LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-12-2023 to 31-12-2023)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Raja Amer Khan and another, etc. v. Federation of Pakistan through the Secretary, Law and Justice Division, Ministry of Law and Justice, Islamabad and others
Constitution Petitions No. 6 to 8, 10 to 12, 18 to 20 and 33 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Sardar Tariq Masood, Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/const.p.6_2023.pdf

Facts: A Full Court was constituted by the Chief Justice of the Supreme Court of Pakistan to decide the petitions filed in the original jurisdiction of the Supreme Court, challenging the vires of the Supreme Court (Practice and Procedure) Act, 2023.

Issues: i) Whether the Constitution of the Islamic Republic of Pakistan bestow unlimited jurisdiction on the Supreme Court?
ii) How many jurisdictions are conferred on the Supreme Court by the Constitution of the Islamic Republic of Pakistan?
iii) What is the responsibility of Judiciary?
iv) Whether the Constitution of the Islamic Republic of Pakistan grants to the Chief Justice power to decide cases unilaterally and arbitrarily?
v) Whether the Constitution of the Islamic Republic of Pakistan empowers Parliament to legislate with regard to making the practice and procedure of the Supreme Court?
vi) Whether the Supreme Court (Practice and Procedure) Act, 2023 provides the right of appeal to one who is aggrieved by a decision of the Supreme Court?

Analysis: i) The Constitution establishes the Judicature. It stipulates that, No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. The Constitution does not bestow unlimited jurisdiction on the Supreme Court, let alone on its Chief Justice.
ii) The Constitution confers the following jurisdictions on the Supreme Court: (1) original jurisdiction, (2) appellate jurisdiction, (3) advisory jurisdiction, (4) power to transfer cases jurisdiction, (5) review jurisdiction, (6) contempt jurisdiction and (7) appellate jurisdiction with regard to decisions of administrative courts and tribunals.
iii) The Judiciary has the responsibility to decide cases in accordance with the Constitution and the law, by applying due process and providing a fair trial.
iv) The Supreme Court comprises of the Chief Justice and all the Judges of the Supreme Court. The Constitution does not grant to the Chief Justice power to decide cases unilaterally and arbitrarily. The Chief Justice cannot substitute his wisdom with that of the Constitution. Nor can the Chief Justice's opinion prevail

over that of the Judges of the Supreme Court. And, the term "Master of the Roster" is not mentioned in the Constitution, in any law or even in the Rules, let alone stating therein that the Chief Justice is the Master of the Roster and empowered to act completely in his discretion.

v) The Constitution empowers Parliament to legislate with regard to making the practice and procedure of the Supreme Court as it specifically stipulated in Article 191. Parliament enacted the Act which does not in any manner infringe any of the Fundamental Rights, rather facilitates their enforcement.

vi) The Act grants an appeal to one who is aggrieved by a decision of the Supreme Court which is passed in exercise of the original jurisdiction of the Supreme Court under Article 184(3) of the Constitution. A standard good worldwide practice and the Injunctions of Islam require that an appeal be provided and when two interpretations are possible, the one that conforms to the Injunctions of Islam shall be adopted. Article 175(2) of the Constitution envisages the conferment of jurisdiction.

Conclusion: i) The Constitution of the Islamic Republic of Pakistan does not bestow unlimited jurisdiction on the Supreme Court.

ii) See above in the analysis clause.

iii) The Judiciary has the responsibility to decide cases in accordance with the Constitution and the law.

iv) The Constitution of the Islamic Republic of Pakistan does not grant to the Chief Justice power to decide cases unilaterally and arbitrarily.

v) The Constitution of the Islamic Republic of Pakistan empowers Parliament to legislate with regard to making the practice and procedure of the Supreme Court as it specifically stipulated in Article 191.

vi) The Supreme Court (Practice and Procedure) Act, 2023 grants an appeal to one who is aggrieved by a decision of the Supreme Court which is passed in exercise of the original jurisdiction of the Supreme Court under Article 184(3) of the Constitution of the Islamic Republic of Pakistan.

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2. **Supreme Court of Pakistan**
Imran Ahmed Khan Niazi etc. v. The State and another
Crl.P.1276/ 2023 and Crl.P.1320/ 2023
Mr. Justice Sardar Tariq Masood, H. ACJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1276_2023.pdf

Facts: The petitioners sought leave to appeal against the orders of the Islamabad High Court, whereby the post-arrest bail had been declined to them in case FIR for the offences punishable under Sections 5 and 9 of the Official Secrets Act 1923 read with Section 34 of the Pakistan Penal Code 1860.

Issue: Whether a Court can indulge in the exercise of a deeper appraisal of the material available on record of the case while deciding a Post-arrest bail?

Analysis: The only question, therefore, before us in the present case is that whether there are not reasonable grounds for believing, at this stage, that the petitioners have committed the offence punishable under clause (b) of Section 5(3) of the Act but rather that there are sufficient grounds for further inquiry into their guilt of the said offence. In this regard, we are cognizant of the one of the elementary principles of the law of bail that to answer the said question, the Court cannot indulge in the exercise of a deeper appraisal of the material available on record of the case but is to determine it only tentatively by looking at such material.

Conclusion: The court, while deciding a post-arrest bail, should make a tentative determination of the available material on the record rather than engaging in its deeper appraisal.

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3. **Supreme Court of Pakistan**
Gul Khan & others v. Saeed ur Rehman & others
Civil Petition No.4305 of 2023
Mr. Justice Sardar Tariq Masood ACJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4305_2023.pdf

Facts: The petitioner assailed the order of Balochistan High Court, whereby, it allowed the constitution petition of respondents No.1 to 4 and declared the delimitation order of the Election Commission of Pakistan to be void and of no legal effect. The High Court further directed the ECP to notify the final delimitation (Form-7) for both constituencies.

Issue: Whether constitutional importance of holding of General Elections in a constitutional democracy as per the Election Programme far outweighs the need for re-examining the delimitation of a constituency at this critical electoral juncture?

Analysis: Delimitation, by its nature, is a detailed and often prolonged exercise, aimed at creating constituencies that reflect current demographic realities. While this is undoubtedly important for the health of a democratic system, it is not so critical that it should impede the timely conduct of general elections. In applying the principle of proportionality, it becomes evident that the larger good the uninterrupted continuation of democratic processes and the assurance of the people's right to government formation takes precedence. Postponing general elections to address constituency delimitation could lead to a vacuum in governance and a potential crisis of legitimacy. Such a situation would be antithetical to the principles of democracy and the larger good of the populace. Therefore, the principle of proportionality and the concept of the larger good demand that general elections be given primacy. Issues concerning the delimitation of constituencies, while important, should be addressed subsequent to the elections. This approach ensures the continuity of democratic governance and upholds the fundamental rights of the electorate, while still acknowledging the need for eventual and necessary adjustments in constituency boundaries. Applying the scale of proportionality, to us the constitutional importance of

holding of General Elections in a constitutional democracy as per the Election Programme far outweighs the need for re-examining the delimitation of a constituency at this critical electoral juncture. Any intervention by us in revisiting the contours of delimitation of a constituency done by the ECP at this stage will open floodgates of similar litigation, resulting in choking the election process. Therefore, proceeding with this case at this stage when the electoral clock has started ticking, would undermine democracy and adversely affect the fundamental right to vote and form a political government of millions of voters and political workers countrywide. The importance of elections in a democracy and the fulfillment of the larger objective of holding a timely election should be given due consideration to ensure that the Court remains within its democratic remit, which in the present case necessitates organizing and conducting of free, fair and timely elections by the ECP.

Conclusion: Constitutional importance of holding of General Elections in a constitutional democracy as per the Election Programme far outweighs the need for re-examining the delimitation of a constituency at this critical electoral juncture.

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4. **Supreme Court of Pakistan**
Rafaqat Ali v. Chief Secretary, Government of the Punjab and others
Civil Petition No. 460 of 2022
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._460_2022.pdf

Facts: This Civil Petition for leave to appeal was directed against the order passed by the Punjab Service Tribunal, Lahore whereby the appeal filed by the petitioner was dismissed.

Issues: i) What is the underlying principle of appellate jurisdiction?
ii) While deciding appeal, whether Service Tribunal is deemed to be a Civil Court?
iii) What is the concept of jurisprudence of term jurisdiction?
iv) Whether the service appeal before the service tribunal is in essence the continuation of proceedings of the departmental order rendered in departmental appeal?
v) Does the service tribunals have jurisdiction against order affecting the terms and conditions of civil servants?

Analysis: i) The underlying principle of appellate jurisdiction is to ensure checks and balances by means of reevaluation and reexamination of the judgment and orders passed by the lower fora in order to scrutinize whether any error has been committed on the facts and law and, while reversing the judgment of court below, record the reasons for justifying the appellate decision.
ii) Under Section 5 (2) of the Service Tribunals Act 1973, the Tribunal for the purposes of deciding any appeal, is deemed to be a Civil Court and have the same powers as are vested in such court. As a forum of exclusive jurisdiction, the

Constitutional mandate as well as the provisions of the Service Tribunals Act articulate and command that the complete and substantial justice must be done between the parties with a judicious denouement of the case.
iii) The term jurisdiction has multifarious concepts of jurisprudence which means the study of law and the principles on which laws are based.
iv) The service appeal before the service tribunal is in essence the continuation of proceedings of the departmental order rendered in departmental appeal which is an administrative remedy and channel for alleviating the grievance of civil servant before invoking the jurisdiction of the service tribunal.
v) The service tribunals have exclusive jurisdiction in matters falling within the terms and conditions of civil servant but an order affecting the terms and conditions of service is sine qua non for entreating the jurisdiction of the Service Tribunal which has been vested in limited jurisdiction to deal with and decide matters relating to the terms and conditions of service of a civil servant.

Conclusions: i) The underlying principle of appellate jurisdiction is to ensure checks and balances by means of reevaluation and reexamination of the judgment and orders passed by the lower fora.
ii) The Service Tribunal for the purposes of deciding any appeal, is deemed to be a Civil Court and have the same powers as are vested in such court.
iii) The term jurisdiction has multifarious concepts of jurisprudence which means the study of law and the principles on which laws are based.
iv) Yes, the service appeal before the service tribunal is in essence the continuation of proceedings of the departmental order rendered in departmental appeal.
v) See above in analysis portion.

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5. **Lahore High Court**
Abid Ali and another v. The State and another
Criminal Appeal No. 29270/2019
Muhammad Nazir v. The State and others
Criminal Appeal No. 39423/2019
Muhammad Nazir v. The State and 2-others
Criminal Revision No. 39425/2019
The State v. Abid Ali
Murder Reference No. 157/2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6634.pdf

Facts: This judgment disposed of Criminal Appeal filed by appellants against their convictions and sentences, Criminal Appeal filed by complainant against order of acquittal of certain respondents, Criminal Revision filed by complainant for enhancement of sentences of appellants and Murder reference sent by trial court, as they all had arisen out of one and the same judgment passed by the trial court.

Issues: i) Whether the testimony of the complainant and eye-witnesses, including an injured eye-witness, can be doubted on score of their being the chance witnesses having no residence at the place of occurrence?

ii) What is effect of unexplained and considerable abscondence of an accused in a criminal case?

iii) Whether acquittal of a co-accused may have any adverse effect on the case of prosecution to the extent of convicted accused?

iv)What would be fate of the defense version of accused alleged in his statement under section 342 of the Criminal Procedure Code, 1898 if neither he has himself deposed under Section 340 (2) of the Code ibid nor has he produced any witness in said regard?

v) What would be the status of recovery of crime weapon if the empties collected from the place of occurrence are not proved having been fired from such weapon?

Analysis: i) If complainant and eye-witnesses give forth natural account of acceptable and valid reasons for their presence at the time and place of occurrence appealing to common prudent man as well as one of the eye-witnesses receives firearm injury during the occurrence, then their testimony can safely be relied upon.

ii) If an accused becomes fugitive from law after the occurrence and his non-bailable warrants of arrest followed by proclamation are issued as well as he is unable to offer any valid/acceptable reason to explain his abscondence, then inference would be drawn against him and in favour of prosecution.

iii) The co-accused may be acquitted for safe administrative of justice by the trial court while taking into consideration prosecution evidence in totality.

iv) The defence version of an accused alleged in his statement under section 342 of the Criminal Procedure Code, 1898 would be mere a bald assertion if neither he himself has appeared to depose under Section 340 (2) of the Code ibid nor has he produced any other witness/resident of locality in this regard.

v) Prosecution is required to prove through forensic report that the empties collected from the place of occurrence are fired from recovered crime weapon.

Conclusion: i) The testimony of the complainant and eye-witnesses, including an injured eye-witness, giving forth satisfactory reasons for their presence at the time and place of occurrence, cannot be doubted on basis of their being chance witnesses having no residence at the place of occurrence.

ii) The unexplained and considerable abscondence of an accused in a criminal case provides corroboration to the ocular account of prosecution witnesses against accused.

iii) The acquittal of co-accused cannot have any adverse effect on the case of prosecution to the extent of convicted accused.

iv) The defense version of accused in his statement under section 342 of the Criminal Procedure Code, 1898 would not be taken as proved nor may it cause any dent in in prosecution case if he neither has appeared himself to depose under Section 340 (2) of the Code ibid nor has he produced any witness in said regard.

v) The recovery of crime weapon would be inconsequential if empties collected from the place of occurrence are not proved having been fired from such weapon.

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6. **Lahore High Court**
Criminal Appeal No. 228667-J/2018
Abu Bakar alias Samosa, etc. v. The State
Murder Reference No. 04/2019
The State v. Abu Bakar alias Samosa
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6759.pdf

Facts: Appellants along with their co-accused persons were tried in complaint case and trial court after conclusion of the trial, vide impugned judgment while acquitting co-accused convicted and sentenced the appellants.

Issues: i) Whether any sanctity or evidentiary value can be attached to the FIR which is registered with unexplained and considerable delay?
ii) Whether a witness who introduces dishonest improvement or omission for strengthening the case, can be relied?
iii) Whether conversation recorded in Audio or Video can be proved without production of actual record of conversation?
iv) Whether medical evidence is mere supportive/confirmatory type of evidence?
v) Whether motive loses its significance and becomes immaterial for conviction when substantive evidence is discarded?
vi) Whether acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, capricious or arbitrary?

Analysis: i) Afore-mentioned state of affairs reflects that F.I.R. was not recorded even at the stated time rather with much delay however ante-time was mentioned in it and further suggests that none of the cited eyewitnesses was present at the "time & place" of occurrence, time was consumed for procuring, introducing, engaging eyewitnesses as well as tailoring/concocting story after deliberation and consultation for the prosecution and then getting the case registered in its present form as well as completing police papers for postmortem examination; therefore, neither any sanctity nor evidentiary value can be attached to F.I.R. in the case and it cannot provide any corroboration to the case of prosecution against the appellant rather it has lost its efficacy and damaged the case of prosecution.
ii) It is also relevant to mention here that PW-2 introduced dishonest improvements during his statement before the court regarding injury on right hand. PW-2 and PW-3 also introduced dishonest improvements regarding making of video of deceased of the case in injured condition. By now it is well settled that witness who introduces dishonest improvement or omission for strengthening the case, cannot be relied.
iii) It is also very much relevant to mention here that as per claim of CW-4, statement of deceased of the case was recorded on mobile phone, then subsequently converted to CD but admittedly said mobile was neither produced during investigation nor during trial rather only CD was produced and by now it is

well settled that though conversation recorded in Audio or Video can be proved yet production of actual record of conversation is necessary for the same. Therefore, due to non-production of mobile of CW-4 wherein statedly said conversation of deceased of the case was recorded, said conversation has not been proved and by production of afore-mentioned CD, said conversation cannot be proved; therefore, its forensic analysis is also of no avail.

iv) So far as medical evidence is concerned, it is trite law that medical evidence is mere supportive/confirmatory type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury; therefore, same is also of no help to the prosecution in peculiar facts and circumstances of the case.

v) Now coming to motive of the occurrence; it was mentioned in the application, F.I.R. and complaint that deceased of the case was an eyewitness of case arising out of F.I.R. registered under Section: 302 PPC at Police Station: Nowshera Virkan but admittedly, none of the present appellants was accused in said case; so it was not directly against them; furthermore, motive is a double edged weapon, it cuts both the ways, it can also be a reason for false implication; even otherwise, when substantive evidence has been discarded, then motive loses its significance and becomes immaterial for conviction.

vi) Hence, for the reasons mentioned in the impugned judgment, acquittal of co-accused persons is neither perverse, nor capricious nor arbitrary rather judgment in this regard has been passed perfectly in accordance with law, facts and record of the case. After acquittal, accused persons have attained double presumption of innocence and courts are always slow to disturb the same and in this regard.

Conclusion: i) Any sanctity or evidentiary value cannot be attached to the FIR which is registered with unexplained and considerable delay rather it loses its efficacy and damages the case of prosecution.

ii) A witness who introduces dishonest improvement or omission for strengthening the case cannot be relied.

iii) Conversation recorded in Audio or Video cannot be proved without production of actual record of conversation.

iv) Medical evidence is mere supportive/confirmatory type of evidence.

v) When substantive evidence is discarded, then motive loses its significance and becomes immaterial for conviction.

vi) Acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, capricious or arbitrary.

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7. **Lahore High Court**
Muhammad Aslam v. Muhammad Ismail (deceased) through L.Rs
C.R. No. 22357 of 2020
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6736.pdf

Facts: Civil Revisions were filed arising out of the same judgments/decrees of the lower fora. The matter pertained to contractual breach whereby the suit for possession through specific performance along with permanent injunction was dismissed. Being dissatisfied with the said judgment/decree, both parties preferred two separate appeals before the appellate court. The appellate court dismissed the respondent's appeal, whereas partially accepted the petitioner's appeal by modifying the judgment/ decree of trial court. However to the extent of specific performance of the agreement, the appeal of the petitioner was dismissed.

Issues: (i) Whether the mandate of law while recording of evidence was followed viz a viz exhibiting/marking the documents through statement of counsel?
(ii) What is the legality of marked documents?

Analysis: (i) The court while relying on cases reported as 2023 SCMR 730, PLD 2021 SC 715 and PLD 2010 SC 604 opined that disputed documents could not be tendered in evidence in statement of the counsel for a party, because such procedure deprives the opposing party to test the authenticity of those documents by exercising his right of cross-examination.
(ii) The court while referring to Rule 4 of Order XIII Code of the Civil Procedure, 1908 as well as case precedents of Hon'ble Supreme Court observed that when a document is not brought on record through witness (es) and duly exhibited, the same cannot be taken into consideration by the Court, as the same has no legal value and sanctity in the eye of law. Mere marking of a document as an exhibit would not dispense with requirement of proving the same and the same cannot be exhibited unless it is proved.

Conclusion: (i) The documents not brought on the record through witnesses' testimonies cannot be taken into consideration by the court.
(ii) Documents not duly exhibited cannot be taken into consideration by the Court.

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8. **Lahore High Court**
Astex (Pvt.) Ltd, etc. v. Faysal Bank Limited
R.F.A.No.216563 of 2018
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC9675.pdf

Facts: Through this Regular First Appeal filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, ("Ordinance") the appellants/judgment debtors called in question judgment and decree passed against them by a learned Single Judge of this Court in a suit for recovery of money filed under Section 9 of the Ordinance by the respondent/decree holder bank.

Issues: i) What is the definition of "adjournment sine die"?
ii) Whether a party has the right to file an application seeking hearing of a case

earlier adjourned sine die and the court has the jurisdiction to fix the case on the basis of such an application or of its own accord?

iii) What is the purpose behind filing application seeking hearing of a case earlier adjourned sine die?

iv) Whether an act of the court can prejudice any one?

v) Whether a case adjourned sine die can be resurrected by the court upon application of any party without applicability of limitation?

vi) Whether the pecuniary jurisdiction of the court is ascertained from the contents of the plaint?

Analysis: i) Although the phrase "adjournment sine die" is not mentioned in the CPC, however the same has a definite meaning in legalese i.e. legal terminology in vogue in the courts. Latin phrase 'Sine die' means 'without day' and in legal language means 'indefinitely'. 'Adjournment sine die' is a phrase from Latin language meaning 'adjournment without a day' or 'adjourned indefinitely' which in other words means that the next date for fixation of the case has not been mentioned by the court or the case has not been fixed for any particular future date. During the time a case is kept under adjournment even though without a further date, the same is still alive before the Court and cannot be declared to have come to an end as for example where a case is dismissed in default, where the case had come to an end on technical ground and has to be got restored before the same can proceed further.

ii) An application seeking hearing of a case earlier adjourned sine die was not an application for review and at the most may be treated as a request for fixation of case for a date of hearing or an early hearing. Either of the parties has the right to file such an application and the court has the jurisdiction to fix the case on the basis of such an application or of its own accord. If it is assumed that only a party can make an application within the limitation period provided under Article 181 of the Limitation Act, 1908 and thereafter cannot file application for fixation of the same, the same would result in ridiculous results and objection may be raised that the Court itself cannot also in such eventuality fix the case for hearing which interpretation if fixed on the same would result in absurdity.

iii) The purpose of filing such an application is to inform the court that due to the reasons mentioned in the application that case may be taken up for hearing for a date to be fixed by the Court and nothing else. Moreover, the power of the Court to fix a case for hearing which was earlier adjourned without a date cannot be taken away on the aforementioned ground raised by the appellants.

iv) An act of Court should not prejudice any one and all efforts are to be made to restore parties to a position pertaining prior to passing of such an order.

v) An order for adjourning any case sine die does not mean that it has been terminated rather the case is simply taken out of the active list of the Court and remains pending with the Court which can be resurrected at any time by a party by filing an application or upon order by the Court itself without any application and the order for resurrecting the suit does not amount to fresh initiation of

proceedings which would be governed by Article 181 of the Limitation Act, 1908 providing for three years limitation and no limitation would be applicable for revival of matter by the Court whether by itself or on application filed by either party.

vi) The pecuniary jurisdiction of the Court is ascertained from the contents of the plaint which was filed against the appellants seeking recovery… The Court had the pecuniary jurisdiction at the time the suit was filed and the Court shall continue to retain the pecuniary jurisdiction notwithstanding any payments made during the pendency of the suit.

Conclusion: i) See above in analysis portion.

ii) Yes, a party has the right to file an application seeking hearing of a case earlier adjourned sine die and the court has the jurisdiction to fix the case on the basis of such an application or of its own accord.

iii) The purpose behind filing application seeking hearing of a case earlier adjourned sine die is to inform the court that due to the reasons mentioned in the application that case may be taken up for hearing for a date to be fixed by the Court and nothing else.

iv) An act of the court cannot prejudice any one.

v) Yes, a case adjourned sine die can be resurrected by the court upon application of any party without applicability of limitation.

vi)Yes, the pecuniary jurisdiction of the court is ascertained from the contents of the plaint.

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9. **Lahore High Court**
Manzoor Hussain v. The State etc.
Criminal Revision No. 40476/2019
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6754.pdf

Facts: The Respondents No. 2 and 3 filed an application before the trial court, seeking permission to deposit the *Arsh* and *Daman* amount under protest, subject to their right to appeal. The trial court accepted the application whereupon the said respondents deposited the money in the government treasury after which they were released from jail. The Petitioner assailed the said order through this revision petition.

Issue: Whether it is inpermissible for the trial court to allow the convict to deposit *Diyat, Arsh, or Daman* under protest for release?

Analysis: Chapter XXVIII of the Code of Criminal Procedure 1898 (Cr.P.C.) delineates the procedure for executing orders and the punishments imposed upon a conviction… Section 382-A Cr.P.C. is relevant for our present purpose. It states that the sentence shall not be executed immediately when a person is convicted and sentenced to imprisonment for less than one year, provided they furnish bail to the court's satisfaction for their appearance at the designated time and place. This

deferral of the sentence continues until the period allowed for filing an appeal against the sentence elapses. If an appeal is filed within that duration, the implementation of the imprisonment sentence is postponed until the appellate court affirms the sentence. Nevertheless, the sentence will be carried out as soon as practicable after the expiry of the appeal filing period or, in the case of an appeal, after the receipt of the appellate court's order confirming the sentence… Section 426 Cr.P.C. addresses situations where a convict is in custody pending an appeal and is not covered by section 382-A Cr.P.C. It empowers the court to grant bail by suspending the sentence… A review of the relevant legislative provisions and case law shows that, upon conviction, the sentence of imprisonment must be carried out unless it is deferred or suspended under section 382-A or section 426 Cr.P.C. It is inpermissible for the trial court to allow the convict to deposit *Diyat, Arsh, or Daman* under protest for release. Any deviation from the prescribed course would constitute an act without lawful authority and would not be sustainable under the law.

Conclusion: It is inpermissible for the trial court to allow the convict to deposit *Diyat, Arsh, or Daman* under protest for release.

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10. **Lahore High Court**
Muhammad Saqlain v. The State etc.
Crl. Misc. No. 62426-B of 2023
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2023LHC6649.pdf

Facts: The petitioners sought post-arrest bail in case F.I.R. registered for offences under sections 302 & 34 PPC. One of the petitioners has again approached this Court for the relief of post arrest bail, after withdrawing his earlier bail petition after arguments, on the ground that his earlier bail petition was not dismissed by this Court as according to the subject order it was "disposed of".

Issue: Whether the order "Disposed of accordingly" may mean decision on merit?

Analysis: As per Black's Law Dictionary Tenth Edition, "disposal" means a patent application's termination by withdrawal, rejection, or grant. It further explains it as "A final settlement or determination/ the court's disposition of the case, while explaining the "informal disposition". The termination of a case by means other than trial is explained as any action that leads to disposition without conviction and without a judicial determination of guilt, such as guilty pleas and decisions not to prosecute, whereas; the "disposition without a trial" is explained as 'the final determination of a criminal case without a trial on the merits, as when a defendant pleads guilty or admits sufficient facts to support a guilty finding without a trial. The "Oxford Paperback Thesaurus, Indian Edition" at page 239 shows informal meaning of dispose of as "get shut of". As per the Fifth Editiion, The American Heritage Dictionary of the English Language, the word dispose also means as to determine the course of events, to finish dealing with something

and settle. The words 'dispose of' merely mean put an end to the appeal by any of the recognized methods. The order "Disposed of accordingly" means that subject petition terminated, settled, ended, concluded or closed as desired by the learned counsel for the petitioner after arguments and consideration of the merits of the case.

Conclusion: By disposing of some matter may not mean decision on merit and the order "disposed of accordingly" does mean that the matter was contested but as the petitioner agrees to withdraw his bail petition instead of getting it dismissed on merit, he preferred to get it ended without any formal, detailed and reasoned order or formal decision of the Court.

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11. **Lahore High Court**
Syed Qamar Mehdi v. Govt. of Punjab, etc.
Writ Petition No. 7449 of 2023
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6655.pdf

Facts: This public interest petition was filed by a regular visitor of Bagh-e-Jinnah to challenge an order by Parks and Horticulture Authority allowing a Skateboard Park in Bagh-e-Jinnah.

Issues: i) Whether it is statutory duty of the Government and any Statutory Authority to preserve and conserve the premises having historical and cultural value?
ii) Is it necessary while declaring any building as Special Premises shall include the appurtenant land and walls being part of it historically?

Analysis: i) … nevertheless it is important to interpret the provisos of Section 5 of the PHA Act of 2012 alongwith Sections 5 and 6 the Punjab Special Premises (Preservation) Ordinance, 1985. Under these provisions, it is statutory duty of the Government and any Statutory Authority to preserve and conserve the premises (building and land appurtenant thereto), having historical and cultural value. Rationale behind these enactments is to preserve sites and premises having cultural and historical value because the history lives in architecture and historical sites, besides representing culture and identity. The heritage inspires and unites generations. It helps to educate new generations about history by witnessing heritage buildings and gives awareness of the culture and its value.
ii) It is necessary to hold for other Special Premises also that declaring any building as Special Premises shall necessarily include the appurtenant land walls, being part of it historically. Its originality shall not be compromised on the pretext of development, or for any commercial purpose.

Conclusion: i) It is statutory duty of the Government and any Statutory Authority to preserve and conserve the premises having historical and cultural value.
ii) It is necessary while declaring any building as Special Premises shall include the appurtenant land and walls being part of it historically.

12. **Lahore High Court**
Faiz Ahmad etc. v. Chairman Federal Land Commission, Islamabad etc.
Writ Petition No. 254943 of 2018 etc.
Mr. Justice Masud Abid Naqvi, Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC6607.pdf

Facts: The petitioners challenged the vires of order passed by the Member, Federal Land Commission, Islamabad whereby resumed state land was allotted to respondents No.5 to 7 with equal share under Paragraph 18(3) of MLR 115/1972.

Issues: i) Whether a property which is situated in prohibited zone can be allotted permanently?
ii) What is meant by "outer limits"?
iii) Whether it is an inalienable obligation of the Courts to be very careful and cautious while dealing with matters of the public properties or public assets, being its custodian?

Analysis: i) As per notification dated 12th December, 1972 Martial Law Regulation No.115 the property which is situated within prohibited zone as provided in the Colonies Department's Circular memorandum No.3024-72/3946-CLIII dated 12th December, 1972 cannot be permanently allotted under Paragraph 18(3) of Martial Law Regulation 115…The main reason for imposition of ban on allotment/grant of proprietary rights of the state land falling in prohibited zone is to cater the present and future needs of the local population as well as for the use of other different public purposes…Thus, the land in question situated within the "prohibited zone" and as such the authorities are debarred to make any allotment of said land…
ii) The term "outer limits" means the piece of land which starts from the end point/boundary of territorial limits of a municipal committee/corporation etc. The limit of "prohibited zone" as per the notification reproduced above, is regarding the land stretched till 05 miles from the "outer limits" of municipal committee…
iii) The Courts of law are custodian of the public properties, assets or interest and while dealing with matters relating to such properties/assets or interests, it is inalienable obligation of the courts to be very careful, cautious and assure itself to the extent of certainty that no mischief is being played with the state assets. An extraordinary obligation is placed upon the courts to keep abreast itself with law and facts of the case and when certain material facts unearthed before it then the matter should be decided as per law even without being influenced by respective pleadings of the parties…

Conclusion: i) A property which is situated in prohibited zone cannot be allotted permanently.
ii) See analyses portion.
iii) Yes, it is an inalienable obligation of the Courts to be very careful and cautious while dealing with matters of the public properties or public assets, being

its custodian.

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13. **Lahore High Court**
Commissioner Inland Revenue v. M/s Gujranwala Electric Power Co. (GEPCO)
ITR No.73049 of 2022
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6720.pdf

Facts: This was a reference application under Section 133 of the Income Tax Ordinance, 2001 and brought a challenge to the order passed by the Appellate Tribunal Inland Revenue while framing a question of law for the opinion of High Court.

Issues: i) To whom section 113 of Income Tax Ordinance applies?
ii) What is meaning of term 'turnover' under section 113 of ITO, 2001?
iii) Whether term 'turnover' is constrained to sources from which sale or gross receipts will be derived and tax can be avoided on the basis that no sale has been made to Federal Government?
iv) Whether revised / modified uniform schedule of tariff determined by NEPRA which was merely factored in the subsidy/ cross subsidy, therefore, the portion which is reimbursed by the Federal Government, there is no sale of goods?

Analysis: i) Section 113 of the Ordinance is a regime of taxation based on minimum tax on the income of certain persons. It is triggered under circumstances mentioned in section 113 and applies to a resident company, permanent establishment of a non-resident company, an individual having turnover of 300 Million rupees or above in the tax year etc. Subsection (2) provides the formulae for classification of the income of a person who is caught by the provisions of section 113. It states that the aggregate of the person's turnover as defined in Sub-section (3) for the tax year shall be treated as the income of the person for the year chargeable to tax.
ii) According to definition u/s 133 (3) (a) of ITO, 2001 turnover means the gross sales or gross receipts exclusive of sales tax and federal excise duty or any trade discounts shown on invoices or bills derived from the sale of goods and also excluding any amount taken as deemed income. It ineluctably follows that there has to be sale of goods from which the gross receipts are derived and unless it is shown that there has been an actual sales of goods, no income can be included in the term 'turnover' as defined in section 113 (3)(a) of the Ordinance.
iii) It is an undeniable fact that sale of goods takes place to the consumers and important aspect of the term 'turnover' as defined in section 113(3)(a) of the Ordinance is for the sale of goods to take place from which gross receipts are derived. It does not constrain the sources from which those receipts will be derived which may be one or multiple sources. Discos' misplaced notion that there is in fact no sale to Federal Government has no basis. No sale need take place to the Federal Government and it is enough if it is done to the consumers. The rest is a matter of receipt of money in respect of the transaction of sale which has already taken place. The evasion of tax on this basis would be tantamount to

distortion of the concept of subsidy which is a matter between the consumers and the Federal Government.

iv) The revised / modified uniform schedule of tariff determined by NEPRA merely factored in the subsidy/ cross subsidy which was to be restituted by the Federal Government in favour of Discos. Thus, Discos charged certain portion of the tariff from the consumers whereas the other portion of the tariff as determined by NEPRA was reimbursed by the Federal Government into the accounts of Discos. At the end of it, Discos did not suffer a diminution of their income which was made up of two different streams. The learned counsel for Discos emphasized during the oral arguments that gross receipts have to be derived from the sale of goods whereas in the case of the portion which is reimbursed by the Federal Government, here is no sale of goods. This is an erroneous view and is based on a misconstruction of the entire transaction brought forth above. Doubtless, the Federal Government is a necessary party to the entire architecture under which tariff determination is made by the Authority and it is on the Motion of the Federal Government that subsidy is given to the consumers. On that basis, there is indeed a sale of goods in favour of the consumers. The only difference is that the moneys recovered in respect of sale of goods come from two different sources in the present cases.

Conclusion: i) Section 113 of ITO, 2001 applies to a resident company, permanent establishment of a non-resident company, an individual having turnover of 300 Million rupees or above in the tax year etc.

ii) See analysis no. 02.

iii) The term 'turnover' is not constrained to sources from which sale or gross receipts will be derived and tax cannot be avoided on the basis that no sale has been made to Federal Government.

iv) This is incorrect view that revised / modified uniform schedule of tariff determined by NEPRA which was merely factored in the subsidy/ cross subsidy, therefore, there is no sale of goods for the portion which is reimbursed by the Federal Government, rather there is indeed a sale of goods in favour of the consumers.

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14. **Lahore High Court**
National Transmission & Despatch Company Ltd. v. The Commissioner Inland Revenue & another
ITR No.72345 of 2023
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6773.pdf

Facts: The Commissioner Inland Revenue (Appeals) decided the appeal against the applicant which was affirmed by the Appellate Tribunal Inland Revenue. The Appellate Tribunal by its two separate orders which was under challenge in these reference applications dismissed the appeal filed by applicant while allowing the appeal of the Department (in the other case) and based its decision on similar

premises.

Issues: i) Whether the aggregate of a person's turnover can be treated as the income of the person for the year chargeable to tax?
ii) Whether Court can take notice of the documents filed during the hearing of any case?
iii) Whether grant of transmission license is distinct and separate from the issuance of a distribution license?

Analysis: i) The crucial aspect is regarding applicability of minimum tax under Section 113 of the Ordinance. For the purpose, the aggregate of a person's turnover as defined in section 113 has to be treated as the income of the person for the year chargeable to tax. The definition of turnover peculiar to section 113 has been set out above. In order to attract minimum tax on the basis of turnover the gross receipts derived from the sale of goods has to be taken into consideration. NTDC contends that it does not derive any gross receipts from sale of goods (electricity in this case) and merely acts as the agent for procurement of electricity on behalf of DISCOs. To resolve the issue engaged in these reference applications, the entire structure of regulation of electricity has to be kept in view which is the centrepiece of the system of procurement and sale of electricity put in place. Hunch or personal apprehension of an officer of income tax department is not enough. In our opinion, NTDC is a special purpose vehicle incorporated for a specific purpose and regarding which a license has been granted to it by NEPRA. It must be borne in mind that NTDC is in possession of a transmission license and its powers are hedged in by the terms of that license… Thus, the transmission business has been defined as the business of transmission of electric power and for the purpose to plan, develop, construct and maintain NTDC's transmission system and operation of such system for the transmission and dispatch of electric power. That is the whole purpose of NTDC and NTDC is not expected to travel beyond that purpose and to engage in the sale and purchase of electricity… The license is granted to NTDC to engage in the transmission business within the territory as set in the Schedule 1 to the license. Article 2 further provides that licensee /NTDC shall comply with and adhere to the rules, regulations and directions of NEPRA from time to time. The periphery of the powers of NTDC has been laid down in Article 2 which does not mention any activity relating to sale or purchase of electricity and is merely confined to the transmission business within the territory delineated in Schedule 1. Article 5 further provides the exclusivity regarding the activities in the territory specified in Schedule 1 in respect of the licensee… Article 7 mentions a competitive market operation date (CMOD) which is June 5, 2015 as stated above. Prior to that the Central Power Purchasing Agency (CPPA) of the licensee was to be established under Article 8 of the License to purchase or procure electric power to meet the demand of eight-ex-WAPDA distribution companies on behalf of those distribution companies and the terms were also given in Article 7. The entire structure under which (CPPA) was to procure electric power on behalf of DISCOs to meet their demands through

contracts with generation licensees was spelt out in Article 7. It also states in clause (2) that competitive market operation date was initially set as July 1, 2009 which was revised to a later date since the infrastructure or market was not adequately developed to support a competitive arrangement by July 1, 2009. Articles 7 and 8 read cumulatively obliged NTDC to establish a central power purchasing agency (CPPA) for the procurement of power on behalf of DISCOs and other related matters primarily relating to reorganization for the maintenance of transmission system and reliable operation, control, switching and dispatch of transmission system and generation facilities and provision of balancing services. NTDC submits that the functions of procurement of electric power on behalf of DISCOs as well as maintenance of transmission system were being undertaken jointly by NTDC and later on as explicated the business of procurement of electric power was carved out of NTDC and CPPA-G was established which now carries on the business of procurement of electric power exclusively. As adumbrated, the initial onus lay on the department to establish that NTDC was actually engaged in the business of selling of electric power and thereby gross receipts were accumulated which were derived from the sale of goods (electric power in this case). In our opinion the department has failed to establish any such activity to have been undertaken by NTDC. Seeking footing in the terms of the license which have been brought forth above and which leave it in no manner of doubt that the cardinal feature of the business of NTDC is circumscribed by the terms of the license which by Article 2 clearly states that it can only engage in the transmission business. If the allegations made in the show cause notices are taken as true then it must be established as a fact in the first instance that NTDC is in breach of its license granted by NEPRA. It is nobody's case that NEPRA has taken any action against NTDC for falling in breach of the terms of the license and, therefore, it can be presumed that NTDC is only engaged in undertaking the transmission business in accordance with the terms of the license.

ii) These documents can be looked at by this Court while deciding these reference applications, firstly because they are undisputed and secondly they are public documents and this Court can take notice of these documents in any case.

iii) Therefore, it is clear that the grant of transmission license is distinct and separate from the issuance of a distribution license and distribution company in whose favour the license has been issued has the exclusive right to provide distribution services and to make sales of electric power to the consumers.

Conclusion: i) The aggregate of a person's turnover as defined in section 113 can be treated as the income of the person for the year chargeable to tax.

ii) The Court can take notice of the documents filed during the hearing of any case when documents are public documents and undisputed.

iii) The grant of transmission license is distinct and separate from the issuance of a distribution license.

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15. **Lahore High Court**
Nadeem Shah v. The State
Criminal Appeal No. 642 of 2019
The State v. Nadeem Shah
Murder Reference No. 55 of 2019
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC6692.pdf

Facts: Feeling aggrieved of conviction and sentence awarded to him, appellant filed Criminal Appeal against it, whereas the trial court sent Murder Reference for the confirmation or otherwise of death sentence so awarded to him.

Issues: i) What is the requisite standard of circumstantial evidence for handing down a guilty verdict against an accused in a case of homicide?
ii) What is effect of the failure of prosecution to prove the proximity of time and distance with regard to evidence of last seen?
iii) If an accused makes confessional statement before a police officer whilst leading to discovery of dead body of deceased, to which extent such statement may be brought on record by the prosecution under Article 40 of the Qanun-e-ShahadatOrder,1984?
iv) What is significance of the preparation of the memo with regard to the fact that the dead body of deceased was discovered in consequence of disclosure of the accused?
v) What is the most well-known external indication upon the corpse recovered from water?
vi) What is effect of the failure of the prosecution to prove proper sampling of internal analswabs, their safe custody and onward transmission to the office of PFSA?

Analysis: i) The circumstantial evidence pertains to the facts or events from the scrutiny of which the guilt or innocence of an accused can be extracted. Circumstantial evidence is even acknowledged in Islamic Law as *'Alqarain'* which refers to an event and serves as a sign or gives traces of existence or non-existence of a fact in issue. For awarding conviction, such incriminating circumstances must so strongly be interwoven with each other as to make an unbroken chain, the one end of which must be touching the corpse and the other proving the guilt of accused.
ii) For structuring conviction upon the circumstantial evidence, it is incumbent upon the prosecution to prove two of its basic ingredients which are proximity of time as well as proximity of distance. The proximity of time to prove the evidence of last seen rests on the principle of "*de recenti*", which lays emphasis that time span between the event of last seen and death must be very short. As regards the proximity of distance, the more is the distance between evidence of last seen and the death of deceased, greater is the possibility about the hypothesis of innocence of the accused.
iii) Article 40 of Qanun-e-Shahadat Order, 1984 provides an exception to the rule

embedded in Articles 38 and 39 of Order ibid as that an incriminating fact discovered in consequence of information provided by an accused, while in the custody of a police officer, can still be proved against him which can be brought on record.

(iv) In order to prove that the accused actually made a disclosure and subsequently led to the recovery of some fact, it is essential that a memo of his disclosure be prepared.

v) Dr. B. R. Sharma in the Chapter Elementary Forensic Medicine of his book titled Forensic Science in Criminal Investigation and Trials, discussed that on occasions when the dead bodies are disposed of in the water in homicide cases and sometimes the death occurs due to drowning but in both the cases, the hands and feet acquire washer man's skin having wrinkles. Similarly, Dr. S. Siddiq Husain in his book titled Forensic Medicine and Toxicology dilated upon the external appearance of a dead body recovered from the water and opined in the Chapter Violent Deaths from Asphyxia that skins of palms and soles of feet is bleached, wrinkled having resemblance with washer man's hands.

vi) The law of individuality has been verified in various fields, the most important out of which pertains to finger prints which are never found to be identical of different persons. The doctrine of individuality which provides credence to the DNA evidence is to be read in conjunction with doctrine of analysis. Improper sampling, unsafe custody and doubtful transmission to the expert render a positive DNA report unworthy of reliance and credence.

Conclusion: i) For handing down a guilty verdict in a case of homicide, each and every incriminating circumstance forming the chain of circumstantial evidence must be clearly established so as to form an irresistible conclusion about the involvement of accused in the crime.

ii) The failure of prosecution to prove the proximity of time and distance is destined to weaken the evidence of last seen.

iii) The prosecution, through necessary implication of Article 40 of the Qanun-e-Shahadat Order,1984, could only bring on record the disclosure of an accused whereby he volunteered to lead the police and witnesses towards the recovery of dead body as this was a fact discovered through such statement.

iv) Only the preparation of the memo testified by the witnesses will prove in subsequent trial that the fact was discovered in consequence of a lead and pointing out of the accused

v) The most well-known external indication upon the corpse recovered from water is the wrinkling of skin upon hands and feet, more commonly called in normal parlance as washer women's hands.

(vi) The failure to prove proper sampling of internal anal swabs, their safe custody and onward transmission to the office of PFSA can in exorable be termed as final nail in the coffin of the prosecution case.

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16. **Lahore High Court**
State v. Muhammad Imran
Criminal Appeal No. 275/2020
Mr. Justice Asjad Javaid Ghural, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6572.pdf

Facts: The appellant/the State challenged the acquittal of accused/respondent vide judgment passed under section 265-K Cr.P.C. by Additional Sessions Judge in case FIR under section 9-C of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether law of limitation can be ignored by treating it mere a technicality?
ii) Whether period of limitation for filing appeal against acquittal by the State under section 48 of the Control of Narcotics Substances Act, 1997 is six months as per Article 157 of the Limitation Act, 1908?
iii) Whether Section 5 of the Limitation Act, 1908 can be invoked for condoning delay in any appeal against acquittal filed under the Control of Narcotic Substances Act, 1997?

Analysis: i) It is now settled that law of limitation being lex fori creates a right in favour of the parties, therefore, cannot be ignored by treating it mere a technicality.
ii) It was claimed that period of limitation for filing of appeal against acquittal by the State is six months as per Article 157 of the Limitation Act. We have examined that this appeal against acquittal is not being regulated under section 417 of Code of Criminal Procedure, 1897, rather was filed under section 48 of the Control of Narcotic Substances Act, 1997 which is a special law and is to be read for period of limitation provided therein…..No period of limitation is mentioned for filing of appeal under section 48 of the Control of Narcotic Substances Act, 1997…….Therefore, subject to section 29 of the Limitation Act, it can safely be held that Article 157 of the Limitation Act would well be available to the State for filing of appeal against acquittal.
iii) Article 29 of the Limitation Act, 1908 makes it clear that in a special law application of Sections 4, 9 to 18 and 22 shall ipso facto apply if they are not specifically excluded from that law, whereas, as per clause (b) above the remaining sections of the Act shall not be applicable in any manner, which obviously includes Section 5 of the Act, therefore, this Court has no jurisdiction to invoke section 5 of the Limitation Act for condoning delay in any appeal against acquittal filed under the Control of Narcotic Substances Act, 1997.

Conclusion: i) Law of limitation being lex fori creates a right in favour of the parties, therefore, cannot be ignored by treating it mere a technicality.
ii) Period of limitation for filing appeal against acquittal by the State under section 48 of the Control of Narcotics Substances Act, 1997 is six months as per Article 157 of the Limitation Act, 1908.
iii) Section 5 of the Limitation Act, 1908 cannot be invoked for condoning delay in any appeal against acquittal filed under the Control of Narcotic Substances Act, 1997.

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17. **Lahore High Court**
Razia Bibi v. Province of the Punjab, through the Home Secretary, and others
Writ Petition No. 24030/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6711.pdf

Facts: The Petitioner's son was serving his sentence in the Central Jail Faisalabad, but Respondent No.3 (Superintendent, Central Jail Faisalabad) shifted him to the

Adiala Jail Rawalpindi. The Petitioner filed an application before Respondent No.3 requesting him to recall his order but the Respondent No.3 did not attend to her request whereupon she approached Respondent No.2 (Inspector General of Police (Prisons), Punjab) without fruition.

Issue: Whether the Government or the Inspector General of Prisons has unfettered powers to transfer a prisoner from one jail to another within or beyond the province?

Analysis: In *Aslam Khaki's* case [PLD 2010 FSC 1], the Federal Shariat Court ruled that Rules 147 through 149 of the Pakistan Prisons Rules, 1978, as well as section 29 of the Prisoners Act, are repugnant to the Islamic Injunctions insofar as the Government has unfettered power to transfer a prisoner from one province to another province without giving notice to the prisoner or without obtaining his consent or without referring to any lawful reason by way of a speaking order conveyed to the detenue and without providing any remedy against exercise of such authority. The Federal Shariat Court declared that the power of the Inspector General of Prisons to transfer a prisoner from one prison to another within the province without notice to the prisoner or obtaining his consent and without providing a right of appeal before an independent tribunal is similarly repugnant to the Islamic Injunctions. Section 29 of Prisoners Act, 1900 and Chapter 7 of the Prison Rules should be recast so that (a) arbitrary, unbridled and unfettered powers are neither given to the Government nor the Inspector General of Prisons; (b) transfers within or beyond the province, without notice or consent, should be avoided unless the gravity of the situation truly demands it. This does not apply to a convict whose release date is approaching, and he is being relocated near his home town following Rule 148, or who is required to be produced in another court in a case being tried elsewhere, or if there are other legitimate grounds such as safety, security or health.

Conclusion: Neither the Government nor the Inspector General of Prisons have unfettered powers to transfer a prisoner from one jail to another within or beyond the province and such transfers, without notice or consent, should be avoided unless the gravity of the situation truly demands it.

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18. **Lahore High Court**
Tariq Mehmood v. Additional Sessions Judge/Ex-officio Justice of Peace and others
Writ Petition No. 68498/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC6808.pdf

Facts: The Ex-officio Justice of Peace accepted an application of the Respondent No. 3 under section 22-A of the Cr.P.C. and a direction was issued to the Respondent SHO to register an FIR against the petitioner on the basis of a self-cheque issued by the petitioner. The Petitioner assailed the said order through this petition.

Issues: (i) Whether criminal proceedings under section 489-F PPC can be initiated against the issuer of a cheque made out to oneself in the event of dishonour?
(ii) Whether criminal proceedings under section 489-F PPC can be initiated against the issuer of a cheque in the event of its dishonour when the cheque is addressed as payable to "self or bearer" and the word "bearer" is not scored off?

Analysis: (i) A "self-cheque" has neither been defined by the Pakistan Penal Code nor the Negotiable Instruments Act 1881 (the "NIA"). Essentially, it refers to a cheque where the drawer is also the payee…Section 489-F PPC does not stipulate that the cheque must be in the name of a specific individual. It simply requires that the person drawing the cheque does so from his own account, and the purpose should be for loan repayment or fulfilling a legal obligation. If the cheque is made to "self" only, no offence is committed. Firstly, a person cannot dishonestly issue a cheque to pay money to himself, and secondly, a person cannot give a cheque for the payment of a loan or to fulfil an obligation that one has towards oneself.
(ii) When a cheque is addressed as payable to "self or bearer"(and the word "bearer" is not scored off), any person who qualifies as a "holder in due course" under section 9 of NIA can initiate legal action under section 489-F PPC, provided they satisfy the elements of the offence …. An individual asserting the status of a holder in due course must also substantiate their claim if challenged. Section 118 of the NIA outlines certain presumptions about negotiable instruments, but these do not extend to section 489-F PPC. The latter provision exclusively governs the prosecution of the offence. Significantly, it does not raise any statutory presumption in favour of the holder of a cheque. The Petitioner neither disputes his signature on [subject] Cheque… nor that it is drawn on his account. Instead, he challenges its validity by claiming it does not fulfil the requirements of section 5 of the NIA. In view of the law discussed above, this contention is repelled. Section 154 Cr.P.C. mandates the officer in charge of a police station to register an FIR when informed about the commission of a cognizable offence. It is a settled law that he cannot determine the veracity of the information/allegations at that stage. The application under section 22-A Cr.P.C. submitted by Respondent No.3 *prima facie* indicates the commission of a cognizable offence. Therefore, the Respondent SHO must proceed under section 154 Cr.P.C. and investigate the various aspects of the case in light of this judgment.

Conclusion: (i) Criminal proceedings under section 489-F PPC cannot be initiated against the issuer of a cheque made out to oneself in the event of dishonour.
(ii) Criminal proceedings under section 489-F PPC can be initiated against the issuer of a cheque in the event of its dishonour when the cheque is addressed as payable to "self or bearer"and the word "bearer" is not scored off.

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19. **Lahore High Court**
Ch. Shaukat Ali Noon and another v. Tehzeb Bakers (Pvt.) Limited and others
Civil Original No. 04 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6559.pdf

Facts: This petition was filed by the Petitioners under Section 5 read with Section 286 of the Companies Act, 2017 seeking annulment of fraudulent actions of the private Respondents for ousting the Petitioners from the running affairs of management/business of the Respondent Company.

Issue: i) Which Court has jurisdiction to entertain a petition under Section 5 read with Section 286 of the Companies Act, 2017?
ii) What is the basic requirement for a member or creditor of a company seeking intervention of the High Court under Section 286 of the Companies Act, 2017?
iii) What are the modes of becoming member of a company?
iv) What a member of a company is liable to prove while agitating a petition under Section 286 of the Companies Act, 2017 seeking winding up a company?

Analysis: i) Section 5 of the Companies Act, 2017 envisages that the High Court, having jurisdiction of the place at which the registered office of the company is situated, has jurisdiction under the Act ibid, which term "registered office" as defined under Section 21 of the Act ibid demonstrates the office where all communications and notices would be addressed to the company and a company is required to notify its registered office under Regulation 4 of the Company (General Provisions and Forms) Regulations, 2018.
ii) Section 286 of the Companies Act, 2017 manifests that the basic requirement for seeking intervention of the High Court by a member or creditor of a company is that such member should not have less than ten percent (10%) of issued share capital of a company or such creditor should not have less than ten percent (10%) of the paid-up capital of a company.
iii) In the case of a company limited by shares, the shareholders are the members and there can be no membership except through the medium of shareholding. However, there may be exceptions to this statement as a person may be a holder of shares by transfer, but he will not become a member of the company until such transfer is registered in the books of the company in his favour and his name is entered in the relevant register of members. In a company limited by guarantee, the persons who are liable under the guarantee clause in its Memorandum of Association are members of the company. Likewise, in an unlimited company, the members are the persons who are liable to the company in the event of its being woundup.
iv) While making an application under Section 288 of the Companies Act, 2017, a member or creditor has to satisfy the Court that the affairs of the company are

being conducted, or are likely to be conducted, in (a) an un lawful manner, or (b) fraudulent manner, or (c) a manner not provided for in its memorandum, or (d) a manner oppressive to any of the member(s) or creditor(s), or (e) a manner that is unfairly prejudicial to the public interest.

Conclusion: i) The High Court having jurisdiction over the place at which the registered office of the company is situated would have jurisdiction to entertain an application under Section 5 read with Section 286 of the Companies Act, 2017.
ii) The basic requirement for a member or creditor of a company seeking intervention of the High Court under Section 286 of the Companies Act, 2017 is that such member should hold not less than ten percent (10%) of issued share capital of a company or such creditor should hold not less than ten percent (10%) of the paid-up capital of a company.
iii) Section 2(21) of the Companies Ordinance, 1984 and Section 118 of the Companies Act, 2017 define the modes of becoming a member of a company, firstly by subscribing to memorandum; secondly by allotment of shares and thirdly by entering their name in the register of members of a company in terms of Section 119 of the Act ibid.
iv) A member of a company moving a petition under Section 286 of the Companies Act, 2017, seeking winding up a company, is required to prove that affairs of the Company are being conducted in an unlawful and fraudulent manner in violation of Section 286 of the Act ibid.

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20. **Lahore High Court**
Sui Northern Gas Pipelines Ltd v. Wafaqi Mohtasib etc.
Writ Petition No. 1791 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC6628.pdf

Facts: Respondent No.3 filed a complaint before the Respondent No.1/Wafaqi Mohtasib (Ombudsman) regarding the delay on the part of Petitioner in issuance of gas connection, which was accepted by the Respondent No.1. The Petitioner called in question the vires of order passed by the President Secretariat (Public), Aiwan-e-Sadr, Islamabad whereby the findings of the Respondent No.1 were maintained.

Issue: Whether the Wafaqi Mohtasib (Ombudsman) has jurisdiction to entertain a complaint over a matter regarding installation of gas connection and to pass order thereon?

Analysis: Pertinently the office of *"Ombudsman"* was created under Article 3 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (the ***"Order"***), preamble whereof, provides for the appointment of the Wafaqi Mohtasib (Ombudsman) to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration. The object of the *"Order"* was to rectify and injustice done to a person through maladministration on the part of any Agency. The purpose thus was to undo the administrative excesses from within

the administration so that justice could be made available to the wronged persons without such persons being forced to knock at the doors of the Courts of law. Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law…..Moreover, it is emphasized that the matter agitated in the complaint was related to non-provision of new gas connection which has been denied by the Petitioner and such action of the Petitioner being "Agency" in terms of Section 2(1) of the *"Order"* if appearing to be unreasonable, unjust, oppressive and arbitrary shall amount to maladministration falling within the ambit of Article 9 of the *"Order"* for the purpose of exercise of jurisdiction by the *"Ombudsman"* in the matter to undo an act of administrative excess therefore, the *"Ombudsman"* has rightly observed that "the complainant should not be penalized of such a ban where he paid Urgent Fee before cutoff date…"

Conclusion: The Wafaqi Mohtasib (Ombudsman) has jurisdiction to entertain a complaint over a matter regarding installation of gas connection and to pass order thereon.

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21. **Lahore High Court**
Amjad Amin Lodhi v. Addl. District Judge, etc.
W.P. No. 9272 of 2021/BWP
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC6602.pdf

Facts: The petitioner challenged the impugned judgment and decree passed by learned Addl. District Judge, whereby appeal filed by the petitioner challenging the decree passed in favour of the respondent in a family suit had been dismissed.

Issues: i) Whether the Family Court can adopt any procedure which is not against the procedure prescribed by Family Court Act, 1964?
ii) Whether an undecided application going to the root of the matter causes prejudice to the rights of a party if without its decision final judgment is passed against the said party?

Analysis: i) The Family Court can adopt any procedure which is not against the procedure prescribed by Family Court Act, 1964, by treating the same as permissible.
ii) Where an application that can affect the merits of the case is left undecided, the same causes prejudice to the rights of the parties and in that eventuality the court cannot assume that such application was dismissed by the Court before which the same was pending for the reason that such presumption would cause serious prejudice to the rights of either of the parties especially the applicant and final judgment, if any passed, without decision of such like application is not sustainable and the courts in such like eventuality have time and again set-aside

the judgments and remanded the matter for fresh decision after deciding the pending applications(…)In furtherance of what has been discussed above, it is settled by now that application for permission to allow additional evidence goes to the very root of the matter especially when in the present case learned counsel for the petitioner states that the learned appellate court while dismissing his appeal had observed that the petitioner had not led any evidence and in this circumstance, it could be not assumed that the appellate court while neglecting to decide the application for permission to record additional evidence had properly exercised its jurisdiction

Conclusions: i) The Family Court can adopt any procedure which is not against the procedure prescribed by Family Court Act, 1964, by treating the same as permissible.
ii) Yes, an application that can affect the merits of the case if left undecided, the same causes prejudice to the rights of the party against whom final judgment is passed.

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22. **Lahore High Court**
Sabir Hussain v. The State, etc.
Criminal Revision No. 200 of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6503.pdf

Facts: Through criminal revision, the petitioner assailed the order of additional sessions judge, declining his request for providing him with copy of CDR mentioned in the recovery memo though was not available on the record. The learned Judge directed that CDR was collected by SI/I.O. who has yet not been examined as witness in the case, therefore, on his appearance in the dock, the petitioner can well examine the data of CDR if produced in evidence.

Issues: i) Whether documents upon which prosecution can be structured must be supplied to the accused well in time?
ii) When a party refuses to produce a document despite having notice to produce, whether he can afterwards use the said document as evidence?
iii) Whether accused can produce secondary evidence of CDR, if upon notice prosecution does not produce the same?
iv) What is meant by unused material?

Analysis: i) The Supreme Court of Pakistan while dilating upon section 94 of Cr.P.C. has categorically interpreted that the trial Court can summon any document which is essential for the purpose of an inquiry or trial and this can also be done on the application of any party. In this case, CDR of accused persons was collected by Dilawar Hussain SI/I.O. through recovery memo dated 30.11.2020 available in the police but such CDR and a recovery memo were not appended with the report under section 173 of Cr.P.C. It is expected that this evidence would be used against the accused if unfavourable to him; therefore, he cannot be embarrassed with surprise evidence without giving him time and opportunity to prepare his

defence on this evidence. Due process as guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 requires that all the processes supplemented by the legal provisions must be followed by providing a fair opportunity to the accused.

ii) It has further been noticed that once a party calls a document after giving notice to the other for its production which is in the possession of other party and if such party refuses to produce the same, then document cannot be used as evidence later in the process except with the consent of party or the Court, and notice to other party of course can be a situation when an application before the Court is filed for summoning of such document. Article 159 & 160 of Qanun-e-Shahadat Order, 1984 are referred in this respect… The Article 159 [of Qanun-e-Shahadat Order, 1984] connotes the benefits and fatalities of summoning of document for production in the evidence. In this case if CDR is unfavourable to the accused, then he cannot opt to skip its production before the Court, if prosecution demands. Whereas Article 160 [of Qanun-e-Shahadat Order, 1984] clearly speaks that if the prosecution shall not produce CDR before the Court on the notice of accused, then it cannot use such CDR as evidence during the trial except with the consent of accused or the Court. Thus, right of the accused for seeking the data of CDR should not be infringed otherwise this evidence could also not been used by the prosecution during the trial.

iii) Another situation can also be materialized in the circumstances that if on notice prosecution does not produce the CDR, then accused shall be at liberty to produce secondary evidence of such CDR as mandated through Article 76 & 77 of the Qanun-a-Shahadat Order, 1984 and in this respect he can seek the help of Court under section 265-F(7) of Cr.P.C. at later stage.

iv) There is no cavil to the proposition that for taking a prosecutorial decision, police collect material pro and contra of the allegations; some material is used considering it in line with prosecution story and rest is abandoned as irrelevant or in conflict of interest, such material is called unused material. In our law, disclosure of material to the accused under section 241-A or 265-C of Cr.P.C. is limited to one which is being used by the prosecution, but in foreign jurisdictions accused always had a chance to see or seek any unused material to build his defence or to contradict the prosecution case. Now Supreme Court of Pakistan … has widened the scope of material to be provided to the accused if it is essential to adhere to fundamental right of due process and fair trial. The only exception to this material would the 'Diary of proceedings in investigation' which is privileged under section 172 of Cr.P.C.

Conclusions: i) Documents upon which prosecution can be structured must be supplied to the accused well in time.

ii) When a party refuses to produce a document despite having notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

iii) If on notice prosecution does not produce the CDR, then accused shall be at

liberty to produce secondary evidence of such CDR as mandated through Article 76 & 77 of the Qanun-a-Shahadat Order, 1984.

iv) For taking a prosecutorial decision, police collect material pro and contra of the allegations; some material is used considering it in line with prosecution story and rest is abandoned as irrelevant or in conflict of interest, such material is called unused material.

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23. **Lahore High Court**
Muhammad Zafar alias Gulabi v. The State etc.
Criminal Appeal No.71 of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6578.pdf

Facts: Being aggrieved, the petitioner assailed the decision of the trial court through Criminal Appeal wherein he was convicted and sentenced in a murder case and his co-accused was acquitted.

Issues: i) What is the importance of motive in criminal case, if set up by the prosecution?
ii) Whether the cross examination of witnesses should be brief and to the point?
iii) What is the difference between examination-in-chief, cross- examination and re-examination?
iv) Whether there is any time-lag for the examination of witness between the three stages of examination?
v) What are the consequences of frequent appearance of a witness in court for giving evidence in piecemeal?
vi) What are the powers of a judge if defence counsel is not ready to cross examine the witness?
vii) What are the responsibilities of a court during cross examination of a witness?
viii) What is the role of a judge and an advocate towards their conduct to contribute in the legal system?

Analysis: i) Though the prosecution is not required to prove motive in every case, yet the same, if set up, should be proved through independent source of evidence other than the words of mouth and in case of failure to do so, the prosecution should have faced the consequences and not the defence.
ii) The cross examination should always be brief and to the point; practice of prolonged cross examination has been deprecated by the Supreme Court of Pakistan.
iii) In an adversarial criminal justice system, there are two parties in contest, i.e., Prosecution and Defence. Examination of witness, by the party who calls him/her, is called examination-in-chief or direct examination. Examination of that witness by opposite party is called cross examination and any question subsequent to cross examination by the party who calls the witness is called re-examination or re-direct.
iv) All three stages of examination hardly had any time-lag, therefore, any party

who does not come forward to question the witness on a day, the alternate arrangement should be made because examination of a witness is a sacred business which cannot be lingered on so as to jeopardize it through intrigues, mechanicians or invented treacherous plans to kneel down or pressurize the witness.

v) Frequent appearance of witness in court for giving evidence in piecemeal, not only derail the true facts due to fading of memory or other reasons but also had a bad impact on the economy of witness who had to earn bread for his family. It is for that reason usually actual witnesses do not come forward to help improve the quality of evidence. The Judge must understand this social problem.

vi) If the judge thinks that defence counsel is not ready to cross examine the witness, a heavy cost be imposed which is called an adjournment cost fully covered under section 344 of Cr.P.C., or to provide counsel on state expenses but not to struck off the right of cross examination. Similarly, if the lawyers are observing strike or the complainant's counsel seeks time, even then court is required to move forward with suggested measures.

vii) The court must have a close eye on the cross examination of witness and if the counsel on State expenses cannot do the job properly, judge should cross examine the witness. If on such measures of a Judge, the advocate concerned retaliates with a behaviour which attracts misconduct or professional misconduct, it can well be reported to the High Court for an action under Section 54 (2) of the Legal Practitioners and Bar Councils Act, 1973.

viii) The Judge and an advocate are for the system to strive for search of truth; both should re-think and re-define their conduct to contribute in the system, and this is high time to stand synchronized with the international best practices which help to recognize their proper and vital roles. Judges should not work for gain or appreciation; it is a divine duty and its efficient performance always finds a support from the audience, even in the form of a one man's feedback and it is learnt through age and experience that feedback is a gift; so, work, work and work, and win the gift.

Conclusion

i) Prosecution is not required to prove motive in every case, yet the same, if set up, should be proved through independent source of evidence.

ii) The cross examination of witnesses should be brief and to the point.

iii) Examination of witness, by the party who calls him/her, is called examination-in-chief or direct examination. Examination of that witness by opposite party is called cross examination and any question subsequent to cross examination by the party who calls the witness is called re-examination or re-direct.

iv) All three stages of examination hardly had any time-lag.

v) Frequent appearance of witness in Court for giving evidence in piecemeal, not only derail the true facts due to fading of memory or other reasons but also had a bad impact on the economy of witness.

vi) Judge should impose heavy cost in case of adjournment by defence counsel or to provide counsel on state expenses but not to struck off the right of cross

examination.
vii) The court must have a close eye on the cross examination of witness.
viii) The Judge and an advocate are for the system to strive for search of truth; both should re-think and re-define their conduct to contribute in the system.

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24. **Lahore High Court**
Kashif Nawaz, etc. v. State, etc.
Criminal Appeal No. 531/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6660.pdf

Facts: This criminal appeal striked against the order passed by learned Additional Sessions Judge, whereby the appellants were convicted under section 180 PPC and sentenced to undergo fifteen days' simple imprisonment along with fine in default to further undergo simple imprisonment for three days.

Issues: i) Whether obtaining signatures of the accused on the charge sheet is legal requirement and if the accused does not sign the charge sheet, whether he can be convicted under section 180 of PPC?
ii) Whether procedure under section 195 of Cr.P.C., authorizes the court to convict the accused there and then?
iii) When an offender is punished under section 180 PPC pursuant to section 480 of Cr.P.C., whether appeal against such order is provided?

Analysis: i) It has been observed that wherever the law requires obtaining the signatures of any person, it has specifically been prescribed under the law. The case reported as "THE STATE versus SARDAR AHMED" (PLD 1967 Karachi 75) throws light that according to provisions of sections 154 and 200 of the Code the complainant is required to sign the statement, whereas, sections 342 and 364 of the Code require obtaining the signatures of the accused but there is no such requirement under sections 243 or 265-E of the Code. Obtaining signatures of the accused on the charge sheet is not the legal requirement but it is in practice since long, therefore, obtaining signatures on the plea of an accused plainly conforms to his admission to charge or otherwise, therefore, it cannot be considered as an illegality; however, if the accused does not sign the charge sheet he cannot be convicted under section 180 of PPC.
ii) The argument of learned Prosecutors that procedure under section 195 of the Code authorizes the learned Judge to convict the accused there and then, is repelled in the light of legal provisions under Sections 480 and 482 of the Code, specially legislated for the purpose to deal with contempt of lawful authority of the Court. If the court considers that any disobedience to his order has been committed pursuant to sections mentioned therein then the offender can be imposed a fine of Rs.200/- only after following the procedure under section 481 of the Code but if the Court considers that more severe sentence should be imposed then of course the Court shall send the complaint to the Magistrate for

the purpose of trial under section 482 of the Code.
iii) The contention of learned Prosecutors that in petty offences no appeal lies as per mandate of section 413 of the Code is also repelled because when an offender is punished under section 180 PPC pursuant to section 480 of the Code then appeal against such order is provided under section 486 of the Code.

Conclusion: i) Obtaining signatures of the accused on the charge sheet is not the legal requirement and if the accused does not sign the charge sheet he cannot be convicted under section 180 of PPC.
ii) In the light of legal provisions under Sections 480 and 482 of Cr.P.C., procedure under section 195 of Cr.P.C., does not authorize the court to convict the accused there and then.
iii) When an offender is punished under section 180 PPC pursuant to section 480 of Cr.P.C., then appeal against such order is provided under section 486 of Cr.P.C.

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25. **Lahore High Court**
Sumera Rasheed v. The State, etc.
P.S.L.A No.07/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6664.pdf

Facts: This petition for special leave to appeal against acquittal of respondents No.2 & 3 in a private complaint under section 500 read with sections 193/195/196/211/34 PPC had been filed for setting aside the impugned order of the Additional Sessions Judge passed under section 265-K of Cr.P.C.

Issues: i) What is the concept of perjury and its difference with act of lying which is used for deception?
ii) Whether Court of Session can take direct cognizance of an offence which is not otherwise triable by it unless the case is sent to it by the learned Magistrate?
iii) Whether offence under section 500 of PPC shall be tried by Court of Sessions when the legislature has specifically inserted section 502-A in PPC vesting special jurisdiction in such Court?
iv) What is the meaning of ‘giving false evidence and “fabricating false evidence”?
v)What are the situations of punishment for giving false evidence or fabricating false evidence?
vi) What is meant by "Judicial proceeding"?
vii) Whether defamatory statement made to a police authority can be made basis of defamation?
viii) Whether trial court can proceed to take cognizance of offences under sections 193/195/196/211 PPC?
ix) Whether perjury is a vice which stigmatizes the judicial system and responsible for failure of justice mission of a country?

Analysis: i) Research shows many motivators or incentives for an individual to tell a lie. Paul Ekman (1985) theorized there are eight motives for an individual to lie: be polite, avoid punishment, gain a reward, protect someone, protect oneself, maintain privacy, or just because he or she can. Lies told to make an individual feel better or to be polite were often referred to as white lies. Ekman argued that these types of lies were not necessarily lying because the individual was not attempting to be deceitful. On occasion, lies were necessary to protect oneself or another, avoid embarrassment, or to maintain privacy. These lies could include pure lies, such as a child lying to a stranger or hospital staff refusing to answer questions about a patient.. Whereas 'Perjury' is a criminal charge. It is the act of lying or making verifiably false statements on a material matter under oath or affirmation in a court of law or in any sworn statements in writing (Black, 1990). A violation of specific criminal statutes; it is not sufficient for a statement to be false to meet the threshold of perjury; it must be an intentionally false statement regarding a material fact, – a fact relevant to the case at hand. Consequently, not all lies under oath are considered perjury...At common law, perjury was considered one of the most odious of offenses. According to William Hawkins, perjury is mother of all Crimes whatsoever the most 'Infamous and Detestable'. Under the Code of Hammurabi, the Roman law, and the medieval law of France, the punishment for bearing falsewitnesswas death; in the colony of New York, punishment included branding the letter 'P' on the offender's forehead. In recent studies of public attitudes toward crime, perjury continues to be viewed as a very serious offense.

ii) Section 500 of PPC is triable by Court of Session on complaint filed by the aggrieved person whereas offences under sections 193/195/196/211 PPC are tried differently under section 476 of Cr.P.C. only on the complaint of concerned Court or the public servant, therefore, joining of two different modes of trial in one complaint is a serious issue. Though section 502-A PPC authorizes Court of Session to try the offence under section 500 of PPC but as per section 193 of Cr.P.C. Court of Session cannot take direct cognizance of an offence unless the case is sent to it by the learned Magistrate... therefore, direct cognizance itself was a ground for dismissal of complaint or acquittal of accused as the case may be.

iii) In the second schedule of Cr.P.C. section 500 of PPC was shown as triable by Court of Session and not only this section but many offences in the second schedule of Cr.P.C. are mentioned as triable by Court of Session, and as per mandate of law if such offences are not punishable with death, shall be tried by the Magistrate Section-30. With this scope, offence under section 500 of PPC then must have been tried by Magistrate section 30 but in my view when the legislature has specifically inserted section 502-A in PPC vesting special jurisdiction in Court of Session, offence under section 500 of PPC shall be tried by Court of Session and not by Magistrate Section-30…

iv) Section 191 PPC states that;"Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a

declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence." This section talks about making of false statement in following three situations when; (1) legally bound by oath to state truth or (2) legally bound by express provision of law to state truth; (3) makes declaration upon any subject…Section 192 PPC explains the situations of 'fabricating false evidence' as under; "Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a falsestatement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to fabricate false evidence…Requirement of this section shall be met only if there is an intention to create circumstance, false entry or document with the expectation of its being used as evidence in a judicial proceeding, or in any other proceeding by law before any public servant or an arbitrator, and such circumstance, false entry or document facilitated to render an erroneous opinion for result of that proceedings.

v) The punishment for giving false evidence or fabricating false evidence has been divided into two situations; first when it is given in any stage of judicial proceedings and second in any other case.

vi) It has been defined in section 4(m) of the Code of Criminal Procedure, 1898 as under; "Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath." If by law and at the discretion of the Court evidence is taken on oath it becomes a stage of judicial proceedings. Section 193 PPC as per explanations 2 & 3 creates a room for judicial proceedings even during investigation being conducted under the law or on the direction of a Court of Justice, but obviously only those false statements during investigation would be considered as giving false evidence, which are intentionally made and the maker by law is bound to state the truth on the subject, or on the same legal premise submit any signed statement, affidavits or declarations…

vii) It has been observed that Section 499 PPC though authorizes a person to bring a complaint against a person who entirely makes defamatory statement to harm his reputation but when such statement is made to a police authority, it certainly falls within the exception of section 499 PPC, therefore, cannot be made basis of defamation and such statement at the most could be used to counter malicious prosecution if they are tested through judicial scrutiny…

viii) As per section 195 of Cr.P.C. if such offences have been committed in, or in relation to, any proceeding in any Court, cognizance can only be taken on the complaint in writing of such Court or of some other Court to which such Court is subordinate. So far statements have not been formalized as part of judicial

proceedings in the Court, therefore, Court had no authority to take cognizance of the matter. Even applicability of sections 195/196 of PPC is under question because statements as an evidence have not been used for procuring conviction nor corruptly used as evidence.

ix) Perjury is a vice which stigmatizes the judicial system and responsible for failure of justice mission of a country. Its impact on the victims of crime or the innocent accused persons psychologically or socially is immeasurable and loss is usually irreparable, therefore, it must be eradicated with sound measures within the parameters of law. It has been learnt that truthful witnesses hardly have their say in the system as clutched in the hands of powerful persons, who procure stock witnesses to lead the fate of case and Courts are to search out the truth from half-truth, based on crippled evidence. A study is necessary and required to understand how the cases are structured with the help of police by the powerful elites and are designed to set the list of witnesses of their choice to continue with the prosecution or withdraw at any time to leave astray the Court to reach out the justice

Conclusion: i) See above in analysis portion.

ii) Court of Session cannot take direct cognizance of an offence which is not otherwise triable by it unless the case is sent to it by the learned Magistrate.

iii) Yes, offence under section 500 of PPC shall be tried by Court of Sessions when the legislature has specifically inserted section 502-A in PPC vesting special jurisdiction in such Court.

iv) See above in analysis portion.

v) There are two situations of punishment for giving false evidence or fabricating false evidence i.e first when it is given in any stage of judicial proceedings and second in any other case.

vi) See above in analysis portion.

vii) Defamatory statement made to a police authority cannot be made basis of defamation.

viii) If such offences have been committed in, or in relation to, any proceeding in any Court, cognizance can only be taken on the complaint in writing of such Court or of some other Court to which such Court is subordinate.

ix) Yes, perjury is a vice which stigmatizes the judicial system and responsible for failure of justice mission of a country.

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26. **Lahore High Court**

M/s Lahore Carpet Manufacturing Company v. Muhammad Jamil & 03 others

W. P. No. 40697 / 2023

Mr. Justice Abid Hussain Chattha

https://sys.lhc.gov.pk/appjudgments/2023LHC6616.pdf

Facts: Instant writ petition along with connected writ petitions were filed against judgments passed by Punjab Labour Appellate Tribunal, Lahore involving

identical question of law and similar set of facts.

Issues: i) Whether scope of the Punjab Industrial Relations Act, 2010 is wider and broader than the Wages Act?
ii) What legislation existed prior to Punjab Industrial Relations Act, 2010?
iii) Whether PLAT has revisional jurisdiction under Section 47(5) of PIRA with respect to order of the Labour Court passed in Appeal under Section 17 of the Wages Act?
iv) What is nature of revisional jurisdiction of PLAT?

Analysis: i) The conjunctive reading of the provisions of law under the Wages Act and PIRA make it manifestly evident that the scope, canvas and area of operation of PIRA is much wider, broader and general in comparison to the Wages Act. The latter is limited to due determination of wages to certain classes of persons employed in industrial or commercial establishment, whereas, the persons employed in any establishment or industry which are not specifically excluded from the application of PIRA in the Province of the Punjab can bring host of multifarious grievances with respect to any right guaranteed or secured to a worker by or under any law before the Labour Court.
ii) The Industrial Relations Ordinance, 1969 was repealed through the Industrial Relations Ordinance, 2002 which in turn was repealed by the Industrial Relations Act, 2008. After the devolution of further subjects to the Provinces under the Constitution (Eighteenth Amendment) Act, 2010, the Industrial Relations Act, 2008 was repealed and the Industrial Relations Act, 2012 was promulgated at the Federal level. In the Province of the Punjab, the Punjab Industrial Relations Ordinance, 2010 was promulgated which was repealed by PIRA as successor law. Acknowledging the afore-noted transition, Section 79(1)(c) of PIRA with the title of 'repeal and savings' states that notwithstanding the repeal of Industrial Relations Act, 2008, every reference to the repealed Industrial Relations Act, 2008 shall be construed as reference to the Industrial Relations Act, 2008.
iii) The Labour Court under the command of Section 17 of the Wages Act is competent to hear appeals against the Authority constituted under Section 15 of the Wages Act. Similarly, PLAT constituted under Section 47 of PIRA exercises both appellate and revisional powers with respect to orders passed by the Labour Court subject to various provisions of PIRA. Section 47(5) of PIRA vests revisional power upon PLAT with respect to 'any case or proceedings' under PIRA regarding an 'order' which includes a 'final order' or 'final judgment' and may pass such order in relation thereto, as it thinks fit. As such, there is no cavil to the proposition that PLAT is vested with revisional powers with respect to an order passed by the Labour Court and the same includes such orders which the Labour Court may pass under any other law to which its jurisdiction extends such as its orders passed in appeal under Section 17 of the Wages Act.
iv) Bare perusal of Sections 47(5), (6) & (7) of PIRA reveal that revisional jurisdiction of PLAT is inherently suo motu. However, where PLAT proceeds under its revisional jurisdiction, it is required to issue notice and hear the other

side in the event of any adverse order against it and follow such procedure as may be 'prescribed'… Revisional jurisdiction vested with PLAT is supervisory in nature in order to enable PLAT placed at the apex of hierarchy of Tribunals setup by the Ordinance, 1969 to examine the legality or propriety of proceedings taken or an order passed by the Labour Court. Therefore, it follows from the above that there is no bar upon any party in laying the information before PLAT in the form of a Revision Petition not as a matter of right but in the discretion of PLAT which in turn may decide to assume revisional jurisdiction depending upon the facts and circumstances of each case warranting exercise or otherwise of revisional jurisdiction. Accordingly, if PLAT exercises its revisional powers, as it did in the titled and connected Petitions, PLAT is acting within its lawful revisional jurisdiction to examine the correctness, legality or propriety of any order passed by the Labour Court.

Conclusion: i) Scope of the Punjab Industrial Relations Act, 2010 is wider and broader than the Wages Act.
ii) See under analysis no. 02
iii) PLAT is vested with revisional powers with respect to an order passed by the Labour Court and the same includes such orders which the Labour Court may pass under any other law to which its jurisdiction extends such as its orders passed in appeal under Section 17 of the Wages Act.
iv) Revisional jurisdiction of PLAT is inherently suo motu and is supervisory in nature in order to enable PLAT placed at the apex of hierarchy of Tribunals.

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27. **Lahore High Court**
Madrissa-Tul-Madina v. Lahore Development Authority, etc.
Civil Revision No. 74007 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6496.pdf

Facts: The petitioner challenged order of the District Judge, whereby the application of one of respondents under Section 24 of the Code of Civil Procedure, 1908 was allowed to the effect that the petitioner's appeal as well as a revision of one of respondents pending before two different Courts were withdrawn by the District Judge and fixed before himself.

Issues: i) If an application under Section 24 of the Code of Civil Procedure, 1908 is made for consolidation of two cases pending before two different courts, without raising reservations against judicial officers concerned, then whether the District Judge may withdraw such cases from such courts to fix those before him?
ii) Whether District Judges or Additional District Judges must show restraint in recording any observation in respect of the conduct of the subordinate Judicial Officers, while hearing the cases before them?

Analysis: i) Section 24 of the Civil Procedure Code, 1908, does not specify any ground on

which the case can be transferred from one Court to another. There is no clog under the law debarring the District Judge from withdrawing cases from other courts subordinate to him and retaining/fixing those before himself.
ii) Judiciary at District level is the backbone of the judicial system in the country and is performing the onerous task of dispensing justice. District Judges or the learned Additional Judges, while hearing the cases before them, must show restraint in recording any observation in respect of the conduct of the subordinate Judicial Officers.

Conclusion: i) The District Judge, on his own or on the application of a litigant, is empowered to transfer the case from one Court to another Court subordinate to him or hear it himself.
ii) District Judges or Additional District Judges must show restraint in recording any observation in respect of the conduct of the subordinate Judicial Officers, while hearing the cases before them.

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28. **Lahore High Court**
Muhammad Hanif Through LRs v. Additional District Judge etc.
Writ Petition No. 19794/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6482.pdf

Facts: The predecessor-in-interest of the petitioners filed an eviction petition against one of the respondents from the rented shop under the Punjab Rented Premises Act, 2009 on grounds of default in payment of rent as well as failure of said respondent to execute formal written tenancy agreement with predecessor of the petitioners. Upon remand, in the third round of litigation, the Rent Tribunal accepted the ejectment petition followed by appeals of both sides and the Appellate Court allowed the appeal preferred by the respondent side while dismissing the appeal of the petitioners. The present constitutional petition emanated from the third round of litigation between the parties.

Issue: What would be the consequence of not mentioning alleged *pagri* amount in the tenancy agreement?

Analysis: Section 2(e) of the Punjab Rented Premises Act, 2009 defines that "*pagri*" includes any amount received by a landlord at the time of grant or renewal of a tenancy except advance rent or security. Section 6 of the Act ibid contemplates that the *pagri* amount, if any, paid by a tenant is to be recorded in the tenancy agreement and includes payment to the landlord. Absence of any reference in the tenancy agreement about the *pagri* agreement earlier executed indicates that both the agreements are not so intertwined and interrelated to form part of one and the same transaction and to be read conjunctively. This fact alone is sufficient to create an adverse inference in relation to the genuineness of the *pagri* agreement as well as the tenancy agreement.

Conclusion: The amount paid or property transferred in terms of the *pagri* agreement, which is not recorded in the tenancy agreement, cannot be treated as *pagri* under Section 2(e) read with Section 6 of the Punjab Rented Premises Act, 2009.

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29. **Lahore High Court**
Agritech Limited v. Federation of Pakistan, etc.
Writ Petition No. 41067/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6532.pdf

Facts: The petitioner challenged the pre-refund audit proceedings and the consequent show-cause notice issued by the respondent-FBR, with the averments that the same be declared illegal, unlawful and violative of the provisions of Section 10 of the Sales Tax Act, 1990.

Issues: i) What is the scope of Section 10 of the Sales Tax Act, 1990?
ii) Whether the elapse of time stipulated in Section 10 of the Sales Tax Act, 1990 ipso facto renders the refund claim admissible and due?
iii) What are the consequences of delay in deciding the refund claim?
iv) Whether Constitutional petition against a show-cause notice is maintainable?

Analysis: i) Insofar as the first legal question formulated hereinabove is concerned, it is evident from bare reading that Section 10(1) of the Act deals with the refund claim of zero-rated local supplies and/or the exports. Proviso to Section 10(1) deals with category of cases other than those provided under Section 10(1) ... While the time period envisaged under Section 10(1) pertains to the excess input tax adjustment emanating out of zero-rated local supplies or exports, proviso to Section 10(1), deals with claim of the other taxpayers. … This in itself connotes that Section 10 is not a self-containing and self-executory provision rather the admissibility of the refund claim is required to be determined before approving the same. It is further fortified by the words used in Section 10(1) i.e., "in such manner and subject to such conditions as the Board may, by notification in the official Gazette specify", shows that the provision is not self-executory rather the same is to be actualized in such manner and subject to such conditions as the Board may specify.

ii) It is the case of the petitioner that in any claim for refund under the Act, once no objection is raised by the respondent-FBR, within the stipulated time period provided under the law (i.e., Section 10 of the Act), the claim of the claimant/tax-payer (the petitioner in the instant case) crystalizes into verified and approved claim and cannot be retracted from or denied subsequently by the department and only post refund audit proceedings can be initiated. By this, the petitioner wants this Court to construe Section 10 as a self-containing and executory provision and failure to object to the claim of the petitioner within the stipulated time to operate as a deeming provision. Argument is misconceived to say the least. Section 10(3)

of the Act empowers the respondent-FBR to initiate and carry out enquiry, audit and/or investigation into any claim for input tax credit or refund in cases where the tax authorities have reason to believe that the claim for input tax credit or refund is not admissible to the claimant. It will be imperative to mention that the Rules have been promulgated to actualize and operationalize the provisions of law contained in Section 10 of the Act and Chapter V contains the relevant provisions.

iii) As a matter of fact, there is no consequence for the non- adherence to the time-limit provided for conclusion of pre-refund audit proceedings under Section 10(3) have been provided which hands out a tool to the officials of the respondent-FBR to delay the rights of the tax payers. As a result, the respondent-FBR and its officials may continue to linger on and protract the pre-audit proceedings for unlimited and unrestricted time period leaving the tax payers not only in limbo but also depriving the taxpayer of his property in violation of the Article 23 and 24 of the Constitution. It is also noted that while Section 11 and other enabling provisions of law in vogue provide for the additional tax and/or penalty for non-payment and/or short payment of tax by the tax payers, Section 67 obligates that failure to make payment within the time period provided under Section 10 would entitle the taxpayer to an additional sum equal to KIBOR on so much of the amount of refund which is not paid within the time stipulated. However, the first proviso to Section 67, as spelled out above, is a limiting proviso which eclipses the applicability of Section 67 till the proceedings (pre-refund audit) as to admissibility of the refund is accepted or rejected and thus takes back to the significance of Section 10(3) and the time-limit provided therein. (…) non-adherence by the respondent-FBR to the time-limit envisaged under Section 10(3) of the Act in concluding the refund claims amounts to concomitant violation of the fundamental rights of the tax-payers guaranteed under Articles 23 and 24 of the Constitution. No consequences of such non-adherence have been envisaged under the Act. This aspect of the matter is a policy issue and requires legislation, which is for the Federal Government to examine on priority basis. Therefore, the Federal Government is directed to consider the possibility of initiating necessary legislation on the subject by providing the consequences of non-adherence to the provision of Section 10(3) so that the rights of the tax payers can be safeguarded.

iv) It is settled law which has been re-affirmed and reiterated by the Supreme Court in case of Commissioner IR, supra that the show-cause notice is an opportunity to a person to explain a particular position, which in itself, is actualization of the principle of audi alterm partem lying on the larger spectrum of principles of natural justice. Constitutional petition against a show-cause notice can be filed only if the same is barred by law or amounts to abuse of process of the Court. As discussed above, in the present case, the show-cause notice issued to the petitioner is not barred by law rather the provisions of law provide for the pre-refund audit if the department has reasons to believe that claim of input tax credit or refund is not admissible. The term “reason to believe” has been repetitively interpreted by the Superior Courts as something on a higher pedestal

than mere suspicion and/or allegations that is tangible to trigger a prudent mind to develop reasons in his mind on a tentative pedestal fulfils the test of "reason to believe". This takes this Court to the impugned show cause notice which spells out the issues the explanation and/or reply whereupon has been sought from the petitioner to explain its position.

Conclusions: i) See analysis portion.
ii) Elapse of time stipulated in Section 10 of the Sales Tax Act, 1990 ipso facto does not render the refund claim admissible and due, as section 10(3) of the Act empowers the FBR to initiate and carry out enquiry, audit and/or investigation into any claim for input tax credit or refund.
iii) No consequences for the non-adherence to the time-limit provided for conclusion of pre-refund audit proceedings under Section 10(3) have been envisaged under the Act, however, such non-adherence amounts to concomitant violation of the fundamental rights of the tax-payers guaranteed under Articles 23 and 24 of the Constitution.
iv) Constitutional petition against a show-cause notice can be filed only if the same is barred by law or amounts to abuse of process of the Court.

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30. **Lahore High Court**
Muhammad Faisal Labar v. Federation of Pakistan, etc.
W. P. No. 80447/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6592.pdf

Facts: The petitioner challenged the appointment of respondent No.4 as Election Commissioner for holding and conducting election of the Chairman of the Pakistan Cricket Board.

Issues: i) Whether an advocate can hold office of Election Commissioner for holding and conducting election of the Chairman of the Pakistan Cricket Board if he does not get his licence suspended?
ii) What is effect if an advocate fails to get his license suspended within one month from the date of his employment in other profession or service?
iii) Which authority has power to proceed against a lawyer for misconduct in terms of the provisions of the Act, 1973?
iv) Whether assigning of task to Election Commission for the composition of the Board of Governor violates the PCB Constitution and the powers of the Management Committee?

Analysis: i) The qualifications of a person to be appointed as Judge of a High Court or the Supreme Court of Pakistan, as the case may be, has been made basis for the qualification to be appointed as the Election Commissioner. The qualification of a Judge of a High Court and Supreme Court have been stipulated under Articles 193 and 177 of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") respectively. Perusal of the said provisions of the Constitution

renders it succinctly clear that practice as an advocate for 10 years, inter alia, is condition precedent, in case of an advocate, to be qualified to be elevated as Judge of a High Court in terms of Article 193, whereas Article 177 of the Constitution envisages that a person who, inter alia, has an experience of 15 years as practicing lawyer is eligible to be appointed as Judge of the Supreme Court. It is the existence of these qualifications which are required to become Judge of a High Court or the Supreme Court, as the case may be, and the suspension of the license to practice law would ipso facto eat away the eligibility to become the Judge of the said Courts and resultantly, eligibility to be appointed as the Election Commissioner, under the PCB Constitution. The suspension of the license would thus ipso facto denude respondent No. 4 to be qualified to be appointed as the Election Commissioner. Therefore, the said interpretation as pleaded by the petitioner, will not only defeat the eligibility criteria envisaged under Paragraph 29 of the PCB Constitution but by its very nature and character, the argument of learned counsel for the petitioner is self-destructive.

ii) Rule 108 Pakistan Legal Practitioners and Bar Councils Rules, 1976 provides that an advocate shall apply to the Bar Council concerned that his license may be suspended as he intends to join some other business, service, profession or vocation. It further lays down that failure to do so within a period of one month shall amount to professional misconduct under the Pakistan Legal Practitioners and Bar Councils Act, 1973. Thus, it is clear that an advocate is required to get his licence suspended within a period of one month from date of said appointment and failure whereof may entail misconduct, if any.

iii) Proceeding against an advocate on account of the misconduct is the power of the Bar Council concerned in terms of the provisions of the Act, 1973 the Pakistan Legal Practitioners and Bar Councils Act, 1973.

iv) Perusal of Paragraph 10 of the PCB Constitution amply reveals that all the members of the BoG except the Chairman are either exofficio members and/or to be appointed from the service organization or department and/or by the Patron, as the case may be, and the Management Committee and/or the Election Commissioner has no direct role in it to play. However, the composition of the BoG is not complete till the election of the Chairman is held. Once the Chairman has been elected, only then the composition of the BoG becomes complete. Thus, the primary task assigned to respondent No.4 as the Election Commissioner by using the words “composition of BoG and the conduct of free and fair election of Chairman, PCB” clearly refers to the conduct of free and fair election of the Chairman of the PCB to complete the composition of the BoG. Therefore, no illegality or irregularity has been committed through impugned notification.

Conclusion: i) An advocate can hold office of Election Commission Election Commissioner for holding and conducting election of the Chairman of the Pakistan Cricket Board even if he does not get his license suspended.

ii) An advocate is required to get his licence suspended within a period of one month from date of said appointment and failure whereof may entail misconduct.

iii) Proceeding against an advocate on account of the misconduct is the power of the Bar Council concerned in terms of the provisions of the Pakistan Legal Practitioners and Bar Councils Act, 1973.
iv) Assigning of task to Election Commission for the composition of the Board of Governor does not violate the PCB Constitution and the powers of the Management Committee.

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31. **Lahore High Court**
State Life Insurance Corporation of Pakistan, etc. v. Mst. Undlus Begum
R.F.A No. 16370/2019
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC6672.pdf

Facts: The appellant filed instant appeal u/s 96 of CPC against the judgment passed by the learned Additional District Judge whereby suit of respondent was decreed.

Issues: i) Whether it would be fair to deprive other party of a valuable right if a party has been thoroughly negligent in implementing its rights and availing its remedies before the right forum?
ii) Whether Insurance Act or Ordinance provided any time frame for the insurer to accept or reject the claim of the insured?
iii) Whether the insurer can claim insurance claim as time barred when insurer itself took seven years in repudiation?
iv) Whether a void order is required to be challenged?
v) Whether condonation of delay can be claimed as a matter of right?
vi) How the court exercises its power of granting or refusing to grant the condonation of delay/extension of time?
vii) When the defence of equitable estoppel in respect of enforcement of Article 86(a) of the Limitation Act is available to the claimant?
viii) What options are available to litigant on return of plaint under O.VII R. 11 of CPC?
ix) Whether compound interest can be awarded u/s 47-B of Insurance Act?

Analysis: i) Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable rather unjustifiable to take away that right on the mere asking of the applicant, particularly, when the delay is directly a result of negligence, default or inaction of that party. If a party has been thoroughly negligent in implementing its rights and availing its remedies before the right forum, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.
ii) Neither under the Insurance Act nor under the Ordinance, any time frame has been envisaged for the insurer to accept or reject the claim of the insured.
iii) In the present case, the claim was repudiated seven years after the death of the husband of the respondent. Argument of learned counsel for the appellant that a

claimant must approach the relevant forum within three years from the date when claim arises without waiting for the repudiation while placing reliance on case of Pak Suzuki Motors Company supra is misconceived inasmuch as the said case was related to the limitation period provided under the Punjab Consumer Protection Act, 2005 that is a special statute and not under the Limitation Act. Even otherwise, the contracts forming subject matter of the consumer protection laws are purely commercial in nature and not based on the doctrine of good faith (uberrimae fidei)… In insurance claims, more particularly one before this Court, unless a claimant is aware of reasons for rejection/repudiation of his/her claim, filing of the suit under the law becomes meaningless. Mere fact that the appellant took seven years to reject the claim of the respondent based on simple service record of the deceased that was in the custody of the appellant belies logic as to what caused the delay for the appellant to reach the conclusion that the respondent's claim is not payable and hence, the appellant cannot set up the defence on ground of limitation.

iv) It is settled principle of law that even a void order is required to be challenged by the aggrieved party.

v) The condonation of delay is a matter of concession and cannot be claimed as a matter of absolute right.

vi) It is the existence of sufficient cause for not filing the proceeding in time before the proper forum that must be justified to the satisfaction of the Court to exercise its power of granting or refusing to grant the condonation of delay/extension of time. If the condition is not satisfied, there is no room for the applicability of the power to condone the delay. Thus, where no cause has, at all, been shown that is, where no explanation has been given for filing the proceeding out of time, there arises no opportunity of considering the sufficiency or otherwise of the reasons for that fact, and there cannot be any room for the exercise of the discretion given under the law. If the condition is satisfied, then the Court gets a discretionary power to grant or refuse the prayer for extension of time. What is sufficient cause, being a question of discretion, depends upon the facts and circumstances of a particular case… Time spent pursuing the claim and/or appeal before a wrong forum, in good faith and with due diligence in the opinion of this Court constitutes sufficient cause for condonation of delay.

vii) In insurance matters, the conduct of the insurer to induce the claimant to wait for the decision and then refusal/repudiation of the claim at a belated stage provides the defence of equitable estoppel in respect of enforcement of Article 86(a) of the Limitation Act against the claimant, which has always been considered as pivotal in deciding the defence of limitation.

viii) Once a plaint is returned under Order VII, Rule 10, CPC, a litigant has option to either file the same before the proper forum or institute new suit.

ix) There is no cavil to the preposition that the compound interest cannot be awarded under Section 47-B of the Insurance Act as the same is no more on the statute books after decision in case reported as "Dr. Mahmood-ur Rahman Faisal and others v. Secretary, Ministry of Law, Justice and Parliamentary Affairs,

Government of Pakistan, Islamabad and others" (PLD 1992 FSC 1) that has been upheld by the Supreme Court of Pakistan in case reported as "Dr. M. Aslam Khaki v. Syed Muhammad Hashim and 2 others" (PLD 2000 SC 225)

Conclusion: i) It would be unfair to deprive other party of a valuable right if a party has been thoroughly negligent in implementing its rights and availing its remedies before the right forum.
ii) Neither under the Insurance Act nor under the Ordinance, any time frame has been envisaged for the insurer to accept or reject the claim of the insured.
iii) The insurer cannot claim insurance claim as time barred when insurer itself took seven years in repudiation.
iv) It is settled principle of law that even a void order is required to be challenged by the aggrieved party.
v) The condonation of delay is a matter of concession and cannot be claimed as a matter of absolute right.
vi) It is the existence of sufficient cause for not filing the proceeding in time before the proper forum that must be justified to the satisfaction of the Court to exercise its power of granting or refusing to grant the condonation of delay/extension of time. If the condition is not satisfied, there is no room for the applicability of the power to condone the delay.
vii) In insurance matters, the conduct of the insurer to induce the claimant to wait for the decision and then refusal/repudiation of the claim at a belated stage provides the defence of equitable estoppel in respect of enforcement of Article 86(a) of the Limitation Act against the claimant.
viii) Once a plaint is returned under Order VII, Rule 10, CPC, a litigant has option to either file the same before the proper forum or institute new suit.
ix) The compound interest cannot be awarded under Section 47-B of the Insurance Act as the same is no more on the statute books as being declared repugnant to injunctions of Islam by Federal Shariat Court.

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32. **Lahore High Court**
Tanveer Sarwar v. Federation of Pakistan through Ministry of Law and Justice & another
Writ Petition No. 51021 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6801.pdf

Facts: The petitioner invoked jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution') praying for a direction to the Election Commission of Pakistan ('ECP') to file complaints against all members of National and Provisional Assemblies who have not disclosed Toshakhana gifts in their statements of assets and liabilities.

Issues: i) Whether it is the obligation of every member of an Assembly and Senate to submit to a copy of his statement of assets and liabilities?

ii) What is the object of prescribing period of limitation for the offence of corrupt practice under section 137(4) of the Elections Act, 2017?
iii) What is the pre-condition for the exercise of its jurisdiction by the High Court under Article 199 of the Constitution?

Analysis: i) From perusal of section 137(1) of the Elections Act, 2017, it is abundantly clear that an obligation has been cast upon every Member of an Assembly and Senate to submit to the ECP, on or before 31st December each year, a copy of his statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June. Failure to submit the aforementioned statement of assets and liabilities by 15th January renders the Member of an Assembly or Senate dysfunctional and such penal consequences, as provided in section 137(3) of the Elections Act, 2017, which makes the requirement to file the statement clearly mandatory.
ii) The object of prescribing period of limitation for the offence of corrupt practice under section 137(4) of the Elections Act, 2017 is to quicken the prosecution of complaints and to rid criminal justice system of inconsequential cases displaying lethargy, inertia or indolence and to make it more orderly, efficient and just.
iii) Jurisdiction of the High Court under Article 199 of the Constitution is subject to limitations specified therein. A High Court may exercise jurisdiction under the said Article where it is satisfied that no other adequate remedy is provided by law to any aggrieved party for redressal of its grievance raised in his petition.

Conclusion: i) It is an obligation upon every Member of an Assembly and Senate to submit to the ECP, on or before 31st December each year, a copy of his statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June.
ii) See above in analysis clause.
iii) High Court exercises its jurisdiction under Article 199 of the Constitution where it is satisfied that no other adequate remedy is provided by law to any aggrieved party for redressal of its grievance raised in his petition.

LATEST LEGISLATION / AMENDMENTS

1. Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 is issued in superession of Notification No. SO(Rev)IRR/12-70/21(All CEs)-878 dated 04.04.2023 regarding the revised water rate for irrigation purposes w.e.f Rabi Season, 2023-2024.
2. Notification No. SOP (WL) 12-12/2022 dated 05.12.2023 issued by the forestry, wildlife and fisheries Department by which the Governor of the Punjab made rules under section 46 of the Punjab Wildlife (Protection, Preservation, Conversion and Management) Act, 1974.

3. Notification No. SO (CAB-I) 2-10/2011 issued by the Implementation and Coordination Wing of Services and General Administration Department regarding amendment in the Punjab Government Rules of Business 2011 in first schedule at serial no. 37 in column 4 and in second schedule at serial no. 3 and 13.
4. Notification No. SO (Cab-I) 2-13/2016(ROB) issued by the Implementation and Coordination Wing of Services and General Administration Department regarding the insertion of 7A after serial no.7 in second schedule of the Punjab Government Rules of Business 2011.

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/Mechanisation-of-Social-Network-on-Modern-Era

Mechanisation of Social Network on Modern Era by Kanak Shakya

*We live in the amazing era of social media, technology, and internet that has completely transformed our day to day life. Earlier as we don't have mobile phones or internet the only access we have was print media like , newspaper, radio, television but now anyone can make there own content on social media platforms, as of now we are very acknowledged with the word "**VIRAL**" which has the ability to spread the content we are dealing with to thousands of users it has been one of the major platform for the people for interaction which could be either personal or professional work, or it could be related to any entertainment purpose or academic purpose it also contains our personal details to should be properly legally govern or regulated by the government to protect the people from the cyber crime.*

2. MANUPATRA
https://articles.manupatra.com/article-details/Audi-Alteram-Partem-and-Nemo-Judex-In-Causa-Sua-The-Two-Pillars-of-Natural-Justice

Audi Alteram Partem and Nemo Judex In Causa Sua: The Two Pillars of Natural Justice by Surbhi Jindal and Anunay Pandey

Natural Justice, also known as procedural fairness, is a legal philosophy that dictates how legal proceedings should be conducted to ensure fairness and justice. In other words, natural justice is the principle of law that protects the rights of individuals to fair treatment in legal proceedings. The principles of natural justice assert that justice should be based on the law of nature rather than on the law of man. It revolves around the idea that decision-making should be fair and impartial and that all parties involved in a dispute should have an opportunity to be heard. This article deals with the principles of natural justice, including post-decisional hearing and exclusion of the principles of natural justice. The main objective of the article is to delve deeper into the topic's nuances in greater detail by understanding how these principles are applied practically in a legal context.

3. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/2023-round-state-consumer-data-privacy-laws

2023 Round-Up on State Consumer Data Privacy Laws by: Ilse P. Johnson , Michael B. Katz of Mintz

Looking back sometimes means looking forward. That is absolutely the case for new comprehensive data privacy statutes enacted in a number of U.S. states during 2023, including Indiana, Tennessee, Montana, Florida, Texas and Oregon. While these states have now codified a range of consumer rights with respect to their personal data, as well as new obligations imposed on covered businesses collecting and processing that data, the new laws do not take effect until the middle of 2024 or beyond. All the same, companies who may be subject to these laws in the future should start preparing now to comply with what are becoming increasingly standardized requirements across many U.S. states.

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

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

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

5. **THE OXFORD ACADEMIC**
https://academic.oup.com/ejil/article/34/1/113/7079615?searchresult=1

Discourses of Fear on Climate Change in International Human Rights Law by Anne Saab

Discourses of fear on climate change are pervasive. International human rights law frequently refers to climate change as one of the most serious threats to human rights, and this language of threat reveals a discourse of fear. Fearful representations of climate change are justified by scientific data and can be effective in drawing attention to the issue and incentivizing necessary action. However, psychologists and communications experts have demonstrated that fear can also lead to disengagement, 'climate change fatigue' and active opposition to climate change policies. By invoking a discourse of fear on climate change, human rights actors are not only reflecting accurate climate science but also engaging in emotional rhetoric. The discourse of fear that presents climate change itself as the main threat to human rights, moreover, contributes to framing

climate change primarily as a physical and scientific problem and obscures other important dimensions of climate change. Those individuals engaging with international human rights law must acknowledge the rhetorical and emotive power of the language they speak and engage more seriously with the literature on discourses of fear and their effects on a broad general audience. Only then can we truly work towards effective action on climate change, supported by international law.

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Pleading for international law: assessing the influence of party to proceedings on legal change in international courts by William Hamilton Byrne, Zuzanna Godzimirska

Scholars increasingly seek to understand the driving forces behind change in international law. However, these analyses often tend to provide external forms of analysis that presume change can be identified without engaging with the actors or looking at the law. This article takes the role of party pleadings in international dispute settlement as a means through which we can assess the influence of actors on law-making. Taking the development of the 'control of the crime' theory at the International Criminal Court as its object, the article scrutinizes legal change by dissecting the multifaceted role of pleadings. Adopting an interdisciplinary approach and conducting quantitative analysis of citation patterns, content analysis of case law, and interviews with practitioners, it offers a novel methodological take and empirical insights into our understanding of what makes up legal change in international law, and how we can identify its meaning through different access points.