mere pendency of a complaint/application and that too by a co-employee, cannot be used to deny a vested right of a government servant whose performance otherwise has been assessed satisfactory.

vi) Putting up the case of the petitioner for regularization prior the expiry of extended period of contract has created legitimate expectancy in the mind of petitioner for regularization of his service.

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16. **Lahore High Court**
Abdul Majid through Attorney Muhammad Azhar v. Anjum Akhtar
R.F.A.No.8633 of 2020
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1676.pdf

Facts: Through the instant Regular First Appeal against appellant challenged the dismissal of suit for recovery under Order XXXVII CPC.

Issues: i) What is the rule of caution for Appellate Court to allow additional evidence under Order XLI Rule 27 CPC?

ii) What is the requirement for a party which intends to bring additional evidence on record?

iii) When party should not be allowed by the Court to produce evidence at appellate stage?

iv) Whether shortcomings in the evidence of the rival party can extend any benefit to appellant?

Analysis: i) Furthermore, a bare perusal of the provisions contained in Rule 27 of the Order XLI, Code of Civil Procedure, 1908 would reveal that the appellate Court must be conscious while allowing a party to adduce additional evidence.
ii) A party which intends to bring additional evidence on record must convince the Court with proof that such party could not lead the evidence at proper stage due to some plausible reasons and sufficient cause.
iii) It is a well settled law that the party who had the opportunity to produce evidence in the trial Court but did not avail of the opportunity should not be allowed to improve its case by producing evidence at the appellate stage, as under the above mentioned provisions, a party cannot be allowed to fill up the lacunas at appellate stage, who has been unsuccessful in the trial Court.
iv) Furthermore, it is a settled principle of law that a party has to stand on his own legs and any shortcomings in the evidence of the rival party cannot extend any benefit to such party, so the arguments that the respondent has not proved his stance are repelled.

Conclusion: i) The Appellate Court must be conscious while allowing a party to adduce additional evidence under Order XLI Rule 27 CPC.
ii) See above analysis no. ii
iii) The party who had the opportunity to produce evidence in the trial Court but did not avail of the opportunity should not be allowed to improve its case by producing evidence at the appellate stage.
iv) A party has to stand on his own legs and any shortcomings in the evidence of the rival party cannot extend any benefit to such party.

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17. **Lahore High Court**
Mst. Anayat Bibi v. Muhammad Saleem (deceased) through L.Rs.
Civil Revision No.72163 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1683.pdf

Facts: Predecessor in interest of the respondents instituted a suit for specific performance of agreement to sell, possession and permanent injunction against the petitioner. The trial Court and the appellate Court ruled out in favour of the respondents; hence, the instant Revision Petition.

Issues: i) What if the foundational elements for a transaction like time, date, place, names of witnesses are missing in the case?
ii) Who is responsible to produce marginal witnesses?
iii) Whether the court is bound to grant the decree of specific performance as it is lawful discretionary relief?

iv) Whether the High Court has power to set aside the concurrent findings of the courts below?

Analysis: i) There is no detail as to time, date, place and names of witnesses in whose presence such bargain was struck in between the parties. Meaning thereby, the foundational elements for a transaction are missing in this case and when the position is as such, the discretionary decree for specific performance can be denied.
ii) In order to prove a document, it is responsibility of the beneficiary to produce two marginal witnesses of the same.
iii) Jurisdiction to decree a suit for specific performance is purely discretionary and the Court is not bound to grant such relief merely because it is lawful to do so. Such discretion of the Court is not arbitrary but is based on sound and reasonable principles.
iv) High Court has ample powers under section 115, Code of Civil Procedure, 1908 to set aside concurrent findings when the same suffer from misreading, non-reading of evidence and patent error of law.

Conclusion: i) If the foundational elements for a transaction are missing in the case the discretionary decree for specific performance can be denied.
ii) In order to prove a document, it is responsibility of the beneficiary to produce two marginal witnesses of the same.
iii) The Court is not bound to grant such discretionary relief merely because it is lawful to do so.
iv) High Court has ample powers under section 115, Code of Civil Procedure, 1908 to set aside concurrent findings when the same suffer from misreading, non-reading of evidence and patent error of law.

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18. **Lahore High Court**
Muhammad Azam v. Province of the Punjab through District Collector & others
Civil Revision No.21823 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1690.pdf

Facts: Civil Revision has been filed assailing the judgment/decree of the learned appellate Court which while accepting the appeal, set aside the judgment and decree passed by the learned trial Court.

Issues: (i) Basic ingredients for a valid gift.
(ii) Permissibility of leading of evidence beyond pleadings.
(iii) Ingredients of Oral Gift and criteria for proving mutation passed on the basis of oral gift.
(iv) Whether the petitioner can take benefit from the shortcomings in the evidence of opposing side or he has to stand on his own legs?

(v) Limitation in inheritance matters.
(vi) In case of inconsistency between the findings of the learned trial Court and the learned Appellate Court, which of the findings must be given preference?

Analysis: (i) The basic ingredients for a valid gift are: offer, acceptance and delivery of possession.
(ii) A party cannot lead any evidence beyond its pleadings.
(iii) Oral gift has two parts namely: the fact of the oral gift which has to be independently established by proving through cogent and reliable evidence the three necessary ingredients of a valid gift as noted above and secondly mutation on the basis of an oral gift has to be independently established and proved by adopting procedure provided in the Land Revenue Act, 1967 and the Rules framed thereunder as well as the evidentiary aspects of the same in terms of the Qanune-Shahadat Order, 1984.
(iv) Petitioner cannot take benefits from the shortcomings in the evidence of respondents rather he had to stand on his own legs.
(v) In the matter with regards to inheritable property the question of limitation does not arise.
(vi) It is a settled principle, by now, that in case of inconsistency between the findings of the learned trial Court and the learned Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

Conclusion: (i) See analysis part above.
(ii) See analysis part above.
(iii) See analysis part above.
(iv) Petitioner cannot take benefits from the shortcomings in the evidence of respondents rather he had to stand on his own legs
(v) In the matter with regards to inheritable property the question of limitation does not arise.
(vi) See analysis part above.

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19. **Lahore High Court**
Muhammad Umar Farooq v. Irshad Bibi
Civil Revision No.13865 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1697.pdf

Facts: The respondent instituted a suit for declaration against the present petitioner to the effect that she is an old aged widow and illiterate; that the petitioner in connivance with the revenue staff got transferred her agricultural land without knowledge of the respondent/ plaintiff. The suit was contested by the petitioner. The trial Court decreed the suit in favour of the respondent. The petitioner being aggrieved preferred an appeal which was dismissed. Hence, the instant Revision petition has been filed.

Issues: i) Whether an old and illiterate lady is entitled to the same protection which is available to the Parda observing lady under the law, and she must have independent advice to be fully aware and cognizant of the nature of the transaction?

ii) Whether adverse presumption as per mandate of article 129(g) of Qanun-e-Shahadat, 1984 can be drawn when the best evidence has been withheld by any party?

iii) Whether a revisional Court can upset a finding of fact of the Court(s) below under section 115, Code of Civil Procedure, 1908?

Analysis: i) As to transaction regarding property with a pardanasheen, infirm/old and illiterate lady, the Supreme Court of Pakistan in a judgment reported as Phul Peer Shah v. Hafeez Fatima (2016 SCMR 1225) has given the parameters and conditions to be fulfilled in a transparent manner… Moreover, this Court has held that old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law… However, in the present case, no such evidence showing that the respondent was having an independent advice and was fully aware and cognizant of the nature of the transaction, was brought on record by the petitioner.

ii) The petitioner could not produce the witnesses in whose presence the disputed mutation was entered into revenue record and the revenue officer, who attested the mutation was also not produced. So adverse presumption as per mandate of article 129(g) of Qanun-e-Shahadat Order, 1984 arises against the petitioners that had the said witnesses been produced in the witness box, they would not have supported the stance of the petitioner.

iii) …when impugned judgments and decrees, passed by the learned Courts below and evidence of the parties are put in juxtaposition, it gleans out that evidence of the parties has minutely been scanned and appraised/ appreciated while recording the judgments by learned Courts below; no misreading and non-reading of evidence has surfaced. Therefore, the learned Courts below have reached to the conclusion in a proper way, concurrently, which cannot be interfered with in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908…

Conclusion: i) An old and illiterate lady is entitled to the same protection which is available to the Parda observing lady under the law, and she must have independent advice to be fully aware and cognizant of the nature of the transaction.

ii) Adverse presumption as per mandate of article 129(g) of Qanun-e-Shahadat, 1984 can be drawn when the best evidence has been withheld by any party.

iii) A revisional Court cannot upset a finding of fact of the Court(s) below under section 115, Code of Civil Procedure, 1908 unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence or suffering from a jurisdictional error.

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20. **Lahore High Court**
Ali Zain v. The State, etc.
Crl. Revision No.23371 of 2024
Miss. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC1743.pdf

Facts: Through instant Criminal Revision under section 439 of Cr.P.C. read with section 435 Cr.P.C. the petitioner prayed for setting aside the order passed by the Additional Sessions Judge whereby the petitioner was not allowed to put question to draftsman regarding the relevancy of site plan of place of recovery of weapon of offence.

Issue: Whether a witness who is not a scriber of the site plan can be considered as an attesting witness?

Analysis: If a witness who is not the author of the site plan nor the witness on whose pointing site plan was prepared. …had not prepared the site plan of the place of recovery of the weapon of the offence, nor did he remain a witness or, under his instructions, have the site plan prepared… is not a scriber of the site plan cannot be considered as an attesting witness.

Conclusion: If witness is not a scriber of the site plan cannot be considered as an attesting witness.

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21. **Lahore High Court**
Zafar Iqbal v. Muhammad Amjad Shami
C.R. No.1527-D of 2018
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC1646.pdf

Facts: This Civil Revision is directed against the judgments and decrees passed by the learned Civil Judge and the learned Additional District Judge. By virtue of the formal judgment a suit for possession through pre-emption filed by the petitioner against the respondent has been dismissed and through the latter the same has been upheld.

Issues: i) Whether it is mandatory to mention categoric details qua time, date and place in plaint of suit for pre-emption and prove the same through evidence?
ii) Whether depositions made by witnesses beyond the scope of pleadings can be read into?
iii) Whether absence of names of witnesses of Talb-e-Ishhad in contents of plaint is fatal to suit for pre-emption?
iv) Who has the burden to prove if it is disputed by the vendee that he never received notice of Talb-e-Muwathibat?
v) How to prove issuance and service of notice of Talab-e-Ishhad?
vi) What will be effect of non-production of a document which was mandatory to prove a fact?

vii) Whether notice of Talb-e-Ishhad can be served upon another person instead of serving on vendee?

Analysis: i) The Supreme Court of Pakistan while dealing with the question of mentioning and proving the time, date and place where pre-emptor got the information of sale and made Talb-e-Muwathibat held in different case laws that while filing a suit for pre-emption it is mandatory for the plaintiff to mention in the plaint categoric details qua time, date and place and thereupon, prove the same through his evidence…

ii) Even otherwise the depositions of the petitioner and his witnesses are beyond the scope of pleadings as the contents of the same qua the place of making Talb-e-Muwathibat as explained in paragraph Nos. 7 & 8 supra are different, hence, the same cannot be read into.

iii) It is also evident that although petitioner has mentioned the names of witnesses of Talb-e- Muwathibat, however, he has failed to mention the names of witnesses of Talb-e-Ishhad, therefore, in view of the judgments of the Supreme Court of Pakistan wherein, it has been held that conspicuous absence of names of witnesses of Talb-e-Ishhad in the contents of the plaint is fatal to the suit for preemption. In this backdrop, since the names of witnesses of Talb-e-Ishhad were not mentioned in the plaint, therefore, the same is fatal for the suit…

iv) Under section 13 of the Act, for performance of Talab-e-Ishhad, it is mandatory for the pre-emptor that he within two weeks of Talb-e-Muwathibat, send notice in writing attested by two truthful witnesses under registered cover acknowledgment due to the vendee. In case, it is disputed by the vendee that he never received the notice, the burden is on the pre-emptor to prove the issuance as well as service of the notice.

v) In order to prove issuance and service of notice of Talab-e-Ishhad, a pre-emptor has to produce/prove the following: a) Notices of Talb-e-Ishhad; b) Its two truthful attesting witnesses; c) Postal receipts; d) Acknowledgement due; e) Postman, who affected the service (both acceptance or refusal).

vi) Since the petitioner has failed to produce the acknowledgement due card through which the alleged notice was sent to and received, hence, he has failed to prove this Talb. In view of the fact that this document, which was mandatory to prove the said Talb, has not been produced, therefore, adverse inference under Article 129(g) of the Qanun-e-Shahdat Order 1984 has to be drawn against the petitioner.

vii) It shall also be apposite to mention here that admittedly respondent was out of country when the notice of Talb-e-Ishhad was issued and instead of sending notice to him petitioner tried to serve the respondent through another person, however, he has not been able to prove that whether that another was the attorney of the respondent having the authority to receive the notice of Talb-e-Ishhad on his behalf. For the sake of argument if this is presumed that the said person was authorized to receive the notice, since the said fact has not been proved by the petitioner, hence, even otherwise, the service was not valid…

Conclusion: i) It is mandatory to mention categoric details qua time, date and place in plaint of suit for pre-emption thereupon, prove the same through his evidence.
ii) Depositions made by witnesses beyond the scope of pleadings cannot be read into.
iii) If the names of witnesses of Talb-e-Ishhad are not mentioned in the plaint, the same is fatal for the suit for pre-emption.
iv) See above analysis no. iv.
v) See above analysis no. v.
vi) See above analysis no. vi.
vii) Notice of Talb-e-Ishhad can be served upon vendee or any person duly athoturized by him.

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22. **Lahore High Court**
Fayyaz-ul-Hassan Anwar v. Mst. Shehla Khalid etc.
Writ Petition No. 46618 of 2021
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC1493.pdf

Facts: Brief facts of this writ petition are that father filed an application under Section 25 of the Guardians & Wards Act, 1890 for custody of the minor, which was contested by mother. Learned Guardian Court issued a schedule of meeting with minor and dismissed the petition as withdrawn. Feeling aggrieved, mother filed an appeal and learned Additional District Judge, partially allowed the appeal and issued new schedule for visitation of minor with the father. Being dissatisfied, the father has filed the instant writ petition and challenged the validity of impugned judgment passed by the learned Appellate Court.

Issues: i) Whether a non-custodial parent has all the rights to meet his/her children and right of access to his/her minor children can be denied or a non-custodial parent will be considered as an alien to his/her children?
ii) Whether while deciding about the visitation schedule, the paramount consideration is the welfare of minor?

Analysis: i) It is a settled proposition of law that a non-custodial parent has all the rights to meet his/her children and neither right of access to his/her minor children can be denied nor a non-custodial parent will be considered as an alien to his/her children. A minor not only needs love, affection, care and attention of a mother but also the father and negating a non-custodial parent of his/her right to meet his/her minor children would lead to emotional deprivation. A non-custodial parent has an inherent right to effectively participate in upbringing of minor and that cannot be achieved without properly chalked visitation schedule. Due to lack of interaction with non-custodial parent, the children start forgetting and in many cases disliking the non-custodial parent and this phenomenon has been named as Parental Alienation Syndrome by the psychiatrists. Hence, visiting schedule significantly bridges a relationship between the minor children and a non-

custodial parent. Using visitation rights, a non-custodial parent can not only recolour the emotions of minor children for him/her but also reinvigorate the bond of love and affection with minor.

ii) Although, the law on the subject of visitation is contained in the Guardian & Wards Act (VIII of 1890) but without any guidelines about the duration, frequency of those visits of minor and about the visitation schedule, hence, while deciding about the visitation schedule, the paramount consideration is the welfare of minor.

Conclusion: i) A non-custodial parent has all the rights to meet his/her children and neither right of access to his/her minor children can be denied nor a non-custodial parent will be considered as an alien to his/her children.

ii) While deciding about the visitation schedule, the paramount consideration is the welfare of minor.

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23. **Lahore High Court**
Ch. Bilal Ejaz v. Election Commission of Pakistan & others
W.P No. 16416 of 2024
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC1604.pdf

Facts: The petitioner and respondent No.3 were candidates in the general elections for a seat of National Assembly. The petitioner won elections and was notified as returned candidate of National Assembly. The respondent no. 03 filed application for recounting of ballot papers to returning officer which was dismissed and respondent no. 03 filed an appeal before ECP which was accepted and as a result a recount was held and respondent no. 03 was declared as the successful candidate, hence, this Constitutional Petition.

Issues: i) Whether ECP can take any action after the election process has been completed and issuance of notification of successful candidate in official gazette?

ii) What do words "save as otherwise provided" means in section 8 of Elections Act, 2017?

iii) In what situation, ECP can order recounting of ballot paper under section 95 of Elections Act, 2017?

iv) Whether ECP does have power to review its own declaration of results in official gazette?

Analysis: i) Section 8 of the 2017 Act came under discussion before the Supreme Court of Pakistan in C.P No.142 of 2019 Zulfiqar Ali Bhatti v. Election Commission of Pakistan and others in which the Supreme Court of Pakistan alluded to the true construction to be put on Article 218 (3) of the Constitution as well as section 8(c) of the 2017 Act. The distilled essence of the observations at paras 18-21 of supra judgment is that the Supreme Court was of the clear opinion that exercise of powers by ECP both under Article 218 of the Constitution as well as section 8 of the 2017 Act could be done at any stage of the election process but not after its

completion. The completion of election process, in turn, would be the issuance of notification regarding returned candidates in the official gazette under Section 98 of the 2017 Act when the election process would be deemed to have been completed. This is also mentioned in paragraph 20 of the Supreme Court's judgment. In a nub, ECP would become functus officio in all such matters after which the issues can only be raised through an election petition before the Election Tribunal.

ii) It will be noted that section 8 starts with these words "save as otherwise provided" which evidently mean that if there is anything specifically provided in the statute itself, the Commission will constrain itself and not exercise jurisdiction in respect of such matters under the cloak of section 8 and the powers conferred thereby.

iii) Sub-section (6) of section 95 is crucial in the present context and confers a power on ECP to direct the Returning Officer to recount the ballot papers before conclusion of consolidation proceedings. The intention, in my opinion, is clear and unequivocal. Firstly, a specific provision exists in the 2017 Act conferring powers on ECP to order the recount of ballot papers. Second and more importantly it has to be done before conclusion of the consolidation proceedings. If this power is not exercised by ECP within the contours mentioned in sub-section (6) of section 95, it cannot thereafter proceed to exercise such power on the misplaced notion that it can do so by invoking provisions of section 8 of the 2017 Act. In such matters, therefore, ECP is constrained by section 95(6) and cannot exceed the jurisdiction so conferred. The indubitable inference would be that in matters of recount of ballot papers, ECP can only act under Section 95(6) and that too before consolidation proceedings are concluded. If that does not happen, ECP cannot use section 8 to circumvent the law to achieve indirectly what cannot be done directly.

iv) The impugned order subsequently passed by ECP would be tantamount to review of its own declaration of results in the official gazette and this is an additional reason why ECP should not have exercised its jurisdiction in the present case after declaration of results by it. Suffice to say that ECP does not have power of review.

Conclusion: i) ECP cannot take any action after the election process has been completed and issuance of notification of successful candidate in official gazette.

ii) See under analysis no. 02.

iii) Sub-section (6) of section 95 confers a power on ECP to direct the Returning Officer to recount the ballot papers before conclusion of consolidation proceedings.

iv) ECP does not have power to review its own declaration of results in official gazette.

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24. **Lahore High Court**
Abdul Ghafoor and another v. Babar Sultan Jadoon and 3 others,
Regular First Appeal No.71 of 2021
Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2024LHC1561.pdf

Facts: The appellant and his co-owner respondent, with regard to their jointly owned commercial plot, executed general attorney in favour of one of the other respondents with an event dated agreement to sell. In support of this, the attorney completed registered sale deeds on behalf of other respondents, who happen to be his biological brothers. Being offended with the execution of sale deeds, the appellant instituted a suit seeking cancellation of sale deeds and revocation of general power of attorney along with recovery of an amount coupled with damages and possession of suit plot. The said suit of the appellants was dismissed, hence this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908.

Issues: i) What is distinction between a suit under section 39 of the Specific Relief Act, 1877 for cancellation of document and suit under section 42 of Act ibid seeking declaration?
ii) How the applicability of Article 91 is different from Article 120 of the Limitation Act, 1908, in terms of a suit for cancellation and suit for declaration?
iii) What is scope and import of Section 202 of the Contract Act, 1872?

Analysis: i) Section 39 is part of Chapter V of the Specific Relief Act, 1877 which deals with the cancellation of instruments, whereas Chapter VI of the Act ibid relates to declaratory decrees and Section 42 forms part of the same. The notable distinction between the above two provisions of the Act ibid is that Section 39 presupposes that the document sought to be cancelled through the suit is void or voidable qua the plaintiff, whereas in terms of Section 42 a person entitled to any character or to any right to any property being offended from the denial of such character or right or title from any other person, seeks a declaration of his status or right without asking for cancellation in furtherance of such declaration. The prayer for cancellation need not be specifically made but is inherent and flows from the relief regarding the prayer for adjudging the document void. Section 39 of the Act does not contain provision similar to the proviso to section 42 of the Act which bars the Court from granting a declaration if the plaintiff being entitled to further relief, omits to do so.
ii) The applicability of Articles 91 and 120 of the Limitation Act, 1908 is dependent upon the actual nature of the suit. Article 91 of the Act ibid provides limitation of three years from the date when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. If the plaintiff is not bound by the document, or if he is not claiming under the same, and the substantial relief prayed for by him is not the cancellation or setting aside of the instrument, then the suit is not governed by Article 91 of the Limitation Act 1908.

Article 91 of the Limitation Act will not apply when the cancellation of the instrument is merely incidental or ancillary to the substantial relief claimed by the plaintiff. In fact, where the case is basically and primarily covered by section 39 of the Specific Relief Act, 1877, then the Article 91 of the Limitation Act 1908 shall be attracted.

iii) In general rules, whenever an attorney intends to alienate or transfer the property subject matter of the deed of attorney in favour of his near relation or kith and kin, he has to seek specific permission from the principal to that effect before entering into such transaction. Section 202 of the Contract Act, 1872 is an exception and departs from these general rules. Power of attorney can either be general or special but in all circumstances, it must be strictly construed in the light of its recitals to ascertain the manner of exercise of the authority in relation to the terms and conditions specified in the instrument. A principal can revoke the deed of attorney at any time. However, when the agent has himself interest in the property, which forms the subject matter of the agency, the agency cannot in absence of an express contract, be terminated to the prejudice of such interest.

Conclusion: i) The distinction between a suit under section 39 of the Act seeking cancellation of a document and a suit under section 42 seeking declaration is quite obvious as in the former case the plaintiff does not seek a declaration regarding his title but only about invalidity of a deed, while in the latter case relief asked for is regarding the title of the plaintiff or right in any property or status.

ii) The suit for cancellation would be governed under Article 91 of the Limitation Act 1908 and a suit for declaration under Section 42 of the Act ibid would certainly be governed by Article 120 of the Act ibid.

iii) Section 202 of the Contract Act, 1872 would only come into play when an interest in the property is created prior to the execution of deed of attorney.

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25. **Lahore High Court**
M/s Al-Harmain & Co. & others v. MCB Bank Limited
EFA No.26 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr.Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC1518.pdf

Facts: The judge banking court while executing a decree, issued non bailable warrants of arrest as well as blocked Computerized National Identity Cards of the appellants. Now, they have assailed vires of order before High Court through this Appeal.

Issues: i) What are the powers of banking court while executing a decree under the Financial Institutions (Recovery of Finance) Ordinance, 2001?

ii) Whether National Database and Registration Authority has power to cancel, impound or confiscate the Computerized National Identity Card of a person?

iii) Whether the need for Computerized National Identity Card has increased manifold?

iv) Whether CNIC is essential for enjoyment of a number of fundamental rights?
v) What are the powers of executing court under Order XXI, Rule 37, 40 of C.P.C, where an application for arrest and detention of judgment debtor is made?

Analysis: i) Section 19 of the FIO, 2001 mainly provides that mortgaged, pledged or hypothecated property and other assets of the judgment-debtor would be the subject matter of the execution. Section 19(2) provides various modes / actions to be taken by the Banking Court to execute a decree coupled with powers given in various sub-sections of section 15 of the FIO, 2004 and bestows it with powers of Executing Court provided in the Code of Civil Procedure, 1908 or any other law for the time being in force.

ii) Section 18(1) of the National Database and Registration Authority Ordinance, 2000 empowers NADRA to cancel, impound or confiscate a CNIC, after giving notice in writing to the holder of CNIC to show cause as to why such order should not be passed. Section 18(2) enumerates the instances / circumstances in which such action can be taken, which includes (a) the card has been obtained by a person who is not eligible to hold such card, by posing himself as eligible; (b) more than one cards have been obtained by the same person on the same eligibility criteria;(c) the particulars shown on the card have been obliterated or tampered with; or (d) the card is forged. Apparently, no instance of blocking a CNIC, pertinently while conducting executing proceedings by a court of law, is visible in the afore-referred provision. Section 18(3) provides right of appeal to aggrieved person before the Federal Government against the order passed against him and again notice providing of hearing is expedient before deciding the appeal. Legislature has made it obligatory upon the NADRA authority as well as the appellate authority to have given a fair opportunity of hearing to lead the defence to the affected person in terms of Section 18.

iii) The need for the CNIC has increased manifold. Almost every government and private organization requires CNIC from a person before attending them. CNIC is also expedient to get admission in higher education programs, apply for a job, open a bank account, get a driving license or arms license, get utility connections, purchase railway and air tickets, execute any instrument, stay in a hotel or lodge, appear in a court proceedings and enter in certain buildings and premises etc.

iv) The CNIC is essential for enjoyment of a number of fundamental rights; hence, a person cannot be deprived of it without due process. The superior Courts have expanded the right to life over time (provided in Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973) and held that it includes the right to legal aid; the right to speedy trial; the right to bare necessities of life; protection against adverse effects of electro-magnetic fields; the right to pure and unpolluted water; the right to access to justice; the right to livelihood; the right to travel; the right to food, water, decent environment, education and medical care. Personal identity of a person comprises all those aspects of his profile which are significant to him. Right to identity is also associated to the right to life (Article 9) and would also be read into Article 14, which guarantees dignity of man.

v) According to the provisions of Order XXI, Rules 37 C.P.C. where an application for the arrest and detention is made, the Court instead of issuing warrant for arrest, may issue a notice calling upon the judgment-debtor to appear on a date specified in the notice and show cause as to why he should not be detained in prison. If the judgment-debtor does not appear in response to notice, the Court shall issue warrant for the arrest of judgment-debtor as provided under Rule 37(2). Rule 40 CPC provides that where the judgment- debtor appears in the Court in pursuance of the notice or is brought before the Court after being arrested, the Court shall hear the decree-holder, take all such evidence as may be produced by him in support of his application and shall then give judgment-debtor an opportunity of showing cause why he should not be detained in prison and that pending conclusion of inquiry the Court, in its discretion, order to release the judgment-debtor on furnishing of security to the satisfaction of the Court for his appearance, when required, and that on conclusion of inquiry, the Court can subject to the satisfaction of provisions of Section 51, C.P.C., make an order in respect of detaining the judgment-debtor in prison. These rules and procedure therein have been considered in a number of cases and the consistent view taken is that before passing an order for arrest and detention of judgment-debtor, the Court shall after due inquiry and affording opportunity of evidence to parties, determine that the pre-conditions for the issuance of such directive have been satisfied by the decree-holder.

Conclusion:

i) Section 19 of the FIO, 2001 mainly provides that mortgaged, pledged or hypothecated property and other assets of the judgment-debtor would be the subject matter of the execution.

ii) Section 18(1) of the National Database and Registration Authority Ordinance, 2000 empowers NADRA to cancel, impound or confiscate a CNIC, after giving notice in writing to the holder of CNIC to show cause as to why such order should not be passed.

iii) The need for the CNIC has increased manifold.

iv) The CNIC is essential for enjoyment of a number of fundamental rights.

v) According to the provisions of Order XXI, Rules 37 C.P.C. where an application for the arrest and detention is made, the Court instead of issuing warrant for arrest, may issue a notice calling upon the judgment-debtor to appear on a date specified in the notice and show cause as to why he should not be detained in prison.

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26. **Lahore High Court**
United Bank Ltd. v. Muhammad Amjad Hayat Khan
EFA No.41 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1632.pdf

Facts:

Through this Execution First Appeal (EFA) vires of order passed by learned Judge Banking Court has been challenged whereby appellant's application under

Section 47 read with Sections 151/152 CPC and Section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance ("FIO"), 2001 praying for revisiting of judgment & decree dated 03.03.2020 was dismissed.

Issues: (i) Whether cost of funds can be awarded to a customer where a customer establishes a breach of obligation on the part of the financial institution?
(ii) Doctrine of Casus Omissus
(iii) Whether questions relating to the executability of an order or decree can be raised even in execution proceedings?

Analysis: (i) Cost of funds is basically the cost that a financial institution is entitled to recover from the borrower on account of funds which as per the terms of the 'Finance' or the law ought to have been in the custody of a financial institution but happened to be in the custody of the customer after default on the rationale that the financial institution has been deprived from placing the funds somewhere else for its financial benefit which is the core business of a financial institution. Since cost of funds is attached to the provisions of funds, therefore, cost of funds is not awarded to a customer even where a customer establishes a breach of obligation on the part of the financial institution. Cost of funds is granted only to a financial institution on the principle that funds are only provided by a financial institution and not by a customer. Banking Court under the provisions of Section 3(2) of the FIO, 2001 is empowered to award cost of funds in favour of financial institutions and such privilege or benefit had not been conferred by statute to the customer.

(ii) The said principle provides that, where the legislature has not provided something in the language of the law, the Court cannot travel beyond its jurisdiction and read something into the law as the same would be ultra vires the powers available to the Court under the Constitution and would constitute an order without jurisdiction. the Courts generally abstained from providing 'casus omissus' or omissions in a statute, through construction of interpretation. The Court observed that the exception to such rule was, when there was a self-evident omission in a provision and the purpose of the law as intended by the legislature could not otherwise be achieved, or if the literal construction of a particular provision led to manifestly absurd or anomalous results, which could not have been intended by the legislature. The Court further held that such power, however, was to be exercised cautiously, rarely and only in exceptional circumstances.

(iii) Executing Court under the provisions of Section 47 CPC can question executability of decree. There is no cavil to the proposition that questions relating to the executability of an order or decree can be raised even in execution proceedings and it is open to the party against whom it is sought to be executed to show that it is null and void or had been made without jurisdiction or that it is incapable of execution. Needless to observe that it is not for the Executing Court to decide whether the decree passed is legal or illegal or whether it is erroneous or

not, but it is open to the Executing Court to consider whether the decree sought to be executed is void or not.

Conclusion: (i) Cost of funds is granted only to a financial institution on the principle that funds are only provided by a financial institution and not by a customer.
(ii) The Courts should refrain from supplying an omission in the statute because to do so steered the courts from the realms of interpretation or construction into those of legislation.
(iii) Executing Court under the provisions of Section 47 CPC can question executability of decree.

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27. **Lahore High Court**
Munawar Hussain Toori v. Government of Pakistan, Establishment Division, Cabinet Secretariat, Islamabad through its Secretary & others
Writ Petition No.15368 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1625.pdf

Facts: The petitioner through this Constitutional Petition has sought direction to the respondents to pay the perks and privileges / pay and allowances to petitioner as are being paid to the other Members of the National Industrial Relations Commission, especially the District & Sessions Judges in other provinces.

Issues: i) Whether the constitution requires from the public authorities to act justly, fairly, equitably and reasonably?
ii) Whether Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification?
iii) What are the essential requirements to establish a reasonable classification based on intelligible differentia in view of Article 25 of the Constitution?
iv) Whether Article 25 of the constitution forbids class legislation?

Analysis: i) The Constitution requires that public functionaries, deriving authority from or under the law, are obliged to act justly, fairly, equitably, reasonably, without any element of discrimination and squarely within the parameters of law, as applicable in a given situation. Any deviation therefrom can be corrected through appropriate orders under Article 199 of the Constitution.
ii) Although Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification, however, in order to justify this difference in treatment the reasonable classification must be based on intelligible differentia that has a rational nexus with the object being sought to be achieved.
iii) In order to establish a reasonable classification based on intelligible differentia, the differentiation must have been understood logically and there should not be any artificial grouping for specific purpose causing injustice to other similarly placed individuals. Concept of reasonableness is rationally a fundamental component of equality or non-arbitrariness. Intelligible differentia

distinguishes persons or things from the other persons or things, who have been left out. Equality clause does not prohibit classification for those differently circumstanced provided a rational standard is laid down. Law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25.

iv) Article 25 forbids class legislation but it does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The classification however must not be arbitrary, artificial or evasive but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. In order to pass the test of reasonableness there must be a substantial basis for making the classification and there should be a nexus between the basis of classification and the object of action under consideration based upon justiciable reasoning.

Conclusion: i) The Constitution requires that public functionaries, deriving authority from or under the law, are obliged to act justly, fairly, equitably, reasonably, without any element of discrimination and squarely within the parameters of law.

ii) Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification, however, in order to justify this difference in treatment the reasonable classification must be based on intelligible differentia.

iii) In order to establish a reasonable classification based on intelligible differentia, the differentiation must have been understood logically and there should not be any artificial grouping.

iv) Article 25 of the constitution forbids class legislation but it does not forbid classification or differentiation which rests upon reasonable grounds of distinction.

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28. **Lahore High Court**
Muhammad Akram Sohail v. Govt. of the Punjab through Secretary Forest Department, Punjab, Lahore & others
W. P. No.1532 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1923.pdf

Facts: Through instant Petition, petitioner assailed vires of order, passed by respondent No. 2 / Divisional Forest Officer, whereby inquiry proceedings were initiated against petitioner under Section 3 of the Punjab Employees, Efficiency, Discipline and Accountability Act, 2006 on the charges of inefficiency and misconduct, with the allegation that during petitioner's posting as Forest Guard, a damage of 466 trees worth was sustained in his beat / block i.e. Dad Block.

Issues: i) Whether an employee who had been exonerated in the inquiry proceedings

initiated against him can be proceeded again against same charges and whether the authority has power under the provisions of PEEDA, 2006 to review his earlier order especially when the earlier order on the same charges had attained finality?

ii) Where an employee has undergone the process of earlier inquiry and subsequent inquiry proceedings are illegal and unlawful, whether the same can be questioned before High Court when appeal before the Service Tribunal lies only against final order?

Analysis: i) The matter was one and the same and the competent authority was also the same. A detailed inquiry ended in petitioner's support and upon receipt of inquiry report, three options or courses of action were available with the competent authority, who could either exonerate petitioner or punish him or order a de novo inquiry, if it was satisfied that inquiry proceedings were not conducted lawfully or on merits. In this case, the competent authority exonerated petitioner, thus it could not initiate fresh or de novo inquiry proceedings against him. Since there is no provision in the relevant law which empowered respondent No. 2 to review his own previous decision to withdraw the disciplinary proceedings initiated against petitioner, I am of the view that the impugned order to re-initiate inquiry proceedings against petitioner is without lawful authority. The competent authority cannot reopen the matter against the petitioner as it is settled law that one cannot be vexed twice for the same cause….. Needless to observe here that once disciplinary proceedings were dropped by the respondent-authority, there was no occasion to again proceed against petitioner for same charges. Such act of authorities is against the principles of natural justice as initiating fresh proceedings did not mean that civil servant should be proceeded again on the same charges, which were not found correct in earlier proceedings. Inquiry can only be conducted if there are charges other than the earlier charges on which show cause notice / disciplinary proceedings was withdrawn / dropped.

ii) So far as argument of learned Law Officer that instant petition is not maintainable against initiation of inquiry proceedings is concerned, suffice it to say that since petitioner has undergone the process of earlier inquiry and subsequent inquiry proceedings are illegal and unlawful under well-settled principles of law, thus, the same can be questioned before this Court, especially when appeal before the Service Tribunal lies only against final order.

Conclusion: i) An employee who had been exonerated in the inquiry proceedings initiated against him cannot be proceeded again against same charges and the authority has no power under the provisions of PEEDA, 2006 to review his earlier order especially when the earlier order on the same charges had attained finality.

ii) Where an employee has undergone the process of earlier inquiry and subsequent inquiry proceedings are illegal and unlawful, the same can be questioned before High Court especially when appeal before the Service Tribunal lies only against final order.

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29. **Lahore High Court**
Istikhar @ Iftikhar v. The State etc.
Criminal Appeal No.56786 of 2017
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC1763.pdf

Facts: Through this appeal under Section 410 Cr.P.C. appellant challenged the vires of judgment passed by the Additional Sessions Judge, in case in respect of an offence under Sections 376 PPC, whereby he was convicted and sentenced to imprisonment for life with fine.

Issues: i) What is the effect of promptness in lodging the FIR?
ii) What constitutes sexual intercourse, particularly in legal and medical contexts, considering factors like penile insertion, even if limited to the labial area, and the significance of hymen rupture?
iii) Whether overwhelming ocular and medical evidence can be discarded merely because of non-detection of seminal material in the vaginal swabs of victim?

Analysis: i) This promptness in lodging the crime report not only confirms presence of the eye witnesses at the spot but also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case.
ii) Learned defence counsel laid much emphasis that according to the opinion of Medical Officer vaginal area was intact, therefore, at the most it could be regarded as an attempt to commit the rape. I am not in agreement with the submission of the learned counsel for more than one reasons. *Firstly*, Section 375 PPC defined the "rape". Explanation 1 of the said section reads as under:- "*For the purpose of this section, "vagina" shall also include labia majora*" In the instant case Medical Officer has observed bruising upon perianal area alongwith tears of different sizes at different position, which when read in context with Explanation reproduced supra, fully constitute that the 'rape' was committed with the victim. *Secondly*, a Forensic Scientist Mr. C.K. Parikh in " Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology at page 5.37 mentions as under:- *"Soon after the act, the torn margins are sharp and red, and bleed on touch".* Moreso, H M V Cox "Medical Jurisprudence and toxicology" (Seventh Edition) by Dr. PC Dikshit, Professor and Head of Forensic Sciences, Maulana Azad Medical College, New Dehli, explains the situation in Chapter of Sexual Offences at page 591 as under:- " *In case of incomplete penetration, the only sign which may be seen are reddening and inflammation of vestibule within the labia or a small tear of the posterior fourchette. There may also be contusion of the hymen.*" The situation when rape is committed with a child has been well explained in the above chapter in the following manner:- "*In the case of small children, the genital injuries found are either absolutely minimal or of such magnitude that one is unable to perform the examination without general unaesthetic. It must be remembered that it requires a great amount of force, exerted via penis, to effect full penetration into the small under-developed child,*

because of this many rapists of small children are satisfied to commit what is described as rape without full penetration." Further that; "*Bodily injuries, because of the lack of resistance by the child are usually absent in this type of case.*"
Furthermore, extent of penal insertion is highlighted in Simpson Forensic Medicine (Tenth Edition) by Bernard Knight in the following manner:- "*Sexual intercourse means nothing less than penile insertion, even if this is only just between the labia. Full penetration is not necessary and rupture of the hymen is irrelevant, but unless some degree of penile introduction can be proved, a charge of rape cannot be sustained and anything less is 'indecent assault.' An orgasm or ejaculation of semen is not relevant, only penetration.* (emphasis supplied)" The nature of injuries endured by the victim and described by the Medical Officer perfectly matched with the observations highlighted above and sufficient to attract the offence of 'rape' on the touchstone of penetration.
iii) Learned defence counsel also stressed that in the report of DNA analysis, no semen stain was detected, which is fatal for the prosecution. This submission is also not helpful for the defence for more than one reasons. Firstly, according to the Medical Officer, private area of the victim was washed prior to her examination, as such there seems no possibility of availability of semen at the time of examination. Secondly, detection of seminal material in the vaginal swabs of the victim is just a corroboratory piece of evidence and merely due to its non-detection the other overwhelming ocular and medical evidence cannot be discarded. (…) The child being in tender nobility is clinically established to have been violated, a circumstance that required no further corroboration. Negative reports do not reflect upon the veracity of prosecution case for reasons more than one. DNA profile generation though a most meticulous method with unfailing accuracy, nonetheless, requires an elaborate arrangement about storage and transportation of samples, a facility seldom available. Eve a slightest interference with the integrity of samples may alter the results of an analysis and thus, the fate of prosecution case cannot be pinned down to the forensic findings alone, otherwise, merely presenting a corroborative support, hardly needed in the face of overwhelming evidence, presented by the prosecution through sources most impeachable.

Conclusions: i) Promptness in lodging the crime report confirms presence of the eye witnesses at the spot and also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case.
ii) See above analysis no. ii.
iii) Detection of seminal material in the vaginal swabs of the victim is just a corroboratory piece of evidence and merely due to its non-detection the other overwhelming ocular and medical evidence cannot be discarded.

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30. **Lahore High Court**
Muhammad Saleem v. The State and another
Criminal Appeal No. 422/2023
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Sadiq Mahmud Khurram

https://sys.lhc.gov.pk/appjudgments/2024LHC1706.pdf

Facts: This Appeal is directed against the judgment handed down by the Additional Sessions Judge, in case FIR for an offence under section 377 of the Pakistan Penal Code 1860, whereby, the appellate was convicted and sentenced.

Issues: i) What does the term 'carnal intercourse' refer?
ii) Whether sections 375, 377, and 377A of PPC differ significantly in their focus, scope, and application?
iii) Whether a child can be a witness if he possesses the capacity and intelligence to understand and respond rationally to questions?
iv) Whether the court's satisfaction in terms of Article 3 of the QSO is merely a procedural formality?
v) Whether mere friendship or association is sufficient to discredit a witness?
vi) Whether the courts generally do consider the delay in making a report to the police material?
vii) Whether DNA's absence or negativity does automatically invalidate the prosecution's case if other evidence provides robust corroboration?

Analysis: i) The term "carnal intercourse" refers to sexual penetration, and "against the order of nature" is interpreted broadly to include any sexual acts other than heterosexual vaginal intercourse for procreation. This includes acts such as homosexual intercourse, bestiality, and certain types of heterosexual intercourse, like anal sex. Notably, the law does not distinguish between consensual and non-consensual acts, making both parties involved liable to prosecution. The explanation provided in the section clarifies that mere penetration is sufficient to constitute the offence, underscoring penetration as the pivotal factor in determining whether an offence under section 377 has been committed.
ii) It is important to note that while sections 375, 377, and 377A all pertain to sexual misconduct, they differ significantly in their focus, scope, and application. Section 375 is centred on non-consensual sexual acts, defining the parameters of rape, whereas section 377 targets voluntary intercourse against the natural order, regardless of consent. It aims to prohibit socially or morally unacceptable behaviours and imposes penalties such as imprisonment or fines for transgressions. Section 377A introduces the offence of sexual abuse, particularly concerning minors, broadening the spectrum to encompass behaviours like fondling, stroking, exhibitionism, or any sexually explicit conduct involving individuals under eighteen years of age. It targets acts that may not necessarily involve penetration but still constitute forms of exploitation and harm, aiming to protect vulnerable individuals from sexual abuse and exploitation. While section 377A broadens the scope of sexual offences to include additional behaviours, it does not override or replace sections 375 and 377. Instead, it complements them by addressing specific aspects of sexual abuse, particularly concerning minors. Each section serves a distinct purpose within the legal framework, ensuring clarity, precision, and effectiveness in addressing various forms of sexual violence

and exploitation while upholding principles of justice and human rights.

iii) In Pakistan, the competency of a witness is determined under Articles 3 and 17 of the Qanun-e-Shahadat, 1984 (QSO), while the credibility of a witness is a question of fact which the court decides following the principles settled for the appraisal of evidence. Article 3 of the QSO does not explicitly specify any particular age qualification for a witness. Under Article 3 of the QSO, a child can be a witness if he possesses the capacity and intelligence to understand and respond rationally to questions – a criterion known as the "voir dire test."

iv) The court's satisfaction in terms of Article 3 of the QSO is not merely a procedural formality but a legal obligation that must be discharged with utmost care and caution.

v) It is a well-established legal principle that mere friendship or association is insufficient to discredit a witness unless there is evidence of hostility towards the accused.

vi) The courts in our country generally do not consider the delay in making a report to the police material unless circumstances are such that they warrant an adverse view. Several factors can contribute to a delay in reporting child sexual abuse, including fear, shame, threats from the perpetrator, or a lack of awareness. The legal system aims to balance the need to protect children from abuse with the principles of fairness and due process.

vii) It is well settled that the strength and credibility of the evidence presented by the prosecution, including eyewitness testimonies and medical findings, hold substantial weight in establishing guilt beyond a reasonable doubt. Courts have historically recognized that DNA evidence can be highly persuasive, but its absence or negativity does not automatically invalidate the prosecution's case if other evidence provides robust corroboration.

Conclusion: i) See above analysis no. i.

ii) Sections 375, 377, and 377A of PPC differ significantly in their focus, scope, and application.

iii) A child can be a witness if he possesses the capacity and intelligence to understand and respond rationally to questions.

iv) The court's satisfaction in terms of Article 3 of the QSO is not merely a procedural formality but a legal obligation.

v) Mere friendship or association is insufficient to discredit a witness unless there is evidence of hostility towards the accused.

vi) The courts generally do not consider the delay in making a report to the police material unless circumstances are such that they warrant an adverse view.

vii) DNA's absence or negativity does not automatically invalidate the prosecution's case if other evidence provides robust corroboration.

31. **Lahore High Court**
Rahat Café, Rawalpindi v. Government of Punjab and Punjab Revenue Authority etc.
Writ Petition No. 4290 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1664.pdf

Facts: The Petitioners under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 challenged the vires of show-cause notices, issued under Section 24(2) of the Punjab Sales Tax on Services Act, 2012, by the Additional Commissioner Punjab Revenue Authority, Finance Department, Government of Punjab.

Issues: i) Whether under Section 24 (2) of the Punjab Sales Tax on Services Act, 2012 the concerned officer is obliged to afford the taxpayer with opportunity of making a representation as well as hearing?
ii)What do provisions of Income Tax Ordinance, 2001, the Sales Tax Act, 1990 and the Punjab Sales Tax on Services Act, 2012 mandate while assessing tax liability?

Analysis: i) Section 24 (1) of the Punjab Sales Tax on Services Act, 2012 empowers an officer of the authority to make an assessment of the tax liability on the basis of any information acquired during an audit, inquiry, inspection or otherwise, if he draws opinion that a registered person has not paid the due tax or he has made a short payment on account thereof.
ii) Under the tax laws, a procedure for assessment of tax, information to be sought and recovery of tax has been provided in Income Tax Ordinance, 2001, the Sales Tax Act, 1990 and the Punjab Sales Tax on Services Act, 2012. A combined reading of aforesaid statutes especially the provisions relating to assessment of tax show that they are identical in nature.

Conclusion: i) In course of an assessment, the concerned officer of the authority under Section 24(2) of the Punjab Sales Tax on Services Act, 2012 is obliged to afford the taxpayer with opportunity of making a representation as well as hearing.
ii) The provisions of Income Tax Ordinance, 2001, the Sales Tax Act, 1990 and the Punjab Sales Tax on Services Act, 2012 envisage that, while assessing tax liability, a taxpayer should be confronted a show-cause notice with intended assessment/information and to provide him an opportunity of hearing.

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32. **Lahore High Court**
Abdul Rehman Khan Kanju v. Rana Muhammad Faraz Noon and others
Intra Court Appeal No. 29 of 2024
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Asim Hafeez.
https://sys.lhc.gov.pk/appjudgments/2024LHC1720.pdf

Facts: This Intra Court Appeal is directed against the order of learned Single Judge-in-

Chambers, whereby constitutional petition, preferred by respondent No.1, against the order of Election Commission of Pakistan, was accepted and original order, including notice for attending recount of votes, were declared lacking in jurisdiction and of no legal effect.

Issues: i) Whether request for recount can be entertained, alternatively by resorting to remedy under section 9(1) of Elections Act?
ii) Whether the Election Commission can review the order passed by Returning Officer under sub-section (5) of Section 95 of Elections Act?
iii) What remedies are provided in law for seeking recount of votes?
iv) Whether the power of recount can be exercised, be it the Returning Officer or Election Commission once consolidation of votes was completed and after declaration of returned candidate?

Analysis: i) Moot question for determination is true character of the order of 22.02.2024 and whether such order could be construed as an order passed in purported exercise of jurisdiction(s) under section 8(b) or section 9(1) of Elections Act. Question of maintainability poses a complex scenario in wake of diverse scope of proceedings envisaged under various provisions of the Elections Act and specific limitations/restraints docketed with each of those provisions – for the purposes of present controversy proceedings under subsection (5) of section 95 of the Elections Act are not in question but proceedings under sub- section (6) of section 95 of the Elections Act. After hearing counsels and perusal of order of 22.02.2024, context of the application requesting Election Commission to direct recount of votes and scope of section 9(1) of the Elections Act, we are convinced that order of 22.02.2024 was not passed in exercise of jurisdiction under section 9 of Elections Act, reasons being, that firstly, when a specific remedy was provided before Election Commission and opted for seeking recount in terms of subsection (6) of section 95 of Elections Act. And in presence of specific timebound remedy, resort to general powers of Election Commissioner and invocation of jurisdiction under section 9(1) are unwarranted and manifest disregard of Elections Act. And secondly, equally significant, the probable outcome or causation of exercise of jurisdiction under section 9(1) of Elections Act is not a direction, simplicitor, for recount of votes but, subject to the fulfillment of conditions, declaration to declare polls void and ordering of re-poll. In these circumstances, jurisdiction of Election Commission to direct recount of votes cannot be brought within the ambit of section 9 of the Elections Act. There is another anomaly in the submissions of learned counsels for Election Commission and appellant. If power to direct recount is allowed or deemed permissible under section 9(1) of the Elections Act, it implies that such power would be exercised notwithstanding publication of name of returned candidate, till after sixty days of publication of name, which erroneous construction would then render timebound remedy of seeking recount of votes under subsection (6) of section 95 of Elections Act redundant – in terms of subsection (6) of section 95 of the Elections Act Commission could only direct recount of votes before the conclusion of consolidation proceedings and not after

conclusion thereof. Hypothetically speaking, if power of the Election Commission to direct recount of votes is deemed or considered to be covered under section 9(1) of Elections Act, then such construction suggests that the option of seeking recount of votes could be sought even after conclusion of consolidation proceedings, when otherwise the recount of votes under subsection (6) of section 95 of Elections Act could be ordered before the conclusion of consolidation proceedings and not beyond that.(…) This is an apparent absurdity. Hence, claim of assumption and exercise of jurisdiction by Election Commission, to direct recount of votes by virtue of original order, purportedly under section 9 of Elections Act, is misconceived and is hereby, repelled. In these circumstances, no question of availability of remedy of appeal, under subsection (5) of section 9 of Elections Act against original order arises.

ii) There is another angle to this debate of maintainability of the appeal in the context of jurisdiction of the Election Commission to review the order of the Returning Officer under clause (b) of section 8 of the Elections Act. If the intention of the legislature was to subject proceedings of consolidation by providing remedy of review against the order of the Returning Officer – perceived interpretation of learned counsel for respondent No.1 – then some restraint on conclusion of consolidation by the Returning officer had to be provided to dilute the effect and mandate of sub-section (8) of section 95 of the Elections Act - which mandated the Returning Officer to send to the Commission signed copies of the Consolidated Statement of the Results of the Count and Final Consolidation Result along other material, as specified therein, within twenty four hours after the consolidation proceedings. Even otherwise section 8 of Elections Act starts with the phrase 'save as otherwise provided, the Commission may….", which suggests that assumption and exercise of jurisdiction by Election Commission under subsection (6) of section 95 of the Elections Act is unaffected by section 8 of Elections Act. (…) There is another aspect. If Election Commission cannot pass order of recount after conclusion of consolidation, how could it review the order, if any passed by Returning Officer under sub-section (5) of Section 95 of Elections Act. Even otherwise Section 8 extends general power to the Commission for ensuring fair elections. There appears no statutory bar on the Returning Officer to wait for the outcome of application, moved with the Election Commission for seeking review of the order of Returning Officer, unless and if so, restrained by the Election Commission. In this case even the application for recount with Election Commission was submitted after conclusion of consolidation proceedings.

iii) Remedy(ies) provided in law for seeking recount of votes are diverse, one is before the Returning officer – explicitly in terms of subsection (5) of section 95 of the Elections Act – and other before the Election Commission under subsection (6) of section 95 of the Elections Act. Both remedies are independent, mutually exclusive and each exercisable in the context of the timelines prescribed, for the purposes of filing application and making of requisite direction. Evidently, application under subsection (5) of section 95 of the Elections Act can be filed

with Returning officer, before the commencement of consolidation proceedings and application before Election Commission, in terms of subsection (6) of section 95 of the Elections Act, could, at best, be submitted before the conclusion of consolidation proceedings – since the discretion to decide such application ceases upon conclusion of consolidation.

iv) It is otherwise an absolute absurdity to assume and construe that power of recount could be exercised, be it the Returning Officer or Election Commission once consolidation of votes was completed – upon issuance of Form-49 – when electoral documents were dispatched to the Commissioner and notification for declaration of returned candidate was made under section 98 of the Elections Act. At that point in time, Election Commission, for the purposes of directing recount of votes, became divested of jurisdiction, otherwise available for recount of votes before the completion of consolidation proceedings. (…) Election Commission erred in law while assuming and exercising jurisdiction, and directing recount of votes after conclusion of consolidation proceedings in violation of subsection (6) of section 95 of the Elections Act.

Conclusions: i) The Election commission cannot entertain request for recount alternatively by resorting to remedy under section 9(1) of Elections Act.

ii) The Election Commission cannot review the order passed by the Returning Officer under sub-section (5) of Section 95 of the Elections Act.

iii) See analysis No. iii.

iv) No, the power of recount cannot be exercised, be it the Returning Officer or Election Commission once consolidation of votes is completed.

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33. **Lahore High Court**
Syed Muhammad Ali v. The State and another
Crl. Misc. No.18392-B/2024
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC1622.pdf

Facts: Through instant Petition, the petitioner/accused has sought post-arrest bail in case arising out of F.I.R. registered under Section 489-F PPC

Issues: i) What is the purpose behind inclusion of Section 489-F PPC?

ii) Whether mere issuance of cheque or its dishonouring is sufficient for invoking Section 489-F PPC?

iii) Whether period in the proclamation for appearance of the accused person can be less than 30 days and he can be termed as proclaimed offender before expiry of said period?

iv)Whether right to grant bail can be withheld due to abscondance of accused as advance punishment?

Analysis: i) Section 489-F PPC was brought on the statute for the purpose of awarding punishment to the person, who issues the cheque dishonestly for repayment of a loan or fulfilment of an "obligation", which is dishonoured on presentation...

ii) For invoking Section 489-F PPC, mere issuance of cheque or its dishonouring is not sufficient rather first of all it will have to be proved as a "must" that cheque was issued for repayment of loan or fulfilment of obligation, meaning thereby that there must be material available on the record to show loan or obligation…Section 489-F PPC was not brought on the statute for using the same as a tool for recovery of the amount rather for the purpose of awarding punishment to the person, who issues the cheque dishonestly for payment of a loan or fulfilment of an "obligation", which is dishonoured on presentation.

iii) Case was registered on 03.02.2024, non-bailable warrants of arrest of the accused were issued on 08.02.2024, proclamation against him was issued on 15.02.2024 whereas challan report under Section 173 Cr.P.C. for proceedings under Section 512 Cr.P.C. was submitted on 17.02.2024 yet at the same time apprises that accused was arrested in the case on 08.03.2024 and sent to jail on 09.03.2024 where he was confined. Since proclamation was issued on 15.02.2024, and period in the proclamation for appearance of the accused cannot be less than 30 days as per statute and admittedly petitioner was arrested on 08.03.2024 i.e. before expiry of said period, therefore, he cannot be termed as proclaimed offender(…)

iv) If Court has come to the conclusion that case of the prosecution against the accused requires further probe/inquiry, then bail is granted to him as of right and same cannot be withheld due to abscondance…Mere detention of the petitioner in jail would serve no useful purpose to the case of prosecution. It is trite law that bail cannot be withheld as advance punishment.

Conclusion: i) See above analysis no. i.

ii) Mere issuance of cheque or its dishonouring is not sufficient for invoking Section 489-F PPC rather there must be material available on the record to show loan or obligation.

iii) Period in the proclamation for appearance of the accused person cannot be less than 30 days and he cannot be termed as proclaimed offender before expiry of said period.

iv) Right to grant bail cannot be withheld due to abscondance of accused and as advance punishment.

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34. **Lahore High Court**

Mst. Haleema and others v. Executive Director (C&CD), Securities and Exchange Commission of Pakistan and another

Intra Court Appeal No. 32 of 2024

Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem

https://sys.lhc.gov.pk/appjudgments/2024LHC1507.pdf

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

dismissed and the order passed by the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department, appointing Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company was held to be valid.

Issues: i) Can a director participate in discussions or vote on a contract or arrangement if he has a direct or indirect interest in it, according to the Companies Ordinance, 1984?

ii) Whether it is necessary that all the conditions as mentioned in section 265 (b) of the Companies Ordinance,1984 should exist at the same time before the appointment of an Inspector?

Analysis: i) The participation of the interested director in the Board Meeting wherein the resolution for disposal of the agricultural land owned by the Company was passed, violated the provisions of section 216 of the Companies Ordinance,1984, which provide that no director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote.

ii) Section 265 of the Companies Ordinance, 1984 allows the appointment of an Inspector to investigate the affairs of a company in certain prevailing conditions as enumerated in section 265 of the Companies Ordinance ,1984. It is also clear from the bare reading of section 265 of the Companies Ordinance ,1984 that it is not necessary that all the conditions as mentioned in section 265 (b) of the Companies Ordinance,984 should be existing at the same time before the appointment of an Inspector, rather even if one of the several conditions is, in the estimation of the Commission, existing, as the word "or" has been used after every condition mentioned in section 265 (b) of the Companies Ordinance ,1984 allowing for the appointment of an Inspector, then the order of appointment of an Inspector to investigate the affairs of the company can be validly passed. The rule is that the word "or" is usually disjunctive and the word "and" is usually conjunctive and a withdrawal from the same is not available unless the very purpose and object of the Statute so requires. The reason being that if the Legislature wants to use "and" in a special statutory provision, then it has each right to do and nothing interrupts them from making so. So, if the word "and" has not been used and rather the word "or" has been used, it is clear that the Legislature has purposely applied the word "or". Except when it is confirmed that there was some design or problem that stopped the Legislature from using the word "and", literal translation has to be used to read the statutory provision and the rule "or" is usually disjunctive and "and" is usually conjunctive" has to be provided effect to.

Conclusions: i) As per section 216 of the Companies Ordinance,1984, no director of a company

shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote.

ii) It is not necessary that all the conditions as mentioned in section 265 (b) of the Companies Ordinance,1984 should be existing at the same time before the appointment of an Inspector, rather even if one of the several conditions is, in the estimation of the Commission, existing, then the order of appointment of an Inspector to investigate the affairs of the company can be validly passed.

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35. **Lahore High Court**
Muhammad Saleem v. Regional Police Officer and five others
W. P. No.1780 of 2024
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2024LHC1500.pdf

Facts: Through this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, petitioner prayed that the impugned order passed by Regional Police Officer/respondent No.1whereby the investigation of the case F.I.R was ordered to be changed in the light of the recommendation of the Regional Standing Board may kindly be declared illegal, against the law & facts, perverse, arbitrary, fanciful and the same may very kindly be set aside.

Issues: i) What are the cardinal rules for interpreting statutes according to the principle that the grammatical and ordinary sense of words used by the Legislature should be adhered to?

ii) How should a court approach cases where literal adherence to the words of an enactment results in absurdity or injustice?

iii) What is the procedure outlined in Article 18(A) of the Police Order, 2002 for changing the investigation?

iv) Is the language of Article 18(A) of the Police Order, 2002 clear and unambiguous such that there is no need to imply additional conditions or reasons for the refusal of an application for transfer of investigation by the District Police Officer before submitting an application to the Regional Police Officer?

Analysis: i) One of the cardinal rules of interpretation of statute is that the grammatical and ordinary sense of the words used by the Legislature in expressing its intention is to be adhered to.

ii) If literal adherence to the words of any enactment appears to produce an absurdity or an injustice, it will be the duty of a Court, so interpreting, to consider the state of the law at the time the Act was passed with the view to ascertaining whether the language of the enactment is capable of another fair interpretation or whether it may not be desirable to put upon the language used, a restrictive meaning. The first rule of construing any enactment is to give the words their

natural meaning and it is only if no reasonable result can be arrived at by giving the words their natural meaning that some other interpretation is permissible. The first and the safest principle of interpretation of statutes is to remain within the language of law and not going beyond the intendments.

iii) The procedure for the change of the investigation has been clearly narrated in the Article 18(A) of the Police Order, 2002, wherein it has been provided that the District Police Officer, after obtaining opinion of the District Standing Board and for reasons to be recorded in writing may transfer the investigation of a case to any other investigation officer and if the District Police Officer has decided an application for transfer of the case, the Regional Police Officer may, within seven working days of the filing of an application, after obtaining opinion of the Regional Standing Board and for reasons to be recorded in writing, transfer investigation of a case also.

iv) The language of the Article 18(A) of the Police Order, 2002 is very clear in its meaning therefore there is no need to read any words into the Article 18(A) of the Police Order, 2002. No particular reasons for the refusal of the application for the transfer of the investigation of the case by the District Police Officer, before an application can be submitted to the Regional Police Officer,have been mentioned in the Article 18(A) of the Police Order, 2002 and had the legislation intended to restrict the submission of an application to the Regional Police Officer, in a certain case after its dismissal by the District Police Officer, then the legislation would have used those words. The very fact that the legislation has not mentioned in the Article 18(A) of the Police Order, 2002 any particular reason for the refusal of the application for the transfer of the investigation of the case by the District Police Officer, the absence or presence of which reason for deciding an application by the District Police Officer would regulate the filing of an application of change of investigation before the Regional Police Officer, reflects that it had no intention to do so.

Conclusions: i) One of the cardinal rules of interpretation of statute is that the grammatical and ordinary sense of the words used by the Legislature in expressing its intention is to be adhered to.

ii) See analysis No.ii.

iii) The District Police Officer may transfer the investigation of a case after obtaining the opinion of the District Standing Board and recording the reasons in writing. If the District Police Officer decides on an application for the transfer of the case, the Regional Police Officer has the authority to transfer the investigation of the case within seven working days from the filing of the application, after obtaining the opinion of the Regional Standing Board.

iv) According to the interpretation provided, the language of Article 18(A) of the Police Order, 2002 is clear and unambiguous. It does not specify any particular reasons for the refusal of an application for the transfer of investigation by the District Police Officer before submitting an application to the Regional Police Officer.

36. **Lahore High Court**
Rana Muhammad Faraz Noon v. Election Commission of Pakistan, etc.
Writ Petition No.1333 of 2024
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC1745.pdf

Facts: This petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 for setting aside the impugned order passed by respondent No.1 and impugned notice issued by respondent No.2 by declaring the same as illegal, without jurisdiction and without lawful authority against the law and facts of the matter.

Issues: i) Whether the Election Commission has any authority or power to pass an order for recounting in terms of section 95 (6) of the Elections Act after completion of consolidation proceedings?
ii) Whether issuance of notice to the contesting candidates is necessary before passing of order qua recounting of votes under section 95 (6) of the Elections Act?
iii) Whether the high court has jurisdiction under Article 199 of the Constitution to entertain a petition involving question of law or interpretation of law in respect of an election dispute?
iv) Whether any power of review has been conferred upon the Election Commission to review its own order?

Analysis: i) From plain reading of the above, it can very conveniently be resolved that powers conferred upon the Commission are constricted only to the issuance of declaration with regard to declaration of poll as void and repolling in respect of one or more polling stations or even in the whole constituency when Commission is satisfied that by reason of grave illegalities or violations of the provisions of the Elections Act or Rules that materially affected the result of the poll at one or more polling stations or in the whole constituency including implementation of an agreement restraining women from casting their votes, repolling and recasting of the votes was necessary. The provisions referred above when are seen in their entirety, same do not confer any power upon the Commission to pass an order for recounting of votes in terms of section 95 of the Elections Act while invoking the provisions of section 9 of the Elections Act. (…) Bare reading of above particularly sub section (6) of Section 95 of Elections Act vividly reveals that the Commission may before the conclusion of consolidation proceedings, after giving notice to contesting candidates and for reasons to be recorded, direct the Returning Officer to recount the ballot papers of one or more polling stations. The powers conferred upon the Commission with regard to passing an order for recounting of the ballot papers are limited and same can be exercised only before the conclusion of consolidation proceedings subject to notice to the contesting candidates. (…) The Commission, therefore, had no authority or power to pass an

order for recounting in terms of section 95 (6) of the Elections Act when consolidation proceedings stood completed and even notification under section 98(1) of the Elections Act declaring petitioner as returned candidate was issued. (…) Impugned order passed by the Commission issuing direction to respondent No.2 for recounting after the completion of consolidation proceedings cannot remain unnoticed by this Court while exercising jurisdiction under the provisions of Article 199 of Constitution particularly in view of the fact that the impugned order was passed after issuance of Notification No.F.2(5)/2024-Cord(1) dated 16.02.2024 and more particularly after the establishment of Election Tribunal through Notification No.F.23(8)/2024- O/o-DD-Law dated 20.02.2024 inasmuch as the moment when Commission issued notification qua the establishment of Election Tribunal so as to decide the election disputes, no authority or jurisdiction was left with the Commission to pass an order qua the recounting of the ballot papers under section 95 of the Elections Act.

ii) It may further be seen that order qua recounting of votes under section 95 (6) of the Elections Act can only be passed after putting the contesting candidates to notice by also giving the reasons justifying order of recounting. In the instant case, undeniably, no notice whatsoever was served to the petitioner before passing an order of recount of ballot papers. Assistant Director (Law) of the Commission upon Court query that whether any notice was issued to petitioner before passing order for recounting, frankly and fairly stated that no notice was served upon petitioner before passing the impugned order. Where law itself provides issuing of notice to a candidate before passing any order for recounting of ballots, same is required to be construed strictly. It is settled principle of law that when a thing is required to be done in a particular manner that must be done in that particular manner and not otherwise. The Commission had failed to follow the dictates of provisions of section 95 (6) of the Elections Act and passed the impugned order even in disregard of norms of judicial procedure that requires issuance of notice to a person whose rights are likely to be affected adversely by the impugned order.

iii) As regards arguments of learned counsel for respondent No.3 and learned Law Officers that order passed by the Commission was not amenable to constitutional jurisdiction of this Court under Article 199 of the Constitution, same carries little substance for the reason that where the action in question suffers from mala fides and is without jurisdiction or is coram non judice, this Court got the jurisdiction to go into and test the validity of such an action.(…) no remedy whatsoever has been provided elsewhere in the Elections Act to impugn an order passed by the Commission with regard to recounting of ballot papers after the consolidation of results of the count, therefore, petitioner cannot be allowed to remain remediless, as such he was well within his right to challenge the impugned order while invoking the provisions of Article 199 of the Constitution (…) Where no remedy is provided elsewhere to challenge the impugn order qua recounting of votes, this Court has got the jurisdiction under Article 199 of the Constitution to entertain a petition involving question of law or interpretation of law in respect of an election dispute.

iv) no remedy of review of an order passed by the Commission itself has been provided elsewhere in the Elections Act. As per section 8(b) of the Elections Act, the Commission only has the power to review an order passed by an Officer under the Elections Act or Rules including rejection of ballot papers. No power of review has been conferred upon the Commission to review its own order.

Conclusions: i) The election commission has no authority or power to pass an order for recounting in terms of section 95 (6) of the Elections Act when consolidation proceedings stood completed.
ii) The order qua recounting of votes under section 95 (6) of the Elections Act can only be passed after putting the contesting candidates to notice by also giving the reasons justifying order of recounting, therefore the same is required to be construed strictly.
iii) Where the action in question suffers from mala fides and is without jurisdiction or is coram non judice and no remedy is provided elsewhere then the high Court has got the jurisdiction to go into and test the validity of such an action in respect of an election dispute.
iv) No power of review has been conferred upon the Commission to review its own order.

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37. **Lahore High Court**
Adnan Anwar v. Ijaz Ahmad & others
Civil Revision No.72449 of 2023
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1638.pdf

Facts: Through this Civil Revision filed u/s 115 of Code of Civil Procedure, 1908, petitioner has called into question the vires, validity and legality of judgment whereby Appellate Court, while accepting the appeals of respondents, set-aside the judgment/order of Trial Court through which the auction was confirmed in favour of the petitioner and sale certificate was issued.

Issues: i) Whether the provisions regarding the payment of 80% of the balance purchase money under sub-section (5) of Section 11 of the Punjab Partition of Immoveable Property Act, 2012 are mandatory or merely directory?
ii) What are the consequences of non-compliance with Section 11(5) of the Act regarding the payment of the balance 80% of the purchase money?
iii) Does non-payment of the balance 80% of the purchase money amount to an irregularity in connection with the "publication and conducting of the sale" under Order XXI, Rule 19 CPC?
iv) How does non-compliance with Section 11(5) of the Act affect the previous proceedings for sale?
v) Whether the Court has power to extend the time for payment of the balance money of the sale price under Section 148 or Section 151 CPC?
vi) Under what circumstances does the maxim "act of the court prejudices no

man" apply?

vii) Whether the Court has power to enlarge the time fixed under Section 11(5) of the Act?

viii) Whether the permission of the Court is required to deposit the remaining consideration amount after an auction?

Analysis: i) The provision with regard to payment of 80% of the balance purchased money contained under sub-section (5) of Section 11 of the Act ibid is mandatory in nature and not merely directory.

ii) Non compliance thereof renders a sale void and the court is under obligation in such circumstances to order for resale of the property in terms of Section 11(10) of the Act ibid.

iii) Non payment of balance 80% of the purchase money cannot be described as an irregularity in connection with the "publication and conducting of the sale" so as to attract the provisions of Order XXI, Rule 19 CPC.

iv) The fact of non compliance of Section 11(5) of the Act ibid on auction sale is that the sale is rendered void and there is no sale within the contemplation of said section. In the event of a default the previous proceedings for sale would completely wiped out as if they do not exist in the eye of law.

v) The Court had no power either under Section 148 or Section 151 CPC to extend the time fixed for payment of the balance money of sale price.

vi) The maxim that act of the court prejudice no man apply on to those cases where it is shown in the first place that the party, who acted bonafidely on the order of Court was in no way responsible for passing of that order and secondly the party was in a position to meet his obligation under law but non compliance resulted due to orders of the Court.

vii) The Court was not possessed any power to enlarge the time fixed under this Section ibid. (…) There is no force in the arguments of learned counsel for the petitioner that the petitioner deposited the remaining 80% amount within the period stipulated by the Court. In this regard, suffice is to say that no Court can deviate from the mandatory provision of law. The act of the Court derives force from the statute and when the statute has not provided any leniency in this regard then how the Court could give any relaxation.

viii) The legislature has not necessitated the permission of the Court to deposit the remaining consideration amount. Petitioner was bound to deposit the remaining 80% amount within 07-days after the auction to which he failed. Hence, non-compliance of said mandatory provision entails the penal consequences.

Conclusions: i) The provision with regard to payment of 80% of the balance purchased money contained under sub-section (5) of Section 11 of the Act ibid is mandatory in nature and not merely directory.

ii) Non-compliance with the Section 11(5) of the Act renders a sale void and the court is under obligation to order for resale of the property.

iii) Non-payment of balance 80% of the purchase money as per the Section 11(5)

of the Act cannot be described as an irregularity in connection with the "publication and conducting of the sale" so as to attract the provisions of Order XXI, Rule 19 CPC.

iv) In the event of non-compliance of Section 11(5) of the Act, the sale is rendered void and the previous proceedings for sale would completely wiped out as if they do not exist in the eye of law.

v) The Court had no power either under Section 148 or Section 151 CPC to extend the time fixed for payment of the balance money of sale price.

vi) See above analysis no. vi.

vii) The court has no power to enlarge the time fixed under Section 11(5) of the Act.

viii) Permission of the Court is not required to deposit the remaining consideration amount after an auction and the same is to be deposited within 07-days after the auction.

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38. **Lahore High Court**
Sabir Ali v. Munawar, & others
Civil Revision No.2938 of 2022
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1827.pdf

Facts: Through this Civil Revision, filed u/s 115 of Code of Civil Procedure, 1908, the petitioner has called in question the validity and legality of impugned orders/judgments of Courts below, whereby, his objection petition was dismissed concurrently.

Issues: i) What is the limitation period for filing of an application for the execution of a decree or order of Civil Court?

ii) When the order should be deemed to a final order which will give a fresh start for the purposes of limitation?

iii) When the order will not be regarded as having finally disposed of the petition, and a subsequent application will be regarded as one for the revival and continuation of the original proceedings?

iv) What are the circumstances when the application for execution would not be regarded as fresh application?

v) When the execution application is deemed to be pending?

vi) When the subsequent application for execution would be regarded as fresh application and not for revival and continuation of the original proceedings?

vii) Whether the reports in the 'Warrant Dakhal' and Rapt Roznamcha Waqiati, that possession was given to the decree holders, can be taken as conclusive proof of the fact that the decree holders were put into physical possession of the suit land decreed in their favour?

Analysis: i) By virtue of Article 181 of the Limitation Act, 1908 an application for the execution of a decree or order of a Civil Court has to be made within three years

of the date of decree or order sought to be executed. Section 48 of C.P.C. prescribes a period of six years as the outer limits after the expiry of which the Court cannot entertain a fresh application for execution.

ii) Where the Court intended to dispose of the matter completely and no longer keeps it pending on its file and does not merely suspend the execution or consign the record to the record room for the time being, the order must be deemed to a final order which will give a fresh start for the purposes of limitation, and that the proceedings not being pending, there would in such a case be no question of revival.

iii) But, where such an order is made in a case in which the decree holder could not take further proceedings owing to circumstances beyond his control, the order will be regarded as merely suspensory in its nature and a fresh application will be regarded as one for the revival and continuation of the original proceedings. Thus, where the execution is stayed or is prevented by injunction, or becomes impossible to be proceeded with, owing to a claim being advanced to the property which is the subject of the execution or owing to some other obstacle placed by the judgment debtor in the way of execution, and the application "dismissed" or "struck off" or "consigned to the record room" or "returned" the order will not be regarded as having finally disposed of the petition, and a subsequent application will be regarded as one for the revival and continuation of the original proceedings.

iv) It should be noted that the words 'fresh application' have been used in Section 48(1) C.P.C., therefore, what is contemplated under this section by the words 'fresh application', is a substantive merely ancillary or incidental to a previous application, that is to say if the decree holder seeks to set the court into motion to take further proceedings in respect of an application already pending or where the application has been recorded or where the execution proceedings have been suspended by reasons of appeal or other proceedings, it would not be regarded as fresh application.

v) The execution application was deemed to be pending so long as no final order disposing it of judicially has been passed thereon. In subsequent application in such a case for execution will be deemed to be one merely for the continuation of the original proceedings.

vi) Where final judicial order termination the execution petition had been passed on the application, such execution proceedings could not be revived and the subsequent application for execution would be regarded as fresh application and not one for revival and continuation of the original proceedings.

vii) Mere on the reports, in the 'Warrant Dakhal' and Rapt Roznamcha Waqiati, that possession was given to the decree holders cannot be taken as conclusive proof of the fact that the decree holders were put into physical possession of the suit land decreed in their favour till then the decree holders admitted said fact. …

Conclusion: i) See above analysis no. i.

ii) See above analysis no. ii.

iii) See above analysis no. iii.
iv) If the decree holder seeks to set the court into motion to take further proceedings in respect of an application already pending or where the application has been recorded or where the execution proceedings have been suspended by reasons of appeal or other proceedings, it would not be regarded as fresh application.
v) The execution application is deemed to be pending so long as no final order disposing it of judicially has been passed thereon.
vi) Where final judicial order termination the execution petition had been passed on the application, such execution proceedings could not be revived and the subsequent application for execution would be regarded as fresh application.
vii) Mere on the reports, in the 'Warrant Dakhal' and Rapt Roznamcha Waqiati, that possession was given to the decree holders cannot be taken as conclusive proof of the fact that the decree holders were put into physical possession of the suit land decreed in their favour till then the decree holders admitted said fact.

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39. **Lahore High Court**
Asghar Ali (deceased) through LRs. v.
Ahmad Ali (deceased) through LRs, etc.
Regular Second Appeal No.75 of 2002
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1838.pdf

Facts: The plaintiff/predecessor of appellants (hereinafter referred to as "appellant") instituted suit for recovery of possession , cancellation of registered sale deed and sought specific performance of agreement to sell which was decreed. Feeling aggrieved, the respondents filed an appeal. During arguments in appeal, the parties agreed for decision of matter on the basis of record qua identity card of a witness and court ordered for summoning of record. The appellant filed an application for elaboration of interim order of summoning of record which was dismissed and appellant moved a review petition for recalling of order. In the meanwhile the lower appellate court received the relevant record and in the light of record, the appeal was allowed and suit was dismissed and review petition was also dismissed. Feeling aggrieved, appellant filed instant Regular Second Appeal which was dismissed by this court. The appellant assailed said judgment & decree through appeal before the Hon'ble Supreme Court of Pakistan which was allowed and the matter was remanded with a direction to decide the same afresh on merits.

Issues: i) Whether Offer made by a party to decide the lis on a particular way and accepted by the other side is enforceable under the law as agreement?
ii) Whether agreement made in the Court is a settlement and resiling of party from same would amount to abuse the process of Court?

Analysis: i) Appellant moved the application for recalling of his consent when the offer made by the respondents was accepted by him and had become a binding contract. Offer made by a party to decide the lis on a particular way when accepted by the

other side had matured into an agreement, same was enforceable under the law and nobody would be allowed to resile from it unless said agreement/contract was either void or had become frustrated… It is settled proposition of law that offer once made by any party and accepted by the other party becomes a binding contract between the parties and nobody is allowed to resile or back out from it on the principle of estoppel.

ii) An agreement made in the Court is a settlement to which the Court is also a party, therefore, such an agreement is not one of those agreements which a party may keep or break as it liked. To allow a party to resile from his earlier commitment without adequate reason would amount to allowing him to play a game of hide and seek with other party and even would amount to abuse the process of Court. Where parties choose deviation from normal course and a mode (procedure) for decision of lis is adopted by the Court on their request, the decision given in pursuance thereof should be given effect to and the parties are estopped from challenging such mode of decision and they could not resile or feel aggrieved against the procedure adopted by the Court. Appellant would have no right whatsoever to wriggle out from such accepted offer being an agreement of binding nature and also on the principle of approbate and reprobate.

Conclusion: i) Offer made by a party to decide the lis on a particular way when accepted by the other side had matured into an agreement; same was enforceable under the law.

ii) Agreement made in the Court is a settlement and resiling of party from same without adequate reason would amount to abuse the process of Court.

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40. **Lahore High Court**
Rao Humayun Waqas v. The State, etc.
Criminal Appeal No.10549 of 2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1817.pdf

Facts: The appellant, along with co-accused (since acquitted) was tried by the Additional Sessions Judge/Judge MCTC in case FIR registered under sections 302/109/34 PPC and on conclusion of trial, the trial court while acquitting co-accused through the same judgment convicted the appellant under section 302 (b) PPC and sentenced him to imprisonment for life. The appellant was further directed to pay compensation. In case of default, the convict was to undergo further simple imprisonment for six months. Being aggrieved with his above conviction and sentence, the appellant has filed this Appeal.

Issues: i) Whether examination in chief of a witness is to be conducted by the Public Prosecutor and what pattern or technique is required to be followed?

ii) Whether prosecutor is authorized to ask the leading question in examination in chief?

iii) Whether conviction can be recorded on the testimony of a single witness?

iv) Whether recovery of weapon of offence is inconsequential when it does not

match with the spent shells collected from the spot?
v) Whether mere abscondence of accused is a conclusive proof of the guilt of the accused?
vi) Whether in failure of substantive evidence, investigation or other material can be looked into for the purpose of stretching anything favourable to the prosecution?

Analysis: i) It is observed that examination in chief of a witness is to be conducted by the Public Prosecutor who is required to follow the pattern suggested as per international best practices so as to facilitate and assist the witness to recollect the facts. The 17th edition of a book titled "ADVOCACY" edited by Robert McPeake printed by Oxford University Press explains that "examination in chief is the process of eliciting evidence from your own witness and is the first opportunity when the court has to assess the witness. A strong impression made at that stage will give the witness credibility and may withstand any attack in cross examination". The aims of conducting examination in chief is usually three-fold; (a) to establish your case or part of it through the evidence elicited from the witness; (b) to present the evidence so that it is clear, memorable and persuasive; (c) to insulate the evidence, insofar as possible, from anticipated attack in cross examination. To achieve such aim next step is the preparation which involves; (i) selecting the order of witnesses; (ii) selecting the order of evidence to be elicited from each witness. It is preferable to start and finish your case with a witness who makes a strong impression. Avoid calling your first witness whose evidence is particularly vulnerable to cross examination and select which part of his evidence is to be elicited first… Preparation of witnesses is an essential task for the prosecution and it usually depends upon the status of witness as ordinary or expert, and with further segregation as child, vulnerable, infirm, incapacitated like deaf or dumb or old aged. Every sort is to be attend accordingly and prosecutor, before presenting the witness in the court, must have a meeting in order to apprise him about the Court science, like appearance style, court decorum, manners and attitude in response to questions asked by the prosecutor, defence counsel and the Court. There are many techniques to follow for conducting examination in chief of a witness. The main two techniques were discussed by this Court in a case reported as "MUHAMMAD RAMZAN Versus The STATE and others" (2023 P Cr. L J 1156)… Apart from technique of signposting and piggybacking for conducting examination in chief of a witness, there are in place certain other suitable and practiced rules in every nook and corner of the world in the Courts. In terms of 'Form of questions', guidelines are as under; (i) Do not lead (ii) Avoid wide question and ask focused/specific/targeted questions (iii) Avoid long question and ask short, simple questions (iv) Avoid compound questions and ask one question at a time (v) one point at a time (vi) Have a dialogue and ensure the questions follow on (vii) establish facts not conclusions (viii) Avoid comment, build to a point. For sequence or structure of questions, following rules are followed; (i) Help the witness to tell the story (ii) paint a picture (iii) Help the

Court to follow (iv) use the exhibits and photos (v) use of plans (vi) avoid irrelevancies (vii) listen to the answers (viii) avoid quick fire questions (ix) avoid interrupting (x) use piggybacking as cited above. To have a control on the witness, techniques are as follows; (i) Ask precise question (ii) know your material (iii) demonstrate clear direction (iv) know where you are going (v) plan transition or alternate questions.

ii) Though prosecutor is not authorized to ask the leading question in examination in chief which is explained in Article 136 of the Qanun-e-Shahadat Order, 1984… however, it is subject to some conditionalities as mentioned in Article-137… First condition is objection of opposite party, if no objection is raised, leading questions can well be asked, whereas on the objection of opposite party, still there is a space to ask leading questions if the Court permits. Court has been guided through the same provision to grant permission if the question relates to matters which are introductory or undisputed or which in the opinion of Court have already been sufficiently proved. Usually to avoid leading questions, prosecutors while conducting examination in chief can use technique of five Ws, which means formulating of interrogatories with "when, where, what, who, why" and for seeking wide expression can ask the witness 'to describe/explain' the fact he stated. The words may not be put into the mouth of witness rather question must be framed in a sequence as to extract the story of witness in his own words. Prosecutor is not bound to conduct the examination in chief of witness in a sequence of facts as mentioned in statements of witnesses recorded under section 161 Cr.PC rather it should be rearranged to create an impact by abandoning the unnecessary details. KEITH EVANS in his book "ADVOCACY IN COURT" (A Beginner's guide) summarized the task as follows; It is done by bearing in the mind the 'one line of transcript' rule, breaking the thing down into the shortest questions eliciting the shortest answers, and by analyzing out as you go along what building bricks you in fact require in order to erect the structure of evidence that you want from this witness. Broken down into the smallest pieces, every story, just about, can be drawn out of a witness without leading questions being used. But you often do have to break the narrative down very finely.

iii) There is no cavil to the proposition that conviction can be recorded on the testimony of a single witness but it is only in a situation when there is only one witness available at the place of occurrence but when prosecution claims more witnesses at the crime scene, then disbelieving the testimony of one or two in contrast to others, squarely helps the prosecution to stay and build their abode on the testimony of single witness because in that eventuality absence of corroboration stems so strong to fail the prosecution case easily in terms of non-availability of proof beyond reasonable doubt while casting a serious doubt on that single testimony.

iv) The recovery of pistol 9-mm is not helpful to the prosecution in the sense that it did not match with the spent shells collected from the spot. Thus, recovery is totally inconsequential losing its corroborative effect in this case.

v) So far as the question that accused/appellant remained absconder, there is

plethora of authorities of superior Courts on this point that mere abscondence of accused is not a conclusive proof of the guilt of the accused. The value of abscondence depends upon the fact of each case and abscondence alone cannot take the place of guilt unless and until the case is otherwise proved on the basis of cogent and reliable evidence, therefore, in view of the dictum handed down in "RAHIMULLAH JAN Versus KASHIF and another" (PLD 2008 SC 298) mere abscondence would not be taken as a conclusive proof of guilt of accused.

vi) It is trite that when substantive evidence fails, investigation or other material hardly supply want of evidence and it cannot be looked into for the purpose of stretching anything favourable to the prosecution except one in the form of digital or forensic evidence, which is not available in this case.

Conclusion: i) See above analysis no. i.

ii) Prosecutor is not authorized to ask the leading question in examination in chief however, it is subject to some conditionalities as mentioned in Article-137 of the Qanun-e-Shahadat, 1984 which are discussed in detail under analysis No. (ii).

iii) Conviction can be recorded on the testimony of a single witness but it is only in a situation when there is only one witness available at the place of occurrence.

iv) Recovery of weapon of offence is inconsequential when it does not match with the spent shells collected from the spot.

v) Mere abscondence of accused is not a conclusive proof of the guilt of the accused.

vi) In failure of substantive evidence, investigation or other material cannot be looked into for the purpose of stretching anything favourable to the prosecution except one in the form of digital or forensic evidence.

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41. **Lahore High Court**
Muhammad Siddique (deceased) through L.Rs. v. Muhammad Yaqoob & others
C. R. No. 2168 / 2014
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1770.pdf

Facts: This Civil Revision is directed against the impugned Judgments & Decrees passed by Civil Judge and Additional District Judge, respectively, whereby, suit of Respondent No. 1 was concurrently decreed.

Issues: i) Whether it is necessary to list the particulars of oral sale transaction in the plaint and as such it is also necessary to independently prove such oral sale transaction?

ii) Where two written statements were filed i.e., first conceding not verified on oath and second contesting, and the court had impliedly discarded the conceding written statement, whether in these circumstances court can subsequently rely on the first conceding written statement and interpret the same as constituting admission?

iii) Whether a bona fide purchaser for valuable consideration without notice is

entitled to the protection accorded to him by Section 41 of the Transfer of Property Act, 1882 and Section 27(b) of the Specific Relief Act, 1877?

Analysis: i) Record vividly reflects that Respondent No. 1 as Plaintiff did not list the particulars of oral transaction in the plaint and as such did not independently prove the oral transaction. The evidence qua oral sale transaction of Respondent No. 1 was not only beyond pleadings but was also discrepant and contradictory particularly with respect to details of oral transaction and receipt of earnest money by Respondent No. 2 on behalf of the Minors. No stamp vendor was produced to prove the procurement of stamp papers for the alleged draft sale deed (Ex.P1). No revenue official was produced with respect to alleged objection of concerned Sub-Registrar denying registration of sale deed in favour of Respondent No. 1 without guardianship certificate in favour of Respondent No. 2 regarding the Minors. Admittedly, sale deed in favour of the Petitioner by Respondent No. 2 was executed and registered as natural guardian of the Minors and there is no explanation to the effect that if the same could be registered why draft sale deed in favour of Respondent No. 1 was declined. There is no evidence that alleged witnesses of the draft sale deed were also witnesses of oral transaction. No target date was alleged with respect to the oral sale transaction. No effort was made to deposit balance sale consideration in Court which admittedly had not been paid till the decision of the suit to demonstrate the readiness and willingness on the part of Respondent No. 1 to perform his part of the oral contract and his financial ability to discharge his obligation. As such, Respondent No. 1 could not prove oral sale transaction as alleged in the plaint.

ii) The first conceding written statement is dated 10.01.2007 while the second contesting written statement is dated 13.01.2007 with a difference of only three days. The second written statement pointed out the death of a minor which fact would naturally be known to Respondent No. 2. Further, the first written statement is not verified on oath unlike the second written statement. Respondent No. 2 while submitting second contesting written statement had specifically stated that the first conceding written statement is neither filed nor signed by him nor he appointed the alleged Advocate or executed any power of attorney in this behalf. He specifically prayed that the same be struck off. As such, the Court impliedly accepted the plea of Respondent No. 2 as it proceeded to frame issues and recorded evidence of the parties. Hence, subsequent reliance by the Courts below on the first conceding written statement and interpreting the same as constituting admission of Respondent No. 2 against the claim of Respondent No. 1 was unwarranted.

iii) The PWs had categorically admitted the claim of the Petitioner that sale deed was executed by Respondent No. 2 in favour of the Petitioner and that the latter was in possession of the suit property. Respondent No. 1 did not specifically claim in the plaint nor produced any evidence to prove that the Petitioner was not a bona fide purchaser for value or had prior knowledge of oral sale transaction between Respondents No. 1 and 2. In contrast, the Petitioner had emphatically

denied the suggestion that he had any prior knowledge of the said alleged oral sale transaction. Overwhelming evidence is on record, whereby, Respondent No. 2 admitted to have executed a registered sale deed in favour of the Petitioner after receiving entire sale consideration. As such, there is no occasion not to give preference to a valid and lawfully registered subsequent sale deed over an unproved oral sale transaction. Hence, the Petitioner as bona fide purchaser for valuable consideration without notice was entitled to the protection accorded to him by Section 41 of the Transfer of Property Act, 1882 and Section 27(b) of the Specific Relief Act, 1877.

Conclusion: i) Yes, it is necessary to list the particulars of oral sale transaction in the plaint and as such it is also necessary to independently prove such oral sale transaction.
ii) Where two written statements were filed i.e., first conceding not verified on oath and second contesting, and the court had impliedly discarded the conceding written statement, in such circumstances court cannot subsequently rely on the first conceding written statement and interpret the same as constituting admission.
iii) A bona fide purchaser for valuable consideration without notice is entitled to the protection accorded to him by Section 41 of the Transfer of Property Act, 1882 and Section 27(b) of the Specific Relief Act, 1877.

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42. **Lahore High Court**
Mst. Abida Rafique Ghouri through her legal heir Mst. Ambreena Azeem v. Syed Amjad Hussain Gillani and 03 others
Civil Revision No. 26520 of 2019
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1927.pdf

Facts: This Civil Revision assails the concurrent judgments & decrees passed by Civil Judge and Additional District Judge respectively, whereby, the suit for specific performance of respondent No. 1 against the petitioner impleaded through her legal heir was concurrently decreed.

Issue: Whether payment of balance sale consideration in court as per direction of the court is sufficient to prove the willingness and ability of the party to complete the sale transection?

Analysis. **…**the Trial Court directed the Respondent to deposit the balance sale consideration in the Court within one month. After settling mode of payment through subsequent orders, the Trial Court granted absolute last opportunity to the Respondent to deposit the balance sale consideration within thirty days and in compliance thereof, the same was paid in the Court. Under these circumstances, it cannot be conclusively conferred that the Respondent did not have financial ability to complete the sale transaction. This is especially so since the Respondent had promptly instituted the suit i.e. 1-1/2 months after the target date. The Petitioner, in her written statement, while admitting the transaction did not seek immediate payment of remaining sale consideration by demonstrating her

willingness to execute sale deed but sought rescission of the Agreement.

Conclusion: Payment of balance sale consideration in court as per direction of the court is sufficient to prove the willingness and ability of the party to complete the sale transaction.

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43. **Lahore High Court**
Punjab Mashhad Meat Complex and another v. Mashhad Meat Industrial Complex
F. A. O. No. 79041 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC1538.pdf

Facts: Through this Appeal order has been challenged, whereby, application of the appellants filed under section 34 of the Arbitration Act, 1940 for staying the proceedings in suit as well directing the parties to pursue their remedies in terms of the arbitration clause, has been rejected.

Issues: i) Whether applications seeking time to file written statement are taken as a requisite intention to waive off a right to get the causes resolved through arbitration?
ii) Whether every step in the proceedings would come in the way of enforcement of arbitration agreement and waive off the right under the arbitration agreement?
iii) Whether the arbitration agreement only imposes 'positive' obligation upon the parties to proceed with the disputes?

Analysis: i) An application seeking time to file written statement is normally taken as displaying such intention and an act or step in the proceedings to preclude a party to seek stay on the basis of arbitration clause, in the absence of anything contrary. In case titled "Pakistan International Airlines Corporation versus Messrs Pak Saaf Dry Cleaners" (PLD 1981 Supreme Court 553) the Supreme Court held that an application for adjournment providing time to file written statement prima facie is a step towards proceedings but subject to a chance to the applicant and burdening him to show as to why effect should not be given to this prima facie meaning or presumption… Though applications seeking time to file written statement in some cases are taken as a requisite intention to waive off a right to get the causes resolved through arbitration but as already discussed above, the Supreme Court of Pakistan in Pakistan International Airlines Corporation case (supra) has not taken such step as conclusive proof of this intention rather as prima facie indication only and burdening the one making request to stay to show otherwise.
ii) In case titled "Rachappa Guruadappa, Bijapur versus Gurusiddappa Nuraniappa and others" (1990 MLD 1383) it has been held that a step taken in the suit, disentitling a party from obtaining stay of a proceeding, has to be a step that should display unequivocal intention to proceed with the suit and to abandon the benefit of arbitration agreement or the right to get the dispute resolved by the arbitration. It is also resolved that not every step in the proceedings would come

in the way of enforcement of arbitration agreement and the step must be clear and unambiguous that manifest the intention to waive off the right under the arbitration agreement… a routine adjournment may not necessarily ascribe to be a step in the proceedings, in the absence of any written application for that precise purpose.

iii) In case titled "POSCO International Corporation through Authorised Officer versus Rikans International through Managing Partner / Director and 4 others" (PLD 2023 Lahore 116) it has been observed that an arbitration agreement does not only impose 'positive' obligation upon the parties to proceed with the disputes but also creates negative undertaking for the parties which obligates them not to bring any claim within the arbitration agreement's scope in a forum other than arbitration.

Conclusion: i) An application seeking time to file written statement is normally taken as displaying such intention and an act or step in the proceedings to preclude a party to seek stay on the basis of arbitration clause, in the absence of anything contrary.

ii) Not every step in the proceedings would come in the way of enforcement of arbitration agreement and waive off the right under the arbitration agreement.

i) An arbitration agreement does not only impose 'positive' obligation upon the parties to proceed with the disputes but also creates negative undertaking for the parties which obligates them not to bring any claim within the arbitration agreement's scope in a forum other than arbitration.

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44. **Lahore High Court**
Muhammad Zulfiqar Ali v. Rashid Mehmood Sidhu
F.A.O No. 72708 of 2023.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC1525.pdf

Facts: Through this appeal, filed under section 19 of Intellectual Property Organization of Pakistan Act, 2012, the appellant challenged order passed by learned Intellectual Property Tribunal that for filing of the second suit is not hit by the bar contained in Order XXIII Rule 1(3) of CPC.

Issues: i) Whether second suit, which was pending at the time of unconditional dismissal as withdrawn of the first suit, is liable to be rejected under the bar contained in Order XXIII Rule 1(3) of CPC?

ii) Whether the defenders can be subjected to more than one suit for the same cause?

Analysis: i) The consensus of the legend jurists of the subcontinent is clear that if a suit is already pending and after filing of subsequent suit, the first suit is withdrawn, in such case, the provision of sub-rule (3) of rule 1 of Order XIII, C.P.C., precluding the plaintiff from instituting fresh suit is not applicable. Thus, in absence of any clear statutory provision, a party cannot be non-suited on presumptive non-

speaking wisdom of the legislature by any stretch of imagination or interpretation of statute.

ii) It has been held that the common principles engrafted in Order II as well as Order XXIII of CPC is that unless the Court is satisfied as to the reasons given in the relevant rules of the said Orders, the defenders cannot be subjected to more than one suits for the same cause and the relevant Courts, when the pendency of the earlier suit is disclosed, can control the situation by taking an action, at earliest.

Conclusion: i) The second suit, which was pending at the time of unconditional dismissal as withdrawn of the first suit, is not liable to be rejected under the bar contained in Order XXIII Rule 1(3) of CPC.

ii) Unless the Court is satisfied, the defenders cannot be subjected to more than one suit for the same cause.

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45. **Lahore High Court**
Nafees Ahmad v. Zia-ud-Din
R.F.A.No.69211 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC1554.pdf

Facts: Through this regular first appeal, judgment and decree passed by learned Additional District Judge has been challenged.

Issues: i) How discretion of granting or refusing leave to defend in a summary suit under Order XXXVII CPC should be exercised by the Court?

ii) Whether failure to fulfill conditions specified in condition leave granting order in suit under Order XXXVII CPC is fatal?

iii) Whether acquittal or discharge of a litigant from criminal case absolve him from the civil liability?

Analysis: i) Order XXXVII Rule 3 (2) of the *Code* authorizes the learned trial Court to grant leave unconditionally or subject to such terms as to payment in the Court or giving security. Granting leave subject to condition or unconditionally is the discretion of the Court which is to be justly exercised while keeping in view the plausibility of the defense.

ii) The failure to fulfill conditions, specified in conditional order granting leave to defend, was found fatal when the defendant remained unable to furnish any plausible reason.

iii) …suffice to say that both the criminal as well as civil cases have different standards of proof and acquittal or discharge from criminal case does not absolve a litigant from the civil liability, if burden is discharged by the other side as per the settled principles of civil standard of proof.

Conclusion: i) Granting leave subject to condition or unconditionally is the discretion of the Court which is to be justly exercised while keeping in view the plausibility of the defense.
ii) See analysis portion above.
iii) Both the criminal as well as civil cases have different standards of proof and acquittal or discharge from criminal case does not absolve a litigant from the civil liability.

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46. **Lahore High Court**
Aun Akhter & another v. Ahmad Abdul Rehman, etc.
Civil Revision No.54194 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC1654.pdf

Facts: In this Civil Revision, the petitioners assailed the order passed by the District Judge whereby application moved by them for withdrawal of cases of civil nature mentioned therein from the Court of Senior Civil Judge (Family Division) and transfer to the Court of Civil Judge or Senior Civil Judge (Civil Division) was dismissed.

Issues: i) Whether a Judge Family Court has jurisdiction to adjudicate upon disputes of other civil nature?
ii) What is object of the Family Courts Act, 1964 and what is jurisdiction and procedure of Family Courts?
iii) Whether a Civil Judge who is presiding over the Family Court has authority to adjudicate upon any other dispute of other civil nature which falls outside the purview of the Act, 1964?
iv) Whether High Court has power to supervise and control all courts subordinate to it and empower Judges of the Family Court to additionally exercise powers of the Civil Courts?
v) Whether District Judge can transfer any civil suit to the Family Court even though subject matter thereof does not fall within the scope of the Act, 1964?

Analysis: i) It is noteworthy that in the scheme of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution') the right of an individual to enjoy the protection of law and to be treated in accordance with the law has been provided. Article 4, inter alia, ordains that no person shall be prevented from or be hindered in doing that which is not prohibited by law; and no person shall be compelled to do that which the law does not require him to do. While a person is constitutionally guaranteed above freedom, there is no inherent power vested in the state organs or authorities to act save for the authority conferred by the Constitution and the law and any act done by the state functionaries, order passed or direction issued, if not sanctioned by the Constitution or the law, is an act without lawful authority. Besides the above general position, there is a specific provision of Article 175(2) in the Constitution that embodies fundamental principle governing jurisdiction of the courts which mandates that no court shall

have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. There is thus no constitutional or legal presumption that in the absence of any restriction placed by law on him/her, a Judge Family Court has jurisdiction to adjudicate upon disputes of other civil nature rather the presumption is the other way round and for a Judge Family Court to exercise such authority, jurisdiction must be conferred on him or her by the law.

ii) The Act has been promulgated to establish a quasi-judicial forum i.e. the Family Court, which can draw and follow its own procedure provided such procedure should not be against the principles of fair hearing and trial. The object of the Act is to minimize the technicalities and procedural holdups for the purpose of speedy justice between the parties in shortest possible time and manner. The Act has changed the forum and also altered the method as to how the trial under the Act is to be proceeded and case decided. A bare reading of the Act clearly suggests that by willful exclusion of procedure as prescribed under the Code, much has been left at the discretion of the Family Court to conduct trial in the manner as provided under the Act and also to adopt all possible measures and take all such steps, which result in achieving the purpose and object of the Act. Section 3 of the Act provides for the establishment of one or more of Family Courts by the Government in each District in consultation with the High Court consisting of District Judge, Additional District Judge, Civil Judge. Section 12A of the Act provides a period of six months for disposal of the case from the date of its institution. Through section 17 of the Act, provisions of the Code of Civil Procedure, 1908 (except for sections10 & 11) and Qanun-e-Shahadat, 1984 have been made inapplicable and the purpose of enacting such section was in fact to give effect to the preamble of the Act, which provides that it is meant for expeditious settlement and disposal of disputes2 . The nature of disputes which can be brought before the Family Court for adjudication have been set forth and enumerated in Part-I of the Schedule referred to in section 5 of the Act. In order to appreciate scope of jurisdiction of the Family Courts, it is imperative to have a glance at section 5 of the Act and Part-I of the Schedule… It is abundantly clear from section 5 of the Act that it confers exclusive jurisdiction upon the Family Court to entertain, hear and adjudicate upon matters specified in Part-I of the Schedule. On account of exclusive jurisdiction of the Family Courts over family disputes, Civil Courts, which are the courts of inherent and plenary jurisdiction competent to adjudicate upon all disputes of civil nature except the suits of which their cognizance is barred either expressly or by necessary implication, have no authority to adjudicate upon such disputes.

iii) Whether a Civil Judge who is presiding over the Family Court has authority to adjudicate upon any other dispute of other civil nature which falls outside the purview of the Act? is the question involved here. Reliance has been placed on the provisions of sections 12(2) and 15 of the Civil Courts Ordinance, 1962 (‘the Ordinance’) to support the impugned order. Undoubtedly, Family Courts fall within one of the classes of Civil Courts recognized under section 3 of the Ordinance for having been established under the Act, which is in force for the

time being. The other classes of courts include the Court of District Judge, Court of Additional District Judge and the Court of the Civil Judge. Section 7 of the Ordinance confers unlimited pecuniary jurisdiction of the District Judges in original civil suits, except as otherwise provided in any enactment for the time being in force, whereas section 9 of the Ordinance empowers the High Court to determine and classify pecuniary jurisdiction of civil judges in original civil suits. Likewise, provisions of sections 5, 6 and 10 of the Ordinance, inter alia, govern territorial jurisdiction of District Judges, Additional District Judges and Civil Judges. Section 12(2) of the Ordinance empowers a District Judge to withdraw any proceedings taken cognizance of by or transferred to a Civil Judge to either himself dispose of the same or transfer to a Court under his control competent to dispose it of, with the exception that no power of withdrawal is available to the District Judge in relation to such proceedings as have been transferred from his Court by the High Court. It is thus apparent that the power of the District Judge under section 12(2) ibid is limited in its scope to transfer proceedings only to such a Court as would be competent to dispose it of. Section 15 of the Ordinance empowers the District Judge to distribute civil business cognizable by his Court and the Courts under his control by written order, in such manner as he thinks fit, however, it may be emphasized that proviso to the said section mandates that no direction issued under that section could empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction. It is thus abundantly clear that be it the power of withdrawal and transfer under section 12 of the Ordinance or the power to distribute business under section 15 of the Ordinance, no authority is vested in the District Judge to entrust any matter to and empower a Civil Judge to adjudicate upon any civil claim beyond the limits of its jurisdiction, in particular over the subject matters covered by special enactments. There is thus no provision in the Punjab Civil Courts Ordinance, 1962 or the Family Courts Act, 1964 or the rules made thereunder which confers authority upon the Family Courts to adjudicate upon civil disputes other than those specified in Part-I of the Schedule to the Act. See section 14 of the Ordinance.

iv) Article 203 of the Constitution envisages that each High Court shall supervise and control all courts subordinate to it with the object to establish orderly, honorable, upright, impartial and legally correct administration of justice. The supervision and control over the subordinate judiciary vested in the High Courts under Article 203 of the Constitution is exclusive in nature, comprehensive in extent and effective in operation. Moreover, section 14 of the Ordinance stipulates that Civil Courts in the area to which the Ordinance extends shall be subordinate to the High Court, and, subject to the general superintendence and control of the High Court, the District Judge shall have control over all Civil Courts within the local limits of his jurisdiction. The above provisions, however, do not take away or restrict authority of this Court to empower Judges of the Family Court to additionally exercise powers of the Civil Courts if so notified. But in the instant case, learned counsel for respondents No.3 & 4 has not been able to refer to any such power conferred upon the Judge Family Court.

v) Without prejudice to the foregoing, assuming for the sake of argument that a discretion is available with the District Judge to transfer any civil suit to the Family Court even though subject matter thereof does not fall within the scope of the Act, would it be proper exercise to allow such a transfer? The answer may well be in negative. The Family Court cannot ordinarily hear the civil suits for such Courts have been established for expeditious settlement and disposal of disputes regarding marriage and family affairs and the matters connected therewith. Except for the disputes having unavoidable nexus with the disputes being adjudicated by the Family Court which, if at all could be referred to the Civil Judge presiding over the Family Court, it would be clearly improper exercise of discretion on part of the District Judge to entrust any ordinary civil dispute to the Family Court having no nexus whatsoever with any pending family case. In forming such opinion, this Court is additionally fortified by the consideration of effective administration of justice inasmuch as efficiency of the Family Courts, which are required to proceed expeditiously with the matters without strictly adhering to the rules of procedure and evidence embodied in the Code of Civil Procedure, 1908 and Qanun-e-Shahadat 1984, would be undermined if made to adjudicate upon ordinary civil disputes where the above enactments are required to be applied.

Conclusion: i) A Judge Family Court have no jurisdiction to adjudicate upon disputes of other civil nature.
ii) See above analysis no. ii.
iii) A Civil Judge who is presiding over the Family Court has no authority to adjudicate upon any other dispute of other civil nature which falls outside the purview of the Act, 1964.
iv) High Court has power to supervise and control all courts subordinate to it and empower Judges of the Family Court to additionally exercise powers of the Civil Courts?
v) District Judge cannot transfer any civil suit to the Family Court even though subject matter thereof does not fall within the scope of the Act, 1964?

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47. **Punjab Subordinate Judiciary Service Tribunal Lahore**
Muhammad Anayet Gondal v. The Registrar, Lahore High Court, Lahore
Service Appeal No. 03 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1795.pdf

Facts: Through instant Appeal, the vires of orders / letters passed by respondent have been assailed whereby representations of appellant for treating the intervening period from the date of dismissal to the date of reinstatement into service as on duty and grant of back benefits were declined.

Issues: i) Whether an employee is entitled to grant back benefits for the intervening period, during which he remained out of service and did not engage in any gainful profession?
ii) Whether the impediment of limitation can be allowed if the claim of back benefits is valid?

Analysis: i) The Supreme Court of Pakistan, in a number of pronouncements, has categorically declared that back benefits shall be granted for the intervening period, during which an employee remained out of service and did not engage in any gainful profession. The concept of reinstatement into service with original seniority and back benefits is based on the established principle of jurisprudence that if an illegal action / wrong is struck down by the Court, as a consequence, it is also to be ensured that no undue harm is caused to any individual due to such illegality / wrong or as a result of delay in the redress of his grievance. If by virtue of a declaration given by the Court a civil servant is to be treated as being still in service, he should also be given the consequential relief of the back benefits (including salary) for the period he was kept out of service as if he was actually performing duties. The grant of back benefits, in such situation, is a rule and denial of such benefit is an exception on the proof that such a person had remained gainfully employed during the intervening period.
ii) As the appellant's claim of back benefits is found to be valid and his entitlement has been established, the impediment of limitation cannot be allowed to come in his way, in view of dictum laid down by the Supreme Court of Pakistan in case reported as Abdul Hameed and others v. Water and Power Development Authority through Chairman, Lahore and others (2021 SCMR 1230).

Conclusion: i) Back benefits shall be granted for the intervening period, during which an employee remained out of service and did not engage in any gainful profession.
ii) If the claim of back benefits is found to be valid and his entitlement has been established, the impediment of limitation cannot be allowed to come in his way.

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48. **Punjab Subordinate Judiciary Service Tribunal Lahore**
Nazir Ahmed Langah v. Lahore High Court, Lahore through its Registrar
Service Appeal No.14 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1798.pdf

Facts: Through instant Appeal, appellant has assailed order passed by respondent, whereby appellant's request for grant of proforma promotion as District & Sessions Judge to the extent of pensionary benefits was declined.

Issues: i) Whether a civil servant/appellant can be penalized by the act of the public functionaries?

ii) Whether any fault may be considered on the part of civil servant/appellant especially when the litigation qua disciplinary proceedings and other complaints ended in appellant's favour?
iii) Whether promotion can be deferred on the ground of pendency of some disciplinary or departmental proceedings, if otherwise appellant has fulfilled the criteria for consideration of promotion?
iv) Whether is it right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria?

Analysis: i) It has been apprised that PER for the [certain] period has not been recorded by the Federal Government, however it is not the case of respondent that appellant had any fault in this regard. We are of the opinion that the appellant cannot be penalized by the act of the public functionaries…
ii) Later on, appellant was compulsorily retired from service in the year 2011 and he remained under litigation till the age of superannuation, therefore, appellant's PERs for the years from 2011 to 2016 are not available on record and in this regard there is no fault of the appellant especially when the litigation qua disciplinary proceedings and other complaints ended in appellant's favour.
iii) We feel it appropriate to observe here that under well-settled principles of law, promotion cannot be deferred on the ground of pendency of some disciplinary or departmental proceedings, if otherwise he has fulfilled the criteria for consideration of promotion.
iv) There is no cavil to the proposition that it is an inalienable right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria.

Conclusion: i) A civil servant/appellant cannot be penalized by the act of the public functionaries.
ii) There is no fault of the appellant especially when the litigation qua disciplinary proceedings and other complaints ended in appellant's favour.
iii) Promotion cannot be deferred on the ground of pendency of some disciplinary or departmental proceedings, if otherwise appellant has fulfilled the criteria for consideration of promotion.
iv) It is an inalienable right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria.

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49. **Punjab Subordinate Judiciary Service Tribunal**
Zafar Hussain Bhatti v. Lahore High Court, Lahore through its Registrar
Service Appeal No.06 of 2017
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Husain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1809.pdf

Facts: Through instant Appeal, appellant has assailed orders passed by respondent, whereby appellant's request for grant of proforma promotion as District & Sessions Judge was declined.

Issues: i) Whether subsequent events including allegations of inefficiency and misconduct become irrelevant once a promotion has been made after fulfillment of all legal and procedural requirements?

ii) Whether the power of receding an order is available with the authority after taking a decisive step?

iii) Whether penalty can be imposed retrospectively?

iv) Whether inquiry officer / hearing officer while conducting disciplinary proceedings can act as the appellate / revisional forum over the judgments / order passed by the judicial officer?

Analysis: i) In these circumstances, subsequent events including allegations of inefficiency and misconduct on passing a bail order or pending inquiries would become irrelevant once a promotion has been made after fulfillment of all legal and procedural requirements. These matters may possibly be taken into consideration while processing case for further promotion.

ii) We are of the considered opinion that power of receding an order is available with the authority before taking a decisive step. The purpose behind such power is to retrace the wrong steps taken by the authority, with the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of an individual, such an order cannot be withdrawn or rescinded to the detriment of his / her rights. The principle of animus revertendi or locus poenitentiae demand that when an order is acted upon and certain benefits have accrued to the person concerned under the order, the same cannot be withdrawn with retrospective effect to deprive that person of the accrued rights.

iii) It is well-settled that penalty cannot be imposed retrospectively unless the authority is vested with such powers expressly provided under the applicable law / rules. No such provision has been cited by learned counsel for respondent to defend the impugned action. A passing reference to some precedents will not be out of place where the Supreme Court of Pakistan elaborated the principle of awarding major penalty retrospectively, including the cases reported as Noor Muhammad v. The Member Election Commission, Punjab and others (1985 SCMR 1178) and Syed Sikandar Ali Shah v. Auditor-General of Pakistan and others (2002 SCMR 1124), wherein it has categorically been declared that major penalty could not have been imposed with retrospective effect unless the competent authority was expressly empowered in this regard by some statute or rules made thereunder.

iv) Needless to say that a judicial officer while hearing a case is at liberty to decide the same by applying law on the facts thereof based on the available record. A decision passed by any judge may ultimately turn out to be wrong and be set aside by higher judicial forum. The erroneous exercise of judicial power resulting into passing of an order on the basis of incorrect application of law, however cannot and should not cast doubt on the integrity of the judicial officer. The quality of a judgment / order passed by a judicial officer can only be judged in appellate judicial proceedings and ordinarily not through disciplinary

proceedings unless the extraneous considerations for which a judgment / order was passed are proved through cogent material brought before the inquiry officer. The inquiry officer / hearing officer while conducting disciplinary proceedings cannot act as the appellate / revisional forum over the judgments / order passed by the judicial officer. The judicial independence of subordinate judiciary is required to be observed and respected at all cost and the inquiry officer/hearing officer must tread extremely cautiously in such matters otherwise it would put a chilling effect on the working of the subordinate judiciary in performing their judicial functions freely and fairly.

Conclusion: i) Subsequent events including allegations of inefficiency and misconduct become irrelevant once a promotion has been made after fulfillment of all legal and procedural requirements.
ii) The power of receding an order is not available with the authority after taking a decisive step.
iii) Penalty cannot be imposed retrospectively unless the authority is vested with such powers expressly provided under the applicable law / rules.
iv) Inquiry officer / hearing officer while conducting disciplinary proceedings cannot act as the appellate / revisional forum over the judgments / order passed by the judicial officer.

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50. **Punjab Subordinate Judiciary Service Tribunal**
Syed Faizan e Rasool v. The Lahore High Court, Lahore through its Registrar.
Service Appeal No. 15 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1791.pdf

Facts: Through instant Service Appeal, appellant challenged letter, issued by respondent, whereby his representation for permission to apply for a Master Degree in Law from a foreign university, was declined..

Issues: i) Whether grant of permission to apply for Higher Education and that too from foreign institute is a rule of thumb for every judicial officer?
ii) Whether in matter of grant of leave discretion of authority can be claimed as right?

Analysis: i) As per law, grant of permission to apply for higher education and that too from a foreign university is not a rule of thumb for every judicial officer, and the same is also not backed by any express provisions of law or rules or policy instructions or prevalent practice. This matter pertains to discretion of the authority to be exercised in the light of attending facts and circumstances of each case, saddled with certain requirements/qualifications...
ii) In matters of grant of leave, it is well-settled that such discretion cannot be claimed as of right, but for seeking such relief the applicant must follow the

proper procedure provided under the rules and he is not supposed to avail any kind of leave entirely in his discretion and choice in departure to the rules and service discipline.

Conclusion: i) Grant of permission to apply for Higher Education and that too from foreign institute is not a rule of thumb for every judicial officer.
ii) In matter of grant of leave the discretion of authority cannot be claimed as right rather for seeking such relief the applicant must follow the proper procedure provided under the rules.

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51. **Punjab Subordinate Judiciary Service Tribunal**
Alamgir Liaqat v. The Registrar, Lahore High Court, Lahore & another
Service Appeal No.18 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Husain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1803.pdf

Facts: The appellant assailed vires of order passed by respondent, whereby appellant's representation for expunction of remarks as advisory recorded in his Performance Evaluation Report ("PER") was declined.

Issues: i) Whether adverse remarks are to be treated as advisory if the reporting officer calls them advisory or the authority treats them so?
ii) Whether counselling of an officer is necessary by the reporting or countersigning officers before incorporating adverse remarks in his PER?

Analysis: i) Adverse remarks indicate the defects or deficiencies in the quality of work or performance or conductof a civil servant except the words in the nature of counsel or advice. Adverse remarks could be deciphered from the words used by the reporting officer in his remarks and the impact those words might have on the reputation and general image of the officer. Adverse remarks do not become advisory even if the reporting officer calls them advisory or the authority treats themso. Moreover, advisory remarks, at the time of promotion of the civil servant, would become adverse and carry stigma if it is found that despite the advice the officer did not make any improvement.
ii) It is well-settled that the Reporting or Countersigning Officers are obliged to offer counselling as to the performance of an officer apprising his weak points and advise him/her how to improve, and if the officer fails to improve despite counselling then adverse remarks may be recorded in the PER. It is up to the supervisory officers to see whether the counselling, advice or warning is to be given orally or in written form, or given publically in a general meeting of the officers or privately in a separate meeting with the concerned officer only. The primary purpose of the supervision is to guide the subordinate officers in improving their performance and efficiency, and that their role is morelike a mentor rather than a punishing authority. The directions contained in the instructions, in this regard, on paying great attention to the manner and method

of communicating advice or warning should be adhered to.

Conclusion: i) Adverse remarks are not to be treated as advisory even if the reporting officer calls them advisory or the authority treats them so.
ii) Counselling of an officer is necessary by the reporting or countersigning officers before incorporating adverse remarks in his PER.

LATEST LEGISLATION / AMENDMENTS

1. Notification No. PRA/ Order. 06/2017. Vol(V)/683, dated 10.11.2023 issued in the partial modification of previous notifications with regard to the powers of some officers till further orders.
2. Notification No. PRA/ Order. 06/2017. Vol(V)/682, dated 10.11.2023 issued in the partial modification of previous notifications with regard to the powers of some officers till further orders.
3. Notification No. PRA/ Order. 06/2017. Vol(V)/702, dated 10.11.2023 issued in the partial modification of previous notifications with regard to the powers of some officers till further orders.
4. Amendments made in the Punjab Primary and Secondary Healthcare Department (health Information And service Delivery Unit) Employees Service Rules 2019, vide notification No. SOR-III 1-9/2018, dated 02.04.2024.
5. Notification No.Legis: 5-5/2020/1376, dated 18.04.2024 is issued for the enforcement of Punjab Alternate Dispute Resolution Act 2019 (XVII of 2019).
6. Notification No. SOR-III (S & GAD) 1-27/2002 (PI) dated 15.04.2024 issued regarding the amendments in the Punjab Social Welfare and Bait-ul-Mal.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/AI-Art-and-Law-How-They-Connect

AI, Art and Law - How They Connect by Ankesh

Introduction:

The growth of artificial intelligence seems to have made a lot of hype around the concerns which are typically associated with it, and in that process, they have been perceived to be quite staid over time. However, the exploration around some areas where artificial intelligence could play an important role is very significant, as it provides a certain level of preparedness, when some of these staid concerns do actually start coming true. Artificial Intelligence in its basic form has been around from the times, computers were formed. A simple search on your local drive would count as an artificial intelligence function done by your computer, however these are not remarkable, as you

or your brain could do the same in supposedly, the same or slightly higher amount of time. Task such as calculators, dictionaries are some of the forms of the basic activities done by the computers.
When we talk about these intelligent systems, what we essentially do is feed them a set of commands which they work on a given set of data to yield results. This means, that whatever the computers do or seem to do are done on these sets of data, thereby yielding effective results. Some of them are also, programmed to leave out the ineffective results along with other adjustments. The end goal of such working is to make sure that the end user is fully satisfied and the computers are working to the best of their efficiency.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/STAMPING-OF-ARBITRATION-AGREEMENT-THE-FINAL-CHAPTER-OF-THE-DECADE-OLD-SAGA

Stamping of Arbitration Agreement: The Final Chapter of The Decade-Old Saga by Sarthak Aswal

The question of validity and enforceability of unstamped arbitration agreement clauses has always been a point of question under the Arbitration and Conciliation Act of 1996[ii] and the Indian Stamp Act of 1899. There has been an array of different judgments providing us with contrasting opinions about the matter and it seems like the issue has finally been settled and the conundrum has reached its finality. The Supreme Court's 7-judge bench in its recent judgment of In Re, Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act of 1996[iii] and the Indian Stamp Act of 1899[iv] unanimously declared that an unstamped arbitration agreement is inadmissible under the Stamp Act but it cannot be rendered as void ab intio and hence arbitration clauses in unstamped or insufficiently stamped agreements shall be held valid and enforceable while this judgment puts a rest to this long drawn issue but the decade-old battle and string of cases involved surely tell a tale.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/COMPARATIVE-ANALYSIS-OF-THE-GOOD-FAITH-DOCTRINE

Comparative Analysis of The Good Faith Doctrine by Vedika Kakar

Introduction:

When two parties are negotiating a contract, it is a likely possibility that one may act in an opportunistic manner which was not reasonably expected of them. The opposite party may suffer loss in this regard; however, they don't have the usual recourse of claiming breach of contract. Situations like these, where a loss has been caused to a party but there has not been a breach of contract are those where the implied covenant of good faith comes into play. The covenant imposes a duty on each party to negotiate and perform contracts in a way that is reasonable and fair to the opposing parties.
Broadly, there are three instances when good faith falls under a contract- as a statutory provision, as a clause under the contract and as an implied covenant. It is easier to seek remedies for the first two as the remedy is arising from an explicit right. In this paper, we would be discussing the latter, the implied covenant which is ambiguous and not recognised by several common law countries. Further, there are broadly two types of scenarios where an implied duty of good faith lies- during negotiations and during

performance. We would be contrasting the implied covenant in a comparative analysis between the United States and the United Kingdom using the UNIDROIT[1] principles.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Deglobalization-in-India-Challenges-Opportunities-and-the-Role-of-RBI

Deglobalization in India: Challenges, Opportunities, and the Role of RBI by Suprit Raj

Introduction:

A few years ago, if we had discussed "de-globalization," we would have meant promoting domestic industries and isolating ourselves from the rest of the world. However, now that the globe has tasted the nectar of "globalization," de-globalization promotes totally new rhetoric. "De-globalization" in the modern period refers to improved "globalization" or accelerated globalization through digitalization, clearly not decelerated or stunted globalization that slows the economy and sends us back in time.
We seem to hear the word "globalization" every day. Without mentioning "the forces of globalization,"[1] no company-manual, strategy plan, or political statement seems complete. Globalization, however, is not irreversible.[2] It is a decision that countries make, and one that can be reversed. "Globalization" should be embraced not because we believe there is no other option but rather because it is the most effective means of fostering communities and opening doors.[3] "Globalization", traced back to European isolation in the 19th century, involves increased interdependence of economies, cultures, and inhabitants through technology, cross-border trade, and capital flows[4]. Even a new book by "Kevin O'Rourke" and "Jeffrey Williamson", titled "Globalization and History", mentions that by 1914, international markets, infrastructure, engineering, manufacturing, and labor markets had a significant impact on global villages and towns; pricing, infrastructure, and skills were imported from abroad.[5]
Then came the bust. The interwar period saw a dramatic rise in tariffs as "beggar-thy-neighbor" protectionism reigned[6]. International capital markets broke down, and have only recently returned to their pre-1914 levels. The breakdown or decline of globalization is referred to as "deglobalization.[7]" "Deglobalization" involves shifting economies away from producing goods for export and towards the local market.[8] The second deglobalization phase began with commerce, banking, and all aspects of politics with the 2008 crisis, much like the 'Great Depression' and the interwar times in the past.[9] The Great Recession, rising inequality, opposition to the notion of a borderless world, and the high rate of immigration are manifestations of the 2008 crisis that signal the end of "globalization".[10] On the other hand, Brexit and Donald Trump's election as US president are signs of the opposite.[11]

5. **MANUPATRA**
https://articles.manupatra.com/article-details/IS-FAST-FASHION-INDUSTRY-AN-ANTITHESIS-OF-THE-ESG-FRAMEWORK-ANSWERING-THROUGH-THE-LENS-OF-OPTIMISM

Is Fast-Fashion Industry an Antithesis of the ESG Framework? Answering Through the Lens of Optimism by Ankita Kalita

Abstract:

The earth's life-support systems are in danger due to the fast-fashion industry's rapid growth and its consequence of environmental damage. This demands that the fast-fashion business adopt sustainability into its operation system.
Within the model of the triple bottom line, Corporate Social Responsibility operates through the Environmental, Social, and Governance (ESG) framework. Thus, a company's operations are guaranteed to be sustainable, which is defined as the equitable and peaceful development of 'profit,' 'people,' and the 'planet.'
Unfortunately, the fast-fashion industry's unabated, environmentally damaging pre- and post-consumer textile waste makes it the antithesis of the ESG framework. Even though the fast-fashion industry's operations and the ESG framework run counter to each other, it is still possible to incorporate sustainability into the design and production of attractive clothing. Consequently, the author concludes the piece in a positive manner regarding the potential for commercial sustainability in the fast-fashion industry, given the consumers' insatiable and uncontrollable fixation with stylish apparel.
Key-words: ESG framework, CSR, Triple bottom line, Fast-fashion, Lifecycle, Textile, Sustainability, Biocentric, Anthropocentric.