LAHORE HIGH COURT

BULLETIN

Fortnightly Case Law Update *Online Edition*

Volume - V, Issue - XXII

16 - 11 - 2024 to 30 - 11 - 2024

Published By: Research Centre, Lahore High Court, Lahore

Online Available at: https://researchcenter.lhc.gov.pk/Home/CaseLawBulletin

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FORTNIGHTLY CASE LAW BULLETIN

(16-11-2024 to 30-11-2024)

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

Sr. No.	Court	Subject	Area of Law	Page
1.	Supreme Court of Pakistan	Mediation and ADR reduce backlog and enhance justice access; mediation favours relational and dignified solutions over litigation; courts should prioritise mediation for dispute resolution; legal frameworks enable courts to refer cases to ADR; Pakistan should ratify the Singapore Convention to strengthen ADR.	Civil Law	1
2.		Clause (iv) of sub-rule (7) of rule 4 of Powers and Duties of Institute Officers Rules; 2021 creates an exception to the retirement age of 60 years prescribed by rule 6 of the Terms and Conditions of Service Rules, 2021 ("TCS Rules"); allowing for reappointment of the outgoing Executive Director (ED) beyond 60 years of age.	Service Law	2
3.		Legal principles governing the interplay of Sections 5 and 14 of the Limitation Act; non-applicability of Section 14 to appeals for determining sufficient cause; binding effect of precedents when facts materially different; incorrect legal advice not sufficient cause.	Civil Law	4
4.		Change of date of birth in service record; Misjoinder and non-joinder of parties; who can be impleaded as plaintiff and defendant; in presence of diversified sets of evidence what remedy is available to a petitioner.		5
5.		Exclusion of provincial labour courts' jurisdiction by the NIRC under the IRA, 2012; Impact of procedural changes in appeal forums on substantive rights and justice; Legal status of judgments by tribunals lacking jurisdiction.	Labour Law	9
6.		Grievance notice; grievance petition; time limit,		10
7.		Disciplinary action limited to show-cause notice allegations; Proof standards in	Service Law	12

		disciplinary vs criminal proceedings; Key elements of a fair departmental inquiry; Proportionality in disciplinary action review.		
8.		Suo Motu power of High Courts; scope and ambit of proceedings before Division Bench; judgment should be confined to grounds and prayer; affectees and beneficiaries shall be heard before decision	Constitutional Law	13
9.	Supreme Court of Pakistan	Criterion for rejecting a plaint under Order VII, Rule 11, CPC; Commencement of limitation for declaratory suits under Article 120 of the Limitation Act; Permissibility of second revision under Section 115, CPC; Appealability of plaint rejection as a decree under Section 2(2) and Section 96, CPC; Remedy against plaint rejection by a revisional court.	Civil Law	15
10.		Rule 4 of Order XXXVII CPC, setting aside of ex-parte judgment and decree, special circumstances; ordinary circumstances, different stance; leave to defend		17
11.		Transfer of criminal case or appeal under Section 526 CrPC; Powers of Provincial Government u/s 9 CrPC regarding Sessions Courts; Comparison of authority of Sessions Judge and Additional Sessions Judge u/s 17(4) CrPC; Administrative role of Sessions Judge in assigning cases to Additional Sessions Judges u/s 193 CrPC; The definition and scope of a "case" under Sub-Section (1-A) of Section 528, CrPC and inclusion of proceedings; Requirements of Article 37(d) of the Constitution regarding justice; Powers of Sessions Judge u/s 528(1A)(1B) CrPC and power to transfer bail application; Inference from Section 24 CPC regarding transfer of criminal cases by Sessions Judge.	Criminal Law	18
12.	Lahore High Court	Use of a Surety Bond executed for the release of a special attorney to auction the surety's property; authority and actions permissible for a recognized agent under Order III CPC, meaning of 'appearance,' 'application,' and 'act' under Order III CPC, liability of a special attorney to satisfy a decree.	Family Law	22
13.		Permissibility of re-medico legal examination after 21 days.	Criminal Law	23
14.		Impropriety of rejecting a plaint on limitation grounds when fixed for temporary injunction arguments; rejection of plaint without prior notice to the plaintiff violates constitutional rights; procedure for addressing maintainability and limitation issues under	Civil Law	23

		Order VII Rule 11 CPC, scope of considering external documents in plaint rejection; resolution of limitation as a mixed question of law and facts requires evidence.		
15.		Application under section 12(2) and its maintainability in Family Courts	Family Law	25
16.		The effect of filing a fresh application instead of challenging earlier rejections; the requirements and conditions for converting a residential site to commercial use; an individual cannot benefit from a favourable policy that is no longer in effect.	Civil Law	26
17.		Essential requirements for a valid show cause notice in departmental proceedings; Procedural requirements for holding an inquiry under "E & D Regulations. Violation of natural justice in departmental proceedings; Circumstances for dispensing with a regular inquiry when imposing major penalties.	Service Law	27
18.	Lahore High Court	An attested document cannot be used as evidence without calling at least two attesting witnesses for the purpose of proving its execution; the court while exercising revisional powers may intervene into concurrent findings to curb and stifle such illegalities and material irregularities.	Civil Law	28
19.		Oobject of the Family Courts Act, 1964; Scope of Section 9(1b) of the Family Courts Act, 1964 along with proviso to Section 7; Procedural requirements for instituting a suit in a family dispute under the Family Courts Act; Including claim of maintenance in written statement while contesting suit for restitution of conjugal rights under the Family Courts Act, 1964	Family Law	30
20.		Suit for pre-emption, death of pre-emptor, proving Talb-i-Muwathibat; chain of information; Revision against concurrent findings.		32
21.		Limitation for filing application for setting aside ex-parte proceedings; Requirement to set aside such proceedings; Ex-parte person remains party to proceedings.	Civil Law	33
22.		Pronote; Relationship between parties business and family; insufficiently stamped document, admitted document, exhibited document		34

23.		Powers of the commissioner of de-notifying the land under The Land Acquisition Act, 1894., No law can condone the indolence of a party.	Civil Law	35
24.		Civil Court reverse a Revenue Appellate Court's allotment cancellation under the Colonization of Government Lands (Punjab) Act, 1912; authority of the (BOR) to cancel allotment after proprietary rights have vested, procedural requirements for cancellation; protection against arbitrary cancellation of proprietary rights post-registration of conveyance deed; legal limitations on disturbing proprietary rights.		37
25.		Vires of certain provisions of Punjab Healthcare Commission Act 2010 and Regulations 2016; Delegation of adjudicative powers to Hearing Committee by Healthcare Commission in case of certain violation of the PHC Act 2010; Imposition of fine and powers of the committee	Criminal Law	38
26.	Lahore High Court	Obligation of the Appellate Court to decide applications for additional evidence before addressing appeal merits; impact of simultaneous decisions on miscellaneous applications and appeals on judicial fairness; consequences of non-disposal of miscellaneous applications before deciding the main case; exercise of suo motu jurisdiction by the Revisional Court in cases of procedural irregularity.	Civil Law	45
27.		Appeal against the decision given or decree passed by a Family Court under Sec. 14 of The West Pakistan Family Courts Act, 1964	Family Law	46
28.		Call Data Record (CDR); Pre-Conditions for its Production in Evidence and the Factors for its Relevancy in Just Decision of Trial.		47
29.		Effects of not proving the safe custody of contraband; Effect of not putting incriminating material to the accused in his/her statement u/s 342 Cr.PC;	Criminal Law	48
30.		Post arrest bail application; dismissal/ withdrawl, concealment, second petition.		49
31.		Objection as to limitation when fraud stands proved in a transaction.	Civil Law	50
32.		The employees, who are employed in the administration of the State, are not civil servants; Remedy under Section 33 of the	Labour Law	51

		Punjab Industrial Relations Act, 2010, workman		
33.	Lahore High Court	The outsourcing policy under Public School Reorganization Program (PSRP) is supported by the statutory framework of the Punjab Education Foundation Act, 2004, and has Cabinet approval; it does not violate Article 25-A of the Constitution, as the State's obligation to provide free and compulsory education remains intact.	Constitutional Law	53
34.		Land Acquisition, partly residential and partly agricultural; land in vicinity / proximity, potential value of the land; compulsory acquisition; Potentiality of the land; fair compensation	Civil Law	55
35.		Consequences of “Erroneous” and “Fraudulent” of Immovable Property		56
36.		Court’s authority to ensure justice under Section 151 CPC; courts power to correct clerical mistakes or accidental omissions; discretionary nature of the court’s power; meaning of ‘accidental slip or omission’; supplementation of omission in the decree for possession under Section 152 CPC; status of Section 28 of the Limitation Act, 1908; relationship between a judgment and a decree; requirement for a decree to conform to the judgment.		57
37.		Dissolution of marriage by way of Khula between spouses belonging to Shia Sect without pronouncement of *“Seegahjaat*; Enforceability of judgment of Federal Shariat Court in case of Imran Anwar Khan (PLD 2022 Federal Shariat Court 25);	Family Law	59
38.		Delay in the postmortem examination; changing the prosecution version and delay in filing private complaint; purpose of site plan; dishonest improvements; document available on judicial file; exhibit of photocopy; uncrossed examined evidence; particular plea and fails to prove.	Criminal Law	66
39.		Inquiry under Section 8 of Juvenile Justice System Act, 2018 for determination of age of accused; What is its nature; Admissibility of documents during inquiry; When an order for medical examination is to be made? Duties of police		68
40.		Expiry of tenancy; grounds for eviction; default in payment of rent; mechanism for settlement of rent disputes in an expeditious and cost effective manner under Preamble and Section 15 of the Punjab Rented Premises Act, 2009	Rent Law	70

41.	Lahore High Court	Exceptions to factual immunity under constitutional jurisdiction; presumption of truth for public documents and its requirements; legal implications of Nikah solemnisation and registration; the obligation to pay dower.	Family Law	71
42.		Precedence between a registered and an unregistered document is determined by the execution date; a prior unregistered agreement nullifies inheritance claims; a decree of specific performance bars and voids subsequent registered sale deeds; validating a prior agreement renders subsequent sale deeds void.	Civil Law	72
43.		Status of National Bank of Pakistan (Staff) Service Rules, 1973 and National Bank of Pakistan (Staff) Service Rules, 2021; Maintainability of Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 under statutory Rules.	Service Law	73
44.		Contents of election petition; full particulars of illegal and corrupt practice; non-signing and non-verification of the election-petition; failure to append affidavit of service under section 144 of the Election Act, 2017	Election Laws	74
45.		Reckoning period under Article 100 of QSO 1984 for presumption related to the genuineness of a document; Circumstances in which courts can refuse to apply the presumption.	Civil Law	75
46.		Suit under order XXXVII CPC; Ex-parte decree; Application for setting aside ex-parte decree.		76
47.		Principles which govern the frequency of transfers of government servants; the ordinary tenure for a posting specified in law can be varied; transfer orders tainted with mala fide; external influence; or arbitrary reasons are void ab initio.		77

LATEST LEGISLATION/AMENDMENTS

1.	Official Gazette of Pakistan dated 18.11.2024; The Seed (Amendment) Act, 2024	78
2.	Notification No. SOT (M&M) 5-12/2003/VIII dated 21.10.2024; Terms and Conditions for the public advertisement notice of open auctions on limestone blocks.	78
3.	Notification No, Estt.I-4/2024-PPSC/1479 dated 06.11.2024; Amendment in PPSC Regulation No. 28(b).	79
4.	Notification NO, SOR-III (S&GAD)1-9/2003 dated 15.11.2024; The Punjab Human Rights and Minorities Affairs (Human Rights Cell) employees Service Rules, 2014 (Amendment).	79

SELECTED ARTICLES

1.	Anti - Defection Law In India by Yogiraj Sadaphal	79
2.	Aligning Family Law Reform with International Treaties by Sana Abbas Dashti	79
3.	Does the 26th Amendment Threaten Judicial Independence and the Rule of Law? By Aamir Latif Bhatti	79
4.	Key Certification and Licensing Requirements for Education and Training By Veer Shrivastava	80
5.	Understanding U.S. Business Structure Options by Stephen Drysdale	80

1. Supreme Court of Pakistan
M/s Mughals Pakistan (Pvt) Limited v. Employees Old Age Benefits Institution through its Director Law, Lahore and others, M/s Pakistan Real Estate Investment & Management Company (Pvt) Ltd., ("PRIMACO") and others
Civil Appeals Nos. 256 & 257 of 2024 and CMAs No. 3039 & 3042 of 2024.
Mr. Justice Syed Mansoor Ali Shah, Mrs Justice Ayesha A. Malik, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._256_2024.pdf

Facts: The facts are that a construction company was engaged for a project, leading to disputes over time extensions and encashment of guarantees. The company sought arbitration, resulting in a unanimous award in its favour, made a Rule of Court. On appeal, the High Court nullified the award. Hence; this appeal.

Issue: i) Can mediation and Alternate Dispute Resolution (ADR) effectively reduce backlog and enhance access to justice in Pakistan?
ii) Does mediation priorities relational, cultural and dignified solutions over adversarial litigation?
iii) Should courts adopt a pro-mediation bias to encourage out-of-date court settlements as a preferred method of dispute resolution?
iv) Does Pakistan's legal framework empower courts to refer cases to ADR with party consent?
v) Should Pakistan ratify the Singapore Convention on mediation to enhance its ADR framework and reduce judicial backlog?

Analysis: i) Mediation is evolving as a powerful mechanism for conflict resolution, bridging divides with creativity and fostering harmonious solutions. It is a testament to the potential of dialogue over confrontation. Mediation (and other mechanisms of ADR) can be philosophically framed as essential tools to ensure access to justice in a country where millions of cases are pending. (…) Mediation embodies a collaborative model of justice that prioritizes dialogue and empowerment, ensuring parties are active participants in resolving their disputes.
ii) Philosophically, mediation reflects the relational nature of human beings. It prioritizes restoring relationships, preserving dignity, and finding mutually beneficial solutions over the zero-sum outcomes of litigation. Mediation accommodates the cultural, social, and economic diversity of disputing parties. It aligns with justice as capability enhancing, allowing parties to exercise their agency and reach solutions that reflect their lived realities. Mediation bridges modern legal systems with indigenous practices, thereby strengthening communal harmony while maintaining legal validity.
iii) The courts should not only encourage "mediating more and litigating less" but also exhibit a promediation bias which connotes a pre-disposition within the legal system for resolution of disputes through mediation rather than through litigation or other forms of dispute resolution. Such bias does not favor one party over

another but rather prioritizes mediation as the preferred method of dispute resolution.

iv) The introduction of a robust legal landscape i.e., The Alternate Dispute Resolution Act, 2017 ("2017 Act") and the provincial legislations9 in each respective province allows courts to exercise this pro-mediation bias. These laws accord the courts the power to refer a case to ADR with the consent of the parties. Similarly, ADR has been defined very broadly 'as a process in which parties' resort to resolving a dispute other than by adjudication by courts and includes, but is not limited to, arbitration, mediation, conciliation and neutral evaluation.

v) the United Nations Convention on International Settlement Agreements Resulting from Mediation, known as, the "Singapore Convention on Mediation", ("Singapore Convention").16 The Convention provides a uniform and efficient framework for the recognition and enforcement of mediated settlement agreements (…)it is recommended that Pakistan becomes a signatory to the Convention. This will not only reduce the alarming backlog statistics through enhancing faster access to justice but will also serve as a turning point towards a comprehensive and profound transformation of the legal and judicial system.

Conclusion: i) Mediation ensures justice through dialogue and resolves backlogs.
ii) Mediation restores relationships and reflects cultural realities.
iii) Courts should prioritise mediation over litigation.
iv) Legal frameworks support mediation as effective ADR.
v) Ratifying the Singapore Convention will enhance justice efficiency.

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2. **Supreme Court of Pakistan**
Dr. Khalid Iqbal Talpur v. Province of Sindh & others
C.P.L.A. No.1417-K of 2022
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1417_k_2022.pdf

Facts: The present dispute, which has gone through two rounds of litigation, is essentially a tussle between the present petitioner and the private respondent No. 4. The dispute is in relation to the eligibility to be appointed as the Executive Director ("ED") of the Sindh Institute of Ophthalmology and Visual Sciences ("Institute") which is a statutory body created by the eponymously named provincial Act of 2013 (as amended; "2013 Act"). More particularly, the dispute centers on whether (as contended by petitioner) an applicant for the post of ED can be up to 65 years of age, or (as contended by respondent No. 4) cannot be older than 60 years.

Issues: i) Either the rule 6, coming from the Terms and Conditions of Service Rules, 2021on the one hand, or rule 4, coming from the Powers and Duties of Institute Officers Rules, 2021 on the other, can trump, or prevail over, the other regarding retirement age of 60 years?

ii) Can the Executive Director (ED) be reappointed, as per clause (iv) of sub-rule (7) of rule 4 of the 2021 Rules?
iii) Whether reappointment under clause (iv) of sub-rule (7) of rule 4 of the 2021 Rules allows the limit to be crossed from the retirement age of 60 years prescribed by rule 6 of the TCS Rules?

Analysis: i) No employee of the Institute, including the ED, can hold office (and therefore ipso facto be reappointed) once this limit is reached; retirement necessarily follows. Clearly, if this is so then the dispute would end there and then; petitioner has admittedly exceeded that age. Now, this limit of 60 years is itself derived from another set of rules, which were also framed contemporaneously with the 2021 Rules by the Board in exercise of its powers under s. 24. These are the Sindh Institute of Ophthalmology and Visual Sciences Employees (Terms and Conditions of Service) Rules, 2021 ("TCS Rules"). Both sets of rules are obviously at the same "level" of lawmaking inasmuch as they are enacted by the same body (the Board) exercising the same statutory power (s. 24). The first point therefore is that neither set of rules can take priority over the other. This is all the more so since both were framed contemporaneously, and gazetted simultaneously. More particularly, neither the aforesaid rule 6, coming from the TCS Rules on the one hand, nor rule 4, coming from the 2021 Rules on the other, can trump, or prevail over, the other. That the retirement age of 60 years is an absolute limit cannot, at least in the facts and circumstances of the present case, therefore be regarded as a correct proposition. The two sets of rules must be read conjointly, and harmonized.
ii) Clause (iv) of sub-rule (7) of rule 4 of the 2021 Rules allows for the reappointment to be for four years. This, in a sense, is the nub of the matter. It should be remembered that s. 11 empowers the Board to appoint the ED on "prescribed" terms and conditions. If therefore the retirement age of 60 years prescribed by rule 6 of the TCS Rules were an absolute limit that would mean that the outgoing ED, who is being considered for reappointment under clause (iv) must not be more than 60 years, and preferably be no more than 56 years. In other words, he must have retired at an age less than 60 years. It is only then that, if reappointed, he could have a term of four years under clause (iv) (or less, if he is more than 56 years) and then leave office at 60 years. But there is nothing to suggest in either the TCS Rules or the 2021 Rules that the ED retires, or is required to retire, at an age earlier than 60 let alone at 56; he retires at the age of sixty years. As is at once clear, this reading would more or less render clause (iv) redundant. It would hardly ever apply in the ordinary course. More specifically, it could conceivably apply but only in the limited situation where clause (i) of rule 6 is applied to the ED, and at a time when he has not crossed the age of 60 years. That contingency may hardly, if ever, arise. For all practical purposes, clause (iv) would be a dead letter. However, it is will settled that any interpretation of a statutory provision which renders it redundant or essentially (legally speaking) deadweight is to be avoided. This is all the more so when the provision (here rule 6) that is causing the redundancy is at the same "level" of law making. The proper

interpretation and application of clause (iv) must therefore be approached from this perspective.

iii) Having considered the matter, it seems that the only way to properly harmonize the two sets of rules is to recognize that clause (iv) creates an exception. For clause (iv) must be harmonized not only with the retirement age limit but also (and perhaps more importantly) with clause (i). It must be kept in mind that in terms of the statutory regime here under consideration, appointment (under clause (i)) is distinct from reappointment (under clause (iv)). The two cannot be confused with each other nor conflated. Each operates in its own orbit. However, this does not mean that the two are separate and independent. There is a direct link between the two, the most obvious being that for there to be a reappointment under clause (iv) there must first have been an appointment under clause (i). The other is that the appointment under clause (i) is capped by the retirement age of 60 whereas, as seen above, the reappointment under clause (iv) allows for that limit to be crossed. Thus, there is a need for harmonization. This can, in our view, only happen if clause (iv) is interpreted as an exception, and have a narrow scope and application. It is concerned not with appointment but with reappointment, and that too of the immediately outgoing ED. Thus, it cannot apply in the case of a person who has served his term as ED and between whose leaving of office and consideration for reappointment, there was an intervening appointment of another person as ED.

Conclusion: i) Neither rule 6, coming from the TCS Rules on the one hand, nor rule 4, coming from the 2021 Rules on the other, can trump, or prevail over, the other regarding retirement age of 60 years.

ii) The Board can reappoint the Executive Director (ED), as per clause (iv) of sub-rule (7) of rule 4 of the 2021 Rules if the conditions of clause (iv) are met.

iii) Reappointment under clause (iv) of sub-rule (7) of rule 4 of the 2021 Rules allows the limit to be crossed from the retirement age of 60 years prescribed by rule 6 of the TCS Rules.

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3. **Supreme Court of Pakistan**
Ghulam Sarwar through his LRs. v. Province of Punjab through District Collector, Lodhran
Civil Appeal No.766 of 2021 & CMA No.7807 of 2021
Mr. Justice Munib Akhtar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a.766 2021.pdf

Facts: The appellant through his legal representatives filed an appeal late by 22 days, citing confusion caused by conflicting legal advice regarding whether a leave petition was required or an appeal lay as of right. The delay was challenged based on the application of Sections 5 and 14 of the Limitation Act, 1908.

Issues: i) The legal principles governing the interplay of Sections 5 and 14 of the ibid Act?

ii) The applicability of the section 14 of the ibid Act to appeals?
iii) Is a precedent binding if the case facts differ materially?
iv) Wether the wrong legal advice is sufficient cause?

Analysis: i) The essential point was that in each case an appeal had been preferred before a wrong appellate forum (by way of first appeal) and thereafter, when it was returned and presented before the correct forum, the s. 5 application seeking condo1nation of delay sought also to invoke s. 14 to show that there was sufficient cause within the meaning of law. Thus, the questions requiring resolution related to the interplay of ss. 5 and 14 and more precisely as to whether any element of s. 14 could be regarded for purposes of showing sufficient cause within the meaning of s. 5.
ii) It was held that while s. 14 (which, if applicable, excludes altogether the period involved from the computation of limitation) applied only to suits as such and not to appeals, the principles thereof could nonetheless in appropriate cases be invoked for purposes of s. 5 (in relation to appeals) to determine whether sufficient cause was disclosed.
iii) It is of course well settled that any case, whether of this Court or of a High Court, that establishes binding precedent turns on facts proved or admitted. The facts and circumstances in which this Court delivered the cited decision were, with respect, materially different from what is now before the Court.
iv) In our view, wrong legal advice such as appears to be involved in the present case does not constitute sufficient cause within the meaning of law.

Conclusions: i) The interplay of sections 5 & 14 of the ibid Act.
ii) Non- applicability of section 14 to appeals.
iii) Precedent is not binding if the facts materially differ.
iv) Incorrect legal advice not a sufficient cause.

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4. **Supreme Court of Pakistan**
The Executive Director (P&GS) State Life, Principal v. Office Karachi and Others.
Civil Petition No. 2367 of 2024.
Mr. Justice Amin-ud-Din Khan, Mr. Justice Irfan Saadat Khan & <u>Mr. Justice Muhammad Ali Mazhar</u>
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2367_2024.pdf

Facts: The Peshawar High Court accepted the Writ Petition of the respondent, whereby the petitioners were directed to change the date of birth of the respondent in the service record of the petitioners (State life Insurance). Hence, this Civil Petition.

Issues: i) What does mean by the term “employee” under The State Life Employees (Services) Regulations, 1973?
ii) What does expression “Juristic person” mean, what legal rights can be enforced by such person?

iii) Against whom the relief must be claimed, whether against legal entity or against the officials alone. Who should be impleaded in Writ Petition?
iv) What does mean by expression "Dominus litis", what are the duties of courts as to this principle?
v) Whether the courts have power to add, delete a party of a litigation?
vi) What are the principles of misjoinder and non-joinder of parties and what are its effects?
vii) At which stage of a lis the objection as to misjoinder and non-joinder of parties is to be taken ?
viii) Who may be joined as plaintiff and defendant, what are the powers of the court to add, substitute, strike out the names of the parties?
ix) What remedy is available to a petitioner in presence of diversified sets of evidence as to a fact ?
x) Whether date of birth can be altered in service record?

Analysis: i) According to The State Life Employees (Services) Regulations, 1973 2(c) (Definitions Clause), the term "employee" means a full time employee of the Corporation on monthly salary, but does not include salaried field officials whose emoluments are dependent on procuration of business except those who are classed as Area Managers by the competent authority.
ii) The expression "juristic person" encompasses a firm or corporation incorporated under the company law or through statutes commonly known as statutory corporations which may sue or be sued in its own name in the court of law as it is a legal entity with certain rights and obligations and acknowledged as a juristic person and separate legal entity. Legal rights and remedies can be enforced by a juristic person, which implies and insinuates a legal recognition to such enterprises by granting them the rights and responsibilities analogous to natural persons.
iii) What is required to be ensured is that a proper and necessary party should be arrayed as defendant or respondent in matters of civil nature, including writ petitions, and if the defendant or respondent is a juristic person then obviously, the said entity should have been made party, rather than impleading its officials without impleading such legal entity. Employees/officials in any organization may come and go but the legal entity holds the perpetual succession till such time as it remains in the arena, therefore, the relief must be claimed against the legal entity and not against the officials alone.
iv) The expression "*Dominus litis*" is a Latin legal maxim that means "master of the suit." This axiom denotes a canon that a party who originates a legal action should have command over the proceedings with the solitary right to make decisions with definitive obligation for managing the *lis* according to law. This principle acknowledges that the parties to the litigation are entitled to safeguard their interests and make decisions on how to settle disputes. The onerous duty lies upon the Court to ensure that there must be a right to some relief against such party in respect of the controversies involved in the proceedings, and to ensure

that the correct or actual parties have been impleaded, in the absence of which no effective decree can be passed.

v) The principle of *dominus litis* cannot be overstretched in the matter of impleading the parties because it is the duty of the court to ensure that if, for deciding the real matter in a dispute, a person is a necessary or proper party, the court can order to implead such person and, similarly, can also order deletion of any such person from the plaint who is not found to be a proper or necessary party.

vi) The expression misjoinder of party connotes that when somebody who has nothing to do with the cause of action is pleaded in the suit. The expression misjoinder also refers to an inappropriate association of a party to a criminal or civil lawsuit. The act of misjoinder of party or parties triggers unnecessary perplexity and inexactness in the legal proceedings which should have been avoided when a lawsuit is set into motion for redress of any grievance or claim. Whereas the non-joinder of a necessary party means the failure, of a person who should have been included either as a plaintiff or defendant, to join as party to a suit. No doubt, the suit may not be solely dismissed on the ground of non-joinder, but the court may allow necessary parties to be joined at any stage of the proceedings, but it is to be kept in mind that the decree or order of the Court cannot be effectively executed against the person who is not a party to the proceedings. According to Section 99 of the Code of Civil Procedure, 1908 ("CPC"), it is clearly provided that no decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court. It is quite significant to note the language of this Section; it only accentuates the term "misjoinder" and not "non-joinder" which has its own implication and aftermath that it does not apply to non-joinder of a necessary party. The basic idea is to ensure that the Court should not render any decree or order which would be unproductive and redundant.

vii) However, the objections to non-joinder or misjoinder should have been raised at an early stage. If objection as to misjoinder or non-joinder are not raised in the court of first instance, then it may not be treated as a good ground for reversing decree or order when it does not prejudice the merits of the case.

viii) Order 1 Rule 1, CPC, is quite relevant which accentuates that all persons may be joined in one suit as plaintiffs in whom any right to relief in respect of a transaction or a series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise. While Rule 3 elucidates that all persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist. However, under Order 1 Rule 10, CPC, it is provided, as a matter of convenience, that where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the

name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just. At the same time, under sub-rule (2), the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

ix) If we keep aside all the documents which the respondent himself submitted at the time of his engagement with the Corporation, and only look at the matriculation certificate, which is now relied upon by the respondent very forcefully, then, another crucial question is cropped up, that how, in the presence of two diversified sets of evidence with regard to the date of birth of one person, such factual controversy could be resolved in the writ jurisdiction or if it would be better for the respondent to opt for a remedy in a civil court where such factual dispute, if genuinely believed to be correct, could have been decided after recording of evidence of the parties.

x) In the case of Manzar Zahoor Vs. Lyari Development Authority and another (2022 SCMR 1305 = 2022 PLC (C.S) 1128) (authored by one of us) this Court dwelled upon the Federal and Provincial Civil Servant laws and relevant Rules in order to examine the provisions accentuated therein for recording the date of birth at the time of induction or appointment and the precise procedure to apply for the correction or rectification of the date of birth in the service record on account of some genuine mistake and error within a period of 2 years but it was not left open for an unlimited period of time or at the rest and leisure of the applicant to wake up from a deep slumber and, on one fine morning, apply for the correction predominantly at the verge of retirement to secure the lease and premium in the length of service. In our view, it is obligatory for any employee to intimate his correct date of birth and to produce confirmatory documentary evidence at the time when the first entry is made in the service record which cannot be altered, except in the case of a clerical error, because the date of birth once recorded at the time of joining service is deemed to be final and thereafter no alteration in the date of birth is permissible.

Conclusion:

i) See above analysis No. i

ii) See above analysis No. ii

iii) A proper and necessary party should be arrayed. Legal entity should have been made party, rather than impleading its officials.

iv) See above analysis No. iv

v) The court can order to implead a person as party and, similarly, can also order deletion of any such person from the plaint who is not found to be a proper or necessary party.
vi) See above analysis No. vi
vii) The objection as to non-joinder or misjoinder should have been raised at an early stage.
viii) See above analysis No. viii
ix) Such controversy can be decided by the Civil Court after recording of evidence of the parties.
x) The date of birth, in service record, cannot be altered, except in the case of a clerical error.

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5. **Supreme Court of Pakistan**
Muslim Commercial Bank Limited *v.* Punjab Labour Appellate Tribunal through its Chairman, Lahore and others.
Civil Petition No. 1866-L of 2023
Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1866_l_2023.pdf

Facts: The case concerned the dismissal of a bank employee found guilty of misconduct. His reinstatement was ordered by the Punjab Labour Court, upheld by the Labour Appellate Tribunal as well as Lahore High Court Lahore. The employer contested jurisdiction, arguing that the matter fell under the exclusive purview of the NIRC following the enactment of the IRA, 2012.

Issues: i) Does the NIRC's jurisdiction under the IRA, 2012, exclude provincial labour courts and tribunals in trans-provincial matters?
ii) Does a procedural change in the forum of appeal prejudice substantive rights or create injustice?
iii) What is the legal status of a judgment rendered by a tribunal without proper jurisdiction?

Analysis: i) Under Subsection (5) of Section 57 of the IRA, no Registrar, Labour Court, or Labour Appellate Tribunal shall entertain matters within the jurisdiction of the NIRC. From the effective date, jurisdiction over employees of trans-provincial establishments is exclusively vested in the NIRC.
ii) It is a well-settled exposition of law that procedural law initiates and guides the process and course of action through which the lawsuit progresses and the way in which court proceedings are undertaken. It also regulates and oversees the procedures employed. Substantive law, on the other hand, comprises statutory obligations relevant to the subject matter, declaring the applicable rights and obligations, and regulating the demeanor of an individual or government... ...Here, the only change was the conferral of jurisdiction to the NIRC to hear cases at both the original and appellate levels for workers in trans-provincial establishments, which in our considered view, does not prejudice or harm any

lawful rights of workers, nor can it be considered an injustice.
iii) If a decision is rendered outside the realm and jurisdiction, it is exclaimed and regarded as *Coram non judice*, which is a Latin legal maxim meaning 'not before a judge.' This expression is used to enumerate a proceeding which may be legal in nature but is outside the authority of a judge due to improper presence or lack of legal jurisdiction. Any order or decision passed without jurisdiction would be *coram non judice* and thus a nullity. It is the duty of the Court itself to apply the relevant law based on the admitted or proven facts... If any order or decision is suffering from the vice of *coram non judice*, it may be quashed and set aside by the Court.

Conclusion: i) Yes, from the effective date of the IRA, 2012, the jurisdiction of provincial labour courts and appellate tribunals is excluded for employees of trans-provincial establishments, and such matters fall exclusively within the NIRC's purview.
ii) No, a procedural change conferring jurisdiction to the NIRC does not harm or prejudice lawful rights, nor can it be considered an injustice.
iii) A judgment rendered without jurisdiction is *coram non judice* and a nullity, and it may be quashed and set aside by the Court.

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6. **Supreme Court of Pakistan**
Muslim Commercial Bank Limited & others V.
The Punjab Labour Appellate Tribunal and others
Mr. Justice Amin-ud Din Khan, Mr. Justice Muhammad Ali Mazhar,
Mr. Justice Irfan Saadat Khan
Civil Petition No. 2305-L of 2016
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2305_l_2016.pdf

Facts: Hon'ble Lahore High Court accepted writ petition and directed the petitioner to reinstate an employee, one of the respondents who had been dismissed from service on 25/5/1976, without back benefits. The order was assailed before august Supreme Court of Pakistan.

Issues: i) Whether there is any time limit for sending a grievance notice to employer or filing grievance petition in Labour Court?
(ii) Does the issuance of time barred grievance notice revive a worker's right to seek redressal?

Analysis: i) Under Section 25A of the IRO 1969, there was a specific timeframe for lodging the grievance in writing which cannot be stretched over an unlimited period of time and no cause of action subsists merely for the reason that one letter was replied after the lapse of the limitation period by the management, which could not extend the starting point of limitation provided under the law for a workman to lodge his grievance before instituting the grievance petition in the Labour Court... Even in the provision for the redress of individual grievance provided under Section 33 of the Industrial Relations Act, 2012, which is applicable to the Islamabad Capital Territory and at the transprovincial level (trans-provincial

refers to any establishment, group of establishments, or industry, having its branches in more than one province), the gist of the Section depicts that a worker may bring his grievance in respect of any right guaranteed to or secured by him under any law or any award or settlement for the time being in force, to the notice of his employer, in writing, either himself or through his shop steward or collective bargaining agent within ninety days of the day on which the cause of such grievance arises and where a worker himself brings his grievance to the notice of the employer, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker with the further rider that in case the employer fails to communicate a decision within the specified period or if the worker is dissatisfied with such decision, the worker or the shop steward may take the matter to his collective bargaining agent or to the Commission or, as the case may be, the collective bargaining agent may take the matter to the Commission, and where the matter is taken to the Commission, it shall give a decision within seven days from the date of the matter being brought before it as if such matter were an industrial dispute; provided that a worker who desires to so take the matter to the Commission shall do so within a period of sixty days from the date of the communication of the employer or, as the case may be, from the expiry of the period mentioned in sub-section (2), or subsection (3). In the complementing parlance, the Punjab Industrial Relations Act, 2010, provides for the redress of individual grievances under Section33; while Section 34 of the Sindh Industrial Relations Act, 2013, deals with the redress of individual grievances; the Balochistan Industrial Relations Act, 2010 deals with this situation under Section 41; and last but not the least, the Khyber Pakhtunkhwa Industrial Relations Act, 2010, under Section 37 provides the mechanism to deal and decide individual grievances. A preview of the aforesaid 5 laws (all relating to Industrial Relations) brings to light that an almost similar time frame for tendering the grievance notice to the employer against any adverse action is provided, with a further timeline in case the employer fails to respond to the grievance notice or if the employee is dissatisfied with the reply, he may lodge the grievance petition in the labour court or commission, as the case may be, for the redressal of his grievance. It is quite significant that the act of sending a grievance notice and filing a grievance petition in the Labour Court or Commission has not been left open-ended but it is linked with the time constraint for initiating legal action for the redress of an individual grievance.
ii) It is reminiscent of jurisprudentia time immemorial that the law favours adjudication on merits, but at the same time another philosophy of law resonates, that the law helps the vigilant and not the indolent. The Latin maxim “Leges vigilantibus non dormientibussubserviunt” or “Vigilantibus Non Dormientibus Jura Subveniunt” articulates that the law aids and assists those who are vigilant but not those who are sleeping or slumbering. The doctrine of equality before the law dictates that all litigants should be afforded the same treatment to administer the law even-handedly. In fact, the law of limitation does not bestow a right but ensues incapacitation after the lapse of a certain period admissible for putting into

force existing legal rights. Therefore, it is a fundamental duty of the Court to examine the question of limitation vis-à-vis the statutory provisions envisioned under special or general law, requiring compliance of an act within a specific timeline... . The respondent ought to have taken the recourse to this legal remedy with due diligence and within the time provided by the law, rather than approaching the Court at his own whims and desires. If this tendency is permitted, it will amount to the misuse of the judicial process and exploitation of the legal system... . What is an employee supposed to do under the mandate of law? He should deliver thegrievance notice to his employer within the specified time, then wait only for the statutory period provided to the employer for the response, and after the lapse of this period, whether the notice was responded to or not by the employer, approach the Court immediately rather than spoiling or obliterating the period of limitation.

Conclusion: i) See analysis (i)
ii) It does not revive a worker's right to seek redressal

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7. **Supreme Court of Pakistan**
Faisal Ali *v.* District Police Officer, Gujrat and another
Civil Petition No. 3109-L of 2016
Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3109_l_2016.pdf

Facts: The petitioner, a police constable, was dismissed from service following allegations of misconduct, including absence from duty and conviction in a criminal case. The dismissal was based on ex-parte departmental proceedings. He challenged the dismissal as procedurally flawed and violative of natural justice. The Punjab Service Tribunal upheld the dismissal, rejecting the petitioner's appeal leading to the filing of CPLA before Supreme Court.

Issues: i) Can disciplinary action be based on allegations not contained in the show-cause notice?
ii) How standard of proof in departmental disciplinary proceedings is different from criminal trial?
iii) What are the essential elements of a fair and lawful departmental inquiry?
iv) What is the role of proportionality in reviewing disciplinary actions?

Analysis: i) The departmental proceedings may be initiated on the basis of allegations contained in the show cause notice and not on the allegations which were never part of the show cause notice. ... In all fairness, the departmental action on account of any misconduct should be confined to the allegations mentioned in the show cause notice/statement of allegations, and should not travel beyond its precinct because the accused of misconduct ... had no supernatural knowledge to respond to the allegations not known to him.
ii) The benchmark of establishing innocence or guilt in the departmental

proceedings initiated on account of some acts of misconduct under the relevant laws (...) is not the same as required to be proved in a criminal trial. In departmental inquiries, the standard of proof is based on the balance of probabilities or preponderance of evidence and not a strict proof beyond any reasonable doubt.
iii) A regular inquiry is triggered after issuing a show cause notice with a statement of allegations, and if the reply is not found suitable, then the inquiry officer is appointed (...)it is obligatory for the inquiry officer to allow an even handed and fair opportunity to the accused to place his defence, and if any witness is examined against him then a fair opportunity should also be given to him to cross-examine the witnesses.
iv) The proportionality test (...) is described as the 'least injurious means' or 'minimal impairment' test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. (...) The Court, entrusted with the task of judicial review, has to examine whether the decision taken by the authority is proportionate i.e. well balanced and harmonious.

Conclusion: i) The departmental action on account of any misconduct should be confined to the allegations mentioned in the show cause notice/statement of allegations, and should not travel beyond its precinct.
ii) In departmental inquiries, the standard of proof is based on the balance of probabilities or preponderance of evidence and not a strict proof beyond any reasonable doubt.
iii) It is obligatory for the inquiry officer to allow an even handed and fair opportunity to the accused to place his defence, and if any witness is examined against him then a fair opportunity should also be given to him to cross-examine the witnesses.
iv) The Court, entrusted with the task of judicial review, has to examine whether the decision taken by the authority is proportionate i.e. well balanced and harmonious.

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8. Supreme Court of Pakistan
Federal Government Employees Housing Authority through its Director General, Islamabad v. Ednan Syed and others
Civil Petition Nos. 767 Of 2022, 857 To 868 Of 2022, 1272 To 1274 Of 2022, 1416 Of 2022, 6616 Of 2021, 4545 To 4549 Of 2022, 4665 Of 2022 & 4666 Of 2022 And C.M.A. Nos.1631 Of 2022, 104 Of 2023, 2237 To 2248 Of 2022 & 3503 Of 2024
Mr. Justice Munib Akhtar Mr. Justice Muhammad Ali Mazhar Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._767_2022.pdf

Facts: Through these Civil Petitions, the petitioners have assailed the judgment whereby the intra-court appeal and the writ petitions filed by the Petitioners were dismissed.

Issues: i) Whether the High Courts have Suo Motu Jurisdiction?
ii) What is scope and ambit of the proceedings before the Division Bench?
iii) Whether the Judgment should have confined itself to the grounds and prayers?
iv) Whether everyone is entitled to a fair trial and due process under Article 10A of Constitution of Pakistan 1973?
v) Is it mandatory to hear all affectees and beneficiaries before any decision is taken?
vi) Whether the courts are bestowed with unfettered powers?

Analysis: i) This Court has consistently ruled that the High Courts do not have suo motu jurisdiction and as such the constitutional scheme never intended to confer such powers on the High Courts. This Court in the Abdullah Jumani judgment, authored by one of us (Muhammad Ali Mazhar, J.), has held that the High Court cannot assume suo motu jurisdiction by overreaching or overstretching its constitutional limits. It is constitutionally impermissible for the courts to expand and enlarge their jurisdictional domain, which is neither allowed by the Constitution nor by the law. In the Taufiq Asif case, this Court has held that the High Court cannot grant a relief, which is not even sought in the petition. As per the Akhtar Abbas case, 'it is settled law that in writ proceedings, the relief must be confined to the prayer made in the writ petition and the High Court cannot issue a writ suo motu'. Hence, in view of the dictum laid down by this Court, the High Court cannot on its motion declare the policy as unconstitutional and illegal.
ii) The scope and ambit of the proceedings before the Division Bench in the Ednan Syed Appeal and Subsequent WPs were, therefore, limited to the extent of the prayers made as mentioned above.
iii) The Impugned Judgment in its entirety appears to only focus on the Revised Policy. As the Revised Policy had not been challenged, the High Court exceeded its authority by declaring the Revised Policy as unconstitutional. It goes without saying that an appeal is the continuation of the same proceedings that allows the appellate court to consider all those aspects which were even challenged before the forum of the first instance. So, the Impugned Judgment should have confined itself to the grounds and prayers of the Ednan Syed Petition and nothing beyond that.
iv) Furthermore, Article 10A of the Constitution requires that everyone is entitled to a fair trial and due process, which includes the basic right to be heard. The principle of 'audi alteram partem' is one of the foundational principles of natural justice. It necessitates the requirement of being heard so that the judicial order reflects the contention of every party before the court. To fulfill the requirements of being heard, it is settled that the relevant party must be issued first a notice and then be allowed a hearing. These two (notice and hearing) are basic pre-requisites, which satisfy the test of being heard as well as fair trial and due process within the ambit of Article 10A of the Constitution.
v) Consequently, they were caught by surprise when the Revised Policy was struck down by the High Court. Given that these cases involve the rights of

retiring or retired government employees who have invested their lifetime savings for the allotment of property under the different FGEHA schemes, it was mandatory to hear all affectees and beneficiaries before any decision was taken, which prejudiced their rights.

vi) The Constitution does not envision that the courts are bestowed with unfettered powers that can be exercised within the disguise of judicial review. The judicial power is the power that is defined by the Constitution and law. It may vary from one institution to the other, such as this Court's jurisdiction is distinct from that of the High Court. However, the underlying principle remains that the judicial review of legislative and executive actions is not an unlimited or unbridled authority of the courts but the one circumscribed or confided by the Constitution and the law. The gateway to invoke judicial review of the High Court is only when there is an application or appeal by the aggrieved or affected party. In the absence of any such application, the High Court may enter into the domain of judicial overreach, which is the exercise of power without any legal basis and the same falls within the ambit of interference and encroachment on the legislative and executive domain. Consequently, such absolute judicial expansionism offends the principle of separation of powers.

Conclusion: i) The High Courts do not have suo motu jurisdiction.

ii) The scope and ambit of the proceedings before the Division Bench is limited to the extent of the prayers.

iii) The Judgment should have confined itself to the grounds and prayers and nothing beyond that.

iv)See analysis Para No.iv.

v) It is mandatory to hear all affectees and beneficiaries before any decision is taken, which prejudiced their rights.

vi) The courts are not bestowed with unfettered powers that can be exercised within the disguise of judicial review.

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9. **Supreme Court of Pakistan**
Misree Khan & others v. Abdul Ghafoor & others
C.P.L.A.81-P/2019.
Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._81_p_2019.pdf

Facts: The petitioners filed a civil suit in 2006 challenging the legality of two revenue mutations sanctioned in 1975. The respondents contested the suit and filed an application under Order VII, Rule 11, CPC, asserting that the plaint did not disclose a cause of action and that the suit was barred by limitation. The Civil Judge dismissed the application, stating the objections required evidence to resolve. However, on revision, the Additional District Judge rejected the plaint. The High Court upheld this decision, leading to the filing of instant CPLA before Supreme Court.

Issues: i) What is the criterion to reject a plaint on the ground of limitation under Order

VII, Rule 11, CPC?
ii) When period of limitation commences to run for a declaratory suit under Article 120 of the Limitation Act, 1908?
iii) Can a second revision application under Section 115, CPC, be entertained by the High Court?
iv) Does an order rejecting a plaint under Order VII, Rule 11, CPC, qualify as a decree under Section 2(2) CPC, and is it appealable under Section 96 CPC?
v) What is the appropriate legal remedy against an order rejecting a plaint issued by a Court exercising revisional jurisdiction?

Analysis: i) Rejecting the plaint under Order VII, Rule 11, CPC is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to exercising power under Order VII, Rule 11, CPC are stringent. This Court has consistently held that the averments in the plaint must be read as a whole to determine whether it discloses a cause of action or whether the suit is barred under any law, including a bar created due to the lapse of the limitation period.
ii) The limitation period of six years for a suit for declaration begins to run when the right to sue accrues. There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement or threat to infringe that right. The date of accrual of the cause of action, and not the cause of action itself, would be terminus a quo for computing limitation time.
iii) The essence of these two principles is that a second revision under Section 115, CPC is not permissible. Given this legal framework, it follows that a second revision of an order rejecting a plaint under Order VII, Rule, 11 CPC, by the District Court cannot be pursued by invoking Section 115 CPC before the High Court.
iv) An order that rejects a plaint under Order VII, Rule, 11 CPC is classified as a decree, as outlined in Section 2(2) CPC. According to Section 96 CPC, an order rejecting a plaint can only be appealed when issued by a Court exercising its original jurisdiction. A revisional court discharging jurisdiction under Section 115 CPC does not operate under original jurisdiction. Therefore, although a revisional court's order rejecting a plaint is classified as a decree, it cannot be appealed under Section 96 CPC.
v) When parties feel aggrieved by revisional orders, they may pursue a writ application under Article 199 of the Constitution. It is crucial to understand that this writ application must go beyond merely alleging illegality. It must establish that the underlying merits of the case have been adversely impacted and that a party's legal rights have been compromised as a result.

Conclusion: i) A plaint can only be rejected under Order VII, Rule 11, CPC, on limitation grounds if the plaint's averments, read as a whole, clearly show the suit is time-barred.
ii) The limitation period for a declaratory suit under Article 120 of the Limitation

Act, 1908, commences when the right to sue accrues due to the infringement or threat of infringement of the asserted right.
iii) A second revision application under Section 115, CPC, is not permissible.
iv) An order rejecting a plaint under Order VII, Rule 11, CPC, qualifies as a decree under Section 2(2) CPC but is not appealable under Section 96 CPC if issued by a revisional court.
v) The appropriate remedy against an order rejecting a plaint issued by a revisional court is a writ application under Article 199 of the Constitution.

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10. **Supreme Court of Pakistan**
Muhammad Mansab v. Muhammad Hanif
Civil Petition Nos.1970-L of 2024
Mr. Justice Yahya Afridi CJ, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1970_l_2024.pdf

Facts: Succinctly, the respondent instituted a suit under Order XXXVII, Rules 1 & 2, Code of Civil Procedure, 1908 for recovery of Rs.10,912,024/- on the basis of various cheques, wherein the petitioner was proceeded against ex parte on 18.02.2022 by the learned trial Court and after recording ex parte evidence, the suit was decreed ex parte on 09.06.2022. After about 19 months of the passing the ex parte decree, the petitioner filed an application seeking setting aside of ex parte decree on the ground that he did not receive any summons or notice. The said application was resisted by the respondent. The learned trial Court vide order dated 01.03.2024 dismissed the above said application. The petitioner being dissatisfied and aggrieved filed revision petition ibid but the same was dismissed by the Lahore High Court, Lahore; hence, the instant petition.

Issues: i) Whether under Rule 4 of Order XXXVII CPC petitioner should also file an application for leave to defend within the prescribed period?
ii) Under what circumstances the court can set aside the decree under Rule 4 of Order XXXVII CPC, what are special circumstances?
iii) Whether a party can lead or take a different stance as has been pleaded by him in his application etc.?

Analysis: i) Rule 4 of Order XXXVII, Code of Civil Procedure, 1908 confers power on the court to set aside the decree under ‘special circumstances’ and give leave to the defendant to appear and defend the suit. Rule 4 of referred Order deals where the defendant fails to appear and files application for leave to defend; however, in the instant case, no application for leave to appear and defend was filed by the petitioner and only application seeking setting aside of ex-parte judgment and decree, not the order for initiating ex parte proceedings, was filed. This Court in Haji Ali Khan case1 held: " It will not be out of context to observe that generally above Rule 4 will cover a case in which a defendant for sufficient cause has failed to appear and to file an application for leave to defend within the prescribed period."

ii) Under Rule 4 of Order XXXVII, Code of Civil Procedure, 1908, "under special circumstances" the court can set aside the decree. Rule 4 of the referred Order is subject to the condition there must be 'special circumstances' to support any application for setting aside decree. The plain reading of the above said Rule makes it diaphanous that it excludes 'ordinary circumstance' or 'circumstances which may happen every day'. Meaning thereby, heavy burden lies on the defendant (petitioner here) to show the circumstances due to which he was unable to appear during proceedings of the suit. The 'special circumstances' are different from 'ordinary circumstance' and 'circumstance which may happen every day', rather the same are rare, exceptional and beyond the control of the human being. The same can be categorized as: 1). Serious illness or accident preventing defendant's appearance; 2). Death or sudden incapacitation of defendant's counsel; 3). Natural calamity or unforeseen events; 4). Mistake or error apparent on the face of the record. 5). Failure of justice due to nonservice or inadequate service.

iii) In addition to the above, a party cannot lead or take a different stance as has been pleaded by him in his application or plaint and written statement/written reply; therefore, the submission made by the petitioner's counsel that the petitioner was abroad, when the said plea was not taken up in his application, cannot be considered.

Conclusion: i) See analysis no. i
ii) See analysis no. ii
iii)See analysis no. iii

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11. **Lahore High Court**
Mian Zaheer Abbas Rabbani v. The State etc.
Transfer Application No.10572-T of 2024.
Ms. Chief Justice Aalia Neelum, Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Asjad Javaid Ghural, Mr. Justice Farooq Haider, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC5077.pdf

Facts: The applicant filed an application for transfer of pre-arrest bail from the court of Additional Sessions Judge to any other court of competent jurisdiction or any other districts/Tehsil courts.

Issues: i) Can the High Court under Section 526 CrPC transfer a criminal case or appeal between subordinate courts for the ends of justice?
ii) What powers does Section 9 CrPC grant to the Provincial Government regarding Sessions court and what does it clarify?
iii) What is the authority and jurisdiction of an additional Sessions Judge compared to Sessions Judge under section 17(4) of the Code?
iv) What does Section 193 CrPC state about the administrative role of the Sessions Judge in assigning cases to Additional Sessions Judge?
v) What is the definition and scope of a "case" under Sub-Section (1-A) of Section 528, CrPC and does it include proceedings beyond the trial of offences?

vi) What does Article 37(d) of the Constitution of Pakistan, 1973, require regarding justice?
vii) What powers does Section 528 (1-A and 1-B) CrPC grant to the Sessions Judge regarding cases assigned to an Additional Sessions Judge?
viii) What are the powers of Sessions Judge regarding transfer of bail application before and after trial?
ix) How does Section 24 CPC support interpreting Section 528 CrPC on Sessions Judge's authority to transfer cases before trial?

Analysis: i) Section 526 Cr.P.C. confers power on the High Court to transfer a case or appeal from one subordinate Criminal Court to any other Criminal Court of equal jurisdiction if it appears that it is expedient for the end of justice. The party is interested in transferring a case from one criminal court to another criminal court from one district to another and even in the same district.
ii) A thorough examination of the Code of Criminal Procedure,1898, reveals that Section 9 empowers the Provincial Government to establish courts of session, appoint judges, and direct where such courts shall hold their sitting…From a close reading of the above-said provisions of the Code, it becomes abundantly clear that the Code uses the words "court of sessions," "Sessions Judge," "Additional Session Judge," and "Assistant Sessions Judge" with the difference in their meanings. It is also clear that a court presided over by an Additional Sessions Judge is also a court of Sessions.

iii) Sub-Section (4) of Section 17 of the code provides for an emergency in which whenever the Sessions Judge is unavoidably absent or incapable of acting, he may make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge, or if there be no Additional or Assistant Session Judge, by such Judge or Magistrate shall have jurisdiction to deal with any such application. Except for this provision of law in the Code, no provision makes the Additional Session Judge subordinate to the Session Judge.

iv) Section 193 of the Code deals with the procedure regarding making over the cases to the Additional and Assistant Sessions Judges in the sessions division. (…) Section 193 of the Code states that an Additional Sessions Judge is to handle only those cases made over to him by the Sessions Judge. (...) The making over of a case for trial or an appeal for hearing to an Additional Sessions Judge by the Sessions Judge relates to the distribution of business, which is purely administrative. The scheme of the Code clearly shows that the exercise of power by the Sessions Judge under Sections 193 read with 17(4) of the Code is administrative in nature; it is the simple distribution of work.
v) The Code does not define the words "Case" and trial used in Sub-Section (1-A) Section 528, Cr.P.C. Above said various provisions of the Code indicate that the Code is not confined to the cases in which offences only are tried, but includes many other type of proceedings that, may not be strictly called as trials of offences, for example, security proceedings or maintenance proceedings or bail applications, which can by no stretch of imagination be construed as cases

wherein offences are tried; nevertheless they are essential part of the cases which the Criminal Courts try. It goes without saying that 'case' comprises various stages, i.e., the case at the investigation stage, the case at the inquiry stage, and the case at the trial stage; so, the case is not only trial but also other proceedings as well, e.g., physical as well as judicial remand of the accused, order on application of *superdari* ( ) of case property, application for bail and other allied matters. It is relevant to mention here that at the time of deciding the application for bail, the court applies its judicial mind to determine whether reasonable grounds are available on the record to connect the accused with the commission of an offence and passes a speaking order of judicial nature which is termed as "case decided"

vi) Article 37(d) of the Constitution of the Islamic Republic of Pakistan, 1973 requires inexpensive and expeditious justice to the litigants at doorstep in accordance with law;

vii) similarly, Section: 528 (1-A and 1-B) was brought on the statute for empowering Sessions Judge to recall any case or appeal which he has made over to any Additional Sessions Judge before the commencement of trial of the case or hearing of the appeal and may try the case in his own court or hear the appeal himself, or make it over to another court for trial or hearing.

4. It appears from a plain reading of Sub-Section (1-A) Section 528, Cr.P.C. that at any time before the trial of the case or hearing of the appeal has commenced before an Additional Sessions Judge, the Sessions Judge may recall any case or appeal which he has made over to him. It, therefore, follows that the Sessions Judge is not empowered to withdraw or recall any case or appeal that he has made over to an Additional Sessions Judge after the trial of the case or hearing of the appeal has commenced. (…) The Additional Sessions Judge is not subordinate to the Sessions Judge. But it has to be noted that the Additional Sessions Judge gets jurisdiction to deal with a case only if such a case or appeal is made over to him by the Sessions Judge. Any time before the trial or hearing of the case or appeal, the Sessions Judge is also empowered to withdraw such cases. That power conferred on the Sessions Judge is meant in the interests of the litigant public and also to lessen the burden of the High Court, lest, for every transfer of a criminal case or appeal in a sessions division, the litigant public will always have to approach the High Court. Since the power under Section 528 (1-A), Cr.P.C. is judicially exercised, therefore, reasons are to be recorded, any party aggrieved can always take recourse to the remedy under Section 526 Cr.P.C. (…) It has also to be noted that the power under Section 528 is to be exercised only if it is expedient for the end of justice and not for any other reason.

viii) Since the application for bail in a case is part of the case, therefore, before the commencement of the trial, the application for bail pending before any Additional Sessions Judge can be recalled by the Sessions Judge from the cause list of learned Additional Sessions Judge, and he can hear the same himself or make it over to any other Additional Sessions Judge for hearing; similarly, before the commencement of trial, Sessions Judge may withdraw the case from

cause list of learned Additional Sessions Judge and he can hear the same himself or make it over to any other Additional Sessions Judge for hearing; before hearing of the appeal, Sessions Judge may withdraw the appeal from cause list of learned Additional Sessions Judge and he can hear the same himself or make it over to any other Additional Sessions Judge for hearing. Even in cases triable by a Magistrate, the application for bail pending before any learned Additional Sessions Judge can be withdrawn from said court and heard by Sessions Judge himself or made over to any learned Additional Sessions Judge for hearing. However, if the trial has commenced, then the case cannot be withdrawn from the Additional Sessions Judge by the Sessions Judge, and, at that stage the application for bail pending before the Additional Sessions Judge can also not be withdrawn, and for that purpose, the relevant forum would be the High Court.

ix) It will also be profitable to draw an analogy regarding the exercise of power by the District Court under Section 24 of the Code of Civil Procedure, 1908. (…) The Presiding Officer of a District Court is the District Judge. The District Judge on the civil side is empowered to transfer any case from one Additional District Court at any stage. If so, why should there be a restricted meaning for transfer on the criminal side if a provision akin to Section 24(3) CPC regarding subordination is not expressly provided under the Code of Criminal Procedure 1898? Should not that enabling provision be read into under Section 528 Cr.P.C. It goes without saying that Section 528 Cr.P.C. appears under Chapter XLIV of the Code dealing with the transfer of criminal cases and itself is captioned as the power of Sessions Judge to transfer cases and appeals from one criminal court to another criminal court at any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge.

Conclusion: i) This section allows the High Court to transfer cases for justice.
ii) This section empowers the Provincial Government to establish Sessions Court and appoint judges.
iii) This section allows an Additional Sessions Judge, or another Magistrate, to handle urgent matters if the Sessions Judge is absent, without making them subordinate.
iv) This provision outlines the administrative role of the Sessions Judge in assigning cases or appeals to Additional Sessions Judges within the Sessions division.
v) The term 'case' encompasses all stages of criminal proceedings, including investigation, inquiry, trial, and related matters like bail, remand, and case property orders.
vi) This Article mandates inexpensive and timely justice for litigants.
vii) Sessions Judges can recall cases assigned to Additional Sessions Judges before trial or hearing begins, ensuring justice and reducing High Court burden.
viii) Before trial starts, a Sessions Judge can recall bail applications or cases from an Additional Sessions Judge, but not after trial begins.

ix) Section 528 CrPC like Section 24 CPC, empowers the Sessions Judge to transfer cases or appeals before trial or hearing begins, emphasizing flexibility in criminal case management.

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12. **Lahore High Court**
Muhammad Naeem v. Additional District Judge etc.
Writ Petition No.65675/2021
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC5370.pdf

Facts: The petitioner challenged the orders of the executing and appellate Courts, which dismissed his objection petition and approved the auction of his immovable property. This arose from his surety bond executed for the release of a special attorney, who was acting on behalf of a Judgment-debtor in a family suit for dissolution of marriage and related claims.

Issues: i) Can the Surety Bond executed for the release of a Special Attorney be used to auction the Surety's property?
ii) What can a recognized agent do under Order III CPC?
iii) What do 'appearance,' 'application,' and 'act' mean under Order III CPC?
iv) Is a Special Attorney liable for satisfying a decree?

Analysis: i) The Surety Bond executed by the Petitioner for release of the Special Attorney cannot be made basis to attach his immoveable property for the satisfaction of decree. Though the Surety Bond is also on behalf of the Judgment-debtor besides the Special Attorney, however, when the Petitioner was not required at first place to execute the Surety Bond for release of Special Attorney, then the whole superstructure on the basis of illegal detention order will crumble down and Petitioner's property cannot be auctioned merely because he mentioned the name of Judgment-debtor in his Surety Bond, which was not required to be executed at the first instance.
ii) Plain reading of Rule 1 of Order III of the CPC shows that a recognized agent can appear, file applications or act in or to any Court on behalf of any party; Rule 2 of Order III of the CPC refers to a class of persons who could be treated as recognized agents of parties, which include a person holding power-of-attorney authorizing him to make and do such appearance, application and act on behalf of a party.
iii) The words "appearance", "application" and "act" used in Rules 1 & 2 ibid are not defined therein. However, applying ordinary meaning to these words the word "appear" means to be present and to represent the party at various stages of litigation. The words "application" or "act" mean necessary steps, which can be taken on behalf of a party in the Court or in the offices of the Court in the course of litigation.
iv) The recognized agent or Special Attorney is entitled to appear, file application and act for a party but not liable for satisfaction of the decree passed against the

Judgment debtor; whereas a "surety" is governed under Section 128 of the Contract Act, 1872 (Act) and enforceable for performance of any decree or any part thereof under Section 145 CPC. Though CPC does not strictly apply in family matters but its principles are applicable.

Conclusion: i) The special attorney's property cannot be auctioned based on the Surety Bond.
ii) A recognised agent can appear, file applications, or act on behalf of a party.
iii) These terms mean representing and taking necessary steps in litigation.
iv) A Special Attorney is not liable; only a Surety can be held enforceable.

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13. **Lahore High Court.**
Sagheer Ahmad v. Sessions Judge, Kasur & Others
Writ Petition No. 55471 of 2024
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2024LHC5364.pdf

Facts: The petitioner challenged the rejection of his application for re-medico legal examination of the complainant, who alleged an iron rod injury. The court examined whether the rejection was justified under health department policies and judicial discretion.

Issues: i) Can an application for re-medico legal examination be entertained after the lapse of the initially prescribed 21-day period?

Analysis: i) So far as the ground taken by the learned Magistrate to the effect that the application was to be moved within twenty-one days is concerned, in this regard two letters issued by Government of the Punjab, Health Department, being relevant…… It is clarified that if the re-examination orders have been passed by the District Magistrate concerned as a Judicial Officer after three weeks of first examination they will supersede instructions issued by Health Department.

Conclusion: i) The time limit for medical re-examination has been extended to an indefinite period as per the policy letter dated 8-2-1992.

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14. **Lahore High Court**
Sabiha Bibi v. Abdul Wahab, etc.
C.R.No.408-D of 2023
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC5093.pdf

Facts: The petitioner filed a suit challenging multiple mutations of gift as fraudulent. The trial court rejected the plaint under Order VII Rule 11 CPC, citing it as barred by limitation, without hearing the maintainability question explicitly. The appellate court upheld this decision, leading to the current civil Revision.

Issues: i) Can a plaint be rejected while deciding an application for a temporary injunction under CPC?
ii) Can a trial court decide on the maintainability of a suit, including the question of limitation, without prior notice to the plaintiff?
iii) What are the limits of considering external documents while exercising jurisdiction under Order VII Rule 11 CPC?
iv) How should courts handle mixed questions of law and fact, such as limitation, in suits under Order VII Rule 11 CPC?
v) What is the proper procedure for handling the maintainability of a suit and the application of Order VII Rule 11 CPC?

Analysis: i) it is improper to reject a plaint while deciding an application for temporary injunction for the reason that there is a material difference in the scope of Order VII Rule 11 and Order XXXIX Rules 1 and 2 CPC as while exercising jurisdiction under the former provision, the Court will have to decide whether there is any cause of action or the suit is barred by law whereas while deciding under the latter provision, the Court will only see prima facie case, balance of convenience and irreparable loss.
ii) once the court decides to proceed with the suit and issue notice to the other side then the court without affording an opportunity to the plaintiff to address the question of maintainability of the suit including the point of limitation should not decide the same, merely because an objection is raised by the other side, which is only a contention and not conclusive as no adjudication is made.
iii) It is cardinal principle of law that for rejection of a plaint only its contents are to be seen and no other document can be considered. An exception to the rule is that the documents, which are admitted between the parties can be looked into by the court while exercising its power under Order VII Rule 11 CPC.
iv) It has also been held by the Apex Court that question of limitation is a mixed question of law and facts, which can only be resolved after recording of evidence of the parties.
v) In the attending circumstances, the proper course available to the trial court was to have decided the application of temporary injunction, framed the issues and treated the issues of maintainability of the suit and limitation as preliminary as contemplated in Order XIV Rule 2 CPC and decide the same at the outset (with or without recording of evidence).

Conclusion: i) A plaint can't be rejected during a temporary injunction application.
ii) The court should not decide maintainability without hearing the plaintiff after issuing notice.
iii) A plaint's rejection depends on its contents, except for admitted documents.
iv) Limitation issues require evidence and can't be decided upfront.
v) Maintainability and limitation should be decided as preliminary issues.

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15. **Lahore High Court, Lahore**
Mst. Misbah Iftikhar and another v. Mst. Aleesa and 3 others
Writ Petition No.1234 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC5139.pdf

Facts: Through this writ petition under Article 199 of Constitution of Pakistan 1973, the petitioners have challenged the judgment of Appellate Court; therein, the application under section 12(2) was dismissed.

Issues: i) What is definition of Family Court?
ii) Whether a Family Court is a Civil Court in every aspect despite the exclusion of the provisions of the Code of Civil Procedure, 1908?
iii) Whether the constitutional petition is maintainable?
iv) Whether an application under Section 12(2) of the "C.P.C." is maintainable before a Family Court?
v) Whether the application under section 12(2) CPC can be decided in a summary manner?
vi) Whether penalty should be commensurate with gravity of allegation?
vii) When the findings of forms are at variance, to which one preference is given?

Analysis: i)…. Section 2 deals with the definitions clause and it defined "Family Court" as under:- "(b) "Family Court" means a Court constitute under this Act"
ii) It would not be out of context to mention here that a Family Court is a Civil Court in every aspect despite the exclusion of the provisions of the "C.P.C." with exception to Sections 10 & 11 and the Qanun-e-Shahadat Order, 1984 by virtue of Section 17 of the "Act, 1964". Though in terms of Rule 3 of the Family Courts Rules, 1965, the courts of the District Judge, the Additional District Judge are also designated as Family Courts alongwith the Civil Judge but ordinarily functions of Family Courts are assigned to the Civil Judge and the District Judge and the Additional District Judge acts as appellate court as is evident from the bare reading of Section 14 of the "Act, 1964"
iii) It is thus evident that learned Additional District Judge, Hassan Abdal (Attock) who decided the application of petitioners under Section 12(2) of the "C.P.C." was officiating as appellate court, thus this writ petition is maintainable and the query is answered accordingly.
iv)….no cavil left to hold that despite an embargo in terms of Section 17 of the "Act, 1964" there is no legal impediment in the way of an aggrieved person moving an application under Section 12(2) of the "C.P.C." before the Family Court.
v) suffice to observe that though it is not a principle of universal application that in each and every case, the court is bound to frame the issues before deciding the fate of an application under Section 12(2) of the "C.P.C." but where misrepresentation and fraud have been alleged and prima facie a case is made out, in such an eventuality said application should have not been dismissed summarily.

Conclusion: i) See the above Para No.i
ii) A Family Court is a Civil Court in every aspect despite the exclusion of the provisions of the "C.P.C."
iii) The writ petition is maintainable
iv) An application under Section 12(2) of the "C.P.C." is maintainable before a Family Court
v) where misrepresentation and fraud have been alleged and prima facie a case is made out, in such an eventuality the application under section 12(2) CPC should have not been dismissed summarily.

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16. **Lahore High Court**
Dr. Shahida Mansoor v. Federation of Pakistan through Secretary Ministry of Defence and 3 others
Writ Petition No.98 of 2014
Mr Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC5101.pdf

Facts: The petitioner challenges the demand for a substantial premium for converting a leased residential property to commercial use. Originally evacuee property vested in the Federal Government, it was leased and later transferred to the petitioner through a gift deed. Despite filing multiple applications for conversion, approval was delayed until a final sanction was granted, contingent on the contested premium. Authorities claim prior unauthorized commercial use, leading to notices before the conditional approval.

Issues: i) What is the effect of filing a fresh application instead of challenging earlier rejections?
ii) What are the requirements and conditions for converting a residential site to commercial use under Clause 2 of the policy year 2007?
iii) Can an individual benefit from a favourable policy that is no longer in effect?

Analysis: i) It is an admitted position that petitioner did not question the orders resulting into rejection of application and instead moved a fresh application on 25th May, 2011. Admittedly the impugned letter is the outcome of said application. The case of the petitioner thus cannot be termed as pending and as such principles laid down in the judgment dated 30th November, 2010 by Sindh High Court cannot be stretched into service.
ii) Clause 2 of the policy deals with the change of purpose from residential to commercial, which reads as under :- "2. Change of Purpose From Residential to Commercial. Sites held for residential purpose may be leased out for commercial purpose subject to the following conditions. a. Obtaining of NOC. The following NOCs will be required:- (1) Sites outside Bazar Areas (a) NOC from GHQ in consultation with Service Headquarters concerned from military/security point of view. (b) NOC of the respective Cantt Board from municipal point of view. (2) Sites Inside Bazar Area. NOC of the local Cantt Board from municipal point of view. b. Premium. 50% of the Revenue Rate (Commercial) will be charged for

conversion from residential to commercial lease in Schedule IX-C. c. Ground Rent. The ground rent shall be charged at the rate of Rs.4/- per sq yd per annum."
iii) The petitioner is thus precluded to claim the benefits of previous policy. In other words, petitioner cannot be benefited for her own wrongs.

Conclusion: i) Filing a fresh application nullifies the applicability of prior principles.
ii) Residential sites can be converted to commercial use with required NOCs, a 50% premium, and ground rent.
iii) An individual cannot benefit from a policy that is no longer in effect.

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17. **Lahore High Court**
Zeeshan Asghar *v.* Province of The Punjab and others
Writ Petition No.1465 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC5130.pdf

Facts: The petitioner, a Junior Clerk at Cadet College Hasanabdal, was compulsorily retired following a show cause notice citing allegations of misconduct and poor service record. His departmental appeal and subsequent review petition were dismissed leading to the filing of instant constitutional petition. He challenged the penalty, arguing procedural violations, including the absence of a regular inquiry, which he claimed violated his constitutional rights under Articles 4 and 10-A of the Constitution.

Issues: i) What are the essential requirements for a valid show cause notice in departmental proceedings?
ii) What is the procedural requirement for holding an inquiry under E&D Regulations?
iii) What constitutes a violation of natural justice in departmental proceedings?
iv)When a regular inquiry can be dispensed with for imposing major penalties?

Analysis: i) A show cause notice must conform to at least seven essential elements, and these include:
(a) it should be in writing and should be worded appropriately;
(b) it should clearly state the nature of the charge(s), date, and place of the commission
or omission of acts, along with apportionment of responsibility;
(c) it should clearly quote the clause of the PEEDA under which the delinquent is liable to be punished;
(d) it should also indicate the proposed penalty in case the charge is proved;
(e) it should specify the time and date within which the employee should submit his explanation in writing. It is also preferable to add in the show cause notice that if no written explanation is received from the accused within the prescribed date, the enquiry will be conducted ex-parte;
(f) it should be issued under the signature of the competent authority and
(g) it should contain the time, date and place of the inquiry and the name of the

inquiry officer.

ii) The authority having power to impose the penalty shall frame a charge, communicate it to the accused together with a statement of the allegation on which it is based and of any other circumstances which the authority proposes to take into consideration when passing orders on the case... The authority shall require the alleged accused, within a reasonable time, which shall not be less than seven days nor more than fourteen days, from the day the charge has been communicated to him, to put in a written defence, stating at the same time whether he desires to be heard in person.

iii) It is emphasised that the charges made in the show cause notice should not be vague. All the acts of commission or omission constituting the charge, and also forming the ground for proceeding against the employee, should be clearly specified because otherwise, it will be difficult for an employee, even by projecting his imagination, to discover all the facts and circumstances that may be in the contemplation of the competent authority to be established against him, and thus, it will not only frustrate the requirement of giving him a reasonable opportunity to put up a defence but also amount to a violation of his fundamental right to a fair trial.

iv) It is discretionary with the department to dispense with the regular inquiry in the facts and circumstances of the case but such dispensation would be backed by some compelling justifiable reasons, assigned in writing, which are clearly lacking in the present case.

Conclusion: i) The show cause notice must reflect the seven essential elements, for details see above analysis no.1.

ii) The authority must frame a charge, communicate it with allegations and circumstances, and provide the accused 7 to 14 days for written defence while stating if he wishes to be heard in person

iii) Charges in the show cause notice must not be vague, as unclear allegations violate the employee's right to a fair trial by denying a reasonable opportunity to defend.

iv) The department may dispense with a regular inquiry, but such dispensation must be supported by compelling justifiable reasons, assigned in writing, which are lacking in this case

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18. **Lahore High Court, Lahore**
Akhtar Gul (deceased) through his legal heirs v. Muhammad Ashiq and 7 others
Civil Revision No. 663-D of 2012
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC5239.pdf

Facts: Predecessor-in interest of the petitioners was owner of the suit property measuring 8 Kanal 11 Marla. The respondents No.3 to 5 instituted a suit for declaration and injunction averring therein that suit property was sold by the predecessor-in interest of the petitioners to respondent No.1 (hereinafter referred to as

"respondent") through an agreement to sell and in furtherance thereof, he also executed a general power of attorney in favour of **respondent** who executed a special power of attorney in favour of respondent No.2. Respondents No.3 to 5 entered into a sale transaction with respondent No.2 to which effect an agreement was executed. Respondents No.3 to 5 when contacted respondent No.2 for execution of sale deed, it transpired that predecessor-in-interest of the petitioners has revoked the general power of attorney executed in favour of respondent. Suit for specific performance was instituted by **respondent** against predecessor-in-interest of the petitioners. Suits were, finally consolidated and through consolidated judgment same were decreed. Feeling dissatisfied the petitioners preferred an appeal before the learned Additional District Judge, but of no avail, as their appeal was dismissed, hence this petition under Section 115 of the Code of Civil Procedure (V of 1908).

Issues: i) Whether a document required by law to be attested, can be used as evidence without calling at least two attesting witnesses?

ii) Whether court exercising revisional powers is bounden duty to correct concurrent findings of lower courts that are tainted with legal infirmities and material irregularities?

Analysis: i) In terms of Article 79 of the Qanun-e-Shahadat Order, 1984 if a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive and subject to the process of the Court and capable of giving evidence. The respondent thus in view of Article 79 ibid was bound to examine two marginal witnesses of the agreement in order to prove the same. There can be thus no second opinion that agreement to sell (Exhibit-P1) was not proved at all by the respondents.

ii) The scope of revisional jurisdiction is hedged in Section 115 of the C.P.C. and though ordinarily concurrent findings of facts are not disturbed but such findings are neither sacrosanct nor it is an inflexible rule that despite observing material flaws, the revisional court will abdicate to exercise its jurisdiction. The judgments passed by the courts below are not based on proper appraisal of evidence and the learned Civil Judge, while decreeing the suits of the respondents has grossly misread the evidence as already noted hereinabove. The appellate court in the circumstances, while upholding the judgment and decree of trial court thus committed a material irregularity. This Court under Section 115 of the C.P.C. is thus obliged and fully competent to correct such error in exercise of its revisional jurisdiction. Needless to observe that when once it is established on the record that concurrent findings are fraught with legal infirmities, it becomes the bounden duty of court exercising revisional powers to curb and stifle such illegalities and material irregularities. Reference in this respect, if needed, can be made to Malik MUHAMMAD KHAQAN versus TRUSTEES OF THE PORT OF KARACHI

(KPT) and another (2008 SCMR 428) and IMAM DIN and 4 others versus BASHIR AHMED and 10 others (PLD 2005 Supreme Court 418).

Conclusion: i) If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution.
ii) When once it is established on the record that concurrent findings are fraught with legal infirmities, it becomes the bounden duty of court exercising revisional powers to curb and stifle such illegalities and material irregularities.

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19. **Lahore High Court**
Nasir Sharif v. Sabeela Imtiaz and another
Writ petition no.4132 of 2023
Mr. Justice Sadaqat Ali Khan, Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC5250.pdf

Facts: The petitioner/husband filed a suit for restitution of conjugal rights whereas the respondent/wife while contesting that suit also claimed maintenance in the written statement. The Family Court fixed an interim maintenance allowance for the respondent, which order was challenged by the petitioner through the present writ petition alleging that a wife defending a suit for restitution of conjugal rights can only claim dissolution of marriage and cannot claim maintenance.

Issues: i) Under what circumstances can a constitutional court interfere with interim or interlocutory orders in the exercise of its constitutional jurisdiction?
ii) What is the object of the Family Courts Act, 1964?
iii) What is the scope of Section 9(1b) of the Family Courts Act, 1964, in light of its joint reading with the proviso to Section 7?
iv) What are the procedural requirements for instituting a suit in a family dispute under the Family Courts Act, 1964?
v) What claims can be included in a plaint for dissolution of marriage under the proviso to Section 7 of the Family Courts Act, 1964?
vi) Can a wife raise a claim for maintenance in her written statement in response to a suit for restitution of conjugal rights under the Family Courts Act, 1964?
vii) Whether the Family Court have jurisdiction to determine interim maintenance in cases where opportunity to file a rejoinder was not provided and what procedural safeguards are required?

Analysis: i) It would be apposite to observe that though the impugned order is interim and ordinarily this Court exercises restraint to interfere with the interim or interlocutory orders in exercise of constitutional jurisdiction but when some patent illegality is apparently floating on the surface of record or petition raises some substantial question of law, exercise of constitutional jurisdiction cannot be abdicated.

ii) It is obvious from the preamble of the “Act, 1964” itself that its prime object was to ensure expeditious settlement and disposal of the disputes relating to marriage and family affairs and the matters connected therewith.
iii) Section 9 of the “Act, 1964” lays down the procedure for submission of written statement by the defendant in the suit… From joint reading of proviso to Section 7 and Sub-Section (1b) of Section 9 of the “Act, 1964”, it can safely be inferred that scope of latter is not limited or confined but wider enough.
iv) In case of a family dispute, a suit shall be instituted by presentation of a plaint or in such other manner or in such court as may be prescribed and the plaint shall contain all material facts relating to the disputes and shall contain a schedule giving number of witnesses intended to be produced in support of the plaint, the names and addresses of the witnesses and brief summary of the facts to which they will depose.
v) In terms of proviso to Section 7 of the “Act, 1964”, a plaint for dissolution of marriage may contain all claims relating to dowry, maintenance, dower, personal property and belongings of wife, custody of children and visitation rights of parents to meet their children.
vi) A wife while resisting a suit for restitution of conjugal rights can raise any of the permissible claims covered under the “Act, 1964” but in such a case the Family Court would be obliged to provide opportunity to the husband (plaintiff) to file a rejoinder in response thereto, which shall be treated as written statement on his behalf.
vii) Though the Family Court allowed the “respondent” to raise her claim of maintenance while responding in the suit for restitution of conjugal rights, filed by the petitioner but without affording the latter an opportunity to submit rejoinder, as observed hereinabove and proceeded to fix interim maintenance of the “respondent” which even otherwise, to our mind, is negation of Section 17-A of the “Act, 1964” … allow this petition and set-aside the order…with the direction to the Family Court to permit the petitioner to file his rejoinder to the claim of maintenance, raised by the “respondent” in her written statement and on receipt of the same, if so filed, proceed to fix interim maintenance, strictly in accordance with law.

Conclusion: i) When some patent illegality is apparently floating on the surface of record or petition raises some substantial question of law exercise of constitutional jurisdiction cannot be abdicated
ii) Prime object was to ensure expeditious settlement and disposal of the family disputes and the matters connected therewith
iii) See above analysis No iii.
iv) See above analysis No iv.
v) See above analysis No v.
vi) A wife while resisting a suit for restitution of conjugal rights can raise any of the permissible claims subject to providing an opportunity to the husband (plaintiff) to file a rejoinder.

vii) See above analysis No vii.

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20. **Lahore High Court Lahore**
Muhammad Saleem (deceased) through Legal Heirs v. Habib-ur-Rehman
Mr. Justice Mirza Viqas Rauf
Civil Revision No.1068-D of 2014
https://sys.lhc.gov.pk/appjudgments/2024LHC5406.pdf

Facts: Petitioner through Revision petition challenged concurrent findings of courts below regarding dismissal of his suit for possession through pre-emption.

Issues: i) Whether right of pre-emption transfers to legal heirs?
ii) What is the significance of mentioning "date""time" and "place" to prove Talb-i-Muwathibat?
iii) What is the evidentiary standard required to prove the chain of information for Talb-i-Muwathibat?
iv) What are the guiding principles while deciding revision petition against concurrent findings of courts below?

Analysis: i) Section 16 of the Punjab Pre-emption Act, 1991 (hereinafter referred to as "Act, 1991") provides that where a pre-emptor dies after making any of the demand under Section 13 of the Act ibid, the right of pre-emption shall transfer to his legal heirs.
ii) Talb-i-Muwathibat is the basic foundation of the right of pre-emption which is to be performed immediately on attaining the knowledge about the sale. Even wastage of a single moment in performance of Talb-i-Muwathibat is sufficient to damage the right of pre-emption. For the purpose of determining the fate of Talb-i-Muwathibat time, date and place always play a significant role. The pre-emptor(s) is/are always obliged to lead cogent and unimpeachable evidence to establish his/their right through performance of necessary Talbs…This sole aspect is sufficient to shatter the case of the pre-emptor because time and place always play a pivotal role for the purpose of analyzing the validity of Talb-i-Muwathibat. Reliance in this respect can be placed on ALLAH DITTA through L.Rs. and others vs MUHAMMAD ANAR (2013 SCMR 866) and Mian PIR MUHAMMAD and another vs FAQIR MUHAMMAD through L.Rs. and others (PLD 2007 Supreme Court 302)… . House is a vast place and non mentioning of exact portion by itself is fatal to right of pre-emption. Guidance in this respect can be sought from ALLAH DITTA through L.Rs. and others versus MUHAMMAD ANAR (2013 SCMR 866)
iii) There is yet another important aspect; claim of preemption always set to motion on the basis of information received by the pre-emptor from the informer. As per claim of the pre-emptor, he attained the knowledge about the sale transaction on 17th February, 2011 from Saeed Akhtar (PW2). As per statement of informer, he became acquainted with the sale transaction from one Muhammad Ayub but said person was never produced in evidence in order to prove the source

of information. Needless to observe that onus to prove the basic source of information through which the pre-emptor attained the knowledge of sale always rests upon him. The pre-emptor was though obliged to establish whole chain of information but it is clearly missing in the present case, which even otherwise is very essential element to prove Talb-e-Muwathibat. Guidance in this respect can be sought from FARID ULLAH KHAN versus IRFAN ULLAH KHAN (2022 SCMR 1231)

iv) The revisional jurisdiction is to be exercised, while keeping in view the principles enshrined in Section 115 of the C.P.C. The superior courts are always reluctant to interfere with the concurrent findings, unless some patent illegality or material irregularity crept up on the record or pointed out by the petitioner(s). The exercise of revisional powers is always guided by the necessary pre-conditions laid down in the above referred provision of law…Reference in this respect can be made to Mst. ZARSHEDA versus NOBAT KHAN (PLD 2022 Supreme Court 21), MUHAMMAD SARWAR and others versus HASHMAL KHAN and others (PLD 2022 Supreme Court 13) and GHULAM QADIR and others versus Sh. ABDUL WADOOD and others (PLD 2016 Supreme Court 712).

Conclusion: i) See analysis (i).
ii) See analysis (ii)
iii) The pre-emptor was obliged to establish whole chain of information.
iv) The revisional jurisdiction is to be exercised, while keeping in view the principles enshrined in Section 115 of the C.P.C.

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21. Lahore High Court
Muhammad Ashfaq & others v. Civil Judge, Samundari & others
Writ Petition No.69059 of 2024
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC5176.pdf

Facts: This writ petition is directed against the order and judgment passed by learned Civil Judge and Additional District Judge, respectively, whereby applications for setting aside ex parte proceedings were concurrently dismissed.

Issues: i) What is limitation period for filing an application for setting aside ex-parte proceedings?
ii) Upon which ground application for setting aside ex-parte order may succeed?
iii) Whether a person declared ex-parte, remains as party to the proceedings?

Analysis: i) Needless to say that Article 163 of the Limitation Act, 1908 provides limitation of 30-days for a plaintiff to seek setting aside of order of dismissal of suit for default, whereas Article 164 prescribes limitation of 30-days for a defendant to seek setting aside of ex parte decree. None of these Articles or any other specific Article cater the situation qua limitation for filing application for setting aside ex parte proceedings. In these circumstances, it would be governed by the residuary

Article 181 of the Act ibid, which provides a limitation period of 03-years from the date the right to sue accrues.
ii) It is also well settled that even if the defendants are proceeded ex parte, they may join the proceedings at any subsequent stage and file an appropriate application for setting aside ex parte order, provided they show good cause.
iii) A person nevertheless declared ex parte, remains as party to the proceedings and may even cross-examine the witnesses… Even otherwise, in the absence of any clear provisions in the Code of Civil Procedure prohibiting the appearance and participating in the proceedings by the defendant, proceeded ex parte, there can be no legal bar to allow him to defend his rights. It is the right of every defendant and also a principle of natural justice, to be given a chance of hearing before any order is passed against his interest.

Conclusion: i) Article 181 Limitation Act being residuary clause provides 3 years limitation period for filing an application for setting aside ex-parte proceedings.
ii) Such application may succeed, if the defendant shows good cause.
iii) A person declared as ex-parte, remains as party to the proceedings and may even cross-examine the witnesses.

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22. **Lahore High Court, Lahore**
Tanveer Ahmed V Imtiaz Anwar
R.F.A. No.1829 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC5198.pdf

Facts: Through instant appeal, appellant has assailed vires of judgment & decree dated 16.12.2022, passed by learned Additional District Judge, Sialkot, whereby respondent's suit, filed under Order XXXVII Rules 1 & 2 C.P.C. for recovery of Rs.10,00,000/- along with markup, was decreed as prayed for.

Issues: i)Whether it is requirement of law to establish relationship between the parties business or family ties?
ii)Whether once insufficiently stamped document exhibited/admitted in evidence such admission cannot be called into question at any stage of the suit or in proceedings?

Analysis: i) There is another important aspect of the matter. Respondent was required under the law to establish that there was a relationship between the parties business or family ties which pondered him to lend such a handsome amount. The contents of the plaint are not reflecting such averment, however in cross-examination as PW-1, respondent simply stated that appellant was his relative without further elaborating the nature of relation and family terms, if any, thus in absence of any explicit stance qua relationship, it is not understandable that how respondent gave such a considerable amount to appellant as loan, hence his claim was not sustainable on this score also. This view is supported by a recent verdict of

Hon'ble Supreme Court of Pakistan in the case reported as Mehr Noor Muhammad v. Nazir Ahmed (PLD 2024 Supreme Court 45).
Respondent produced pronote and receipt thereof in evidence, respectively, and an objection was raised by the adversary counsel qua insufficient stamp duty and learned Trial Court vowed to address the aforesaid objection at the time of final decision, however exhibited the documents. Learned counsel for appellant has pleaded that the aforesaid objection has not been appropriately addressed by learned Trial Court at the time of final decision, thus, the said documents could not have been given evidentiary value and impugned judgment and decree is not legally sustainable. The submission is totally misconceived firstly in view of Section 36 of the Stamp Act, 1899, which provides that once a document has been admitted in evidence, such admission cannot be called into question at any stage of the suit or in proceedings, on the ground that the instrument has not been duly stamped; and secondly it has been enunciated by the Hon'ble Apex Court in the case of Mehr Noor Muhammad supra that such objection has to be decided there and then when the document is tendered in evidence; once the Court, rightly or wrongly, admits the document in evidence and allows the parties to use it in examination and cross-examination, so far as the parties are concerned, the matter is closed; that the the party challenging the admissibility of the document must be alert to see that the document is not admitted in evidence by the Court. In the present case as the promissory note had been admitted in evidence, the same cannot be reviewed or revised by the same Court or a Court of superior jurisdiction.

Conclusion: i) It is required under the law to establish that there was a relationship between the parties business or family ties which pondered him to lend such a handsome amount.
ii) once document has been admitted in evidence, such admission cannot be called into question at any stage of the suit or in proceedings, on the ground that the instrument has not been duly stamped;

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23. **Lahore High Court**
Ms MAG Apartments Private Limited v. Lahore Development Authority & another
ICA No.26642 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi & Mr. Justice Rasaal Hasan Syed.
https://sys.lhc.gov.pk/appjudgments/2024LHC5302.pdf

Facts: A notification for the acquisition of land of the appellant was issued in 1981. Appellant filed an application before commissioner, who accepted the application, and excluded the land from the acquired land by its de-notifying. Learned Single Judge of High Court, allowed the petition of LDA and set aside Commissioner's order. Hence, instant intra courts appeal.

Issues: i) Whether the power to issue the notification de-notifying the land was available with the commissioner?

ii) What remedy is available to landowner if the commissioner withdraws from the acquisition of land?

iii) What kind of possession is required in acquisition of land under the Act, 1894?

iv) Whether law can condone the indolence of a party?

Analysis: i) The power of the Commissioner to withdraw from the acquisition of any land is unfettered till possession has been taken. As such, the Act of 1894, contemplates that, once possession has been taken, acquisition is complete, and the Commissioner can no longer exercise the power to withdraw. It is implicit that after possession has been taken, the land is vested in the Government, and the notifications issued prior to it cannot be cancelled under Section 21 of the General Clauses Act, 1897. Therefore, the Commissioner was justified to de-notify appellant's land, taking into account the conduct of respondent-LDA. Reliance is placed upon (PLD 2024 Supreme Court 218).

ii) Whenever any such withdrawal is made, the landowner is entitled to compensation for any damage he suffers, to be determined per subsection (2) of Section 48 of The Land Acquisition Act,1894.

iii) In our view, it must be actual possession of the land, as all interests in the land are sought to be acquired. There can be no question of taking "notional" or "symbolical" possession, nor would possession merely on paper be enough. It ought to be either under Section 16 or 17 of the Act.

iv) A party cannot be expected to wait indefinitely, as the Government acquires its valuable right to the immovable property. If the Government or its acquiring department did not have the funds, it should have made up its mind quickly and that too before taking possession and told the landowners where they stood. The land acquisition process started decades ago, however, the landowners have been struggling to get their legitimate rights. Based on these facts, no law can condone the indolence of the respondent-LDA.

Conclusion: i) Commissioner can de-notify the land till possession has been taken. However, once possession has been taken, acquisition is complete, and the Commissioner can no longer exercise the power to withdraw.

ii) In case of any such withdrawal, the landowner is entitled to compensation.

iii) Under The Land Acquisition Act,1894 actual possession of the land is required.

iv) No, it cannot be condoned.

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24. **Lahore High Court**
Sarfraz Khan v. Province of Punjab & others
Civil Revision No.155763 of 2018
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC5170.pdf

Facts: The petitioner has challenged the cancellation of his land allotment. After securing proprietary rights through a sale deed and mutation sanctioned by the District Collector, the Board of Revenue (BOR) later cancelled the allotment, citing violations of lease conditions. The petitioner contested this before the lower fora which resulted against him. Hence; this appeal.

Issues: i) Can a Civil Court reverse a Revenue Appellate Court's allotment cancellation under the Colonization of Government Lands (Punjab) Act, 1912?
ii) Can the (BOR) unilaterally cancel an allotment after proprietary rights have vested through a registered sale deed?
iii) What procedural requirements must the (BOR) fulfil for cancellation of proprietary rights?
iv) Can post-sale deed proprietary rights be disturbed without substantial legal violations?

Analysis: i) Once sale price has been deposited and possession was handed over to the allottees, by the Collector, no other Revenue Authorities even superior to the Collector can intervene to reverse the Collector's decision. If an allotment has been cancelled by Revenue Appellate Court, the Civil Court has the jurisdiction to set aside the cancellation, especially if it is found to be in violation of the terms of sale or the provisions of the Act V of 1912.
ii) The Board of Revenue does not have authority to unilaterally cancel an allotment after proprietary rights have vested through a registered sale deed, unless there is substantial documented evidence of fraud or a significant violation of allotment conditions. (…) The Hon'ble Superior Courts have consistently upheld principles that protect proprietary rights under the Act of 1912. In these cases, it has been emphasized that once proprietary rights are granted, same cannot be arbitrarily cancelled by the authorities.
iii) Section 30 of the Act ibid mandates the issuance of a formal show cause notice and provides the affected party with an opportunity to contest any claims of fraud or misrepresentation before the government can resume such land.
iv) It is reiterated that proprietary rights, once vested, gain additional protections under the law and can only be disturbed in instances of proven statutory breaches.

Conclusion: i) Yes, if the cancellation violates the terms of sale or Act V of 1912.
ii) (BOR) does not have authority to unilaterally cancel an allotment.
ii) Section 30 requires a formal show cause notice and an opportunity to contest claims.
iv) Proprietary rights, once vested, gain additional protections under the law and can only be disturbed in instances of proven statutory breaches.

25. **Lahore High Court Lahore,**
Muhammad Tariq Javed v. Punjab Healthcare Commission and others
Writ Petition No.7031/2023
Mr. Justice Tariq Saleem Sheikh.
https://sys.lhc.gov.pk/appjudgments/2024LHC5323.pdf

Facts: Petitioner though owns a medical store having a valid drug sale license but was identified as engaged in quackery, by Punjab Health Commission "Commission". Officials of the "Commission" visited his premises thrice but it was found closed. Consequently his medical store was sealed. Subsequently "Commission" learnt that petitioner had opened a new clinic. Upon visit of PHC officials, clinic was found operational but petitioner fled away. They collected evidence and reported the matter to the "Commission"; PHC officials once again visited the location; They found that Commission's seal on medical store broken though it was closed. They re-sealed the medical store and submitted a report to "Commission"; Considering the above-mentioned reports, the "Commission" issued a notice to petitioner directing him to appear before "Hearing Committee" with relevant documents / evidence etc. Petitioner firstly evaded but eventually appeared with a plea denying his engagement in quackery. Upon conclusion of the proceedings "Hearing Committee" imposed a fine of Rs.300,000/- on the petitioner and directed medical store and clinic be kept under surveillance to ensure that no healthcare services are provided in violation of Punjab Health Commission Act, 2010 (PHC Act 2010) and Anti Quackery Regulations, 2016 (Regulations 2016). Against said Order, petitioner preferred an appeal under S.31 of PHC Act 2010, which was partially allowed, and amount of fine was reduced from Rs.300,000/- to Rs.150,000/-. The said judgment has been assailed through instant Writ Petition

Issues: i) What is the aim of PHC Act, 2010?
ii) What are the areas of application of the PHC Act, 2010?
iii) Whether the "Commission" is empowered to make regulations for carrying out the purpose of PHC Act, 2010?
iv)Whether the "Commission" possesses power to seal the healthcare establishments?
v) Whether PHC Act 2010 regulates the medical profession or is confined to healthcare services?
vi) What is the responsibility of the Commission?
vii) Is PHC Act 2010 ultra vires the Constitution?
viii) What is the mandate of Section 22 of the PHC Act, 2010?
ix) What is the rule of purposive interpretation?
x) Who is competent for inspection of healthcare establishment?
xi) Whether a technical expert is essential for identifying quackery?
xii) Does Regulation 3(2) of the 2016 Regulations conflict with section 22 of the PHC Act 2010?

xiii) Are the powers of seizure and sealing conferred by Regulations 5 and 5A of the 2016 Regulations ultra vires of the PHC Act 2010?
xiv) What is the basis of judicial decisions?
xv) What is guidance for by administrative decisions?
xvi) What is concept of quasi-judicial functions?
xvii) According to De Smith's Judicial review, what are the meanings of quasi-judicial functions?
xviii) According to De Smith's Judicial review, what are general principles of delegation of discretion?
xix) Whether a person to whom an authority was granted can subdelegate it?
xx) On which kind of proceedings maxim delegatus non potest delegare (or delegate potestas non potest delgari rigorously applies?
xxi) Whether special tribunals and public bodies can delegate their decision-making authority?
xxii) What are the essentials for lawful delegation of authority?
xxiii) Does concept of delegation distinguish from agency?
xxiv) How statutory delegation is distinct from agency?
xxv) Whether "processing the case" and "deciding the case" are two distinct actions.
xxvi) What kind of proceedings are permissible before "Hearing Committee"?
xxvii) Whether the "Commission" can delegate its adjudicative to "Hearing Committee" in case involving violations of the PHC Act 2010, rules or regulations?
xxviii) Whether "Hearing Committee" is authorized / competent to impose fines on offenders?
xxix) Whether delegation of power by the Commission to the "Hearing Committee" to impose fines on offenders without supervisory control was invalid / improper?
xxx) Whether regulation 7 (4) of the 2016 empowering the "Hearing Committee" to impose additional fine is *ultra vires*?

Analysis: i) The PHC Act of 2010 aims to improve the quality of healthcare services and ban quackery in the Punjab in all its forms and manifestations.
ii) It applies to all healthcare establishments, public and private hospitals, non-profit organizations, charitable hospitals, trust hospitals, semi-government and autonomous healthcare organizations**.**
iii) Section 40 empowers the Commission to make regulations for carrying out the purposes of the Act by issuing a notification in the official Gazette.
iv) Under section 4 of the PHC Act, the Commission possesses inherent powers to seal healthcare establishments as a precautionary step, a power that existed even before the framing of the 2016 Regulations.
v) In the post-remand judgment dated 6.7.2018, which is reported as Punjab Healthcare Commission v. Mushtaq Ahmed Chaudhary and others (PLD 2018 Lahore 762), the Court ruled that the PHC Act does not regulate the medical

profession but instead regulates healthcare services, establishments, and service providers.

vi) Accordingly, the Commission is responsible for establishing a clinical governance and healthcare system to effectively monitor all services, providers, and establishments within the healthcare sector.

vii) The Court concluded that the PHC Act is not ultra vires the Constitution, and its mandate falls squarely under provincial jurisdiction.

viii) Section 22(1) of the PHC Act grants the Commission the general power to appoint an inspection team to carry out its functions and exercise its powers regarding inspections under the Act, rules, or regulations to ensure compliance with the law. In contrast, section 22(2) applies specifically to two scenarios: when a healthcare establishment applies for a new licence or renewal and when there is a complaint against a healthcare establishment. The overall focus of section 22, particularly through section 22(2), seems to be ensuring that licensed establishments meet the required standards. However, the broader authority granted by section 22(1) can extend to other areas like quackery if needed

ix) To reconcile the two sections, the court may invoke the rule of purposive interpretation, which focuses on the law's underlying purpose to ensure it achieves the intended objective when the literal meaning leads to an ambiguous, absurd, or unjust outcome.

x) The purpose of section 22 of the PHC Act is that a healthcare establishment should be inspected by qualified persons so that they may ensure regulatory compliance. These inspections naturally require technical expertise, as inspectors must evaluate complex medical practices and equipment, ensuring that the healthcare establishment is providing safe and effective services.

xi) In contrast, identifying quackery primarily involves verifying the credentials of the individual concerned, which does not demand the same level of technical expertise. Therefore, a technical expert is not essential for inspecting premises suspected of quackery.

xii) Regulation 3(2) of the 2016 Regulations empowers the Commission to authorize executive authorities or law enforcement agencies, through written instructions or directions, to exercise the necessary powers to visit premises suspected of quackery. These agencies are required to report quacks and quackery-related activities to the Commission, either directly or through designated officers. Regulation 3(2) is fundamentally based on the wide powers granted to the Commission under section 4 of the PHC Act. While the Commission can appoint inspection teams under section 22 for various purposes, including investigating quackery, Regulation 3(2) derives its legitimacy from the Commission's broader regulatory authority under section 4. Therefore, it is lawful and not ultra vires.

xiii) The legislative intent of the PHC Act is to empower the Commission to safeguard public health by regulating healthcare standards and eliminating quackery. The powers of seizure and sealing are robust enforcement mechanisms that align with this intent and enable the Commission to act swiftly and

effectively against quackery. They are consistent with the broad mandate given to the Commission under section 4 of the PHC Act, which allows the Commission to take all necessary steps to ban quackery and protect public health. Consequently, Regulations 5 and 5A of the 2016 Regulations are intra vires the PHC Act.

xiv) Judicial decisions are based on legal rules and principles, with a judge seeking the correct solution through objective analysis.

xv) In contrast, an administrative decision is guided by policy, focusing on what is suitable and desirable in the public interest.

xvi) The concept of quasi-judicial functions refers to administrative tasks that must follow certain judicial procedures, such as adhering to natural justice principles. For example, when a minister decides on a planning appeal, the decision is based on policy, but the process requires fairness and transparency, similar to judicial procedures.

xvii) De Smith's Judicial Review explains that the term quasi-judicial function may have any one of the following three meanings: First, it may describe a function that is partly judicial and partly administrative, such as the process of issuing a compulsory purchase order, where an administrative decision is made after a judicial-like inquiry and consideration of objections. Second, it may refer to the judicial aspect within a broader administrative process, such as the inquiry and objection handling, which are considered quasi-judicial acts. Finally, the term may apply to discretionary acts where the decision-maker's discretion is not entirely free but is bound by certain legal standards or principles of fairness.

xviii) According to De Smith's Judicial Review, the following are some of the general principles of delegation of discretion:

(i) The delegation may be deemed invalid if an authority grants discretionary powers to committees, sub-committees, or individuals without retaining supervisory control.

(ii) The extent of control the delegating authority maintains over the actions of the delegate, such as the power to reject a decision or recommendation, is crucial for ensuring the delegation is valid.

(iii) The ability to delegate discretionary powers depends on the scope of the authority, its impact on individual interests, and the need for efficient public administration. The choice of delegate should be based on practicality, not rank, and should consider factors like resources, skills, and experience.

(iv) It is improper to delegate broad discretionary powers to another authority unless expressly authorized, especially if the delegating body cannot control the other authority.

(v) Discretionary powers assigned to a specific officer (e.g., a chief of police) cannot be exercised by someone else unless there is a statutory provision for a deputy or if administrative necessity outweighs personal responsibility.

(vi) Sub-delegation of powers that have already been delegated is more strictly controlled than the initial delegation, as Parliament is

presumed to allow no further delegation unless explicitly stated.

(vii) Powers to sub-delegate do not usually include the authority to delegate tasks requiring judgment unless such delegation is necessary for performing the duty.

(viii) Statutes that allow sub-delegation must be followed strictly, ensuring that delegation is conveyed properly and the scope of delegated functions is clearly defined.

xix) It is a well-known principle of law that when a person is granted authority, particularly where their individual judgment and discretion are trusted, they must personally exercise that power unless explicitly allowed to delegate it.

xx) It has been applied most rigorously to proceedings of courts, requiring the judge to act personally throughout a case except insofar as he is expressly absolved from this duty by statute.

xxi) Special tribunals and public bodies exercising functions broadly analogous to the judicial are also barred from delegating their decision-making authority unless the law allows it.

xxii) In Pakistan Electronic Media Regulatory Authority (PEMRA) v. Pakistan Broadcasters Association and another (2023 SCMR 1043), the Supreme Court held that when considering delegation, the authority must begin by identifying the individual to whom the delegation is made and the specific power, responsibility, or function to be delegated. It should take into account factors such as the significance of the task, the nature of the responsibility or function, the context in which it is exercised, and its impact on those affected. While these factors are not exhaustive, they are essential for making a lawful delegation.

xxiii) The concept of delegation must be clearly distinguished from agency. There are three main characteristics of agency. First, an agent acts on behalf of the principal, in the principal's name, and any actions taken by the agent within their authority are attributable to the principal. These principles also apply to delegation in administrative law, where it is generally unlawful for a delegate to exercise powers in their own name. However, when Parliament delegates legislative powers or is validly subdelegated by its delegate, the delegate or sub-delegate exercises the powers in their own name. In local government, administrative delegation schemes often operate in ways that diverge from the traditional principal agent relationship. Secondly, an agent typically receives detailed instructions from the principal and operates with limited discretion. In contrast, those entrusted with statutory discretionary powers often exercise sufficient autonomy. The level of control retained by the delegating authority is usually a critical factor in determining the validity of the delegation. Courts are more likely to uphold delegation when the authority retains significant control and may even conclude that no delegation has occurred if the original authority continues to exercise substantial oversight over the powers. Thirdly, in agency, the principal retains concurrent powers with the agent, meaning the principal can act alongside or instead of the agent, even when the agent is authorized to act. The agent operates on behalf of the principal, but the principal does not relinquish

their authority. On the other hand, delegation involves the transfer of specific powers or functions to a delegate. Once delegated, the delegate exercises those powers independently within the scope of the delegation, and the authority cannot directly exercise the delegated powers unless the terms of the delegation explicitly provide for such a right. However, it retains oversight and may revoke or amend the delegation. The delegator is bound by decisions made by the delegate within the scope of the delegated authority.

xxiv) In view of the above distinction between delegation and agency, in Abdul Haseeb Khan v. Ravi Urban Development Authority and others [2023 PLC (C.S.) 804], this Court explained that in cases of statutory delegation, the delegate exercises the assigned powers and performs the delegated functions in their own name. This is because statutory delegation grants authorization to act personally rather than as an agent.

xxv) "Processing the case" and "deciding the case" are two distinct actions. The case of Prof. Dr. Manzoor Hussain and others v. Zubaida Chaudhry and others (2023 SCMR 1311) is instructive. In that case, section 14(4) of the Federal Ombudsman Institutional Reforms Act 2013 stipulated that a representation made to the President of Pakistan must be "processed" in the president's office by a person qualified to be a Supreme Court Judge or who has served as a Wafaqi Mohtasib or Federal Tax Ombudsman. The question arose as to whether, in the absence of explicit authority to delegate the President's decision-making powers, the term "processed" implied that these powers were delegated to the officer, thereby divesting the President of his authority. The Supreme Court ruled that the officer's role was limited to preparing the case and making recommendations, while the President retained final authority to decide the matter. The Court emphasized the distinction between processing and deciding, noting that the officer's role was ancillary to the President's ultimate decision-making authority. The President retains complete control over the decision and may, if necessary, personally hear the parties before issuing a ruling.

xxvi) Proceedings before a Hearing Committee are permissible if they are merely for "processing the case", as they fall within the ambit of clause (m) of section 4(2) of the PHC Act.

xxvii) Section 28 of the PHC Act expressly confers the jurisdiction for adjudication of fines on the Commission, a power further reinforced by sections 4(2)(g), 22(5), and 31(1)(e). A collective reading of these provisions indicates that the Commission is responsible for delivering the final verdict in any given case. As the PHC Act currently stands, it does not permit delegating this adjudicative power to the Hearing Committees.

xxviii) I have concluded that the Commission can delegate its power to hear a complaint/report submitted by the Visiting/Reporting Officer to a committee under Regulation 6, which may conduct the hearing and present its findings to the Commission for a final verdict. However, I have upheld the Petitioner's contention that, under section 28, read with section 4(2)(g) of the PHC Act, only

the Commission can impose a fine on individuals found guilty of practising quackery. The Hearing Committee is not authorized to do so.

xix) Since the PHC Act, as adumbrated, does not expressly authorize the delegation of such significant powers to the Hearing Committee, this delegation violates established principles. Furthermore, Smith's principles highlight that delegating discretionary powers to a subordinate body without proper supervisory control renders the delegation invalid. In the context of the PHC Act, the Commission has improperly delegated its power to impose fines to the Hearing Committee without adequate oversight.

xxx) As adumbrated, Regulation 7(4) also empowers the Hearing Committee to impose an additional fine in the event of continuing failure to comply with the orders and directions or repetition of the illegal practice of quackery. This portion of Regulation 7(4) cannot be saved by applying the principle of reading down. It is, therefore, declared *ultra vires* and struck down.

Conclusion: i) It aims to improve the quality of healthcare services and ban quackery.

ii) See above analysis No.ii).

iii) The "Commission" is empowered to make regulations for carrying out the purposes of the Act by issuing a notification in the official Gazette.

iv) The "Commission" possesses inherent powers to seal healthcare establishments.

v) PHC Act 2010 does not regulate the medical profession but instead regulates healthcare services, establishments, and service providers.

vi)The "Commission" is responsible for establishing a clinical governance and healthcare system to effectively monitor all services, providers, and establishments within the healthcare sector.

vii) PHC Act 2010 is not ultra vires the Constitution.

viii) See above analysis No.viii).

ix) See above analysis No.ix)

x) Qualified person is competent for inspection of healthcare establishment.

xi) Technical expert is not essential for identifying quackery.

xii) Regulation 3(2) of the 2016 is not in conflict with section 22 of the PHC Act 2010.

xiii) Powers of seizure and sealing conferred by Regulations 5 and 5A of the 2016 Regulations are intra vires the PHC Act 2010.

xiv) Judicial decisions are based on legal rules and principles.

xv) An administrative decision is guided by policy.

xvi) The concept of quasi-judicial functions refers to administrative tasks that must follow certain judicial procedures.

xvii) See above analysis No.xvii).

xviii) See above analysis No.xviii).

xix) He cannot subdelegate power unless explicitly allowed to delegate it.

xx) Maxim rigorously applies to proceedings of courts.

xxi) They are barred to delegate their decision-making authority unless the law

allows it.
xxii) see above analysis No.xxii).
xxiii) The concept of delegation is distinguished from agency.
xxiv) See above analysis No.xxiv).
xxv) "Processing the case" and "deciding the case" are two distinct actions.
xxvi) Proceedings merely for "processing the case", are permissible before a Hearing Committee.
xxvii) "Commission" cannot delegate its adjudicative to "Hearing Committee" in case involving violations of the PHC Act 2010, rules or regulations.
xxviii) "Hearing Committee" is not authorized / competent to impose fines on offenders.
xxix) Delegation of power by the "Commission" to the "Hearing Committee" to impose fines on offenders without supervisory control was invalid / improper.
xxx) Regulation 7 (4) of the 2016 empowering the "Hearing Committee" to impose additional fine is *ultra vires.*

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26. **Lahore High Court**
Muhammad Iqbal Gill, etc. v. Nasir Abbas, etc.
C.R. No.6830 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC5266.pdf

Facts: The Petitioners filed a suit for specific performance of an agreement to sell land, alleging that the Respondents, who had sold them shares in the land, failed to execute the sale deed despite receiving earnest money. The suit was dismissed by the Trial Court and later by the Appellate Court, prompting the petitioners to seek revision on grounds of procedural irregularities, including the simultaneous dismissal of an application for additional evidence and the appeal.

Issues: i) Whether the Appellate Court is obliged to decide the application for additional evidence before addressing the merits of the appeal?
ii) What is the procedural requirement when an application under Order XLI, Rule 27 CPC is filed during an appeal?
iii) What are the consequences of non-disposal of miscellaneous applications before deciding the main case?
iv)Does deciding both the miscellaneous application and the appeal simultaneously undermine the fairness of judicial proceedings?
v) Can the Revisional Court exercise suo motu jurisdiction in cases of procedural irregularity?

Analysis: i) It is a well-established principle of law that whenever a miscellaneous application is pending before the Court, it must be decided first before finalizing the lis. Failure to decide the miscellaneous application before the final verdict would render the latter a nullity in the eyes of the law.

ii) Whenever a miscellaneous application, such as an application under Order XLI, Rule 27 CPC for production of additional evidence, is pending during the course of an appeal, it is imperative for the Appellate Court to first decide the said application before delving into the merits of the appeal. This procedural requirement is not merely a technical formality, but a critical component of ensuring that justice is served fairly and equitably.
iii) The failure to resolve such a pending application prior to rendering a final decision on the appeal leads to a procedural irregularity that invalidates the entire appellate process, as it deprives the parties of their right to a fair and impartial hearing.
iv) A joint decision, where both the miscellaneous application and the appeal are decided together, without first addressing the application separately, undermines the fairness of the judicial proceedings.
v) The Revisional 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.

Conclusion: i) Undecided miscellaneous applications nullify the final verdict.
ii) The Appellate Court must decide the application before addressing the appeal's merits.
iii) Unresolved applications invalidate the appellate process.
iv) Joint decisions without resolving applications first undermine fairness.
v) The Revisional Court may act suo motu to uphold justice.

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27. **Lahore High Court Lahore**
Muhammad Ashraf v. Judge Executing Court, etc.
Writ Petition No. 15322 of 2024
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2024LHC5284.pdf

Facts: Through the constitutional petition, petitioner/judgment debtor challenged the order passed by learned executing court, whereby instead of returning dowry articles, he was directed to pay its value, which was the alternate relief provided in terms of decree passed by the Family Court in favor of respondent/ decree-holder.

Issues: Whether the order passed by learned executing court, whereby instead of returning dowry articles, the judgment debtor was directed to pay its value, which was the alternate relief provided in terms of decree passed by the Family Court in favor of respondent/ decree-holder is an appealable order or not?

Analysis: In terms of principles of law laid down in judgments reported as "Rahim Bukhsh versus Mst. Shehzadi and others" (2018 CLC 1789 (Lahore), "Jabran Mustafa versus Judge Family Court and others" (2021 MLD 847 (Lahore) and "Abid Hussain versus Additional District Judge, Alipur, District Muzaffargarh and

another" (2006 SCMR 100) the impugned order passed by the executing court is an appealable order as the same is tantamount to a 'decision given' in terms of Section 14 of The Family Court Act, 1964 whereby the learned executing court has decided that the petitioner instead of returning the decreed dowry articles is liable to pay the value of said articles in terms of decree passed in alternate by the learned Family Court to which extent the aforementioned aspect of the matter has been finally decided as in terms of the said order the petitioner has been restrained from returning the dowry articles for satisfaction of the decree to absolve him from future liability and he has been burdened with duty to pay the value of said articles, hence, the same cannot be treated as an interim or interlocutory order against which appeal is not maintainable in view of Section 14(3) of the Family Court Act, 1964 therefore, the same is appealable before the appellate court, which alternate remedy has not yet been availed.

Conclusion: The order whereby instead of returning dowry articles, the judgment debtor was directed to pay its value, which was the alternate relief provided in terms of decree passed by the Family Court in favor of respondent/ decree-holder is an appealable order as it cannot be treated as an interim or interlocutory order against which appeal is not maintainable in view of Section 14(3) of the Family Court Act, 1964.

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28. **Lahore High Court**
Shabbir Hussain v. The State and another
Crl. Appeal No.68635/2024
Mr. Justice Farooq Haider, Mr. Justice Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC5071.pdf

Facts: Petitioner, an accused of a case registered under the provisions of the Control of Narcotic Substances Act, 1997, moved an application under section 540 Cr.P.C. for production of mobile data before the learned Additional Sessions Judge, which was dismissed and the same order was impugned in shape of instant appeal.

Issues:
i) What does Call Data Record (CDR) include?
ii) What are the pre-conditions for production of CDR?
iii) What facts can be ascertained through CDR and what not?
iv) What is the legal repercussion of absence of forensic voice record transcript?
v) What is the fate of concessional statement of a witness in absence of having a SIM without being registered in his name and forensically analyzed voice record transcript?

Analysis: i) The Call Data Record = Call Detail Record herein after being referred as CDR is the record generated by telecommunication companies for every call made or received on its network, it includes phone numbers involved, date, time and duration of the call as well as detail of telecommunication/cellular tower in whose territorial range, SIM (Subscriber Identity Module) received or made the call.

ii) It is relevant to mention here that if said witness is owner of the SIM i.e. same is registered in his name, it was operational/functional in his cell/mobile phone, he made or received phone call through said SIM and his forensically analysed voice record transcript/end to end audio or video recording is available.
iii) Availability of said SIM and its use at that particular time i.e. of making/receiving phone call in territorial range of cellular tower of said company can be assessed and ascertained, however, even then exact point/locale of availability of the SIM and person using the same in the territorial range of said cellular tower, which range usually comprises of considerable area, cannot be ascertained through CDR
iv) So, in absence of forensically analysed voice record transcript/ end to end audio or video recording, mere production of CDR is of no avail/help to establish presence of any person even in territorial area/range of cellular tower.
v) Mere concessional statement of any witness that he was having mobile phone number with him at relevant time without proof that SIM was registered in his name and without forensically analysed voice record transcript of call made or received by said witness, is of no avail and same cannot be made basis for summoning the CDR as it would be of no help for just decision of the case

Conclusion: i) See above analysis No.1
ii) Prior to produce CDR, it is requirement of law that a) the witness is to be is owner of the SIM, b) the same is to be operational in mobile phone, c) the witness made or received call through said SIM and d) there should be forensic analysis of voice record transcript with end to end audio or video recording.
iii) See above analysis No.iii
iv) See above analysis No.iv
v) Concessional statement of a witness with regard to his having mobile phone number without forensic analysis of voice record transcript of making or receiving call is a fact which is not relating to just decision of the case.

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29. **Lahore High Court**
Mst. Shahidah Bibi v. The State, etc
Crl. Appeal No. 40132/2023.
Mr. Justice Farooq Haider & Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC5214.pdf

Facts: This appeal has been filed against the judgment of trial court in a case F.I.R No.1631/2022 dated: 22.12.2022 registered under Section: 9(1)(3)(c) of the Control Narcotic Substances Act, 1997 at Police Station: Khurrianwala, District Faisalabad, vide which he was convicted and sentenced to Rigorous Imprisonment for 09-years with fine of Rs.80,000/- and in default thereof, to further undergo S.I for 06-months. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

Issues: i) What would be the effects if chain of safe custody of contraband is not proved?

ii) If safe custody of the contraband and sample thereof is not proved, what would be the fate of PFSA report?
iii) If incriminating material is not put to the accused in his statement under section 342 Cr.P.C, whether such material can be used against him?

Analysis: i) Now law is well settled on the point that unbroken chain of safe custody of "allegedly recovered case property and parcel of sample" is to be proved otherwise, conviction is not possible and it is rightly so because recovery of narcotics is not a mere corroboratory piece of evidence rather it constitutes the offence itself and entails punishment.
ii) Since safe custody of the allegedly recovered charas and sample taken out of it, has not been proved in this case therefore report of Punjab Forensic Science Agency, Lahore (Exh.PE) is inconclusive and cannot be made basis for conviction. By now it is also well settled that if safe custody of allegedly recovered substance or parcel of sample/case property has not been proved then it straightaway leads to the acquittal of the accused.
iii) for recording conviction and awarding sentence in a criminal case, it is mandatory to put entire incriminating material to the accused under Section: 342 Cr.P.C. in order to have his explanation/ reply in said regard otherwise it would amount to "audi alteram partem" and in this regard, case of "AMEER ZEB versus THE STATE" (PLD 2012 Supreme Court 380), "It is trite that a piece of evidence not put to the accused person at the time of recording of his statement under section 342, Cr.P.C. cannot be used against him by the prosecution."

Conclusion: i) In such case the conviction is not possible.
ii) In such situation the report of PFSA becomes inconclusive and cannot be made basis for conviction.
iii) It would amount to "audi alteram partem". It cannot be used against him by the prosecution.

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30. **Lahore High Court Lahore**
Ehsan Ali v. The State, etc.
Mr. Justice Farooq Haider
Crl. Revision No.72289/2024
https://sys.lhc.gov.pk/appjudgments/2024LHC5229.pdf

Facts: Petitioner withdrew his post arrest bail application from the court of Additional Sessions Judge and on the next day, through same counsel, again filed bail petition, without disclosing about earlier application. The application was entrusted to another court and was allowed. Complainant filed application for cancellation of bail which was accepted. Petitioner assailed the order regarding cancellation of bail before Hon'ble High Court.

Issues: What would be the legal effect of filing second post arrest bail application in the same case while concealing fact of dismissal of earlier application?

Analysis: Withdrawing first application and then on the very next day, filing another application through the same counsel while not mentioning dismissal of earlier application resulting into entrustment of 2nd application to another learned Additional Sessions Judge, Sialkot, getting bail from there and even not disclosing earlier dismissal of application at the time of final arguments in 2nd application clearly reflects the violation of ratio as well as spirit contained in the case of **"The STATE THROUGH ADVOCATE-GENERAL, N.W.F.P. versus ZUBAIR AND 4 OTHERS"** (**PLD 1986 SC 173**) and its re-visit (**2002 SCMR 171**) and **"Nazir Ahmed and others versus The State and others" (PLD 2014 Supreme Court 241).**

Relief obtained by way of such foul play i.e. concealing dismissal of earlier petition cannot be permitted to remain in the field, therefore, irrespective of the merit of the case, impugned order has been passed by learned Additional Sessions Judge, Sialkot while keeping in view the peculiar facts and circumstances as well as settled principles of law on the subject, therefore, same needs no interference by this Court.

Conclusion: Relief obtained by way of such foul play i.e. concealing dismissal of earlier petition cannot be permitted to remain in the field.

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31. **Lahore High Court**
Muhammad Iqbal, etc. v. Imam Bakhsh, etc.
Civil Revision No.954-D/2012.
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC5233.pdf

Facts: Trial court decreed petitioner's suit for declaration, directed against the gift mutation. Appellate Court, substantially, reversed finding of the trial court on issue relating to the limitation, allowed respondent's appeal and dismissed petitioner's suit. However, the appellate court upheld the findings of trial court as to establishment of fraud.

Issues: i) Whether defence of limitation of suit holds ground when factum of fraud qua impugned mutation was unequivocally established / proved, and which findings were not controverted or even questioned.?

Analysis: i) Objection of limitation hold no ground upon failure of the beneficiaries to prove alleged transaction of gift and execution of the mutation – both had to be proved independently…Fraud vitiates even the most solemn transaction, attracting voidness in respect thereof. Even otherwise once impugned mutation is proved to be a consequence of defrauding the donor and depriving heirs of the donor of their due share, issue of limitation becomes insignificant and all heirs of the donor, upon his death, will become co-owners.

Conclusion: i) When fraud is established in a transaction, objection of limitation holds no

ground.

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32. **Lahore High Court, Lahore**
Province of Punjab, etc. v. Punjab Labour Appellate Tribunal, etc.
Writ Petition No. 2453 of 2024
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC5376.pdf

Facts: Through this writ petition under Article 199 of Constitution of Pakistan 1973, the petitioners have challenged the judgments passed by the Labour Court(s) and then affirmed by the Punjab Labour Appellate Tribunal (in some cases divergent decisions are subject matter of challenge, where Labour Court(s) had dismissed the grievance petition(s) but said decisions were reversed by the Appellate Tribunal)

Issues: i) Whether the government departments fall within the definition of 'commercial' or 'industrial' establishment?

ii) Whether the decisions in the cases of Sajjad Naseem and 3 others" (supra) and 'Farzana Basharat and 2 others" (supra) were in conflict with the dictum laid in the case of Abdul Aziz and others"?
iii) Whether employees on work-charge basis could be construed as involved in the administration of the State – exclusion of such category of employees is provided in clause (b) of sub-section (3) of section 1 of the Act, 2010?
iv) Whether seeking enforcement of statutory right(s) guaranteed under clause 1(b) of the Schedule to the Standing Orders 1968 makes it imperative that the employer, which is government department(s) in the cases at hand, must qualify as a commercial or industrial establishment under section 2(b) and 2 (f) of the Standing Orders 1968?
v) Whether services of the employees hired / appointed on work-charge basis are governed under the statutory rules of service in the context of their conduct and discipline?
vi)Whether alleged right(s) granted / guaranteed under clause 1(b) of the Schedule to the Standing Orders 1968 could be enforced by invoking the remedy under section 33 of the Act, 2010?
vii) Whether the Labour Court(s) and Appellate Tribunal, as the case may be, had exceeded their jurisdiction while issuing directions for preparation and issuance of service book of the employees upon treating them as regular government employees, once they are regularized as permanent workman?
viii) What is the effect of the Policy decision issued through Notification No. SO(ERB)5-44/2019/WC-DW-Policy of 29th January 2021 issued by the Government of the Punjab Services & General Administration Department (Regulations/O&M Wing?

Analysis: i) No deliberation is found that whether government departments are either covered under the expressions 'establishment', 'industry' and 'employer', as

defined under the Act, 2010, let alone any passing reference. There is no deliberation regarding the nature of work / services performed by the respondents and no adjudication that whether respondents are employed in the administration of the State. Working for the State and employed in the administration of the State have different dimensions, in the context of the controversy.

ii) I hold that the ratio of decision in the case of Abdul Aziz and others (supra), was not considered or appreciated while handing down decisions in cases of "Sajjad Naseem and 3 others" (supra) and 'Farzana Basharat and 2 others" (supra), hence, latter judgments are declared per-incuriam, being contrary to the law enunciated by the Honourable Supreme Court of Pakistan….

iii) It is incorrect to assume that every employee is employed in the administration of the State. The decision in the case of Abdul Aziz and others (supra) had aptly elaborated the expression "in the administration of the state" appearing in clause (b) of sub-section (3) of section 1 of erstwhile Industrial Relation Ordinance, 1969, which is pari materia to clause (b) of sub-section 3 of section 1 of the Act 2010. Respondent(s) employees are not civil servants…..I confine to the determination of applicable / binding precedent, since it is argued that in wake of decisions of "Sajjad Naseem and 3 others" (supra) and 'Farzana Basharat and 2 others" Appellate Tribunal would treat employees as employed in the administration of the State, hence, decision be made.

iv) If nature of the service / assignment of the employees does not involve performance of duties involving employment in the administration of the State, then why cannot the workmen invoke remedy under section 33 of the Act, 2010, for enforcement of right under clause 1(b) of the Schedule to Standing Orders 1968. In the case of "Federal Revenue Alliance Employees Union through President Vs. Federal Board of Revenue through Chairman" (2024 PLC 2018) definition of establishment was discussed in the context of clause (b) of sub-section (3) of section 1 of the Industrial Relations Act, 2012 and status of FBR was declared as an establishment, if not industry. This reasoning find support from clause (c) of definition of 'employer'. Evidently clause (c) of section 2(ix) of the Act of 2012 is reflection of clause (c) of section 2(viii) of the Act, 2010. I leave this question for determination of the Appellate Tribunal to assess the status of the government department(s) for the purposes of considering its placement in the ambit of 'establishment' or 'industry' depending upon the scope of functions undertaken by the employer – government department(s). Guidance can also be solicited from the ratio in the case of "Messrs Pak Telecom Mobile Limited vs. Muhammad Atif Bilal and 2 others" (2024 SCMR 719).

v) Admittedly, the services of the employees are not governed by or under the statutory rules of service, conduct and discipline. Employees are not the civil servant.

vi) Yes, such rights are enforceable in the context of the ratio of decision in the case of "Muhammad Atif Bilal and 2 others" (supra) – an individual grievance can be enforced upon invoking remedy under 33 of the Act of 2010.

vii) Labour Court(s) and Appellate Tribunal exceeded their jurisdiction while instructing the department for the preparation and issuance of service book to the employees, treating them as regular government employees, upon being regularized, without appreciating the distinction between a permanent workman and civil servant. Assumption of jurisdiction to pass such directions is erroneous and exceeds the scope of jurisdiction conferred. And if at all any employee, upon regularization, is claiming the status of a civil servant in the context of the assignment assigned, same had to approach the Service Tribunal and establish its status as a civil servant. No such jurisdiction vests in the Labour Court(s) and Appellate Tribunal.

viii) Appellate Tribunal will consider the effect of the policy introduced for the work-charged employees, daily wagers and contingent paid staff – which policy was framed in the light of the instructions of Hon'ble Supreme Court of Pakistan in terms of Order dated 11.12.2018 in CP No.3340-3344/2018.

Conclusion: i) See the above analysis Para No.i

ii) See the above analysis Para No.ii

iii) See the above analysis Para No.iii

iv) See the above analysis Para No.iv

v) The service of such employees is not governed by service law as they are not civil servants

vi) An individual grievance can be enforced upon invoking remedy under 33 of the Act of 2010.

vii) Labour Court(s) and Appellate Tribunal exceeded their jurisdiction

viii) The Appellate Tribunal will consider the effect of the policy introduced for the work.

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33. **Lahore High Court, Lahore**
Syed Ahsan Abbas, etc. v Government of the Punjab, etc.
W.P.No. 7707 of 2024
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC5390.pdf

Facts: This and connected constitutional petitions, detailed in Schedule-A, appended and forms part of the judgment, are simply directed against the policy decision of the Provincial Government to out-source the running and management of Public schools under Public School Reorganization Program (PSRP), being unlawful and unconstitutional, on the premise that it violates the constitutional guarantees extended under Article 25-A of the Constitution of Islamic Republic of Pakistan 1973 (the 'Constitution, 1973')

Issues: i) What are goals, objectives, targets and functions of the Foundation established under The Punjab Education Foundation Act, 2004 (Act of 2004)?

ii) Whether the Foundation under The Punjab Education Foundation Act, 2004 is an autonomous body, independent of the regulatory control of the Government or

an instrumentality to benefit private sector at the expense of depriving deserving children of fair opportunity?

iii) Whether the outsourcing of public schools under the Public School Reorganization Program (PSRP) violates constitutional guarantees under Article 25-A of the Constitution of Pakistan, 1973, and the functions performed by the Foundation are in accord with the mandate of the law?

Analysis: i) It is apparent from the perusal of the Punjab Rules of Business 2011 that Foundation is under the allocation of School Education Department. Program is run, managed and regulated through the terms of reference, which prescribes mechanism for handing over of administration and management of underperforming Public Sector Schools to private service providers through the Foundation – in fact is the bridge between the Government and private sector.

ii) There is no cavil that School Education Department is the secretariat department of the Government, to which business of the government is allocated / distributed, which allotment inter alia includes the task of promoting quality education through Public Private partnership through Punjab Education Foundation – clear instructions are contained in the Rules of Business. It is noted that Punjab Education Foundation was omitted from the list of Autonomous Bodies and brought under the regulatory control of the government department. It is in fact the policy of the department, which is being implemented under the statutory framework of address the Act of 2004. Section 13-A of the Act of 2004 provides key to address the consternation / concern of the petitioners. Functionality of the Foundation is governed and regulated by the Government. No violation of any fundamental right is evident, when no direct evidence is available to substantiate allegation of fee raise or increase in education budget of the citizens

iii) Petitioners in fact are seeking exercise of judicial review jurisdiction in the functioning of the department, which intrusion in the absence of any illegality, voidness and perversity is unwarranted. Neither any violation of constitutional guarantee is established nor violation of any provision of The Punjab Free and Compulsory Education Act 2014 is shown. In these circumstances, no case for exercising judicial review jurisdiction against the policy decision and Program is made out, which calls for showing deference to the policy-making domain of the Government/Executive. **Policy decisions require political judgment, not legal interpretation.**

Conclusion: i) Foundation established under The Punjab Education Foundation Act, 2004 (Act of 2004) is an instrument to outsource of the administration / management of underperforming schools.

ii) The Foundation under Act, 2004 is governed and regulated by the Government without raising or increasing of fee in education budget of the citizens in violation of any provision of The Punjab Free and Compulsory Education Act 2014.

iii) The outsourcing policy under the Public schools under Public School Reorganization Program (PSRP) does not violate Article 25-A of the Constitution.

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34. **Lahore High Court, Lahore**
Malik Nazar Hussain. v. Multan Development Authority, etc.
RFA No.171/2016.
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC5396.pdf

Facts: Land was acquired for developing housing scheme by respondents from appellant, feeling aggrieved regarding quantum of compensation awarded by Referee court Parties has filed these appeals .

Issues: i)When land being used for agriculture purpose at the time of Notification, would be treated as residential, for computing fair amount of compensation. ?
ii)What factors are include in potentiality of the land?
iii)Whether is it fair to determine value of the land in the vicinity / proximity, differently, If land in the vicinity was assessed in the context of having potentiality?
iv)Whether the potential value of agricultural land, which includes its prospective uses, should be considered in determining fair compensation for land acquisition?

Analysis: i) Land Acquisition Collector had treated subject land as partly residential and partly agricultural, which manifest that land could ably to put to use for residential purposes, irrespective of being used for agriculture purpose at the time of Notification. If part of the land is classified as residential why cannot the land in vicinity / proximity thereto would be treated as residential, for computing fair amount of compensation.
ii) Scope and significance of ascertaining the potential value of the land, in the context of compulsory acquisition, under the principle of eminent domain, is well-established, jurisprudentially. Potentiality of the land includes land's future value, economic potential and probable use(s) thereof, which inter alia includes development prospects of the land, in near future. In the case at hand, subject land was acquired for residential housing scheme – which strongly suggests and implies that before identification of the land, sought to be acquired for residential purposes, it was surveyed and found fit for such purpose, because of various factors, one of which being its territorial footprint in urban / municipal limits – since part of it was treated as residential – or in close proximity thereof. And activities carried in the vicinity. It was not the case that purely / exclusively agricultural land was acquired, situated at some far-flung distance from city / urban limits. Hence, suitability and appropriateness of the land for housing scheme provides undeniable insight into its potential value. Section 23 of the Act, 1894 provides benchmark for determination of the potentiality of the land – and jurisprudence to that extent is well-settled. Guidance is solicited from the ratio settled in the cases of "SARHAD DEVELOPMENT AUTHORITY N.W.F.P.

(NOW KPK) through COO/CEO(OFFICIO) and others. Vs. NAWAB ALI KHAN and others." (2020 SCMR 265) and "PROVINCE OF PUNJAB through Land Acquisition Collector and another. Vs. BEGUM AZIZA" (2014 SCMR 75)
iii)If land in the vicinity was assessed in the context of having potentiality, whether is it fair to determine value of the land in the vicinity / proximity, differently. No special disability / disadvantage was attributed to the land of the appellants, except that it was used for agricultural purposes or was under cultivation. Here, the Referee Court had erred in failing to appreciate the concept of potential value. There is no evidence on the record to establish remoteness of land of the appellants from the reference point – housing project or land subject matter of RFA No.224/2018.
iv)Potential value inter alia includes prospective use to which said land could be put to. Unless upon comparative analysis, potentiality of the agricultural land is found on the lower side, in the context of the objective of the project, appellants / landowners could not be deprived of fair compensation of their land. No adverse evidence is available to disentitle the appellants of the enhanced quantum of value of their land. Determining the potential value of the land merely in the context of use thereof, contemporaneously, is wrong. In this context guidance is solicited from the ratio settled in "Malik TARIQ MAHMOOD and others' (supra), relevant paragraph is reproduced hereunder,......

Conclusion: i) If part of the land is classified as residential the land in vicinity / proximity thereto would be treated as residential, for computing fair amount of compensation.
ii) See above analysis no. 2.
iii)See above analysis no. 3
iv)Determining the potential value of the land merely in the context of use thereof, contemporaneously, is wrong, Potential value inter alia includes prospective use to which said land could be put to.

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35. **Lahore High Court**
Noora (deceased) through L.Rs. v. Province of Punjab, etc.
Civil Revision No.14536 of 2022
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC5203.pdf

Facts: Respondents No.3 & 4 ("plaintiffs") brought their suit for declaration and permanent injunction against respondents No.1 & 2 ("defendants No.1 &2") averring that they had purchased the suit land through registered sale-deed followed by a mutation. Respondent No.3 ("defendants No.3") allegedly got deducted a piece of land from the stated mutation after being in league with revenue officials and then alienated the deducted land in his favor through another mutation ("impugned"). Only the respondent No.3 contested the suit while the rest of respondents were proceeded against *ex parte.* During the course of proceedings, respondent No.3 died and his legal heirs were impleaded. After full-

fledged trial, suit was dismissed but the learned appellate Court accepted appeal. Dissatisfaction of the appellate order brought about the filing of instant Civil Revision.

Issues: i) When does Section 43 of the Transfer of Property Act, 1882 comes into play?
ii) In what way, "fraudulent" and "erroneous" transfer operates on the acquired interest of transferor?

Analysis: i) Provision of this Section comes into play when a person "fraudulently" or "erroneously" represents that he is authorized to transfer certain immovable property for consideration although not so authorized
ii) Such transfer at the option of transferee operates on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. The erroneous representation may be innocent and would also cover a situation where the transferor is not even aware of lack of his authority to transfer the immoveable property.

Conclusion: i) See above analysis No.1
ii) As per Section 43 of the Transfer of Property Act, 1882, the unauthorized transfer of immovable property by a transferor shall extend to his interest which he acquires during subsistence of contract.

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36. **Lahore High Court**
Muhammad Hussain, etc. v. Ali Muhammad, etc.
Civil Revision No.1499 of 2012
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC5288.pdf

Facts: The petitioners filed a suit in 1974 seeking a declaration of their title and recovery of possession of land. The trial court dismissed their suit in 1990, but the appellate court partially allowed their appeal in 1995, declaring them owners of half of the disputed land. They later sought correction of the appellate decree under Section 152 CPC, claiming omission of the relief of possession, which was dismissed.

Issues: i) Can court ensure justice under section 151 CPC?
ii) Can courts correct clerical mistakes, accidental slip or omission under section 152 CPC?
iii) Is section 28 of the Limitation Act, 1908 still effective?
iv) What is the relationship between a judgment and a decree?
v) Whether a decree conform to judgment?
vi) Is the court's power under section 152 CPC discretionary?
vii) What is an 'accidental slip or omission' under section 152 CPC?
viii) Can an omission in the decree for possession be supplemented under section 152 CPC?

Analysis: i) No doubt, the Courts have inherent powers under section 151 C.P.C., to make

such orders as may be necessary to meet the ends of justice or to prevent the abuse of the process of the Court but the said powers are to be exercised to secure the ends of justice.

ii) Admittedly Section 152 C.P.C., gives an authority to the Court to correct the clerical or arithmetical mistakes even of its own motion as none should suffer due to mistake of the Court. (…)The Court has the powers under Section 152 C.P.C., to amend the orders or decrees, to remove, inter-alia, errors arising therein, from any accidental slip or omission and this power can, in express terms of the Section be exercised at any time. The plain reading of Section, leaves no doubt whatsoever, that the power conferred on the Court, if the case falls within the purview of the provisions, can be exercised at any time and it has accordingly been held that there is no time limit for entertaining an application in that behalf. Also it is apparent that the power can be exercised suo motu.

iii) Section 28 of the Limitation Act, 1908 was enforced when the learned trial Court passed the judgment and decree on 22.04.1990. But later on the Hon'ble Supreme Court of Pakistan in the case titled "Maqbool Ahmad vs. Government of Pakistan" (1991 SCMR 2063) declared provisions of Section 28 repugnant to injunctions of Islam by declaring that any suit on the basis of adverse possession is not maintainable from 31.08.1991. The Government of Pakistan vide Limitation (amendment Act-II) of 1995 (PLD 1996 Central Statute 1296) omitted Section 28 from the Limitation Act, 1908 on 18.10.1995. In this way Section 28 of the Limitation Act, 1908 has ceased to have any effect from 31.08.1991 and was omitted from the Limitation Act on 18.10.1995.

iv) Judgment is verdict or decision of the Court usually recorded after recording the evidence and hearing the contesting parties. It is a conclusive judicial determination of rights of parties in any legal proceedings. Decree, is formal expression of opinion of the Court, it follows the judgment. When conclusion of the Court is translated into executable form, it is reflected in the "decree". Decree must be drawn in consonance and in conformity with decision of the Court.

v) On reading Rule 6 of Order XX of C.P.C., it is but clear that, the decree should be in accordance and in conformity with the judgment. Decree in fact is will of the Court. It is true reflection of the judicial determination of rights of the parties made by the Court. It is the decree that is executed or implemented. It is duty of the Court, while drawing the decree, to specify clearly the relief granted or other determination of rights of the parties in the suit so as to make it conformity with the will of the Court capable of enforcement.

vi) It has however, been held that the fact that powers of Court under Section 152 C.P.C., are unlimited does not mean that they will be exercised in all cases in which an application for their exercise is made. The exercise of power will depend on the circumstances of each case. The power is, therefore, discretionary with the Court, although normally where the provision of section 152 C.P.C., are attracted it will order amendment, unless it is inequitable to do so.

vii) Thus it could be said that "accidental slip or omission" as used in Section 152 C.P.C., means to leave out or failure to mention, something unintentionally, it is

only where the slip or omission as accidental or unintentionally it could be supplemented or added in exercise of jurisdiction conferred under Section 152 C.P.C.

viii) It has however, been held that the fact that powers of Court under Section 152 C.P.C., are unlimited does not mean that they will be exercised in all cases in which an application for their exercise is made. The exercise of power will depend on the circumstances of each case. The power is, therefore, discretionary with the Court, although normally where the provision of section 152 C.P.C., are attracted it will order amendment, unless it is inequitable to do so. (…) Such course is provided to foster cause of justice, to suppress mischief and to avoid multiplicity of proceedings. However, where slip or omission is intentional and deliberate, it could only be remedied or corrected by way of review if permissible or in appeal or revision as the case may be.

Conclusion: i) Yes, to prevent abuse of process.
ii) Courts can correct errors under this section anytime, even suo motu.
iii) No, it ceased on 31.08.1991 and was omitted in 1995.
iv) A decree reflects the judgment in executable form.
v) Yes, it must reflect the court's determination.
vi) Yes, it depends on the case's circumstances.
vii) it is an unintentional error that can be corrected under this section.
viii) No, only accidental omissions may be corrected and deliberate omissions require review, appeal or revision.

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37. **Lahore High Court Rawalpindi Bench Rawalpindi**
Syed Shouzab Imran Bukhari v. **Syeda Iffat Bukhari and 2 Others**
Writ Petition No.2521 of 2022.
Mr. Justice Shakil Ahmad.
https://sys.lhc.gov.pk/appjudgments/2024LHC5108.pdf

Facts: Petitioner was married with respondent No.1. On account of some differences, the latter instituted a suit for dissolution of marriage, recovery of dower, maintenance, gold and dowry articles before the Family Court. Suit was resisted by the petitioner, while submitting his written statement, controverting the assertions contained in the plaint. On failure of reconciliation proceedings, suit for dissolution of marriage was decreed in favour of the respondent No.1 on the basis of khula in terms of Section 10(5) of the Family Courts Act, 1964 subject to relinquishing of dower by her as per law. Feeling dissatisfied, the petitioner filed this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as "Constitution") on multiple grounds.

Issues: i) In how many ways Islam permits dissolution of marriage between Muslim spouses?
ii) What is literal meaning of Khula?
iii) How Khula has been defined by different Muslim Scholars?

iv) Whether Khula is a right of a Muslim woman to seek dissolution of marriage?
v) Can marriage of a Muslim woman be dissolved by Khula, even if husband does not consent?
vi) Whether amendment in Section 7 of the Muslim Family Laws Ordinance, 1961 introduced through the Muslim Family Laws (Second Amendment) Act, 2017 extends to the Province of Punjab?
vii) When decision of Federal Shariat Court takes effect?
viii) What is time period for filing an appeal against the decision of the Federal Shariat Court before the Supreme Court of Pakistan?
ix) What would be the legal status of an Order passed under Subsections (5) and (6) of section 10 of the West Pakistan Family Court Act, 1964 which were declared to deem annul and ineffective from 1st May 2022 by Federal Shariat Court in case of Imran Anwar Khan (PLD 2022 Federal Shariat Court 25)?
x). Whether a wife can seek dissolution of marriage by way Khula without the consent of husband even if the spouses are observing “Shia” sect?
xi) Whether without pronouncement of *“Seegahjaat”* no divorce interse *“Shia”* spouses would become effective?
xii) Can power of Family Court to dissolve the marriage on the basis of Khula, when reconciliations fails, be abridged?

Analysis: i) Islam permits dissolution of marriage between Muslim spouses in three ways i.e. Talaq, Mubarat and Khula.
ii) The literal meaning of term “khula” is to extract oneself.
iii) According to Ibn Manzur Muhammad bin Mukarram (Lisan al-‘Arab), the root of “khul” is “khal” and the verbal noun “khal” refers to the act of extraction, removal, detaching or tearing out. In its real sense, “khal” is generally associated with things or object, such as garments. According to Alauddin Masu’d al-Kasani (Badda ‘i’al-sana’i’ fi tarib al-shara ‘i’) the redemption (khul) is lexically, “al-naz” which means to pull out/extract something from something. Thus, “khala’ha” means that he has removed her from his marriage. According to Badruddin Mahmud al-‘Ayni (al-Binayah), the term “khul” is used technically for marital “extraction”, in that it is an act of receiving compensation from the wife in exchange of her being relieved from the marital tie. Thus, in simple terms, “khul” denotes a woman securing the annulment of her marriage in lieu of payment of some compensation to her husband.
iv). “Khula” denotes the right of a Muslim woman to seek dissolution of marriage in which she gives or consent to give a consideration to the husband for her release as determined by the court.
v) The above principle of law, however, then went under a radical change as in the case of Mst. BALQIS FATIMA versus NAJAM-UL- IKRAM QURESHI (PLD 1959 (W.P.) Lahore 566) Full Bench of this Court carved out “Khula” as a right of wife to seek from the court albeit the husband does not agree upon dissolution of marital tie. The Full Bench, while heavily relying upon and interpreting verse 2:229 noted hereinabove coupled with ahadith including

Habibah's case as well as practices of the Khulafa-e-Rashideen and opinion of Maulana Maududi (in Huqooq-ul-Zaujain) as well as other interpretations by renowned Muslim Scholars held that the commandment to refer the matter to the Qazi would be pointless, if he could not make a determination that the parties cannot live within the bounds set by Allah almighty without the husband's consent to the dissolution of marriage. It would not be out of context to mention here that in arriving at its conclusion, the court observed that though all schools of thought do not accept the jurisdiction of the Qazi to dissolve a marriage on basis of khula without the husband's consent, however, in rendering judgment on a question of interpretation of the Quran, the High Court is not bound by the opinions of jurists, especially where the plain meaning of the verse is clear. Thus, the objection that most interpretations by Muslim exegetes of verse 2:229 envisage consent of the husband was authoritatively dispelled.

vi) Suffice to observe that amendment in Section 7 was introduced through the Muslim Family Laws (Second Amendment) Act, 2021, which admittedly is restricted to Federally administered areas and it is not extended to the Province of Punjab.

vii) Article 203D of the Constitution deals with the powers, jurisdiction and functions of the Federal Shariat Court and in terms of proviso to sub-article (2) of Article 203D, no decision of the Federal Shariat Court shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or where an appeal has been so preferred, before the disposal of such appeal.

viii) Article 203F of the Constitution provides a time period for filing an appeal against the decision of the Federal Shariat Court before the Supreme Court of Pakistan. In terms whereof, if the appeal is to be preferred by any party to the proceedings such appeal is to be presented within sixty days of the decision whereas if the appeal is to be preferred on behalf of the Federation or of a Province it prescribes six months time limit for such appeal.

ix) It is an admitted position on the record that against the decision of the Federal Shariat Court in عمران انور خان supra case an appeal in terms of Article 203F of the Constitution has been preferred by the Province of Punjab. From the joint reading of both the provisions i.e. Articles 203D and 203F of the Constitution an inference can safely be drawn that at the time of passing of impugned order, Section 10(5) of the Act, 1964 was intact and as such it cannot be said that the impugned order suffers with any perversity.

x) The nutshell of above noted threadbare discussion is that a wife can seek dissolution of marriage by way of khula from the court even if his husband does not give consent for the same, nevertheless spouses are observing "Shia" sect.

xi) Adverting to the contention of learned counsel for the petitioner that without pronouncement of *"Seegahjaat"* no divorce interse *"Shia"* spouses would become effective, it is observed that a similar proposition came under consideration in the case of Syed MSAJID HUSSAIN ABIDI versus IRAM

SHEHZADI ABIDI and others (PLD 2023 Lahore 38) and this Court ruled as under :-

> "6. Notably, both the parties have got their statements recorded in the presence of the Family Judge. The petitioner has not denied the presence of respondent No.1 in the court. His only argument is that Talaq will become effective only after Seeghajaat read by him. In this context, it will be important to mention that under the personal law of Fiqa Jafria the divorce takes effect when the Arabic sentences (Seeghajaat) are read in presence of two witnesses. To trace out the relevant judicial precedents, the first famous authority is in case titled Syed Ali Nawaz Shah Gardezi v. Lt.- Col. Muhammad Yusuf Khan, Commissioner, Quetta Division reported as (PLD 1962 (W.P.) Lahore 558) in which Single Judge of this Court had dealt with the proposition in detail and held in para 74 that two witnesses are not only required as a proof of divorce under Shia law but essential to the very act of divorce as it is related to substantive law. Relevant extract at page 626 is reproduced as under:-
>
> > "…..It will be noticed that it is not with regard to proof of divorce that the Shia law insists on two witnesses but to the very act of divorce and it cannot, therefore, be held that the matter related to proof and not to substantive law….."
>
> In Syed Ali Nawaz Shah Gardezi v. Lt.-CoL. Muhammad Yousaf Khan, Commissioner, Quetta Division (PLD 1962 (W.P.) Lahore 558), same view (supra) was followed with a further reference to Mulla's Principles of Mohammadan Law that under Shia law a Talaq must be pronounced orally in the presence of two competent witnesses and Talaq communicated in writing will not be valid unless the husband is physically incapable of pronouncing it orally. Extract from para 5 is reproduced as under:-
>
> > "Mr. S. Anwarali has also invited my attention to Mulla's Principles of Mahommedan Law where it isagain stated that a Talaq under Shia Law must be pronounced orally in the presence of two competent witnesses, and a talaq communicated in writing, is not valid unless the husband is physically incapable of pronouncing it orally."
>
> Likewise, in The State v. Syedda Salma Begum and another reported as (PLD 1965 (W.P.) Karachi 185) same view was followed with a reliance upon Muslim Law as administered in British India by Saksena according to which
>
> > "Under Shia Law, a Talaq is of no effect unless it is pronounced:
> >
> > (1) Strictly in accordance with Sunna
> >
> > (2) in Arabic terms.

> (3) in the presence of at least two adult male witnesses."
>
> This follows that Talaq pronounced by respondent No.1 was not valid as it did not comply with the legal requirements prescribed by Sia Law. If a Shia is unable to pronounce Talaq in presence of wife in the prescribed manner then it cannot be pronounced in presence of two male witnesses and communicated to her in writing. There is nothing on record to show that the respondent No.1 was incapable of pronouncement in the prescribed form and manner before the witnesses."

In Syed Azharul Hassan Naqvi v. Hamida Bibi alias Eshrat Jahan and 3 others reported as (1987 CLC 1041) it was held that Talaq pronounced by a Shia male had to be heard by two "Adil" males if it has to result in breaking of ties. Relevant extract from para 3 is reproduced as under:-

> "3. The precise question which came up for decision before the learned trial and appellate Courts as wellas before this Court was whether or not the Talaq pronounced by the petitioner was valid. Whereas the petitioner insisted that Talaq pronounced by him was in consonance with the Muslim law as followed by Shias yet respondent No.1 asserted that no valid Talaq had been given by the petitioner and that the marriage continued to subsist. Admittedly, under Shia law pronouncement of Talaq by the petitioner was required to be heard by two adil males if it were to result in the breaking of marriage tie. The learned trial court, on the basis of the evidence led by the parties, reached the conclusion that the pronouncement of Talaq made by the petitioner did not conform to the requirement of Shia law inasmuch as it was not heard by two adil males and, therefore, respondent No.1 could not be said to have ceased to be his wife. This finding of the learned trial Court having been endorsed by the learned Additional District Judge the petitioner has invoked the extraordinary jurisdiction of this Court."

In Mst. Asmat Nigar v. Sayed Ibrar Hussain Shah and 2 others reported as (2004 YLR 111), Division Bench of Peshawar High Court has given reference to the famous book; Muhammadan Law by Syed Amir Ali the Shia doctrine of Talaq was discussed. Relevant extract is reproduced as under:-

> "The requirement of valid Talaq under Shia Law is that it shall have no effect unless it is pronounced strictly in accordance with Shia Law, in Arabic words in presence of two adult male witnesses and the wife but when the presence/attendance of the wife cannot be procured, then the husband can pronounce the Talaq in specific Arabic words which is known as "Khutba Talaq", but in presence

of two male witnesses and the same can be reduced into writing and forwarded to wife or it may be intimated to her otherwise.

3. Amir Ali in his book Muhammadan Law, Vol. II, Seventh Edition has stated Shia Doctrine of Talaq as follows:-

"They do not allow a Talaq to be given in writing nor in any language other than Arabic when there is ability to pronounce the words necessary for a valid repudiation….Even an absent husband cannot effect a valid Talaq in writing. He must pronounce the words in the presence of witnesses, and the fact of his doing so may be recording in writing, which may be forwarded to the wife or it may be intimated to her otherwise."

In Syed Asad Raza Naqvi v. Mst. Saima Fatima and another (2014 MLD 254), a reference was given to Mst. Kaneez Fatima v. Wali Muhammad and another (PLD 1993 Supreme Court 901), while holding that Section 7 of the Ordinance, 1961 is to be applied and interpreted to the facts of the case. However, it was held that suchShia male can pronounce the divorce afresh. Para 14is relevant and is reproduced as under:-

"…..Since, the valid Talaq is a precondition for exercise of jurisdiction under section 7(1) of the Muslim Family Laws Ordinance, 1961, or initiating proceedings under it and since the Talaq in question is invalid from the very face of it, therefore, the respondent No.2 was not liable to act upon such invalid Talaq and as such any proceedings, it initiated, on the basis of invalid talaq, would be illegal and without lawful authority and of no binding effect. So far as the case-law cited by learned counsel for petitioner in connection with the provisions of section 7 of Muslim Family Laws Ordinance, 1961, is concerned, a larger Bench of Hon'ble Supreme Court of Pakistan, examined such question in the case of Mst. Kaneez Fatima v. Wali Muhammad (PLD 1993 SC 901) and observed in its judgment at page 910 as follows:--

"The provisions of section 7 of the Ordinance have remained controversial from the very beginning and there are conflicting views in general about it. In view of the Constitutional restraints the Courts cannot give any verdict on the conflicting claims challenging or justifying the provisions of section 7 of the Ordinance. However, keeping in view the facts of each case the applicability and interpretation of section 7 has to be construed in

that light."

15. In view of above, this petition is hereby disposed of accordingly. with the observation that the petitioner will be at

liberty to pronounce fresh Talaq to his wife the respondent No.1, keeping in view the C requirements prescribed under the Shia law and thereafter, respondent No 2 shall act in accordance with law without any delay. The listed/pending application (C.M.A. No.4609) filed by petitioner with a prayer to restrain respondent party and police concerned, from causing him any harassment etc., and from interfering in the matter of his second marriage, is also disposed of with direction to the police concerned to ensure that the harassment, if any, is not caused to the petitioner in violation of law."

A reference may also be given to Mst. Zeba v. Abdul Ali (2002 SCMR 1315) a leave granting order. Paras Nos. 3 and 4 are relevant and, therefore, reproduced as under for ready reference:-

"3. Learned counsel appearing for petitioner, inter alia, contended that according to Shia School of thought, respondent Abdul Ali did not pronounce Talaq in Arabic (صیغه) in presence of two witnesses. To substantiate his contention, he referred to para.2517 (page 377) of the book "(توضیح المسائل)". He also relied upon the cases of Syed Ali Nawaz Gardezi v. Lt. Col. Muhammad Yousaf (PLD 1963 SC 51) and Mirza Qamar Raza v. Mst. Tahira Begum and 14 others (PLD 1988 Kar. 169).

4. It was argued by the learned counsel that the Family Court decided the issue "whether defendant has divorced plaintiff on 26-8-1996?" against the respondent, after having appreciated the available evidence on record, according to the principle of Qanun-e-Shahadat Order, 1984, but learned High Court in its Constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan disturbed the findings of the fact contrary to the settled law that the findings of facts are intervened very rarely unless it is established that the trial Court has recorded the perverse findings and had drawn conclusion which is contrary to law. We have heard the learned counsel appearing for petitioner and have also gone through the judgment cited by him as well as the book "(توضیح المسائل)". In our opinion, the contention raised by the learned counsel needs examination in depth. As question of public importance is involved in instant petition as such leave to appeal is granted."

Notably, the amendment recently introduced is exactly in accordance with the precedents of the superior Courts of this country and the law discussed hereinabove."

xii) Subsection (5) of Section 10 of the Act, 1964 ordains that in a suit for dissolution of marriage on failure of reconciliation proceedings, the Family Court shall immediately pass a decree for dissolution of marriage and in case of dissolution of marriage through khula, may direct the wife to surrender upto fifty percent of her deferred dower or upto twenty five percent of her admitted prompt dower to husband. No shatters thus can be imposed upon the power of Family Court to dissolve the marriage on the basis of khula, when reconciliation is not possible.

Conclusion: i) Islam permits dissolution of marriage between Muslim spouses in three ways i.e. Talaq, Mubarat and Khula.

ii) The literal meaning of term "khula" is to extract oneself.

iii) See above analysis No.iii).

iv) Khula is right of Muslim woman to seek dissolution of marriage.

v) See above analysis No.v).

vi) Amendment in Section 7 of the Muslim Family Laws Ordinance, 1961 introduced through the Muslim Family Laws (Second Amendment) Act, 20217 is not extended to the Province of Punjab.

vii) See above analysis No.vii).

viii) See above analysis No.viii).

ix) See above analysis No.ix).

x) A wife can seek dissolution of marriage by way of khula from the court even if her husband does not give consent for the same, nevertheless spouses are observing "Shia" sect.

xi) See above analysis No.xi).

xii) See above analysis No.xii).

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38. **Lahore High Court, Lahore**
Criminal Appeal No.83167 of 2023 (Muhammad Nawaz vs. The State etc.)
Criminal Appeal No.2404 of 2024 (Sharafat Ali vs. Muhammad Talal etc.)
Criminal Revision No.2407 of 2024 (Sharafat Ali vs. The State etc.)
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC5030.pdf

Facts: A case was registered under sections 302, 324, 337-F(iii) and 34 PPC Complainant also filed private complaint. Trial court after trial convicted one accused and acquitted the other. Convict aggrieved by conviction preferred appeal, complainant also preferred appeal against acquittal and filed revision petition for enhancement of sentence.

Issues: i)Whether an adverse inference can be drawn on gross delay in the post mortem examination?

ii)Whether site plan can be used to contradict or disbelieve the eyewitnesses?

iii)What is the condition precedent for giving preference to ocular account over site plan?

iv)Whether witnesses are untrustworthy if they make dishonest improvements?

v)Whether Court can look into the averments of any document which is available on judicial file?
vi)Whether photocopy of any document can be exhibited and read in evidence?
vii)Whether in criminal case the portion of uncross-examined evidence should be admitted as correct?
viii)Whether inference can be drawn against the defence if defence failed to prove specific plea?

Analysis: i) Keeping in view the above mentioned gross delay in the post mortem examination, an adverse inference can be drawn that the prosecution witnesses were not present at the time and place of occurrence and the intervening period had been consumed in fabricating a false story after preliminary investigation, otherwise there was no justification of such delay for conducting post mortem examination on the dead body of the deceased. Wisdom is derived from the case-laws tilted as "Muhammad Ilyas vs. Muhammad Abid alias Billa and others" (2017 SCMR 54), "Muhammad Adnan and another vs. The State and others" (2021 SCMR 16) and "Iftikhar Hussain alias Kharoo vs. The State" (2024 SCMR 1449).
ii) So far as the contention of learned counsel for the complainant that site plan is not a substantive piece of evidence and cannot be given preference over the direct evidence of eyewitnesses is concerned, I am in agreement with the proposition that although site plan is not a substantive piece of evidence as held in case of "Ellahi Bakhsh vs. Rab Nawaz and another" (2002 SCMR 1842) but it reflects the view of crime scene and the same can be used to contradict or disbelieve the eyewitnesses....
iii) It is true that ocular account is given preference over the site plan yet there is a condition precedent that the ocular account must be cogent, trustworthy and not tainted, otherwise, site plan can be used to corroborate or contradict other evidence, because, it is used to give true picture and salient features of the occurrence.
iv)In a slew of decisions, the Supreme Court of Pakistan has declared that the witnesses are untrustworthy if they make dishonest improvements in their statements on material aspects of the case in order to fill up the lacunas and gaps in the prosecution case or to bring their statements in line with the other prosecution evidence. Reference in this respect may be made to the judgments of Supreme Court of Pakistan reported as "Mst. Saima Noreen and another vs. The State" (2024 SCMR 1310) and "Muhammad Jahangir and another vs. The State and others" (2024 SCMR 1741)..
v) There is no cavil to the proposition that for safe administration of justice and fair play, the Court can look into the averments of any document which is available on judicial file but at the same time, it does not mean that the contents of the same can be referred in the judgment because it is a well settled principle of law that the document, which has not been produced and exhibited in evidence,

cannot be read and relied upon. In case titled as "Mazhar Iqbal vs. The State and another" (2022 MLD 752)....
vi) It is not disputed that the photocopy of any document cannot be exhibited and read in evidence except as a secondary evidence. It is true that in absence of any evidence with regard to loss of any document, photocopy of the same even if taken on record and exhibited without any objection would not qualify the document as admissible in evidence, in this way, I agree with the contention of learned counsel for the complainant that the trial court has wrongly exhibited photocopy...
vii) So far as the case-laws referred by learned counsel for the complainant about the above-mentioned proposition are concerned, the same are not relevant because every criminal case is to be decided on the basis of totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination. Even otherwise the point agitated by learned counsel for the complainant is applicable in the civil cases and not in criminal cases. Guidance in this respect has been sought from the cases reported as "Juwarsing and others v. The State of Madhya Pradesh" (AIR 1981 Supreme Court 373) and "Nadeem Ramzan v. The State" (2018 SCMR 149)...
viii) It is well settled by now that general principle in criminal jurisprudence is that the prosecution has to stand on its own legs and this burden does not shift from prosecution even if accused takes up any particular plea and fails to prove it. Reliance can be placed upon the case-laws titled as "Hakim Ali and four others vs. The State and another" (1971 SCMR 432) and "Ashiq Hussain vs. The State" (1993 SCMR 417).

Conclusion: i) An adverse inference can be drawn that the prosecution witnesses were not present at the time and place of occurrence and the intervening period had been consumed in fabricating a false story after preliminary investigation.
ii) It reflects the view of crime scene and the same can be used to contradict or disbelieve the eyewitnesses.
iii) See above analysis no. 4
iv) See above analysis no. 5
v)See above analysis no. 6
vi) photocopy of any document cannot be exhibited and read in evidence except as a secondary evidence.
vii) This principle applicable in the civil cases and not in criminal cases.
viii) The prosecution has to stand on its own legs and this burden does not shift from prosecution even if accused takes up any particular plea and fails to prove.

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39. **Lahore High Court Lahore,**
Kamran Mushtaq v. The State & Others
Criminal Revision No.56647 of 2024
Mr. Justice Muhammad Amjid Rafiq.
https://sys.lhc.gov.pk/appjudgments/2024LHC5222.pdf

Facts: Though this Criminal Revision Petition, petitioner has assailed the Orders of learned Additional Sessions Judge on the ground that while relying on medical report/ossification test, the documentary evidence produced by the petitioner in support of his application to declare him the juvenile within the meanings of Juvenile Justice System Act, 2018 was rejected.

Issues: i) What is object of inquiry under section 8 of Juvenile Justice System Act, 2018?
ii) What is the form of inquiry under section 8 of Juvenile Justice System Act, 2018?
iii) What is touchstone of acceptance of documents in inquiry under S.8 of Juvenile Justice System Act, 2018?
iv) What does mean “in the absence of documents” used in S.8 of Juvenile Justice System Act, 2018?
v) What is nature of inquiry for age determination?
vi) What kind of duty does S.8 of Juvenile Justice System Act, 2018 cast upon police?
vii) When a Court must pass an Order for medical examination of accused?
viii) Is birth certificate is conclusive proof of date of birth?

Analysis: i) Section 8 of JJSA 2018 used word ‘‘inquiry’’ to determine the age of person on the basis of birth certificate, educational certificate or any other document, primarily to be made by the police and then by Magistrate before order for further detention. It is trite that object of the inquiry is to determine the truth or falsity of certain facts in order to take further action thereon as held in a case reported as “P. Sirajuddin Vs Government of Madras, represented by the Chief Secy., Madras and others” (AIR 1968 Madras 117).
ii) The Supreme Court of Pakistan in a case reported as “Sultan Ahmed Versus Additional Sessions Judge-I, Mianwali and 2 others” (PLD 2004 Supreme Court 758), has declared that the inquiry for age determination is a form of judicial proceedings calling for application of Qanun-e-Shahadat Order, 1984 (the Order), which says it applies to all judicial proceedings in or before any Court.
iii) Thus, documents primary or secondary, in support of age of accused, shall be not be accepted at the whims of the parties without verification but on the touchstone of admissibility rules contained in the Order.
iv) Absence of documents does not mean that there is no document at all rather it means absence of authentic, correct & true documents as admissible in evidence.
v) Inquiry for age determination is like a voir dire process (trial within trial) which cannot be left at the mercy of police.
vi) Enactment of section 8 ibid requires the police to collect material for and against claim of juvenility to save precious time of the Courts so as to avoid unnecessary entangling in summoning of stary records on the applications of the parties, as was the requirement of section-7 of erstwhile law i.e., Juvenile Justice System Ordinance 2000.

vii) Form the above discussion, it is clear the age of the accused shall only be accepted on the basis of documents after proper inquiry. If after inquiry into such documents, Court rejects them, then it must direct for medical examination.

viii) Supreme Court of Pakistan while discarding birth certificate declared it a volunteered entry by the accused, in a case reported as "MUHAMMAD ANWAR Versus MUHAMMAD SUFFYIAN and another" (2009 SCMR 1073) as under;

> "The entry of date of birth in the above mentioned register Dakhil Kharij and in the above mentioned Provisional Result Certificate are not independent sources of information about the said respondent's date of birth because they only followed the information volunteered by the student himself or someone connected with him. Since such certificates are based on the information about the date of birth as volunteered as mentioned above, therefore, the same could never be found to be a conclusive proof of the concerned person's date of birth."

Conclusion: i) Object of inquiry is to determine the age of accused.

ii) The inquiry for age determination is a form of judicial proceedings.

iii) Documents would be accepted on touchstone of admissibility rules contained in Qanun-e-Shahadat Order, 1984.

iv). See analysis iv).

v) Inquiry for age determination is like a voir dire process (trial within trial).

vi) To collect material for and against claim of juvenility to save precious time of the Courts.

vii) Order for medical examination would be passed after rejection of documents.

viii) Birth certificate is not conclusive proof of the concerned person's date of birth.

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40. **Lahore High Court Lahore**
Muhammad Saleem Minhas v. Ashfaq Hussain Minhas, etc.
(Writ Petition No. 2292 of 2024)
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC5348.pdf

Facts: Special Judge (Rent) passed eviction order against the petitioner/tenant on the ejectment petition filed by the landlord on the ground of default. The learned Appellate Court maintained the order passed by the learned Special Judge (Rent). The petitioner/ tenant then filed constitutional petition and assailed the impugned order(s) on the ground that once the Special Judge (Rent) reached the conclusion that no arrears were payable as the tenant had cleared the entire amount of arrears, no ground for acceptance of the eviction petition stood out.

Issue: Whether an order of eviction can be passed on ground of expiry of the tenancy period/lease when the said ground is not taken and the eviction petitions are only filed on the basis of default?

Analysis: It is settled principle of law that once a tenant is always a tenant, nothing but a

tenant. Directing the eviction petitioners to file a fresh eviction petition (with expiry of tenancy as a ground of eviction) would amount to lingering on the matter in a manner that the tenant is enabled to continue with the occupation of the rented premises, without consent of the landlord, for no beneficial outcome except that after fulfilling codal formalities of issuing notice on such fresh eviction petition, the same merits acceptance. Additionally, such fresh petitions would add to already piled up cases with the Courts for no just reason. Such an interpretation does not dovetail well with the object and purpose of the Act, which aims at ensuring that the disputes, inter se, the landlord and tenant are resolved in a cost effective and expeditious manner as is evident from the preamble of the Act: "Whereas it is expedient to regulate the relationship of landlord and tenant, to provide a mechanism for settlement of their disputes in an expeditious and cost effective manner and for connected matters". Thus, when Section 15 of the Act, provides for eviction in cases where the tenancy has expired, it is nothing less than bizarre to contend that such ground has not been taken by the landlord and he must file a fresh eviction petition.

Conclusion: The order of eviction of the tenant can be validly passed on expiry of tenancy (expired during the pendency of the ejectment proceedings) even if said ground is not taken in the eviction petition.

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41. **Lahore High Court, Lahore**
Jawad Ali Shah, etc. v. Mst. Sarwat Fatima, etc.
W.P. No.173/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC5358.pdf

Facts: The petitioners, children of deceased with special abilities, challenged the entitlement of respondent, widow of the deceased, to recover Rs. 300,000/- as dower. The respondent's claim was based on an entry in the Nikahnama, alleged by the petitioners to have been interpolated after the death of the deceased. Both lower courts ruled in favour of the respondent, decreeing her claim. Hence; this petition.

Issues: i) Can the High Court in constitutional jurisdiction intervene in Family Court cases for misreading evidence or misapplying the law?
ii) Does a registered Nikahnama carry a presumption of truth?
iii) Which copy of a Nikahnama carries the presumption of truth?
iv) When does the obligation to pay dower apply?

Analysis: i) Generally, factual determination in a case instituted under the Family Courts Act, 1964 is immune from interference by this Court in exercise of its constitutional jurisdiction, however, the present case falls under an exception where the evidence on record has been misread and the applicable law has been misapplied,

ii) In ordinary circumstances if the respondent had produced her Nikahnama duly registered in accordance with law, the same could have carried presumption of truth attached to it and it was for the petitioners to prove that the document was interpolated because in order to carry presumption of truth by a public document, it is imperative that such document is registered and/or kept/maintained, in accordance with law, by the authority envisaged thereunder. (…)Presumption of truth attached to the Nikahnama, being a public document, is rebuttable
iii) it is fourth copy (پرت) (duly forwarded to the Union Council concerned or the (first pert) one that is kept in the original register is the document that carries the presumption of truth.
iv) Adverting to the reliance placed on the ratio laid down in case of Haseen Ullah supra, suffice to observe that the same is settled law qua obligation of a husband to pay the dower and is applicable in cases where the registered Nikahnama carrying presumption of truth is brought on record.

Conclusion: i) Yes, in such exceptions.
ii) Yes, unless proven interpolated.
iii) The original register copy or the fourth copy forwarded to the Union Council.
iv) When a registered Nikahnama with presumption of truth is on record.

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42. **Lahore High Court**
Mst. Shamim Akhtar (deceased) through Legal Heirs and others v. Abdul Hameed & 04 others
C. R. No. 828-D / 2014
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC5313.pdf

Facts: The case involves a dispute over ownership of a property claimed by the Petitioners based on subsequently registered sale deeds executed by legal heirs of Sher Muhammad, and by the Respondent, who asserted ownership under a prior unregistered sale agreement executed by Sher Muhammad. The Petitioners' suit for declaration of ownership and possession was dismissed, as the Respondent's specific performance decree based on the prior agreement attained finality.

Issues: i) What determines precedence between a registered document and an unregistered document?
ii) Does a prior unregistered agreement nullify inheritance claims?
iii) What is the effect of a decree of specific performance on subsequent registered sale deed?
iv) Does validating a prior agreement render subsequent sale deeds void?

Analysis: i) The Supreme Court of Pakistan in case titled "Muhammad Sadiq v. Muhammad Ramzan and 8 others" (2002 SCMR 1821) held that the registered document will have precedence over the unregistered document, if it was executed earlier in time because title is determined from the date of execution and not from the date of registration of the document.

ii) Once the Respondent proved his prior unregistered Agreement executed by Sher Muhammad in his lifetime against payment of the entire sale consideration, there was no question of devolving of the suit property to the legal heirs of Sher Muhammad.
iii) the decree of specific performance having attained finality, the execution whereof is admittedly pending, operates as res judicata to the claim of ownership of the Petitioners based on subsequent sale deeds. It is a well settled principle of law that if the foundation of any building collapses, the super structure built thereon would also fall to ground.
iv) As such, once the prior Agreement of the Respondent was validated, the subsequent sale deeds became illegal and void, thus stood cancelled.

Conclusion: i) Execution date decided title precedence.
ii) Valid prior agreement nullifies inheritance.
iii) Final decree voids later sale deeds.
iv) Validation of a prior agreement nullifies subsequent sale deeds, making them illegal and void.

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43. **Lahore High Court Lahore,**
Raheem Ahmad v. Federation of Pakistan, etc.
Writ Petition No.1050/2022
Mr. Justice Abid Hussain Chattha.
https://sys.lhc.gov.pk/appjudgments/2024LHC5414.pdf

Facts: Petitioner was employed as OG-III / Cash Officer in National Bank of Pakistan (NBP) on contract basis on 12.08.2016 for a period of three years, which was renewed from time to time but he was dismissed from service with immediate effect vide impugned Order dated 17.02.2021. Petitioner filed W.P. No. 3669 of 2021 challenging the dismissal Order which was disposed of vide Order dated 10.03.2021 by transmitting the Petition to the concerned Respondent of the NBP to decide the same in accordance with law. Representation of the Petitioner was dismissed by holding that the Cash Internee Certificate purportedly issued by Zarai Tarraqiati Bank Limited (the "ZTBL") submitted by the Petitioner at the time of his appointment was not verified by the ZTBL, hence, the Petitioner was dismissed on account of submitting fake antecedent pursuant to clause 5.6 of his appointment letter. Aggrieved from the same, the Petitioner filed W.P. No. 14150 of 2021 which was disposed of vide Order dated 25.10.2021 directing to decide pending appeal of the Petitioner, which was later dismissed vide impugned Order dated 29.12.2021 on the same ground that the Petitioner failed to provide any record verified by the Head Office of ZTBL regarding genuineness of his Cash Internee Certificate dated 29.06.2016 purportedly issued by the Branch Manager of ZTBL. Said Order has been assailed through instant Wirt Petition.

Issues: i) Whether National Bank of Pakistan (Staff) Service Rules, 1973 (Rules, 1973) are statutory rules whereas National Bank of Pakistan (Staff) Service Rules, 2021

(Rules, 2021) are non-statutory rules. If so, whether Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 is maintainable, if yes, under which rules?

Analysis: i) It is an admitted fact that the Petitioner was employed on contract basis on 12.08.2016 for a period of three years and his contract was extended from time to time until he was abruptly and arbitrarily dismissed vide letter dated 17.02.2021. On the date of his dismissal from service, the non-statutory Rules, 2021 were not in force, rather the statutory Rules, 1973 were applicable. For reference, see Umar Asghar Qureshi case (supra); "Muhammad Tariq Badr and another v. National Bank of Pakistan and others" (2013 SCMR 314); and "Muhammad Tariq Khan v. National Bank of Pakistan through President/CEO, etc." (PLJ 2024 Lahore 376). As such, this Petition was maintainable.

Conclusion: i) National Bank of Pakistan (Staff) Service Rules, 1973 are statutory rules whereas National Bank of Pakistan (Staff) Service Rules, 1973 are non-statutory rules. Writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 is maintainable under statutory rules.

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44. **Lahore High Court Lahore**
Muhammad Barjees Tahir v. Arslan Aswad Naeem and 18 others
(Election Petition No. 18669 of 2024)
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC5187.pdf

Facts: The election-petitioner called into question the election, inter alia, on the ground that respondent (returned candidate) has failed to disclose two properties given as gift to his sons, in his declaration filed along-with the nomination papers. Some other grounds as to corrupt and illegal practices on the polling day were also taken.

Issues: i) Whether the election-petitioner is required to give full particulars of illegal and corrupt practice as per section 144(b) of the Election Act, 2017?
ii) Whether non-signing and non-verification of the election-petition appears to be in defiance of section 144(b) of the Election Act, 2017?
iii) Whether failure to append affidavit of service with the election-petition appears to be in defiance of the provisions of the Election Act, 2017?

Analysis: i) The election-petitioner has not indicated in the entire election petition as to any benefit derived, from the purported mis-declaration, as necessitated in the case of "Khawaja Muhammad Asif v. Muhammad Usman Dar" (2018 SCMR 2128) and then reiterated in case titled "Shamona Badshah Qaisarani versus Election Tribunal, Multan and Others" (2021 SCMR 988). The sons of the returned candidate somehow also filed their declaration and separate forms, which are available on the record. Their declarations reflect the gift from their father / the returned candidate.

ii) There is no denial of the fact that if the verification in the election petition is not in accordance with law but the same is accompanied by an affidavit verifying the contents of the petition and it fulfills the requirements of the Act, there are some judgments which recognize that the election petition shall be taken as validly instituted. In case titled "Abdul Wahab Baloch Versus Imran Ahmad Khan Niazi and Others" (PLD 2019 Lahore 119) after survey of the entire case law of the Honourable Supreme Court of Pakistan, this Court reached to the conclusion that even a short affidavit is sufficient if it duly fulfills the requirement of Order VI Rule 15 of the Code. It is also settled that when the election-petitioner is not personally known to the oath commissioner, he can be identified by an advocate, who is then required to state that election-petitioner is personally known to him.
iii) In "Abdul Wahab Baloch" case (supra) it has been entrenched that section 144 of the Act requires appending an affidavit of service with the election petition to the effect that copies of the election petition along-with the copies of all annexure, including list of witnesses, affidavit(s) and documentary evidence have been sent to the respondents by registered or courier service. Even an ambiguous affidavit of service was found defective and invalid. In "Syed Atta Ul Hassan Versus Ahmad Nawaz and Others" (2019 MLD 1013) with respect to affidavit of service, it has been observed that postal receipts are not sufficient to meet the requirement of section 144(2)(c) of the Act.

Conclusion: i) The election-petitioner is required to give full particulars of illegal and corrupt practice as per section 144(b) of the Election Act, 2017 and also to indicate in the election-petition as to any benefit derived, from the purported mis-declaration.
ii) If the verification in the election petition is not in accordance with law but the same is accompanied by an affidavit verifying the contents of the petition and it fulfills the requirements of the Act, then the election petition shall be taken as validly instituted.
iii) See Analysis no. iii.

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45. **Lahore High Court**
Muhammad Ramzan (deceased) and others v. Muhammad Sharif (deceased) and others
Civil Revision No 65806 of 2024
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC5194.pdf

Facts: This case revolves around the enforceability of an old property agreement and the evidentiary standards applied to documents produced decades after execution. Predecessor of the petitioners instituted a suit for specific Performance and possession in April 2013, on the basis of an agreement to sell dated 26.08.1988. The suit was dismissed by the trial and first Appellate Court against which the present Revision petition was filed.

Issues: i) What is the reckoning period of thirty years under Article 100 of Qanun-e-Shahadat Order 1984 (QSO 1984) for presumption related to the genuineness of a document?
ii) Under what circumstances can courts refuse to apply the presumption under Article 100 of QSO 1984 for old documents?
iii) Does the presumption under Article 100 of QSO 1984 automatically apply to old documents?

Analysis: i) From the plain reading of Article 100 of QSO 1984 it looks that thirty (30) years are to be taken on the date when a document is produced from any custody. Article 100 of QSO 1984 is identical to section 90 of the Evidence Act-1872 (the '**Act**'), which came under consideration of this Court in "Bahadar and Others Versus Sohna and Another"1 case, wherein it was concluded that this section refers to production of document. In "Surendra Krishna Roy and another Versus Mirza Mahammad Syed Ali Mutawali and Others"2 case the Privy Council expressed the opinion that under section 90 of the Act, the period of thirty (30) years is to be reckoned, not from the date upon which deed is filed in the Court but from the date on which, it having been tendered in evidence, its genuineness or otherwise becomes the subject of proof.
ii) Courts should be very careful about applying any presumption under Article 100 of QSO 1984 in favour of old documents when the same are produced during the trial of a suit, in which the proprietary rights are set up and the Courts in its discretion can refuse to apply presumption where evidence in proof of the document is produced and then it is disbelieved.
iii) The word 'may' used in Article 100 of QSO 1984 signifies that presumption envisaged therein does not follow as a matter of course.

Conclusion: i) The period of thirty (30) years is to be reckoned, not from the date upon which deed is filed in the Court but from the date on which, it having been tendered in evidence, its genuineness or otherwise becomes the subject of proof.
ii) Courts in its discretion can refuse to apply presumption where evidence in proof of the document is produced and then it is disbelieved.
iii) See above analysis no iii.

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46. **Lahore High Court Lahore**
Javed Ahmad Shafqat V. Tariq Ali
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC5180.pdf

Facts: Suit filed under order XXXVII of the Code of Civil Procedure, 1908 got decreed ex-parte against the appellant. Application filed for setting aside the decree was dismissed from trial court and appellant assailed the order before Honorable High Court.

Issues: i) What is the time period available to the defendant for filing application for setting aside ex-parte decree passed under order XXXVII of the Code of Civil Procedure, 1908?
ii) Are "special circumstances" essential to set aside a decree under Order XXXVII Rule 4 of the Code?
iii) Can a litigant set up a new mode of knowledge in subsequent application to set aside an ex-parte decree?

Analysis: i) There is no dispute as to the settled proposition that thirty days time period is available to defender from the date of knowledge of ex-parte decree. This is when the defender has not participated in the proceedings and it is apparent from record that he never had knowledge of such proceedings.
ii) Much focus has been made in the second application as to the law that thirty days period is available to the appellant for seeking to set-aside the ex-parte decree by referring to different cases but this second application lacks "special circumstances", which are also essential to be shown for seeking to set-aside the decree and for giving leave to the defender, if it seems reasonable to the Court to do so. In the absence of existence of "special circumstances" the defender of the suit of summary procedure is not entitled to the relief under Order XXXVII Rule 4 of the Code.
iii) The appellant had never set-up the above mode of knowledge in the first application. It appears that above specific development in mode of knowledge is due to the reason that vide judgment dated 03.02.2016 (i.e. the judgment in the first application) the learned trial Court had already observed that the appellant has given the same address that is mentioned in the suit and he has admitted that his address in the suit is correct where he was served through ordinary mode, courier service and as per the observation of the then learned Judge, proof of the same was available. It is also evident from the record that the appellant in pursuance to the then pending execution, which was initiated on 07.02.2015 under the misconception that decree was also passed, appeared on 08.05.2015 and then kept on seeking adjournment without raising any objection. Facing this situation the appellant has modified his grounds as well as the mode of knowledge, in the second application.

Conclusion: i) See above analysis (i).
ii) Special circumstances" are essential to be shown for seeking to set-aside ex-parte decree.
iii) A litigant cannot later alter the mode of knowledge to set aside an ex-parte decree.

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47. **Lahore High Court**
Muhammad Shoaib Iqbal v. Government of the Punjab, etc.
W.P. No.19728 of 2023
Mr Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC5308.pdf

Facts: The petitioner challenged his transfer to the District Council arguing it violated the statutory security of tenure provided under Section 186 of the Punjab Local Government Act, 2022. The petitioner highlighted frequent transfers within a short span, contending such actions were arbitrary and contrary to the law. Hence; this petition.

Issues: i) What principles govern the frequency of transfers of government servants?
ii) When can the ordinary tenure for a posting specified in law be varied?
iii) What makes a transfer order void ab initio?

Analysis: i) The normal period of posting at a station provided by the law is to be followed in ordinary circumstances unless for reasons of exigencies of service1 . The transfers of civil servants should only be considered on the basis of convenience to the general public, betterment of the institution or in the interest of public good but unfortunately, this is being used for extraneous considerations
ii) When the ordinary tenure for a posting is specified in the law or rules made thereunder, such tenure must be respected and should not be varied, except for compelling reasons, which should be recorded in writing2 .
iii) However, on the touchstone of the above principles, the competent authority can transfer an officer on administrative grounds but if the same is tainted with mala fide or any external influence or any other arbitrary reason or a reason contrary to the settled principles of transfer/posting, the same is void abinitio. Needless to observe that the right of an employee/officer against displacement or transfer is accepted only when the same is passed on extraneous consideration and it cannot be claimed as a matter of right.

Conclusion: i) The normal posting tenure should be followed unless justified by public convenience or exigency of service.
ii) Specified tenure must be respected and only varied for compelling, recorded reasons.
iii) Transfers made with mala fide, external influence, or arbitrary reasons are void ab initio.

LATEST LEGISLATION/AMENDMENTS

1. Vide the Seed (Amendment) Act, 2024, amendments are made in preamble, sections 2, 6, 10, 12, 16, 22B, 22D and 22F, 22J, 23, 24, 25, 29 and substitution of sections 3, 4, 28 and insertion of sections 3A to 3E, 4A, 24A to 24C, 28A, 30, 31 and omission of section 22I.
2. Vide notification No. SOT (M&M) 5-12/2003/VIII dated 21.10.2024, the comprehensive terms and conditions for the open auction of limestone blocks under section 187(2) of the Punjab Mining Concession Rules 2002 are approved.

3. Vide Notification No, Estt.I-4/2024-PPSC/1479 dated 06.11.2024, the amendment is made in PPSC regulation 28(b).
4. Vide notification NO, SOR-III (S&GAD)1-9/2003 dated 15.11.2024, amendments are in column No.2, after serial No.6, 7 & 8, at serial No.7 & 8.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/anti-defection-law-in-India

Anti - Defection Law In India by Yogiraj Sadaphal

The Tenth Schedule, also known as the "Anti-Defection law," was inserted to the Indian Constitution by the 52nd Constitutional Amendment Act of 1985. Defections from political parties constituted a danger to India's democracy and the ideas that underpin it. The modification was intended to reduce party defections among members at the time. The law has worked reasonably well and has helped to maintain party stability to some extent. The schedule specifies the criteria for a defecting member's exclusion from his former political party. There are several exceptions to disqualification in the legislation, such as in the case of a party merger. The purpose of this article is to provide a quick overview of the reasons listed in the Tenth Schedule. It also discuss merits and demerits of the law, current senario of the law and effects of Anti-defection law in Parliamentary Debate.

2. **COURTING THE LAW**
https://courtingthelaw.com/2024/11/10/laws-judgments-2/aligning-family-law-reform-with-international-treaties/

Aligning Family Law Reform with International Treaties by Sana Abbas Dashti

Family law reforms in Pakistan are influenced by various factors, including international treaties and conventions to which the country is a party. The ***Family Courts Act 1964*** *governs family law matters and its provisions are often interpreted in light of international obligations. Pakistan's commitment to international treaties like* ***CEDAW*** *necessitates significant reforms in family law to ensure gender equality and protect women's rights. The judiciary has emphasized the importance of aligning domestic laws with international standards, often highlighting the need for legislative reforms to address existing gaps. However, the implementation of these reforms must be sensitive to Pakistan's cultural and religious context, requiring a careful balance between international obligations and local customs.*

3. **COURTING THE LAW**
https://courtingthelaw.com/2024/11/05/commentary/does-the-26th-amendment-threaten-judicial-independence-and-the-rule-of-law/

Does the 26th Amendment Threaten Judicial Independence and the Rule of Law? By Aamir Latif Bhatti

This article focuses on the recent Twenty Sixth Constitutional Amendment passed by the Pakistani Parliament. It has raised many eyebrows because of its effects on the judiciary's autonomy, the rule of law, and human rights. This article makes an attempt to analyze the changes brought about by the Amendment that modify the structure of the Judicial Commission of Pakistan (JCP), the selection process of the Chief Justice of Pakistan (CJP), and newly introduced grounds for the removal of judges on the grounds of "inefficiency" when the term has not been defined. This article examines these developments relative to international norms, especially the International Covenant on Civil and Political Rights (ICCPR) and the United Nations (UN) Basic Principles on the Independence of Judiciary. It also analyses the implications of these findings for the prospects of democratic governance in Pakistan, proposing that the Amendment impairs the judiciary's autonomy, weakens its check on the executive and legislature, and infringes on the doctrine of the rule of law and fundamental rights.

4. **LEGAL VISION**
   https://legalvision.com.au/certification-licensing-educational-training-business/

Key Certification and Licensing Requirements for Education and Training By Veer Shrivastava

If you operate an educational or training business, you must understand the required qualifications, certifications, and registrations. These requirements apply to both your employees and your business. This comprehensive guide explains the key certification and licensing requirements for running an educational or training business. It outlines the qualifications your employees need. It also covers the child safety certifications your staff must secure. Additionally, it explains how to register a school or training organisation with the government. By following these guidelines, you can keep your business compliant with legal regulations and set it up for success. This article will cover the qualifications, certifications, and registrations required to run an educational or training business.

5. **LEGAL VISION**
   https://legalvision.com.au/us-business-structure/

Understanding U.S. Business Structure Options by Stephen Drysdale

When establishing or expanding a business to the United States, choosing the right business structure is an important step that impacts tax obligations, liability risk and operational flexibility. This article discusses the most common business structures in the United States, highlighting their key features, advantages and legal considerations so that you can choose the right structure for your business.